

## CHAPTER 191

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**CORPORATIONS AND ASSOCIATIONS**

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**HOUSE BILL 93-1154**

BY REPRESENTATIVES Schauer, Chlouber, Friednash, George, June, Kaufman, May, Sullivan, and Taylor;  
also SENATORS Mutzebaugh, Casey, Cassidy, Feeley, and Meiklejohn.

**AN ACT**

**CONCERNING CORPORATIONS, AND, IN CONNECTION THEREWITH, AMENDING AND RECODIFYING THE  
"COLORADO CORPORATION CODE".**

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

**SECTION 1.** Title 7, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW ARTICLES to read:

**ARTICLE 101  
General Provisions**

**PART 1  
SHORT TITLE AND RESERVATION OF POWER**

**7-101-101. Short title.** ARTICLES 101 TO 117 OF THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO BUSINESS CORPORATION ACT".

**7-101-102. Reservation of power to amend or repeal.** THE GENERAL ASSEMBLY HAS THE POWER TO AMEND OR REPEAL ALL OR PART OF ARTICLES 101 TO 117 OF THIS TITLE AT ANY TIME AND ALL DOMESTIC AND FOREIGN CORPORATIONS SUBJECT TO SAID ARTICLES SHALL BE GOVERNED BY THE AMENDMENT OR REPEAL.

**PART 2  
FILING DOCUMENTS**

**7-101-201. Filing requirements - number of copies - signature as affirmation.**  
(1) A DOCUMENT SHALL SATISFY THE REQUIREMENTS OF THIS SECTION, AND OF ANY

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

OTHER SECTION THAT ADDS TO OR VARIES THESE REQUIREMENTS, TO BE ENTITLED TO FILING BY THE SECRETARY OF STATE.

(2) THE DOCUMENT SHALL BE ONE WHICH IS REQUIRED OR PERMITTED BY ARTICLES 101 TO 117 OF THIS TITLE TO BE FILED IN THE OFFICE OF THE SECRETARY OF STATE.

(3) THE DOCUMENT SHALL CONTAIN ALL INFORMATION REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE AND MAY CONTAIN OTHER INFORMATION AS WELL.

(4) THE DOCUMENT SHALL BE TYPEWRITTEN OR PRINTED.

(5) THE DOCUMENT SHALL BE IN THE ENGLISH LANGUAGE. A CORPORATE NAME NEED NOT BE IN ENGLISH IF WRITTEN IN ENGLISH LETTERS OR ARABIC OR ROMAN NUMERALS, AND THE CERTIFICATE OF EXISTENCE REQUIRED OF FOREIGN CORPORATIONS NEED NOT BE IN ENGLISH IF ACCOMPANIED BY A REASONABLY AUTHENTICATED ENGLISH TRANSLATION.

(6) THE DOCUMENT SHALL BE EXECUTED, OR SHALL BE A TRUE COPY, MADE BY PHOTOGRAPHIC, XEROGRAPHIC, OR OTHER PROCESS PROVIDING SIMILAR COPY ACCURACY, OF A DOCUMENT THAT HAS BEEN EXECUTED, AS FOLLOWS:

(a) BY THE CHAIRPERSON OF THE BOARD OF DIRECTORS OF A DOMESTIC OR FOREIGN CORPORATION, BY ALL OF ITS DIRECTORS, BY ONE OF ITS OFFICERS, OR BY ANY OTHER PERSON AUTHORIZED TO EXECUTE THE DOCUMENT;

(b) IF DIRECTORS HAVE NOT BEEN ELECTED OR THE CORPORATION HAS NOT BEEN FORMED, BY AN INCORPORATOR;

(c) IF THE CORPORATION IS IN THE HANDS OF A RECEIVER, TRUSTEE, OR OTHER COURT-APPOINTED FIDUCIARY, BY THAT FIDUCIARY; OR

(d) IF THE DOCUMENT IS THAT OF A REGISTERED AGENT, BY THE REGISTERED AGENT, IF THE PERSON IS AN INDIVIDUAL, OR BY A PERSON AUTHORIZED BY THE REGISTERED AGENT TO EXECUTE THE DOCUMENT, IF THE REGISTERED AGENT IS AN ENTITY.

(7) THE PERSON EXECUTING THE DOCUMENT SHALL STATE BENEATH OR OPPOSITE SUCH PERSON'S SIGNATURE HIS OR HER NAME AND THE CAPACITY IN WHICH THE PERSON SIGNS.

(8) THE DOCUMENT MAY BUT NEED NOT CONTAIN:

(a) THE CORPORATE SEAL;

(b) AN ATTESTATION BY THE SECRETARY OR AN ASSISTANT SECRETARY;

(c) AN ACKNOWLEDGMENT, VERIFICATION, OR PROOF.

(9) WHETHER OR NOT THE DOCUMENT CONTAINS AN ACKNOWLEDGMENT, VERIFICATION, OR PROOF PERMITTED BY SUBSECTION (8) OF THIS SECTION, THE SIGNATURE OF EACH PERSON SIGNING THE DOCUMENT SHALL CONSTITUTE THE

AFFIRMATION OR ACKNOWLEDGMENT OF SUCH PERSON, UNDER PENALTIES OF PERJURY, THAT THE DOCUMENT IS THE PERSON'S ACT AND DEED OR THE ACT AND DEED OF THE CORPORATION AND THAT THE FACTS STATED IN THE DOCUMENT ARE TRUE.

(10) IF THE SECRETARY OF STATE REQUIRES THE USE OF A FORM OR COVER SHEET FOR A DOCUMENT UNDER SECTION 7-101-202, THE DOCUMENT SHALL BE IN OR ON THE REQUIRED FORM OR SHALL HAVE THE REQUIRED COVER SHEET.

(11) THE DOCUMENT SHALL BE DELIVERED TO THE SECRETARY OF STATE FOR FILING AND SHALL BE ACCOMPANIED BY ONE EXACT OR CONFORMED COPY THEREOF (EXCEPT AS PROVIDED IN SECTIONS 7-105-103 AND 7-115-110), THE CORRECT FILING FEE, AND ANY PENALTY REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE OR OTHER LAW. EXCEPT WITH RESPECT TO FILINGS PURSUANT TO SECTION 7-105-103 OR 7-115-110, THE DOCUMENT SHALL STATE, OR BE ACCOMPANIED BY A WRITING STATING, THE ADDRESS TO WHICH THE SECRETARY OF STATE MAY SEND A COPY UPON COMPLETION OF THE FILING.

**7-101-202. Forms - secretary of state to furnish upon request.** THE SECRETARY OF STATE MAY PREPARE AND FURNISH FORMS AND COVER SHEETS FOR ANY DOCUMENT REQUIRED OR PERMITTED BY ARTICLES 101 TO 117 OF THIS TITLE AND MAY REQUIRE THE USE OF ANY SUCH FORM OR COVER SHEET; HOWEVER, NO REQUIREMENT THAT A FORM OR COVER SHEET BE USED SHALL PRECLUDE IN ANY WAY THE INCLUSION IN ANY DOCUMENT OF ANY ITEM THE INCLUSION OF WHICH IS NOT PROHIBITED BY SAID ARTICLES OR REQUIRE THE INCLUSION THEREIN OF ANY ITEM THE INCLUSION OF WHICH IS NOT REQUIRED BY SAID ARTICLES. THE SECRETARY OF STATE SHALL FURNISH, ON REQUEST, ANY FORM OR COVER SHEET THAT THE SECRETARY OF STATE REQUIRES TO BE USED PURSUANT TO THIS SECTION.

**7-101-203. Filing, service, and copying fees - subpoenas.** (1) THE SECRETARY OF STATE SHALL CHARGE AND COLLECT FEES AND OTHER CHARGES, WHICH SHALL BE DETERMINED AND COLLECTED PURSUANT TO SECTION 24-21-104 (3), C.R.S., FOR:

- (a) ISSUING ANY CERTIFICATE;
- (b) FURNISHING WRITTEN INFORMATION CONCERNING ANY CORPORATION;
- (c) FURNISHING A COPY OF ANY DOCUMENT OR INSTRUMENT;
- (d) CERTIFYING A COPY OF ANY DOCUMENT OR INSTRUMENT THAT IS ON FILE WITH THE SECRETARY OF STATE;
- (e) SERVICE OF ANY NOTICE, DEMAND, OR PROCESS UPON THE SECRETARY OF STATE AS THE REGISTERED AGENT OF A CORPORATION, WHICH AMOUNT MAY BE RECOVERED AS COSTS BY THE PARTY TO THE SUIT, ACTION, OR PROCEEDING CAUSING SUCH SERVICE TO BE MADE IF SUCH PARTY PREVAILS THEREIN; AND
- (f) FILING ANY DOCUMENT REQUIRED OR PERMITTED TO BE FILED UNDER ARTICLES 101 TO 117 OF THIS TITLE.

(2) THE SECRETARY OF STATE SHALL CHARGE AND COLLECT, AT THE TIME OF SERVICE OF ANY SUBPOENA UPON THE SECRETARY OF STATE OR ANY DEPUTY OR

EMPLOYEE OF THE SECRETARY OF STATE'S OFFICE, A FEE OF FIFTY DOLLARS AND AN ALLOWANCE OF TEN DOLLARS FOR MEALS AND A CHARGE FOR MILEAGE AT THE RATE PRESCRIBED BY SECTION 24-9-104, C.R.S., FOR EACH MILE FROM THE STATE CAPITOL BUILDING TO THE PLACE NAMED IN THE SUBPOENA. THE FEE SHALL BE PAID TO THE SECRETARY OF STATE; THE MEAL ALLOWANCE AND MILEAGE CHARGE SHALL BE PAID TO THE PERSON NAMED IN THE SUBPOENA. IF THE PERSON NAMED IN THE SUBPOENA IS REQUIRED TO APPEAR AT THE PLACE NAMED IN THE SUBPOENA FOR MORE THAN ONE DAY, HE OR SHE SHALL BE PAID IN ADVANCE A PER DIEM ALLOWANCE OF FORTY-FOUR DOLLARS FOR EACH DAY OF ATTENDANCE IN ADDITION TO ANY OTHER FEES, ALLOWANCES, AND CHARGES.

(3) THE SECRETARY OF STATE SHALL CHARGE AND COLLECT ALL OTHER FEES AND PENALTIES IMPOSED BY OR ASSESSED IN ACCORDANCE WITH ARTICLES 101 TO 117 OF THIS TITLE.

(4) IN ALL CASES WHERE FEES OR CHARGES ARE IMPOSED UNDER ARTICLES 101 TO 117 OF THIS TITLE, THE FEE SHALL INCLUDE INDEXING AND FILING OF THE DOCUMENT AND SHALL INCLUDE AFFIXING THE SEAL OF THE SECRETARY OF STATE UPON ANY CERTIFIED COPY.

**7-101-204. Effective time and date of document.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION AND IN SECTION 7-101-205 (4), A DOCUMENT THAT IS FILED BY THE SECRETARY OF STATE IS EFFECTIVE:

(a) AT THE TIME OF FILING ON THE DATE IT IS FILED, AS EVIDENCED BY THE SECRETARY OF STATE'S TIME AND DATE ENDORSEMENT ON THE DOCUMENT; OR

(b) AT THE LATER OF THE TIME SPECIFIED IN THE DOCUMENT AS ITS EFFECTIVE TIME ON THE DATE IT IS FILED, AS SUCH DATE IS SPECIFIED IN THE SECRETARY OF STATE'S TIME AND DATE ENDORSEMENT ON THE DOCUMENT, OR THE TIME SPECIFIED IN SUCH TIME AND DATE ENDORSEMENT OF THE SECRETARY OF STATE.

(2) A DOCUMENT MAY SPECIFY A DELAYED EFFECTIVE TIME AND DATE, AND IF IT DOES SO THE DOCUMENT BECOMES EFFECTIVE AT THE TIME AND DATE SPECIFIED. IF A DOCUMENT SPECIFIES A DELAYED EFFECTIVE DATE BUT NOT A TIME, THE DOCUMENT IS EFFECTIVE AT THE CLOSE OF BUSINESS ON THAT DATE. IF A DOCUMENT SPECIFIES A DELAYED EFFECTIVE DATE THAT IS LATER THAN THE NINETIETH DAY AFTER THE DATE THE DOCUMENT IS FILED, THE DOCUMENT IS EFFECTIVE ON THE NINETIETH DAY AFTER IT IS FILED.

(3) IF A DOCUMENT SPECIFIES A DELAYED EFFECTIVE DATE PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE DOCUMENT MAY BE PREVENTED FROM BECOMING EFFECTIVE BY DELIVERING TO THE SECRETARY OF STATE FOR FILING, ON OR BEFORE THE SPECIFIED EFFECTIVE DATE OF THE DOCUMENT, A CERTIFICATE OF WITHDRAWAL, EXECUTED IN THE SAME MANNER AS THE DOCUMENT BEING WITHDRAWN, STATING:

(a) THAT THE DOCUMENT HAS BEEN REVOKED BY APPROPRIATE CORPORATE ACTION OR BY COURT ORDER OR DECREE PURSUANT TO SECTION 7-110-108 AND IS VOID; AND

(b) IN THE CASE OF A COURT ORDER OR DECREE PURSUANT TO SECTION 7-110-108, THAT SUCH COURT ORDER OR DECREE WAS ENTERED BY A COURT HAVING JURISDICTION OF THE PROCEEDING FOR THE REORGANIZATION OF THE CORPORATION UNDER A SPECIFIED STATUTE OF THE UNITED STATES.

**7-101-205. Correcting filed document.** (1) A DOMESTIC OR FOREIGN CORPORATION MAY CORRECT A DOCUMENT FILED BY THE SECRETARY OF STATE IF THE DOCUMENT CONTAINS AN INCORRECT STATEMENT OR WAS DEFECTIVELY EXECUTED, ATTESTED, SEALED, VERIFIED, OR ACKNOWLEDGED.

(2) A DOCUMENT IS CORRECTED BY DELIVERING TO THE SECRETARY OF STATE FOR FILING ARTICLES OF CORRECTION THAT:

(a) DESCRIBE THE DOCUMENT, INCLUDING ITS FILING DATE, OR HAVE A COPY OF IT ATTACHED TO THE ARTICLES OF CORRECTION;

(b) SPECIFY THE INCORRECT STATEMENT AND THE REASON IT IS INCORRECT OR THE MANNER IN WHICH THE EXECUTION, ATTESTATION, SEALING, VERIFICATION, OR ACKNOWLEDGMENT WAS DEFECTIVE; AND

(c) CORRECT THE INCORRECT STATEMENT OR THE DEFECTIVE EXECUTION, ATTESTATION, SEALING, VERIFICATION, OR ACKNOWLEDGMENT.

(3) ARTICLES OF CORRECTION MAY BE EXECUTED BY ANY PERSON DESIGNATED IN SECTION 7-101-201 (6) OR BY THE PERSON OR PERSONS WHO EXECUTED THE DOCUMENT THAT IS CORRECTED.

(4) ARTICLES OF CORRECTION ARE EFFECTIVE ON THE EFFECTIVE DATE OF THE DOCUMENT THEY CORRECT EXCEPT AS TO PERSONS RELYING ON THE UNCORRECTED DOCUMENT AND ADVERSELY AFFECTED BY THE CORRECTION. AS TO THOSE PERSONS, ARTICLES OF CORRECTION ARE EFFECTIVE WHEN FILED.

**7-101-206. Filing duty of secretary of state - manner of filing.** (1) IF A DOCUMENT DELIVERED TO THE SECRETARY OF STATE FOR FILING SATISFIES THE REQUIREMENTS OF SECTION 7-101-201, THE SECRETARY OF STATE SHALL FILE IT.

(2) THE SECRETARY OF STATE FILES A DOCUMENT BY LEGIBLY STAMPING OR OTHERWISE ENDORSING THE WORD "FILED", TOGETHER WITH THE NAME AND OFFICIAL TITLE OF THE SECRETARY OF STATE AND THE TIME AND DATE OF RECEIPT, ON BOTH THE DOCUMENT AND THE ACCOMPANYING COPY OR COPIES. AFTER FILING A DOCUMENT, EXCEPT AS PROVIDED IN SECTIONS 7-105-103, 7-115-110, AND 7-116-108, THE SECRETARY OF STATE SHALL DELIVER THE ACCOMPANYING COPY, WITH THE RECEIPT FOR FILING FEES, IF ANY, TO THE DOMESTIC OR FOREIGN CORPORATION OR ITS REPRESENTATIVE.

(3) IF THE SECRETARY OF STATE REFUSES TO FILE A DOCUMENT, THE SECRETARY OF STATE SHALL RETURN IT TO THE PERSON DELIVERING THE DOCUMENT, TOGETHER WITH A WRITTEN NOTICE PROVIDING A BRIEF EXPLANATION OF THE REASON FOR THE REFUSAL, WITHIN TEN DAYS AFTER THE DOCUMENT WAS DELIVERED TO THE SECRETARY OF STATE.

(4) THE SECRETARY OF STATE'S DUTY TO FILE DOCUMENTS UNDER THIS SECTION IS MINISTERIAL. THE FILING OF OR REFUSAL TO FILE A DOCUMENT DOES NOT:

- (a) AFFECT THE VALIDITY OR INVALIDITY OF THE DOCUMENT IN WHOLE OR IN PART;
- (b) RELATE TO THE CORRECTNESS OR INCORRECTNESS OF INFORMATION CONTAINED IN THE DOCUMENT; OR
- (c) CREATE A PRESUMPTION THAT THE DOCUMENT IS VALID OR INVALID OR THAT INFORMATION CONTAINED IN THE DOCUMENT IS CORRECT OR INCORRECT.

**7-101-207. Appeal from secretary of state's refusal to file document.** (1) IF THE SECRETARY OF STATE REFUSES TO FILE A DOCUMENT DELIVERED TO THE SECRETARY OF STATE FOR FILING, THE PERSON DELIVERING THE DOCUMENT FOR FILING MAY, WITHIN FORTY-FIVE DAYS AFTER THE EFFECTIVE DATE OF THE NOTICE OF THE REFUSAL GIVEN BY THE SECRETARY OF STATE PURSUANT TO SECTION 7-101-206 (3), APPEAL TO THE DISTRICT COURT OF THE COUNTY WHERE THE REGISTERED OR PRINCIPAL OFFICE OF THE CORPORATION IS LOCATED. THE APPEAL IS COMMENCED BY PETITIONING THE COURT TO COMPEL THE FILING OF THE DOCUMENT BY THE SECRETARY OF STATE AND BY ATTACHING TO THE PETITION A COPY OF THE DOCUMENT AND A COPY OF THE SECRETARY OF STATE'S NOTICE OF REFUSAL.

(2) THE COURT MAY ORDER THE SECRETARY OF STATE TO FILE THE DOCUMENT OR TO TAKE SUCH OTHER ACTION AS THE COURT CONSIDERS APPROPRIATE.

(3) THE COURT'S ORDER OR DECISION MAY BE APPEALED AS IN OTHER CIVIL PROCEEDINGS.

**7-101-208. Evidentiary effect of copy of filed document.** A CERTIFICATE ATTACHED TO A COPY OF A DOCUMENT FILED BY THE SECRETARY OF STATE BEARING THE SECRETARY OF STATE'S SIGNATURE, EITHER MANUAL OR FACSIMILE, AND THE SEAL OF THIS STATE IS PRIMA FACIE EVIDENCE THAT THE DOCUMENT IS ON FILE WITH THE SECRETARY OF STATE.

**7-101-209. Certificates issued by secretary of state.** (1) THE SECRETARY OF STATE SHALL ISSUE TO ANY PERSON, UPON REQUEST, A CERTIFICATE THAT SETS FORTH ANY FACTS OF RECORD IN THE OFFICE OF THE SECRETARY OF STATE, INCLUDING, IF APPROPRIATE, A CERTIFICATE OF GOOD STANDING CONCERNING ANY DOMESTIC OR FOREIGN CORPORATION.

(2) A CERTIFICATE ISSUED BY THE SECRETARY OF STATE MAY BE RELIED UPON, SUBJECT TO ANY QUALIFICATION STATED IN THE CERTIFICATE, AS PRIMA FACIE EVIDENCE OF THE FACTS SET FORTH THEREIN.

### PART 3 SECRETARY OF STATE

**7-101-301. Powers.** THE SECRETARY OF STATE HAS ALL POWERS REASONABLY NECESSARY TO PERFORM THE DUTIES REQUIRED OF THE OFFICE BY ARTICLES 101 TO 117 OF THIS TITLE.

PART 4  
DEFINITIONS

**7-101-401. General definitions.** AS USED IN ARTICLES 101 TO 117 OF THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADDRESS" MEANS ANY LOCATION WHERE MAIL CAN BE DELIVERED BY THE UNITED STATES POSTAL SERVICE. "ADDRESS" INCLUDES POST OFFICE BOX NUMBERS, RURAL FREE DELIVERY ROUTE NUMBERS, AND STREET NAMES AND NUMBERS.

(2) "AFFILIATE" MEANS ANY PERSON THAT DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES CONTROLS, OR IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH, THE PERSON SPECIFIED.

(3) "ARTICLES OF INCORPORATION" INCLUDES AMENDED ARTICLES OF INCORPORATION, RESTATED ARTICLES OF INCORPORATION, ARTICLES OF MERGER, AND OTHER INSTRUMENTS, HOWEVER DESIGNATED, ON FILE WITH THE SECRETARY OF STATE WHICH HAVE THE EFFECT OF AMENDING OR SUPPLEMENTING IN SOME RESPECT THE ORIGINAL OR AMENDED ARTICLES OF INCORPORATION.

(4) "ASSUMED CORPORATE NAME" MEANS THE NAME ASSUMED FOR USE IN THIS STATE BY A FOREIGN CORPORATION PURSUANT TO SECTION 7-115-106 OR BY A FOREIGN NONPROFIT CORPORATION PURSUANT TO SECTION 7-27-105 BECAUSE ITS CORPORATE NAME IS NOT AVAILABLE FOR USE IN THIS STATE.

(5) "AUTHORIZED SHARES" MEANS THE SHARES OF ALL CLASSES WHICH A DOMESTIC OR FOREIGN CORPORATION IS AUTHORIZED TO ISSUE.

(6) "BYLAWS" INCLUDES AMENDED BYLAWS AND RESTATED BYLAWS.

(7) "CASH" AND "MONEY" ARE USED INTERCHANGEABLY IN ARTICLES 101 TO 117 OF THIS TITLE. EACH OF THESE TERMS INCLUDES:

(a) LEGAL TENDER;

(b) NEGOTIABLE INSTRUMENTS READILY CONVERTIBLE INTO LEGAL TENDER; AND

(c) OTHER CASH EQUIVALENTS READILY CONVERTIBLE INTO LEGAL TENDER.

(8) "CONSPICUOUS" MEANS SO WRITTEN THAT A REASONABLE PERSON AGAINST WHOM THE WRITING IS TO OPERATE SHOULD HAVE NOTICED IT. FOR EXAMPLE, PRINTING OR TYPING IN CONTRASTING ITALICS, BOLDFACE, COLOR, CAPITALS, OR UNDERLINING IS CONSPICUOUS.

(9) "CONTROL" MEANS THE POSSESSION, DIRECT OR INDIRECT, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF AN ENTITY, WHETHER THROUGH THE OWNERSHIP OF VOTING SHARES, BY CONTRACT, OR OTHERWISE.

(10) "CORPORATE NAME" MEANS:

(a) THE NAME OF A DOMESTIC CORPORATION OR A DOMESTIC NONPROFIT CORPORATION AS STATED IN ITS ARTICLES OF INCORPORATION; OR

(b) THE NAME OF A FOREIGN CORPORATION OR A FOREIGN NONPROFIT CORPORATION AS STATED IN ITS ARTICLES OF INCORPORATION OR DOCUMENT OF SIMILAR IMPORT.

(11) "CORPORATION" OR "DOMESTIC CORPORATION" MEANS A CORPORATION FOR PROFIT WHICH IS NOT A FOREIGN CORPORATION, INCORPORATED UNDER OR SUBJECT TO THE PROVISIONS OF ARTICLES 101 TO 117 OF THIS TITLE.

(12) "DELIVER" INCLUDES MAIL; EXCEPT THAT DELIVERY TO THE SECRETARY OF STATE MEANS ACTUAL RECEIPT BY THE SECRETARY OF STATE.

(13) "DISTRIBUTION" MEANS A DIRECT OR INDIRECT TRANSFER BY A CORPORATION OF MONEY OR OTHER PROPERTY, EXCEPT ITS OWN SHARES, OR INCURRENCE OF INDEBTEDNESS BY A CORPORATION, TO OR FOR THE BENEFIT OF ANY OF ITS SHAREHOLDERS IN RESPECT OF ANY OF ITS SHARES. A DISTRIBUTION MAY BE IN ANY FORM, INCLUDING A DECLARATION OR PAYMENT OF A DIVIDEND; A PURCHASE, REDEMPTION, OR OTHER ACQUISITION OF SHARES; OR DISTRIBUTION OF INDEBTEDNESS.

(14) "EFFECTIVE DATE", WHEN REFERRING TO A DOCUMENT FILED BY THE SECRETARY OF STATE, MEANS THE TIME AND DATE DETERMINED IN ACCORDANCE WITH SECTION 7-101-204.

(15) "EFFECTIVE DATE OF NOTICE" HAS THE MEANING SET FORTH IN SECTION 7-101-402.

(16) "EMPLOYEE" INCLUDES AN OFFICER BUT NOT A DIRECTOR; EXCEPT THAT A DIRECTOR MAY ACCEPT DUTIES THAT MAKE SAID DIRECTOR ALSO AN EMPLOYEE.

(17) "ENTITY" INCLUDES A DOMESTIC OR FOREIGN CORPORATION, A NONPROFIT CORPORATION, A PROFIT OR NONPROFIT UNINCORPORATED ASSOCIATION, A BUSINESS TRUST, AN ESTATE, A PARTNERSHIP, A LIMITED LIABILITY COMPANY, A TRUST, TWO OR MORE PERSONS HAVING A JOINT OR COMMON ECONOMIC INTEREST, A STATE, THE UNITED STATES, AND A FOREIGN GOVERNMENT.

(18) "FOREIGN CORPORATION" MEANS A CORPORATION FOR PROFIT INCORPORATED UNDER A LAW OTHER THAN THE LAWS OF THIS STATE.

(19) "GOVERNMENTAL SUBDIVISION" INCLUDES AN AUTHORITY, COUNTY, DISTRICT, SUBDISTRICT, MUNICIPALITY, AND ANY OTHER POLITICAL SUBDIVISION.

(20) "INCLUDES" WHEN USED IN REFERENCE TO ANY DEFINITION OR LIST INDICATES THAT THE DEFINITION OR LIST IS PARTIAL AND NOT EXCLUSIVE.

(21) "INDIVIDUAL" INCLUDES THE ESTATE OF AN INCOMPETENT OR DECEASED INDIVIDUAL.

(22) "MAIL" MEANS DEPOSIT IN THE UNITED STATES MAIL, PROPERLY ADDRESSED, FIRST CLASS POSTAGE PREPAID, AND INCLUDES REGISTERED OR CERTIFIED MAIL FOR



WHICH THE PROPER FEE HAS BEEN PAID.

(23) "MEANS" DENOTES AN EXHAUSTIVE DEFINITION OR LIST.

(24) "PERSON" MEANS AN INDIVIDUAL OR AN ENTITY.

(25) "PRINCIPAL OFFICE" MEANS THE OFFICE, IN OR OUT OF THIS STATE, DESIGNATED BY A DOMESTIC OR FOREIGN CORPORATION AS ITS PRINCIPAL OFFICE IN ITS MOST RECENT DOCUMENT ON FILE WITH THE SECRETARY OF STATE PROVIDING SUCH INFORMATION, INCLUDING ANY NOTICE OF CHANGE OF PRINCIPAL OFFICE ON FILE WITH THE SECRETARY OF STATE.

(26) "PROCEEDING" INCLUDES A CIVIL SUIT, ARBITRATION, OR MEDIATION AND A CRIMINAL, ADMINISTRATIVE, OR INVESTIGATORY ACTION.

(27) "RECEIVE", WHEN USED IN REFERENCE TO RECEIPT OF A WRITING OR OTHER DOCUMENT BY A DOMESTIC OR FOREIGN CORPORATION, MEANS THAT THE WRITING OR OTHER DOCUMENT IS ACTUALLY RECEIVED:

(a) BY THE CORPORATION AT ITS REGISTERED OFFICE IN THIS STATE OR AT ITS PRINCIPAL OFFICE;

(b) BY THE SECRETARY OF THE CORPORATION, WHEREVER THE SECRETARY IS FOUND; OR

(c) BY ANY OTHER PERSON AUTHORIZED BY THE BYLAWS OR THE BOARD OF DIRECTORS TO RECEIVE SUCH WRITINGS, WHEREVER SUCH PERSON IS FOUND.

(28) "RECORD DATE" MEANS THE DATE, ESTABLISHED UNDER ARTICLE 106 OR 107 OF THIS TITLE, ON WHICH A CORPORATION DETERMINES THE IDENTITY OF ITS SHAREHOLDERS AND THEIR SHAREHOLDINGS. THE DETERMINATION SHALL BE MADE AS OF THE CLOSE OF BUSINESS ON THE RECORD DATE UNLESS ANOTHER TIME FOR DOING SO IS SPECIFIED WHEN THE RECORD DATE IS FIXED.

(29) "SECRETARY" MEANS THE CORPORATE OFFICER TO WHOM THE BYLAWS OR THE BOARD OF DIRECTORS HAS DELEGATED RESPONSIBILITY UNDER SECTION 7-108-301 (3) FOR THE PREPARATION AND MAINTENANCE OF MINUTES OF THE MEETINGS OF THE BOARD OF DIRECTORS AND OF THE SHAREHOLDERS AND OF THE OTHER RECORDS AND INFORMATION REQUIRED TO BE KEPT BY THE CORPORATION UNDER SECTION 7-116-101 AND FOR AUTHENTICATING RECORDS OF THE CORPORATION.

(30) "SHARES" MEANS THE UNITS INTO WHICH THE PROPRIETARY INTERESTS IN A CORPORATION ARE DIVIDED.

(31) "SHAREHOLDER" MEANS EITHER THE PERSON IN WHOSE NAME SHARES ARE REGISTERED IN THE RECORDS OF A CORPORATION OR THE BENEFICIAL OWNER OF SHARES TO THE EXTENT RECOGNIZED PURSUANT TO SECTION 7-107-204.

(32) "STATE", WHEN REFERRING TO A PART OF THE UNITED STATES, INCLUDES:

(a) A STATE, A COMMONWEALTH, AND THE DISTRICT OF COLUMBIA, TOGETHER

WITH ALL AGENCIES AND GOVERNMENTAL SUBDIVISIONS THEREOF; AND

(b) ANY TERRITORY OR INSULAR POSSESSION OF THE UNITED STATES, TOGETHER WITH ALL AGENCIES AND GOVERNMENTAL SUBDIVISIONS THEREOF.

(33) "STREET ADDRESS" MEANS STREET NAME AND NUMBER, CITY OR TOWN, AND UNITED STATES POST OFFICE ZIP CODE DESIGNATION. IF, BY REASON OF RURAL LOCATION OR OTHERWISE, A STREET NAME, NUMBER, TOWN, OR CITY DOES NOT EXIST, ANOTHER APPROPRIATE DESCRIPTION FIXING AS NEARLY AS POSSIBLE THE ACTUAL PHYSICAL LOCATION MAY BE SUBSTITUTED, BUT IN ALL SUCH CASES THE RURAL FREE DELIVERY ROUTE, THE COUNTY, AND THE UNITED STATES POST OFFICE ZIP CODE DESIGNATION SHALL BE INCLUDED.

(34) "SUBSCRIBER" MEANS A PERSON WHO SUBSCRIBES FOR SHARES IN A CORPORATION, WHETHER BEFORE OR AFTER INCORPORATION.

(35) "UNITED STATES" INCLUDES ANY DISTRICT, AUTHORITY, OFFICE, BUREAU, COMMISSION, DEPARTMENT, AND ANY OTHER AGENCY OF THE UNITED STATES OF AMERICA.

(36) "VOTING GROUP" MEANS ALL THE SHARES OF ONE OR MORE CLASSES OR SERIES THAT, UNDER THE ARTICLES OF INCORPORATION OR UNDER ARTICLES 101 TO 117 OF THIS TITLE, ARE ENTITLED TO VOTE AND BE COUNTED TOGETHER COLLECTIVELY ON A MATTER AT A MEETING OF SHAREHOLDERS. ALL SHARES ENTITLED BY ARTICLES 101 TO 117 OF THIS TITLE OR THE ARTICLES OF INCORPORATION TO VOTE GENERALLY ON THE MATTER ARE FOR THAT PURPOSE A SINGLE VOTING GROUP.

**7-101-402. Notice.** (1) NOTICE GIVEN PURSUANT TO ARTICLES 101 TO 117 OF THIS TITLE SHALL BE IN WRITING UNLESS ORAL NOTICE IS REASONABLE UNDER THE CIRCUMSTANCES.

(2) NOTICE MAY BE GIVEN IN PERSON; BY TELEPHONE, TELEGRAPH, TELETYPE, ELECTRONICALLY TRANSMITTED FACSIMILE, OR OTHER FORM OF WIRE OR WIRELESS COMMUNICATION; OR BY MAIL OR PRIVATE CARRIER.

(3) WRITTEN NOTICE BY A CORPORATION TO ITS SHAREHOLDERS, IF IN A COMPREHENSIBLE FORM, IS EFFECTIVE AS TO EACH SHAREHOLDER WHEN MAILED, IF MAILED ADDRESSED TO THE SHAREHOLDER'S ADDRESS SHOWN IN THE CORPORATION'S CURRENT RECORD OF SHAREHOLDERS. IF THREE SUCCESSIVE NOTICES GIVEN TO A SHAREHOLDER PURSUANT TO THIS SUBSECTION (3) HAVE BEEN RETURNED AS UNDELIVERABLE, NO FURTHER NOTICES TO SUCH SHAREHOLDER SHALL BE NECESSARY UNTIL ANOTHER ADDRESS FOR THE SHAREHOLDER IS MADE KNOWN TO THE CORPORATION.

(4) WRITTEN NOTICE TO A DOMESTIC CORPORATION OR TO A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE MAY BE ADDRESSED TO ITS REGISTERED AGENT AT ITS REGISTERED OFFICE OR TO THE CORPORATION OR ITS SECRETARY AT ITS PRINCIPAL OFFICE.

(5) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, WRITTEN NOTICE,

IF IN A COMPREHENSIBLE FORM, IS EFFECTIVE AT THE EARLIEST OF:

- (a) THE DATE RECEIVED;
- (b) FIVE DAYS AFTER MAILING; OR
- (c) THE DATE SHOWN ON THE RETURN RECEIPT, IF MAILED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND THE RECEIPT IS SIGNED BY OR ON BEHALF OF THE ADDRESSEE.
- (6) ORAL NOTICE IS EFFECTIVE WHEN COMMUNICATED IF COMMUNICATED IN A COMPREHENSIBLE MANNER.
- (7) NOTICE BY PUBLICATION IS EFFECTIVE ON THE DATE OF FIRST PUBLICATION.
- (8) IF ARTICLES 101 TO 117 OF THIS TITLE PRESCRIBE NOTICE REQUIREMENTS FOR PARTICULAR CIRCUMSTANCES, THOSE REQUIREMENTS GOVERN. IF THE ARTICLES OF INCORPORATION OR BYLAWS PRESCRIBE NOTICE REQUIREMENTS NOT INCONSISTENT WITH THIS SECTION OR OTHER PROVISIONS OF ARTICLES 101 TO 117 OF THIS TITLE, THOSE REQUIREMENTS GOVERN.

## **ARTICLE 102**

### **Incorporation**

**7-102-101. Incorporators.** ONE OR MORE PERSONS MAY ACT AS THE INCORPORATOR OR INCORPORATORS OF A CORPORATION BY DELIVERING ARTICLES OF INCORPORATION TO THE SECRETARY OF STATE FOR FILING. AN INCORPORATOR WHO IS A NATURAL PERSON SHALL BE OF THE AGE OF EIGHTEEN YEARS OR OLDER.

**7-102-102. Articles of incorporation.** (1) THE ARTICLES OF INCORPORATION SHALL SET FORTH:

- (a) A CORPORATE NAME FOR THE CORPORATION THAT SATISFIES THE REQUIREMENTS OF SECTION 7-104-101;
- (b) THE INFORMATION REGARDING SHARES REQUIRED BY SECTION 7-106-101;
- (c) THE STREET ADDRESS OF THE CORPORATION'S INITIAL REGISTERED OFFICE AND THE NAME OF ITS INITIAL REGISTERED AGENT AT THAT OFFICE;
- (d) THE ADDRESS OF THE CORPORATION'S INITIAL PRINCIPAL OFFICE;
- (e) THE NAME AND ADDRESS OF EACH INCORPORATOR; AND
- (f) THE WRITTEN CONSENT OF THE INITIAL REGISTERED AGENT TO THE APPOINTMENT UNLESS SUCH CONSENT IS PROVIDED IN AN ACCOMPANYING DOCUMENT.

(2) THE ARTICLES OF INCORPORATION MAY BUT NEED NOT SET FORTH:

- (a) THE NAMES AND ADDRESSES OF THE INDIVIDUALS WHO ARE ELECTED TO SERVE AS THE INITIAL DIRECTORS;

(b) PROVISIONS NOT INCONSISTENT WITH LAW REGARDING:

(I) THE PURPOSE OR PURPOSES FOR WHICH THE CORPORATION IS INCORPORATED;

(II) MANAGING THE BUSINESS OF THE CORPORATION AND REGULATING ITS AFFAIRS;

(III) DEFINING, LIMITING, AND REGULATING THE POWERS OF THE CORPORATION, ITS BOARD OF DIRECTORS, AND ITS SHAREHOLDERS;

(IV) A PAR VALUE FOR AUTHORIZED SHARES OR CLASSES OF SHARES;

(V) THE IMPOSITION OF PERSONAL LIABILITY ON SHAREHOLDERS FOR THE DEBTS OF THE CORPORATION TO A SPECIFIED EXTENT AND UPON SPECIFIED CONDITIONS; AND

(c) ANY PROVISION THAT UNDER ARTICLES 101 TO 117 OF THIS TITLE IS REQUIRED OR PERMITTED TO BE SET FORTH IN THE BYLAWS.

(3) FOR CORPORATIONS INCORPORATED AFTER DECEMBER 31, 1958, IF CUMULATIVE VOTING IS NOT DESIRED IN THE ELECTION OF DIRECTORS, A STATEMENT TO THAT EFFECT SHALL BE MADE IN THE ARTICLES OF INCORPORATION. IF NO SUCH STATEMENT IS MADE, CUMULATIVE VOTING SHALL BE MANDATORY IN THE ELECTION OF DIRECTORS, SUBJECT TO THE PROVISIONS OF SECTION 7-107-209. FOR CORPORATIONS INCORPORATED BEFORE JANUARY 1, 1959, THE ARTICLES OF INCORPORATION SHALL STATE WHETHER CUMULATIVE VOTING SHALL BE ALLOWED IN THE ELECTION OF DIRECTORS; AND, IF THE ARTICLES OF INCORPORATION ALLOW CUMULATIVE VOTING, SHAREHOLDERS SHALL BE PERMITTED TO CUMULATE THEIR SHARES IN THE ELECTION OF DIRECTORS AS PROVIDED IN SECTION 7-107-209.

(4) THE ARTICLES OF INCORPORATION NEED NOT SET FORTH ANY OF THE CORPORATE POWERS ENUMERATED IN ARTICLES 101 TO 117 OF THIS TITLE.

(5) IF ARTICLES 101 TO 117 OF THIS TITLE CONDITION ANY MATTER UPON THE PRESENCE OF A PROVISION IN THE BYLAWS, THE CONDITION IS SATISFIED IF SUCH PROVISION IS PRESENT EITHER IN THE ARTICLES OF INCORPORATION OR THE BYLAWS. IF ARTICLES 101 TO 117 OF THIS TITLE CONDITION ANY MATTER UPON THE ABSENCE OF A PROVISION IN THE BYLAWS, THE CONDITION IS SATISFIED ONLY IF THE PROVISION IS ABSENT FROM BOTH THE ARTICLES OF INCORPORATION AND THE BYLAWS.

**7-102-103. Incorporation.** (1) A CORPORATION IS INCORPORATED WHEN THE ARTICLES OF INCORPORATION ARE FILED BY THE SECRETARY OF STATE OR, IF A DELAYED EFFECTIVE DATE IS SPECIFIED PURSUANT TO SECTION 7-101-204 (2) IN THE ARTICLES OF INCORPORATION AS FILED BY THE SECRETARY OF STATE AND A CERTIFICATE OF WITHDRAWAL IS NOT FILED, ON SUCH DELAYED EFFECTIVE DATE. THE CORPORATE EXISTENCE BEGINS UPON INCORPORATION.

(2) EXCEPT IN A PROCEEDING BY THE STATE TO CANCEL OR REVOKE THE INCORPORATION OR INVOLUNTARILY DISSOLVE THE CORPORATION, THE SECRETARY OF STATE'S FILING OF THE ARTICLES OF INCORPORATION IS CONCLUSIVE AND IT SHALL BE INCONTESTABLE THAT ALL CONDITIONS PRECEDENT TO INCORPORATION HAVE BEEN MET.

**7-102-104. Unauthorized assumption of corporate powers.** ALL PERSONS PURPORTING TO ACT AS OR ON BEHALF OF A CORPORATION WITHOUT AUTHORITY TO DO SO AND WITHOUT GOOD FAITH BELIEF THAT THEY HAVE SUCH AUTHORITY SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL LIABILITIES INCURRED OR ARISING AS A RESULT THEREOF.

**7-102-105. Organization of corporation.** (1) AFTER INCORPORATION:

(a) IF INITIAL DIRECTORS ARE NOT ELECTED IN THE ARTICLES OF INCORPORATION, THE INCORPORATORS MAY HOLD A MEETING, AT THE CALL OF A MAJORITY OF THE INCORPORATORS, TO ADOPT INITIAL BYLAWS, IF DESIRED, AND TO ELECT A BOARD OF DIRECTORS; AND

(b) THE INITIAL DIRECTORS MAY HOLD A MEETING, AT THE CALL OF A MAJORITY OF THE DIRECTORS, TO ADOPT BYLAWS, IF DESIRED, TO APPOINT OFFICERS, AND TO CARRY ON ANY OTHER BUSINESS.

(2) ACTION REQUIRED OR PERMITTED BY ARTICLES 101 TO 117 OF THIS TITLE TO BE TAKEN BY INCORPORATORS AT AN ORGANIZATIONAL MEETING MAY BE TAKEN WITHOUT A MEETING IF THE ACTION IS TAKEN IN THE MANNER PROVIDED IN SECTION 7-108-202 FOR ACTION BY DIRECTORS WITHOUT A MEETING.

(3) AN ORGANIZATIONAL MEETING MAY BE HELD IN OR OUT OF THIS STATE.

**7-102-106. Bylaws.** (1) THE BOARD OF DIRECTORS OR, IF NO DIRECTORS HAVE BEEN ELECTED, THE INCORPORATORS MAY ADOPT INITIAL BYLAWS. IF NEITHER THE INCORPORATORS NOR THE BOARD OF DIRECTORS HAVE ADOPTED INITIAL BYLAWS, THE SHAREHOLDERS MAY DO SO.

(2) THE BYLAWS OF A CORPORATION MAY CONTAIN ANY PROVISION FOR MANAGING THE BUSINESS AND REGULATING THE AFFAIRS OF THE CORPORATION THAT IS NOT INCONSISTENT WITH LAW OR WITH THE ARTICLES OF INCORPORATION.

**7-102-107. Emergency bylaws.** (1) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, THE BOARD OF DIRECTORS MAY ADOPT BYLAWS TO BE EFFECTIVE ONLY IN AN EMERGENCY AS DEFINED IN SUBSECTION (4) OF THIS SECTION. THE EMERGENCY BYLAWS, WHICH ARE SUBJECT TO AMENDMENT OR REPEAL BY THE SHAREHOLDERS, MAY INCLUDE ALL PROVISIONS NECESSARY FOR MANAGING THE CORPORATION DURING THE EMERGENCY, INCLUDING:

(a) PROCEDURES FOR CALLING A MEETING OF THE BOARD OF DIRECTORS;

(b) QUORUM REQUIREMENTS FOR THE MEETING; AND

(c) DESIGNATION OF ADDITIONAL OR SUBSTITUTE DIRECTORS.

(2) ALL PROVISIONS OF THE REGULAR BYLAWS CONSISTENT WITH THE EMERGENCY BYLAWS SHALL REMAIN IN EFFECT DURING THE EMERGENCY. THE EMERGENCY BYLAWS SHALL NOT BE EFFECTIVE AFTER THE EMERGENCY ENDS.

(3) CORPORATE ACTION TAKEN IN GOOD FAITH IN ACCORDANCE WITH THE

## EMERGENCY BYLAWS:

(a) BINDS THE CORPORATION; AND

(b) MAY NOT BE THE BASIS FOR IMPOSITION OF LIABILITY ON ANY DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF THE CORPORATION ON THE GROUND THAT THE ACTION WAS NOT AUTHORIZED CORPORATE ACTION.

(4) AN EMERGENCY EXISTS FOR THE PURPOSES OF THIS SECTION IF A QUORUM OF THE DIRECTORS CANNOT READILY BE OBTAINED BECAUSE OF SOME CATASTROPHIC EVENT.

**ARTICLE 103**  
**Purposes and Powers**

**7-103-101. Purposes and applicability.** (1) EVERY CORPORATION INCORPORATED UNDER ARTICLES 101 TO 117 OF THIS TITLE HAS THE PURPOSE OF ENGAGING IN ANY LAWFUL BUSINESS UNLESS A MORE LIMITED PURPOSE IS SET FORTH IN THE ARTICLES OF INCORPORATION.

(2) WHERE ANOTHER STATUTE OF THIS STATE REQUIRES THAT CORPORATIONS OF A PARTICULAR CLASS SHALL BE ORGANIZED OR INCORPORATED EXCLUSIVELY THEREUNDER, CORPORATIONS OF THAT CLASS SHALL BE ORGANIZED OR INCORPORATED UNDER SUCH OTHER STATUTE.

(3) WHERE ANOTHER STATUTE OF THIS STATE REQUIRES CORPORATIONS OF A PARTICULAR CLASS TO BE ORGANIZED OR INCORPORATED UNDER THAT OTHER STATUTE AND ALSO UNDER GENERAL CORPORATION LAWS, SUCH CORPORATIONS SHALL BE ORGANIZED OR INCORPORATED UNDER SUCH OTHER LAW AND, IN ADDITION THERETO, UNDER ARTICLES 101 TO 117 OF THIS TITLE TO THE EXTENT GENERAL CORPORATION LAWS ARE APPLICABLE.

(4) WHERE ANOTHER STATUTE OF THIS STATE PERMITS CORPORATIONS OF A PARTICULAR CLASS TO BE ORGANIZED OR INCORPORATED EITHER UNDER SUCH STATUTE OR UNDER THE GENERAL CORPORATION LAWS, A CORPORATION OF THAT CLASS MAY AT THE ELECTION OF ITS INCORPORATORS BE ORGANIZED OR INCORPORATED UNDER ARTICLES 101 TO 117 OF THIS TITLE. UNLESS THE ARTICLES OF INCORPORATION OF SUCH CORPORATION INDICATE THAT IT IS ORGANIZED OR INCORPORATED UNDER SUCH OTHER ALTERNATE STATUTE, THE CORPORATION SHALL FOR ALL PURPOSES BE CONSIDERED AS ORGANIZED AND INCORPORATED UNDER ARTICLES 101 TO 117 OF THIS TITLE.

(5) ARTICLES 101 TO 117 OF THIS TITLE SHALL APPLY TO CORPORATIONS OF EVERY CLASS, INCLUDING THOSE ORGANIZED OR INCORPORATED UNDER AND GOVERNED BY OTHER STATUTES OF THIS STATE, TO THE EXTENT THAT SAID ARTICLES ARE NOT INCONSISTENT WITH SUCH OTHER STATUTES.

**7-103-102. General powers.** (1) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, EVERY CORPORATION HAS PERPETUAL DURATION AND SUCCESSION IN ITS CORPORATE NAME AND HAS THE SAME POWERS AS AN INDIVIDUAL TO DO ALL THINGS NECESSARY OR CONVENIENT TO CARRY OUT ITS BUSINESS AND

## AFFAIRS, INCLUDING THE POWER:

- (a) TO SUE AND BE SUED, COMPLAIN, AND DEFEND IN ITS CORPORATE NAME;
- (b) TO HAVE A CORPORATE SEAL, WHICH MAY BE ALTERED AT WILL, AND TO USE SUCH SEAL, OR A FACSIMILE THEREOF, INCLUDING A RUBBER STAMP, BY IMPRESSING OR AFFIXING IT OR BY REPRODUCING IT IN ANY OTHER MANNER;
- (c) TO MAKE AND AMEND BYLAWS;
- (d) TO PURCHASE, RECEIVE, LEASE, AND OTHERWISE ACQUIRE, AND TO OWN, HOLD, IMPROVE, USE, AND OTHERWISE DEAL WITH, REAL OR PERSONAL PROPERTY OR ANY LEGAL OR EQUITABLE INTEREST IN PROPERTY, WHEREVER LOCATED;
- (e) TO SELL, CONVEY, MORTGAGE, PLEDGE, LEASE, EXCHANGE, AND OTHERWISE DISPOSE OF ALL OR ANY PART OF ITS PROPERTY;
- (f) TO PURCHASE, RECEIVE, SUBSCRIBE FOR, AND OTHERWISE ACQUIRE SHARES AND OTHER INTERESTS IN, AND OBLIGATIONS OF, ANY OTHER ENTITY; AND TO OWN, HOLD, VOTE, USE, SELL, MORTGAGE, LEND, PLEDGE, AND OTHERWISE DISPOSE OF, AND DEAL IN AND WITH, THE SAME;
- (g) TO MAKE CONTRACTS AND GUARANTEES, INCUR LIABILITIES, BORROW MONEY, ISSUE NOTES, BONDS, AND OTHER OBLIGATIONS (WHICH MAY BE CONVERTIBLE INTO OR INCLUDE THE OPTION TO PURCHASE OTHER SECURITIES OF THE CORPORATION), AND SECURE ANY OF ITS OBLIGATIONS BY MORTGAGE OR PLEDGE OF ANY OF ITS PROPERTY, FRANCHISES, OR INCOME;
- (h) TO LEND MONEY, INVEST AND REINVEST ITS FUNDS, AND RECEIVE AND HOLD REAL AND PERSONAL PROPERTY AS SECURITY FOR REPAYMENT;
- (i) TO BE A PROMOTER, PARTNER, MEMBER, ASSOCIATE, TRUSTEE, OR MANAGER OF, OR TO HOLD ANY SIMILAR POSITION WITH, ANY ENTITY;
- (j) TO CONDUCT ITS BUSINESS, LOCATE OFFICES, AND EXERCISE THE POWERS GRANTED BY ARTICLES 101 TO 117 OF THIS TITLE WITHIN OR WITHOUT THIS STATE;
- (k) TO ELECT DIRECTORS AND APPOINT OFFICERS, EMPLOYEES, AND AGENTS OF THE CORPORATION, DEFINE THEIR DUTIES, FIX THEIR COMPENSATION, AND LEND THEM MONEY AND CREDIT;
- (l) TO PAY PENSIONS AND ESTABLISH PENSION PLANS, PENSION TRUSTS, PROFIT SHARING PLANS, SHARE BONUS PLANS, SHARE OPTIONS AND RIGHTS PLANS, AND BENEFIT OR INCENTIVE PLANS FOR ANY OF ITS CURRENT OR FORMER DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS;
- (m) TO MAKE DONATIONS FOR THE PUBLIC WELFARE OR FOR CHARITABLE, SCIENTIFIC, OR EDUCATIONAL PURPOSES;
- (n) TO MAKE PAYMENTS OR DONATIONS AND TO DO ANY OTHER ACT, NOT INCONSISTENT WITH LAW, THAT FURTHERS THE BUSINESS AND AFFAIRS OF THE

CORPORATION;

(o) TO INDEMNIFY CURRENT OR FORMER DIRECTORS, OFFICERS, EMPLOYEES, FIDUCIARIES, OR AGENTS AS PROVIDED IN ARTICLE 109 OF THIS TITLE;

(p) TO LIMIT THE LIABILITY OF ITS DIRECTORS AS PROVIDED IN SECTION 7-108-402 (1);

(q) TO CEASE ITS CORPORATE ACTIVITIES AND DISSOLVE; AND

(r) TO IMPOSE RESTRICTIONS ON THE TRANSFER OF ITS SHARES.

**7-103-103. Emergency powers.** (1) IN ANTICIPATION OF OR DURING AN EMERGENCY DEFINED IN SUBSECTION (4) OF THIS SECTION, THE BOARD OF DIRECTORS MAY:

(a) MODIFY LINES OF SUCCESSION TO ACCOMMODATE THE INCAPACITY OF ANY DIRECTOR, OFFICER, EMPLOYEE, OR AGENT; AND

(b) RELOCATE THE PRINCIPAL OFFICE, DESIGNATE ALTERNATIVE PRINCIPAL OFFICES OR REGIONAL OFFICES, OR AUTHORIZE THE OFFICERS TO DO SO.

(2) DURING AN EMERGENCY AS CONTEMPLATED IN SUBSECTION (4) OF THIS SECTION, UNLESS EMERGENCY BYLAWS PROVIDE OTHERWISE:

(a) NOTICE OF A MEETING OF THE BOARD OF DIRECTORS NEED BE GIVEN ONLY TO THOSE DIRECTORS WHOM IT IS PRACTICABLE TO REACH AND MAY BE GIVEN IN ANY PRACTICABLE MANNER, INCLUDING BY PUBLICATION OR RADIO; AND

(b) ONE OR MORE OFFICERS OF THE CORPORATION PRESENT AT A MEETING OF THE BOARD OF DIRECTORS MAY BE DEEMED TO BE DIRECTORS FOR THE MEETING, IN ORDER OF RANK AND WITHIN THE SAME RANK IN ORDER OF SENIORITY, AS NECESSARY TO ACHIEVE A QUORUM.

(3) CORPORATE ACTION TAKEN IN GOOD FAITH DURING AN EMERGENCY UNDER THIS SECTION TO FURTHER THE ORDINARY BUSINESS AFFAIRS OF THE CORPORATION:

(a) BINDS THE CORPORATION; AND

(b) MAY NOT BE THE BASIS FOR THE IMPOSITION OF LIABILITY ON ANY DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF THE CORPORATION ON THE GROUND THAT THE ACTION WAS NOT AUTHORIZED CORPORATE ACTION.

(4) AN EMERGENCY EXISTS FOR PURPOSES OF THIS SECTION IF A QUORUM OF THE DIRECTORS CANNOT READILY BE OBTAINED BECAUSE OF SOME CATASTROPHIC EVENT.

**7-103-104. Ultra vires.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE VALIDITY OF CORPORATE ACTION MAY NOT BE CHALLENGED ON THE GROUND THAT THE CORPORATION LACKS OR LACKED POWER TO ACT.

(2) A CORPORATION'S POWER TO ACT MAY BE CHALLENGED:



(a) IN A PROCEEDING BY A SHAREHOLDER AGAINST THE CORPORATION TO ENJOIN THE ACT;

(b) IN A PROCEEDING BY OR IN THE RIGHT OF THE CORPORATION, WHETHER DIRECTLY, DERIVATIVELY, OR THROUGH A RECEIVER, TRUSTEE, OR OTHER LEGAL REPRESENTATIVE, AGAINST AN INCUMBENT OR FORMER DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF THE CORPORATION; OR

(c) IN A PROCEEDING BY THE ATTORNEY GENERAL UNDER SECTION 7-114-301.

(3) IN A SHAREHOLDER'S PROCEEDING UNDER SUBSECTION (2) (a) OF THIS SECTION TO ENJOIN AN UNAUTHORIZED CORPORATE ACT, THE COURT MAY ENJOIN OR SET ASIDE THE ACT, IF IT WOULD BE EQUITABLE TO DO SO AND IF ALL AFFECTED PERSONS ARE PARTIES TO THE PROCEEDING, AND MAY AWARD DAMAGES FOR LOSS, OTHER THAN ANTICIPATED PROFITS, SUFFERED BY THE CORPORATION OR ANOTHER PARTY BECAUSE OF THE INJUNCTION.

**7-103-105. Agent may convey real estate.** CORPORATIONS, DOMESTIC AND FOREIGN, BY WRITTEN POWERS EXECUTED IN THE MANNER PROVIDED FOR THE CONVEYANCE OF REAL ESTATE BY CORPORATIONS, MAY APPOINT AGENTS OR ATTORNEYS-IN-FACT TO CONVEY THEIR REAL ESTATE. ALL CONVEYANCES EXECUTED BY SUCH AGENTS OR ATTORNEYS-IN-FACT IN THE NAME OF THE CORPORATION SHALL PASS THE LEGAL TITLE OF THE CORPORATION TO THE REAL ESTATE THEREBY CONVEYED, AS EFFECTUALLY AS IF SUCH CONVEYANCES HAD BEEN EXECUTED BY THE CORPORATION IN THE MANNER PROVIDED BY LAW FOR THE CONVEYANCE FOR REAL ESTATE BY CORPORATIONS; AND IT SHALL NOT BE NECESSARY TO AFFIX THE SEAL OF THE CORPORATION TO ANY CONVEYANCE SO EXECUTED BY SUCH AGENT OR ATTORNEY-IN-FACT.

## ARTICLE 104

### Name

**7-104-101. Corporate name.** (1) SUBJECT TO SUBSECTION (4) OF THIS SECTION, A CORPORATE NAME OF A DOMESTIC CORPORATION:

(a) SHALL CONTAIN THE WORD "CORPORATION", "INCORPORATED", "COMPANY", OR "LIMITED" OR AN ABBREVIATION OF ANY THEREOF; AND

(b) SHALL NOT CONTAIN LANGUAGE STATING OR IMPLYING THAT THE CORPORATION IS INCORPORATED FOR A PURPOSE OTHER THAN THAT PERMITTED BY SECTION 7-103-101 AND ITS ARTICLES OF INCORPORATION.

(2) EXCEPT AS AUTHORIZED BY SUBSECTION (3) OF THIS SECTION, A CORPORATE NAME SHALL NOT BE THE SAME AS OR DECEPTIVELY SIMILAR TO:

(a) THE CORPORATE NAME OF ANY DOMESTIC CORPORATION OR DOMESTIC NONPROFIT CORPORATION;

(b) THE NAME OF ANY DOMESTIC LIMITED PARTNERSHIP AS SET FORTH IN ITS CERTIFICATE OF LIMITED PARTNERSHIP ON FILE WITH THE SECRETARY OF STATE;

(c) THE NAME OF ANY DOMESTIC LIMITED LIABILITY COMPANY AS SET FORTH IN ITS ARTICLES OF ORGANIZATION ON FILE WITH THE SECRETARY OF STATE;

(d) THE NAME UNDER WHICH ANY FOREIGN CORPORATION, FOREIGN NONPROFIT CORPORATION, FOREIGN LIMITED PARTNERSHIP, OR FOREIGN LIMITED LIABILITY COMPANY IS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE;

(e) THE CORPORATE NAME OF ANY FOREIGN CORPORATION OR FOREIGN NONPROFIT CORPORATION REGISTERED PURSUANT TO SECTION 7-115-107 OR 7-22-108;

(f) A NAME THE EXCLUSIVE RIGHT TO WHICH IS RESERVED WITH THE SECRETARY OF STATE UNDER THE LAWS OF THIS STATE;

(g) ANY TRADE NAME OR ASSUMED NAME WHICH IS REGISTERED WITH THE SECRETARY OF STATE BY ANOTHER PERSON PURSUANT TO SECTION 7-71-101 OR FOR WHICH AN APPLICATION FOR REGISTRATION BY ANOTHER PERSON IS PENDING; OR

(h) THE CORPORATE NAME, ASSUMED NAME, OR TRADE NAME OF A DISSOLVED CORPORATION DURING THE ONE-HUNDRED-TWENTY-DAY PERIOD FOLLOWING THE EFFECTIVE DATE OF SUCH CORPORATION'S DISSOLUTION.

(3) A CORPORATION MAY APPLY TO THE SECRETARY OF STATE FOR AUTHORIZATION TO USE A NAME, OR MAY DELIVER FOR FILING ARTICLES OF INCORPORATION THAT STATE A CORPORATE NAME, THAT IS THE SAME AS OR DECEPTIVELY SIMILAR TO A NAME OTHERWISE NOT AVAILABLE PURSUANT TO SUBSECTION (2) OF THIS SECTION IF THE CORPORATION DELIVERS TO THE SECRETARY OF STATE FOR FILING EITHER:

(a) THE WRITTEN CONSENT OF THE OTHER CORPORATION OR HOLDER OF THE NAME TO USE THE SAME OR A DECEPTIVELY SIMILAR NAME IF ONE OR MORE WORDS ARE ADDED, ALTERED, OR DELETED TO MAKE THE NAME DISTINGUISHABLE ON THE RECORDS OF THE SECRETARY OF STATE FROM THE OTHER NAME; OR

(b) A CERTIFIED COPY OF A FINAL DECREE OF A COURT OF COMPETENT JURISDICTION ESTABLISHING THE PRIOR RIGHT OF THE CORPORATION TO THE USE OF SUCH NAME IN THIS STATE.

(4) PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO:

(a) A CORPORATION INCORPORATED BEFORE JANUARY 1, 1959, WHOSE CORPORATE NAME HAS NOT BEEN CHANGED BY AMENDMENT TO ITS ARTICLES OF INCORPORATION EFFECTIVE AFTER DECEMBER 31, 1958;

(b) A CORPORATION INCORPORATED UNDER OTHER STATUTES OF THIS STATE WHICH PERMIT THE USE OF OTHER NAMES; AND

(c) SAVINGS AND LOAN ASSOCIATIONS COVERED BY SECTION 11-41-102, C.R.S.

**7-104-102. Reserved name.** (1) ANY PERSON MAY APPLY FOR THE RESERVATION OF THE EXCLUSIVE USE OF A NAME BY DELIVERING AN APPLICATION FOR RESERVATION OF NAME TO THE SECRETARY OF STATE FOR FILING, SETTING FORTH THE NAME AND ADDRESS OF THE APPLICANT AND THE NAME PROPOSED TO BE RESERVED. IF THE

SECRETARY OF STATE FINDS THAT THE NAME APPLIED FOR WOULD BE AVAILABLE FOR USE AS A CORPORATE NAME UNDER SECTION 7-104-101, THE SECRETARY OF STATE SHALL RESERVE THE NAME FOR THE APPLICANT'S EXCLUSIVE USE FOR A ONE-HUNDRED-TWENTY-DAY PERIOD, WHICH RESERVATION MAY BE RENEWED.

(2) THE OWNER OF A RESERVED NAME MAY TRANSFER THE RESERVATION TO ANY OTHER PERSON BY DELIVERY TO THE SECRETARY OF STATE FOR FILING OF A NOTICE OF THE TRANSFER THAT HAS BEEN EXECUTED BY THE OWNER AND STATES THE RESERVED NAME, THE NAME OF THE OWNER, AND THE NAME AND ADDRESS OF THE TRANSFEREE.

(3) IF ARTICLES OF INCORPORATION, ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION, RESTATED ARTICLES OF INCORPORATION, OR ARTICLES OF MERGER SPECIFYING A DELAYED EFFECTIVE DATE PURSUANT TO SECTION 7-101-204 (2) AND SETTING FORTH A NEW CORPORATE NAME ARE FILED BY THE SECRETARY OF STATE, SUCH CORPORATE NAME SHALL BE DEEMED TO BE RESERVED UNTIL THE DOCUMENT BECOMES EFFECTIVE PURSUANT TO SECTION 7-101-204 (2) OR THE DOCUMENT IS WITHDRAWN UNDER SECTION 7-101-204 (3).

### **ARTICLE 105** **Office and Agent**

**7-105-101. Registered office and registered agent.** (1) EACH CORPORATION SHALL CONTINUOUSLY MAINTAIN IN THIS STATE:

(a) A REGISTERED OFFICE; AND

(b) A REGISTERED AGENT, WHO SHALL BE:

(I) AN INDIVIDUAL WHO RESIDES IN THIS STATE AND WHOSE BUSINESS OFFICE IS IDENTICAL WITH THE REGISTERED OFFICE;

(II) A DOMESTIC CORPORATION OR DOMESTIC NONPROFIT CORPORATION WHOSE BUSINESS OFFICE IS IDENTICAL WITH THE REGISTERED OFFICE; OR

(III) A FOREIGN CORPORATION OR FOREIGN NONPROFIT CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE WHOSE BUSINESS OFFICE IS IDENTICAL WITH THE REGISTERED OFFICE.

(2) A CORPORATION SHALL NOT SERVE AS ITS OWN REGISTERED AGENT.

**7-105-102. Change of registered office or registered agent.** (1) A CORPORATION MAY CHANGE ITS REGISTERED OFFICE OR REGISTERED AGENT BY DELIVERING TO THE SECRETARY OF STATE FOR FILING A STATEMENT OF CHANGE THAT SETS FORTH:

(a) ITS CORPORATE NAME;

(b) THE STREET ADDRESS OF ITS CURRENT REGISTERED OFFICE;

(c) IF THE REGISTERED OFFICE IS TO BE CHANGED, THE STREET ADDRESS OF THE

NEW REGISTERED OFFICE;

(d) THE NAME OF ITS CURRENT REGISTERED AGENT;

(e) IF THE REGISTERED AGENT IS TO BE CHANGED, THE NAME OF THE NEW REGISTERED AGENT AND THE NEW REGISTERED AGENT'S WRITTEN CONSENT TO THE APPOINTMENT, EITHER ON THE STATEMENT OF CHANGE OR IN AN ACCOMPANYING DOCUMENT; AND

(f) THAT, AFTER THE CHANGE OR CHANGES ARE MADE, THE STREET ADDRESSES OF ITS REGISTERED OFFICE AND OF THE BUSINESS OFFICE OF ITS REGISTERED AGENT WILL BE IDENTICAL.

(2) IF A REGISTERED AGENT CHANGES THE STREET ADDRESS OF THE REGISTERED AGENT'S BUSINESS OFFICE, THE REGISTERED AGENT MAY CHANGE THE STREET ADDRESS OF THE REGISTERED OFFICE OF ANY CORPORATION FOR WHICH THE REGISTERED AGENT IS THE REGISTERED AGENT BY GIVING WRITTEN NOTICE TO THE CORPORATION OF THE CHANGE AND EXECUTING, EITHER MANUALLY OR IN FACSIMILE, AND DELIVERING TO THE SECRETARY OF STATE FOR FILING A STATEMENT OF CHANGE THAT COMPLIES WITH THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION AND RECITES THAT NOTICE OF THE CHANGE HAS BEEN GIVEN TO THE CORPORATION.

**7-105-103. Resignation of registered agent.** (1) THE REGISTERED AGENT OF A CORPORATION MAY RESIGN THE AGENCY BY DELIVERING TO THE SECRETARY OF STATE FOR FILING A STATEMENT OF RESIGNATION, WHICH SHALL BE ACCOMPANIED BY TWO EXACT OR CONFORMED COPIES THEREOF. THE STATEMENT OF RESIGNATION MAY INCLUDE A STATEMENT THAT THE REGISTERED OFFICE IS ALSO DISCONTINUED.

(2) AFTER FILING THE STATEMENT OF RESIGNATION, THE SECRETARY OF STATE SHALL DELIVER ONE COPY TO THE REGISTERED OFFICE OF THE CORPORATION AND THE OTHER COPY TO THE PRINCIPAL OFFICE OF THE CORPORATION.

(3) THE AGENCY APPOINTMENT IS TERMINATED, AND THE REGISTERED OFFICE DISCONTINUED IF SO PROVIDED, ON THE THIRTY-FIRST DAY AFTER THE DATE ON WHICH THE STATEMENT OF RESIGNATION WAS FILED.

**7-105-104. Service on corporation.** (1) A CORPORATION'S REGISTERED AGENT IS THE CORPORATION'S AGENT FOR SERVICE OF ANY PROCESS, NOTICE, OR DEMAND REQUIRED OR PERMITTED BY LAW TO BE SERVED ON THE CORPORATION.

(2) IF A CORPORATION HAS NO REGISTERED AGENT, OR THE REGISTERED AGENT CANNOT WITH REASONABLE DILIGENCE BE SERVED, THE CORPORATION MAY BE SERVED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE CORPORATION AT ITS PRINCIPAL OFFICE. SERVICE IS PERFECTED UNDER THIS SUBSECTION (2) AT THE EARLIEST OF:

(a) THE DATE THE CORPORATION RECEIVES THE PROCESS, NOTICE, OR DEMAND;

(b) THE DATE SHOWN ON THE RETURN RECEIPT, IF SIGNED ON BEHALF OF THE CORPORATION; OR

(c) FIVE DAYS AFTER MAILING.

(3) THIS SECTION DOES NOT PRESCRIBE THE ONLY MEANS, OR NECESSARILY THE REQUIRED MEANS, OF SERVING A CORPORATION.

**ARTICLE 106**  
**Shares and Distributions**

**PART 1**  
**SHARES**

**7-106-101. Authorized shares.** (1) THE ARTICLES OF INCORPORATION SHALL PRESCRIBE THE CLASSES OF SHARES AND THE NUMBER OF SHARES OF EACH CLASS THAT THE CORPORATION IS AUTHORIZED TO ISSUE. IF MORE THAN ONE CLASS OF SHARES IS AUTHORIZED, THE ARTICLES OF INCORPORATION SHALL PRESCRIBE A DISTINGUISHING DESIGNATION FOR EACH CLASS, AND, BEFORE THE ISSUANCE OF SHARES OF ANY CLASS, THE PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS OF THAT CLASS SHALL BE DESCRIBED IN THE ARTICLES OF INCORPORATION. ALL SHARES OF A CLASS SHALL HAVE PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS IDENTICAL WITH THOSE OF OTHER SHARES OF THE SAME CLASS EXCEPT TO THE EXTENT OTHERWISE PERMITTED BY SECTION 7-106-102.

(2) THE ARTICLES OF INCORPORATION SHALL AUTHORIZE:

(a) ONE OR MORE CLASSES OF SHARES THAT TOGETHER HAVE UNLIMITED VOTING RIGHTS; AND

(b) ONE OR MORE CLASSES OF SHARES, WHICH MAY BE THE SAME CLASS OR CLASSES AS THOSE WITH VOTING RIGHTS, THAT TOGETHER ARE ENTITLED TO RECEIVE THE NET ASSETS OF THE CORPORATION UPON DISSOLUTION.

(3) THE ARTICLES OF INCORPORATION MAY AUTHORIZE ONE OR MORE CLASSES OF SHARES THAT:

(a) HAVE SPECIAL, CONDITIONAL, OR LIMITED VOTING RIGHTS, OR NO RIGHT TO VOTE; EXCEPT THAT NO CONDITION, LIMITATION, OR PROHIBITION ON VOTING SHALL ELIMINATE ANY RIGHT TO VOTE PROVIDED BY SECTION 7-110-104;

(b) ARE REDEEMABLE OR CONVERTIBLE AS SPECIFIED IN THE ARTICLES OF INCORPORATION:

(I) AT THE OPTION OF THE CORPORATION, THE SHAREHOLDER, OR ANOTHER PERSON OR UPON THE OCCURRENCE OF A DESIGNATED EVENT;

(II) FOR MONEY, INDEBTEDNESS, SECURITIES, OR OTHER PROPERTY; OR

(III) IN A DESIGNATED AMOUNT OR IN AN AMOUNT DETERMINED IN ACCORDANCE WITH A DESIGNATED FORMULA OR BY REFERENCE TO EXTRINSIC FACTS OR EVENTS;

(c) ENTITLE THE HOLDERS TO DISTRIBUTIONS CALCULATED IN ANY MANNER, INCLUDING DIVIDENDS THAT MAY BE CUMULATIVE, NONCUMULATIVE, OR PARTIALLY

CUMULATIVE; OR

(d) HAVE PREFERENCE OVER ANY OTHER CLASS OF SHARES WITH RESPECT TO DISTRIBUTIONS, INCLUDING DIVIDENDS AND DISTRIBUTIONS UPON THE DISSOLUTION OF THE CORPORATION.

(4) THE DESCRIPTION OF THE PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS OF CLASSES OF SHARES IN SUBSECTION (3) OF THIS SECTION IS NOT EXHAUSTIVE.

**7-106-102. Terms of class or series determined by board of directors.** (1) IF THE ARTICLES OF INCORPORATION SO PROVIDE, THE BOARD OF DIRECTORS MAY DETERMINE, IN WHOLE OR IN PART, THE PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS, WITHIN THE LIMITS SET FORTH IN SECTION 7-106-101, OF:

(a) ANY CLASS OF SHARES BEFORE THE ISSUANCE OF ANY SHARES OF THAT CLASS;  
OR

(b) ONE OR MORE SERIES WITHIN A CLASS BEFORE THE ISSUANCE OF ANY SHARES OF THAT SERIES.

(2) EACH SERIES OF A CLASS SHALL BE GIVEN A DISTINGUISHING DESIGNATION.

(3) ALL SHARES OF A SERIES SHALL HAVE PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS IDENTICAL WITH THOSE OF OTHER SHARES OF THE SAME SERIES AND, EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN THE DESCRIPTION OF THE SERIES, WITH THOSE OF OTHER SERIES OF THE SAME CLASS.

(4) BEFORE ISSUING ANY SHARES OF A CLASS OR SERIES, THE PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS OF WHICH ARE DETERMINED BY THE BOARD OF DIRECTORS UNDER THIS SECTION, THE CORPORATION SHALL DELIVER TO THE SECRETARY OF STATE FOR FILING ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION, WHICH ARE EFFECTIVE WITHOUT SHAREHOLDER ACTION, THAT SET FORTH:

(a) THE NAME OF THE CORPORATION;

(b) THE TEXT OF THE AMENDMENT DETERMINING THE DESIGNATIONS, PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS OF THE CLASS OR SERIES OF SHARES;

(c) THE DATE THE AMENDMENT WAS ADOPTED; AND

(d) A STATEMENT THAT THE AMENDMENT WAS DULY ADOPTED BY THE BOARD OF DIRECTORS.

**7-106-103. Issued and outstanding shares.** (1) A CORPORATION MAY ISSUE THE NUMBER OF SHARES OF EACH CLASS OR SERIES AUTHORIZED BY THE ARTICLES OF INCORPORATION. SHARES THAT ARE ISSUED ARE OUTSTANDING SHARES UNTIL THEY ARE REACQUIRED, REDEEMED, CONVERTED, OR CANCELLED.

(2) THE REACQUISITION, REDEMPTION, OR CONVERSION OF OUTSTANDING SHARES

IS SUBJECT TO THE LIMITATIONS CONTAINED IN SUBSECTION (3) OF THIS SECTION AND IS SUBJECT TO SECTION 7-106-401.

(3) AT ALL TIMES THAT SHARES OF THE CORPORATION ARE OUTSTANDING, ONE OR MORE SHARES THAT TOGETHER HAVE UNLIMITED VOTING RIGHTS AND ONE OR MORE SHARES THAT TOGETHER ARE ENTITLED TO RECEIVE THE NET ASSETS OF THE CORPORATION UPON DISSOLUTION SHALL BE OUTSTANDING.

**7-106-104. Fractional shares.** (1) A CORPORATION MAY:

(a) ISSUE FRACTIONS OF A SHARE OR PAY IN CASH THE VALUE OF FRACTIONS OF A SHARE;

(b) ARRANGE FOR DISPOSITION OF FRACTIONAL SHARES BY THE SHAREHOLDERS;  
OR

(c) ISSUE SCRIP IN REGISTERED OR BEARER FORM ENTITLING THE HOLDER TO RECEIVE A FULL SHARE UPON SURRENDERING ENOUGH SCRIP TO EQUAL A FULL SHARE.

(2) EACH CERTIFICATE REPRESENTING SCRIP SHALL BE CONSPICUOUSLY LABELED "SCRIP" AND SHALL CONTAIN THE INFORMATION REQUIRED TO BE INCLUDED IN A SHARE CERTIFICATE BY SECTIONS 7-106-206 (2) (a), (2) (c), AND (4) AND 7-106-208 (2).

(3) THE HOLDER OF A FRACTIONAL SHARE IS ENTITLED TO EXERCISE THE RIGHTS OF A SHAREHOLDER, INCLUDING THE RIGHT TO VOTE, TO RECEIVE DIVIDENDS, AND TO PARTICIPATE IN THE ASSETS OF THE CORPORATION UPON LIQUIDATION. THE HOLDER OF SCRIP IS NOT ENTITLED TO ANY OF THESE RIGHTS UNLESS THE SCRIP PROVIDES FOR THEM.

(4) THE BOARD OF DIRECTORS MAY AUTHORIZE THE ISSUANCE OF SCRIP SUBJECT TO ANY CONDITION CONSIDERED DESIRABLE, INCLUDING:

(a) THAT THE SCRIP WILL BECOME VOID IF NOT EXCHANGED FOR FULL SHARES BEFORE A SPECIFIED DATE; AND

(b) THAT THE SHARES FOR WHICH THE SCRIP IS EXCHANGEABLE MAY BE SOLD AND THE PROCEEDS PAID TO THE SCRIPHOLDERS.

PART 2  
ISSUANCE OF SHARES

**7-106-201. Subscription for shares.** (1) A SUBSCRIPTION FOR SHARES ENTERED INTO BEFORE INCORPORATION IS IRREVOCABLE FOR SIX MONTHS UNLESS THE SUBSCRIPTION AGREEMENT PROVIDES A LONGER OR SHORTER PERIOD OR ALL THE SUBSCRIBERS AGREE TO REVOCATION BEFORE THE TIME THE CORPORATION IS INCORPORATED AND ACCEPTS THE SUBSCRIPTION.

(2) THE ACCEPTANCE BY THE CORPORATION OF A SUBSCRIPTION ENTERED INTO BEFORE INCORPORATION AND THE AUTHORIZATION OF THE ISSUANCE OF SHARES PURSUANT THERETO ARE SUBJECT TO SECTION 7-106-202.

(3) THE BOARD OF DIRECTORS MAY DETERMINE THE PAYMENT TERMS OF SUBSCRIPTIONS FOR SHARES THAT WERE ENTERED INTO BEFORE INCORPORATION, UNLESS THE SUBSCRIPTION AGREEMENT SPECIFIES THEM. A CALL FOR PAYMENT BY THE BOARD OF DIRECTORS SHALL BE UNIFORM SO FAR AS PRACTICABLE AS TO ALL SHARES OF THE SAME CLASS OR SERIES, UNLESS THE SUBSCRIPTION AGREEMENT SPECIFIES OTHERWISE.

(4) SHARES ISSUED PURSUANT TO SUBSCRIPTIONS ENTERED INTO BEFORE INCORPORATION ARE FULLY PAID AND NONASSESSABLE WHEN THE CORPORATION RECEIVES THE CONSIDERATION SPECIFIED IN THE SUBSCRIPTION AGREEMENT.

(5) IF A SUBSCRIBER DEFAULTS IN PAYMENT OF MONEY OR OTHER PROPERTY UNDER A SUBSCRIPTION AGREEMENT ENTERED INTO BEFORE INCORPORATION, THE CORPORATION MAY COLLECT THE AMOUNT OWED AS IT MIGHT COLLECT ANY OTHER DEBT. ALTERNATIVELY, UNLESS THE SUBSCRIPTION AGREEMENT PROVIDES OTHERWISE, THE CORPORATION MAY RESCIND THE AGREEMENT AND MAY SELL THE SHARES IF THE DEBT REMAINS UNPAID MORE THAN TWENTY DAYS AFTER THE CORPORATION SENDS WRITTEN DEMAND FOR PAYMENT TO THE SUBSCRIBER.

(6) A SUBSCRIPTION AGREEMENT ENTERED INTO AFTER INCORPORATION IS A CONTRACT BETWEEN THE SUBSCRIBER AND THE CORPORATION SUBJECT TO SECTION 7-106-202.

**7-106-202. Issuance of shares.** (1) THE POWERS GRANTED IN THIS SECTION TO THE BOARD OF DIRECTORS MAY BE RESERVED TO THE SHAREHOLDERS BY THE ARTICLES OF INCORPORATION.

(2) SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (5) OF THIS SECTION, THE BOARD OF DIRECTORS MAY AUTHORIZE THE ISSUANCE OF SHARES FOR CONSIDERATION CONSISTING OF ANY TANGIBLE OR INTANGIBLE PROPERTY OR BENEFIT TO THE CORPORATION, INCLUDING CASH, PROMISSORY NOTES, SERVICES PERFORMED, AND OTHER SECURITIES OF THE CORPORATION.

(3) BEFORE THE CORPORATION ISSUES SHARES, THE BOARD OF DIRECTORS SHALL DETERMINE THAT THE CONSIDERATION RECEIVED OR TO BE RECEIVED FOR THE SHARES TO BE ISSUED IS ADEQUATE. IN THE ABSENCE OF FRAUD IN THE TRANSACTION, THAT DETERMINATION BY THE BOARD OF DIRECTORS IS CONCLUSIVE INsofar AS THE ADEQUACY OF SUCH CONSIDERATION RELATES TO WHETHER THE SHARES ARE VALIDLY ISSUED, FULLY PAID, AND NONASSESSABLE.

(4) WHEN THE CORPORATION RECEIVES THE CONSIDERATION FOR WHICH THE BOARD OF DIRECTORS HAS AUTHORIZED THE ISSUANCE OF SHARES, THE SHARES ISSUED THEREFOR ARE FULLY PAID AND NONASSESSABLE.

(5) THE PROMISSORY NOTE OF A SUBSCRIBER OR AN AFFILIATE OF THE SUBSCRIBER FOR SHARES SHALL NOT CONSTITUTE CONSIDERATION FOR THE SHARES UNLESS THE NOTE IS NEGOTIABLE AND IS SECURED BY COLLATERAL, OTHER THAN THE SHARES, HAVING A FAIR MARKET VALUE AT LEAST EQUAL TO THE PRINCIPAL AMOUNT OF THE NOTE. FOR THE PURPOSES OF THIS SUBSECTION (5), "PROMISSORY NOTE" MEANS A NEGOTIABLE INSTRUMENT ON WHICH THERE IS AN OBLIGATION TO PAY INDEPENDENT OF COLLATERAL AND DOES NOT INCLUDE A NONRECOURSE NOTE.



(6) UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE ARTICLES OF INCORPORATION OR BYLAWS, SHARES HAVING A PAR VALUE MAY BE ISSUED FOR LESS THAN THE PAR VALUE.

**7-106-203. Liability of shareholders.** (1) A PURCHASER FROM A CORPORATION OF SHARES ISSUED BY THE CORPORATION IS NOT LIABLE TO THE CORPORATION OR ITS CREDITORS WITH RESPECT TO THE SHARES EXCEPT TO PAY THE CONSIDERATION FOR WHICH THE SHARES WERE AUTHORIZED TO BE ISSUED UNDER SECTION 7-106-202 OR SPECIFIED IN A SUBSCRIPTION AGREEMENT UNDER SECTION 7-106-201.

(2) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, A SHAREHOLDER OR A SUBSCRIBER FOR SHARES OF A CORPORATION IS NOT PERSONALLY LIABLE FOR THE ACTS OR DEBTS OF THE CORPORATION; EXCEPT THAT SUCH PERSON MAY BECOME PERSONALLY LIABLE BY REASON OF THE PERSON'S OWN ACTS OR CONDUCT.

(3) ANY PERSON BECOMING AN ASSIGNEE OR TRANSFEREE OF SHARES OR OF A SUBSCRIPTION FOR SHARES IN GOOD FAITH AND WITHOUT KNOWLEDGE OR NOTICE THAT THE FULL CONSIDERATION THEREFOR HAS NOT BEEN PAID SHALL NOT BE PERSONALLY LIABLE TO THE CORPORATION OR ITS CREDITORS FOR ANY UNPAID PORTION OF SUCH CONSIDERATION.

**7-106-204. Share dividends.** (1) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, SHARES MAY BE ISSUED PRO RATA AND WITHOUT CONSIDERATION TO THE SHAREHOLDERS OR TO THE SHAREHOLDERS OF ONE OR MORE CLASSES OR SERIES OF ITS SHARES. AN ISSUANCE OF SHARES PURSUANT TO THIS SUBSECTION (1) IS A SHARE DIVIDEND.

(2) SHARES OF ONE CLASS OR SERIES MAY NOT BE ISSUED AS A SHARE DIVIDEND IN RESPECT OF SHARES OF ANOTHER CLASS OR SERIES UNLESS:

(a) THE ARTICLES OF INCORPORATION SO AUTHORIZE;

(b) SUCH ISSUANCE IS APPROVED BY A MAJORITY OF THE VOTES ENTITLED TO BE CAST BY THE CLASS OR SERIES TO BE ISSUED; OR

(c) THERE ARE NO OUTSTANDING SHARES OF THE CLASS OR SERIES TO BE ISSUED.

(3) THE BYLAWS OR, IN THE ABSENCE OF AN APPLICABLE BYLAW, THE BOARD OF DIRECTORS MAY FIX A FUTURE DATE AS THE RECORD DATE FOR DETERMINING SHAREHOLDERS ENTITLED TO A SHARE DIVIDEND. IF NO FUTURE RECORD DATE IS SO FIXED, THE RECORD DATE IS THE DATE THE BOARD OF DIRECTORS AUTHORIZES THE SHARE DIVIDEND.

**7-106-205. Share options and other rights.** (1) FOR PURPOSES OF THIS SECTION:

(a) "RIGHTS" MEANS RIGHTS, OPTIONS, WARRANTS, OR CONVERTIBLE SECURITIES ENTITLING THE HOLDERS THEREOF TO PURCHASE, RECEIVE, OR ACQUIRE SHARES OR FRACTIONS OF SHARES OF THE CORPORATION OR ASSETS OR DEBTS OR OTHER OBLIGATIONS OF THE CORPORATION.

(b) "SIGNIFICANT SHAREHOLDER" MEANS ANY PERSON OWNING, OR OFFERING TO ACQUIRE, DIRECTLY OR INDIRECTLY, A NUMBER OR PERCENTAGE, AS SPECIFIED BY THE BOARD OF DIRECTORS, OF THE OUTSTANDING VOTING SHARES OF A CORPORATION, OR ANY TRANSFEREE OF SUCH PERSON.

(2) A CORPORATION MAY CREATE AND ISSUE RIGHTS, EXCEPT AS PRECLUDED OR LIMITED BY PROVISIONS CONTAINED IN THE ARTICLES OF INCORPORATION AT THE TIME OF SUCH CREATION OR ISSUANCE. THE BOARD OF DIRECTORS SHALL DETERMINE THE TERMS UPON WHICH THE RIGHTS ARE ISSUED, THEIR FORM AND CONTENT, AND THE CONSIDERATION, IF ANY, FOR WHICH SHARES OR FRACTIONS OF SHARES, ASSETS, OR DEBTS OR OTHER OBLIGATIONS OF THE CORPORATION ARE TO BE ISSUED PURSUANT TO THE RIGHTS. IN THE ABSENCE OF FRAUD IN THE TRANSACTION, THE JUDGMENT OF THE BOARD OF DIRECTORS AS TO THE ADEQUACY OF CONSIDERATION RECEIVED FOR SUCH RIGHTS SHALL BE CONCLUSIVE.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF ARTICLES 101 TO 117 OF THIS TITLE, THE TERMS DETERMINED BY THE BOARD OF DIRECTORS PURSUANT TO SUBSECTION (2) OF THIS SECTION FOR RIGHTS ISSUED BEFORE, ON, OR AFTER JANUARY 1, 1994, TO ANY SHAREHOLDERS, BY WAY OF DISTRIBUTION OR OTHERWISE, MAY, WITHOUT LIMITATION:

(a) PRECLUDE OR LIMIT ANY SIGNIFICANT SHAREHOLDER FROM EXERCISING, CONVERTING, TRANSFERRING, OR RECEIVING RIGHTS;

(b) IMPOSE CONDITIONS UPON THE EXERCISE, CONVERSION, TRANSFER, OR RECEIPT OF RIGHTS BY ANY SIGNIFICANT SHAREHOLDER THAT DIFFER FROM THOSE IMPOSED ON OTHER HOLDERS OF THE SAME CLASS OF RIGHTS; OR

(c) PROVIDE THAT, UPON EXERCISE OR CONVERSION, ANY SIGNIFICANT SHAREHOLDER SHALL BE ENTITLED TO RECEIVE SECURITIES, OBLIGATIONS, OR ASSETS, THE TERMS OR NATURE OF WHICH MAY DIFFER FROM THE SECURITIES, OBLIGATIONS, OR ASSETS TO BE RECEIVED BY THE OTHER HOLDERS OF THE SAME CLASS OF RIGHTS.

(4) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO EFFECT A CHANGE IN THE FIDUCIARY DUTIES OF DIRECTORS.

**7-106-206. Form and content of certificates.** (1) SHARES MAY, BUT NEED NOT, BE REPRESENTED BY CERTIFICATES. UNLESS ARTICLES 101 TO 117 OF THIS TITLE OR ANOTHER STATUTE EXPRESSLY PROVIDE OTHERWISE, THE RIGHTS AND OBLIGATIONS OF SHAREHOLDERS ARE NOT AFFECTED BY THE FACT THAT THEIR SHARES ARE NOT REPRESENTED BY CERTIFICATES.

(2) EACH SHARE CERTIFICATE SHALL STATE ON ITS FACE:

(a) THE NAME OF THE ISSUING CORPORATION AND THAT THE CORPORATION IS INCORPORATED UNDER THE LAWS OF THIS STATE;

(b) THE NAME OF THE PERSON TO WHOM THE CERTIFICATE IS ISSUED; AND

(c) THE NUMBER AND CLASS OF SHARES AND THE DESIGNATION OF THE SERIES, IF ANY, THE CERTIFICATE REPRESENTS.

(3) EACH SHARE CERTIFICATE:

(a) SHALL BE SIGNED, EITHER MANUALLY OR IN FACSIMILE, BY ONE OR MORE OFFICERS DESIGNATED IN THE BYLAWS OR BY THE BOARD OF DIRECTORS;

(b) MAY BEAR THE CORPORATE SEAL OR ITS FACSIMILE; AND

(c) MAY CONTAIN SUCH OTHER INFORMATION AS THE CORPORATION DEEMS NECESSARY OR APPROPRIATE.

(4) IF THE ISSUING CORPORATION IS AUTHORIZED TO ISSUE DIFFERENT CLASSES OF SHARES OR DIFFERENT SERIES WITHIN A CLASS, THE SHARE CERTIFICATE SHALL CONTAIN A SUMMARY, ON THE FRONT OR THE BACK, OF THE DESIGNATIONS, PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS APPLICABLE TO EACH CLASS, THE VARIATIONS IN PREFERENCES, LIMITATIONS, AND RIGHTS DETERMINED FOR EACH SERIES, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE CLASSES OR SERIES. ALTERNATIVELY, EACH CERTIFICATE MAY STATE CONSPICUOUSLY ON ITS FRONT OR BACK THAT THE CORPORATION WILL FURNISH TO THE SHAREHOLDER THIS INFORMATION ON REQUEST IN WRITING AND WITHOUT CHARGE.

(5) IF THE PERSON WHO SIGNED, EITHER MANUALLY OR IN FACSIMILE, A SHARE CERTIFICATE NO LONGER HOLDS OFFICE WHEN THE CERTIFICATE IS ISSUED, THE CERTIFICATE IS NEVERTHELESS VALID.

**7-106-207. Shares without certificates.** (1) UNLESS OTHERWISE PROVIDED BY THE BYLAWS, THE BOARD OF DIRECTORS MAY AUTHORIZE THE ISSUANCE BY THE CORPORATION OF SOME OR ALL OF THE SHARES OF ANY OR ALL OF ITS CLASSES OR SERIES WITHOUT CERTIFICATES. THE AUTHORIZATION DOES NOT AFFECT SHARES ALREADY REPRESENTED BY CERTIFICATES UNTIL THEY ARE SURRENDERED TO THE CORPORATION.

(2) WITHIN A REASONABLE TIME AFTER THE ISSUANCE OR TRANSFER OF SHARES WITHOUT CERTIFICATES, THE CORPORATION SHALL SEND TO THE SHAREHOLDER A WRITTEN STATEMENT OF THE INFORMATION REQUIRED ON CERTIFICATES BY SUBSECTIONS (2) AND (4) OF SECTION 7-106-206 AND SECTION 7-106-208.

**7-106-208. Restriction on transfer of shares and other securities.** (1) THE ARTICLES OF INCORPORATION, THE BYLAWS, AN AGREEMENT AMONG SHAREHOLDERS, OR AN AGREEMENT AMONG SHAREHOLDERS AND THE CORPORATION MAY IMPOSE RESTRICTIONS ON THE TRANSFER OR REGISTRATION OF TRANSFER OF SHARES OF THE CORPORATION. A RESTRICTION DOES NOT AFFECT SHARES ISSUED BEFORE THE RESTRICTION BECAME EFFECTIVE UNLESS THE HOLDER OF SUCH SHARES ACQUIRED SUCH SHARES WITH KNOWLEDGE OF THE RESTRICTION, IS A PARTY TO THE AGREEMENT CONTAINING THE RESTRICTION, OR VOTED IN FAVOR OF THE RESTRICTION OR OTHERWISE CONSENTED TO THE RESTRICTION.

(2) A RESTRICTION ON THE TRANSFER OR REGISTRATION OF TRANSFER OF SHARES IS VALID AND ENFORCEABLE AGAINST THE HOLDER OR A TRANSFEREE OF THE HOLDER IF THE RESTRICTION IS AUTHORIZED BY THIS SECTION AND ITS EXISTENCE IS NOTED CONSPICUOUSLY ON THE FRONT OR BACK OF THE CERTIFICATE OR IS CONTAINED IN

THE INFORMATION STATEMENT REQUIRED BY SECTION 7-106-207 (2). UNLESS SO NOTED, A RESTRICTION IS NOT ENFORCEABLE AGAINST A PERSON WITHOUT KNOWLEDGE OF THE RESTRICTION.

(3) A RESTRICTION ON THE TRANSFER OR REGISTRATION OF TRANSFER OF SHARES IS AUTHORIZED:

(a) TO MAINTAIN THE CORPORATION'S STATUS WHEN IT IS DEPENDENT ON THE NUMBER OR IDENTITY OF ITS SHAREHOLDERS;

(b) TO PRESERVE ENTITLEMENTS, BENEFITS, OR EXEMPTIONS UNDER FEDERAL, STATE, OR LOCAL LAWS; AND

(c) FOR ANY OTHER REASONABLE PURPOSE.

(4) A RESTRICTION ON THE TRANSFER OR REGISTRATION OF TRANSFER OF SHARES MAY:

(a) OBLIGATE THE SHAREHOLDER FIRST TO OFFER TO THE CORPORATION OR OTHER PERSONS, SEPARATELY, CONSECUTIVELY, OR SIMULTANEOUSLY, AN OPPORTUNITY TO ACQUIRE THE RESTRICTED SHARES;

(b) OBLIGATE THE CORPORATION OR OTHER PERSONS, SEPARATELY, CONSECUTIVELY, OR SIMULTANEOUSLY, TO ACQUIRE THE RESTRICTED SHARES;

(c) REQUIRE, AS A CONDITION TO SUCH A TRANSFER OR REGISTRATION, THAT ANY ONE OR MORE PERSONS, INCLUDING THE CORPORATION OR THE HOLDERS OF ANY OF ITS SHARES, APPROVE THE TRANSFER OR REGISTRATION, IF THE REQUIREMENT IS NOT MANIFESTLY UNREASONABLE; OR

(d) PROHIBIT THE TRANSFER OR THE REGISTRATION OF A TRANSFER OF THE RESTRICTED SHARES TO DESIGNATED PERSONS OR CLASSES OF PERSONS, IF THE PROHIBITION IS NOT MANIFESTLY UNREASONABLE.

(5) FOR PURPOSES OF THIS SECTION, "SHARES" INCLUDES A SECURITY CONVERTIBLE INTO OR CARRYING A RIGHT TO SUBSCRIBE FOR OR ACQUIRE SHARES.

**7-106-209. Expense of issue.** A CORPORATION MAY PAY THE EXPENSES OF SELLING OR UNDERWRITING ITS SHARES, AND OF INCORPORATING, ORGANIZING, OR REORGANIZING THE CORPORATION, FROM THE CONSIDERATION RECEIVED FOR SHARES.

PART 3  
SUBSEQUENT ACQUISITION OF SHARES  
BY SHAREHOLDERS AND CORPORATION

**7-106-301. Shareholders' preemptive rights.** (1) THE SHAREHOLDERS OF A CORPORATION DO NOT HAVE A PREEMPTIVE RIGHT TO ACQUIRE UNISSUED SHARES EXCEPT TO THE EXTENT PROVIDED BY SUBSECTIONS (3) TO (6) OF SECTION 7-117-101 OR THE ARTICLES OF INCORPORATION.

(2) A STATEMENT INCLUDED IN THE ARTICLES OF INCORPORATION THAT "THE

CORPORATION ELECTS TO HAVE PREEMPTIVE RIGHTS", OR WORDS OF SIMILAR IMPORT, MEANS THAT THE FOLLOWING PRINCIPLES APPLY, EXCEPT TO THE EXTENT OTHERWISE PROVIDED BY SUBSECTIONS (3) TO (6) OF SECTION 7-117-101 OR THE ARTICLES OF INCORPORATION:

(a) THE SHAREHOLDERS HAVE A PREEMPTIVE RIGHT, SUBJECT TO ANY UNIFORM TERMS AND CONDITIONS PRESCRIBED BY THE BOARD OF DIRECTORS TO PROVIDE A FAIR AND REASONABLE OPPORTUNITY TO EXERCISE THE RIGHT, TO ACQUIRE PROPORTIONAL AMOUNTS OF THE UNISSUED SHARES UPON THE DECISION OF THE BOARD OF DIRECTORS TO ISSUE THEM.

(b) A SHAREHOLDER MAY WAIVE THE SHAREHOLDER'S PREEMPTIVE RIGHT, AND SUCH WAIVER, IF EVIDENCED BY A WRITING, IS IRREVOCABLE EVEN THOUGH IT IS NOT SUPPORTED BY CONSIDERATION.

(c) THERE IS NO PREEMPTIVE RIGHT WITH RESPECT TO:

(I) SHARES ISSUED AS COMPENSATION TO DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES OF THE CORPORATION OR ITS SUBSIDIARIES OR AFFILIATES;

(II) SHARES ISSUED TO SATISFY CONVERSION OR OPTION RIGHTS CREATED TO PROVIDE COMPENSATION TO DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES OF THE CORPORATION OR ITS SUBSIDIARIES OR AFFILIATES;

(III) SHARES THAT ARE ISSUED WITHIN SIX MONTHS AFTER THE EFFECTIVE DATE OF INCORPORATION; OR

(IV) SHARES SOLD OTHERWISE THAN FOR CASH.

(d) HOLDERS OF SHARES OF ANY CLASS WITHOUT GENERAL VOTING RIGHTS BUT WITH PREFERENTIAL RIGHTS TO DISTRIBUTIONS OR ASSETS HAVE NO PREEMPTIVE RIGHTS WITH RESPECT TO SHARES OF ANY CLASS.

(e) HOLDERS OF SHARES OF ANY CLASS WITH GENERAL VOTING RIGHTS BUT WITHOUT PREFERENTIAL RIGHTS TO DISTRIBUTIONS OR ASSETS HAVE NO PREEMPTIVE RIGHTS WITH RESPECT TO SHARES OF ANY CLASS WITH PREFERENTIAL RIGHTS TO DISTRIBUTIONS OR ASSETS UNLESS THE SHARES WITH PREFERENTIAL RIGHTS ARE CONVERTIBLE INTO OR CARRY A RIGHT TO SUBSCRIBE FOR OR ACQUIRE SHARES WITHOUT PREFERENTIAL RIGHTS.

(f) SHARES SUBJECT TO PREEMPTIVE RIGHTS THAT ARE NOT ACQUIRED BY SHAREHOLDERS MAY BE ISSUED TO ANY PERSON, FOR A PERIOD OF ONE YEAR AFTER BEING OFFERED TO SHAREHOLDERS PURSUANT TO SUCH PREEMPTIVE RIGHTS, AT A CONSIDERATION SET BY THE BOARD OF DIRECTORS THAT IS NOT LOWER THAN THE CONSIDERATION SET FOR THE EXERCISE OF PREEMPTIVE RIGHTS. AN OFFER AT A LOWER CONSIDERATION OR AFTER THE EXPIRATION OF SUCH ONE-YEAR PERIOD IS SUBJECT TO THE SHAREHOLDERS' PREEMPTIVE RIGHTS.

(3) FOR PURPOSES OF THIS SECTION, "SHARES" INCLUDES A SECURITY CONVERTIBLE INTO OR CARRYING A RIGHT TO SUBSCRIBE FOR OR ACQUIRE SHARES.

**7-106-302. Corporation's acquisition of its own shares.** (1) A CORPORATION MAY ACQUIRE ITS OWN SHARES, AND, EXCEPT AS PROVIDED BY SECTION 7-117-101 (6), SHARES SO ACQUIRED CONSTITUTE AUTHORIZED BUT UNISSUED SHARES.

(2) IF THE ARTICLES OF INCORPORATION PROHIBIT THE REISSUANCE OF ACQUIRED SHARES:

(a) THE NUMBER OF AUTHORIZED SHARES IS REDUCED BY THE NUMBER OF SHARES ACQUIRED BY THE CORPORATION, EFFECTIVE UPON AMENDMENT TO THE ARTICLES OF INCORPORATION; AND

(b) THE CORPORATION SHALL DELIVER TO THE SECRETARY OF STATE FOR FILING ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION, WHICH ARE EFFECTIVE WITHOUT SHAREHOLDER ACTION, THAT SET FORTH:

(I) THE NAME OF THE CORPORATION;

(II) THE REDUCTION IN THE NUMBER OF AUTHORIZED SHARES, ITEMIZED BY CLASS AND SERIES; AND

(III) THE TOTAL NUMBER OF AUTHORIZED SHARES, ITEMIZED BY CLASS AND SERIES, REMAINING AFTER REDUCTION OF THE SHARES.

#### PART 4 DISTRIBUTIONS

**7-106-401. Distributions to shareholders.** (1) A BOARD OF DIRECTORS MAY AUTHORIZE, AND THE CORPORATION MAY MAKE, DISTRIBUTIONS TO ITS SHAREHOLDERS SUBJECT TO ANY RESTRICTION IN THE ARTICLES OF INCORPORATION AND SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (3) OF THIS SECTION.

(2) THE BYLAWS OR, IN THE ABSENCE OF AN APPLICABLE BYLAW, THE BOARD OF DIRECTORS MAY FIX A FUTURE DATE AS THE RECORD DATE FOR DETERMINING SHAREHOLDERS ENTITLED TO A DISTRIBUTION, OTHER THAN ONE INVOLVING A PURCHASE, REDEMPTION, OR OTHER ACQUISITION OF THE CORPORATION'S SHARES. IF A RECORD DATE IS NECESSARY BUT NO FUTURE RECORD DATE IS SO FIXED, THE RECORD DATE IS THE DATE THE BOARD OF DIRECTORS AUTHORIZES THE DISTRIBUTION.

(3) NO DISTRIBUTION MAY BE MADE IF, AFTER GIVING IT EFFECT:

(a) THE CORPORATION WOULD NOT BE ABLE TO PAY ITS DEBTS AS THEY BECOME DUE IN THE USUAL COURSE OF BUSINESS; OR

(b) THE CORPORATION'S TOTAL ASSETS WOULD BE LESS THAN THE SUM OF ITS TOTAL LIABILITIES PLUS (UNLESS THE ARTICLES OF INCORPORATION PERMIT OTHERWISE) THE AMOUNT THAT WOULD BE NEEDED, IF THE CORPORATION WERE TO BE DISSOLVED AT THE TIME OF THE DISTRIBUTION, TO SATISFY THE PREFERENTIAL RIGHTS UPON DISSOLUTION OF SHAREHOLDERS WHOSE PREFERENTIAL RIGHTS ARE SUPERIOR TO THOSE RECEIVING THE DISTRIBUTION.

(4) THE BOARD OF DIRECTORS MAY BASE A DETERMINATION THAT A DISTRIBUTION

IS NOT PROHIBITED UNDER SUBSECTION (3) OF THIS SECTION EITHER ON FINANCIAL STATEMENTS PREPARED ON THE BASIS OF ACCOUNTING PRACTICES AND PRINCIPLES THAT ARE REASONABLE UNDER THE CIRCUMSTANCES OR ON A FAIR VALUATION OR OTHER METHOD THAT IS REASONABLE UNDER THE CIRCUMSTANCES.

(5) EXCEPT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, THE TIME FOR MEASURING THE EFFECT OF A DISTRIBUTION UNDER SUBSECTION (3) OF THIS SECTION IS:

(a) IN THE CASE OF DISTRIBUTION BY PURCHASE, REDEMPTION, OR OTHER ACQUISITION OF THE CORPORATION'S SHARES, AS OF THE EARLIER OF:

(I) THE DATE MONEY OR OTHER PROPERTY IS TRANSFERRED OR DEBT IS INCURRED BY THE CORPORATION; OR

(II) THE DATE THE SHAREHOLDER CEASES TO BE A SHAREHOLDER WITH RESPECT TO THE ACQUIRED SHARES;

(b) IN THE CASE OF ANY OTHER DISTRIBUTION OF INDEBTEDNESS, AS OF THE DATE THE INDEBTEDNESS IS DISTRIBUTED; AND

(c) IN ALL OTHER CASES, AS OF EITHER:

(I) THE DATE THE DISTRIBUTION IS AUTHORIZED, IF THE PAYMENT OCCURS WITHIN ONE HUNDRED TWENTY DAYS AFTER THE DATE OF AUTHORIZATION; OR

(II) THE DATE THE PAYMENT IS MADE, IF IT OCCURS MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE DATE OF AUTHORIZATION.

(6) INDEBTEDNESS OF A CORPORATION, INCLUDING INDEBTEDNESS ISSUED AS A DISTRIBUTION, IS NOT CONSIDERED A LIABILITY FOR PURPOSES OF DETERMINATIONS UNDER SUBSECTION (3) OF THIS SECTION IF ITS TERMS PROVIDE THAT PAYMENT OF PRINCIPAL AND INTEREST THEREON ARE MADE ONLY IF AND TO THE EXTENT THAT PAYMENT OF A DISTRIBUTION TO SHAREHOLDERS COULD THEN BE MADE UNDER THIS SECTION. IF THE INDEBTEDNESS IS ISSUED AS A DISTRIBUTION, EACH PAYMENT OF PRINCIPAL OR INTEREST THEREON IS TREATED AS A DISTRIBUTION THE EFFECT OF WHICH IS MEASURED ON THE DATE THE PAYMENT IS ACTUALLY MADE.

(7) UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE ARTICLES OF INCORPORATION OR BYLAWS, A STATEMENT OF PAR VALUE FOR SHARES SHALL NOT IMPOSE ANY LIMITATION ON DISTRIBUTIONS AND SHALL NOT REQUIRE ANY SEPARATE DESIGNATION, RESTRICTION, RESERVATION, OR OTHER SEGREGATION OF ANY CAPITAL ACCOUNT OF A CORPORATION.

**7-106-402. Unclaimed distributions.** IF A CORPORATION HAS MAILED THREE SUCCESSIVE DISTRIBUTIONS TO A SHAREHOLDER ADDRESSED TO THE SHAREHOLDER'S ADDRESS SHOWN ON THE CORPORATION'S CURRENT RECORD OF SHAREHOLDERS AND THE DISTRIBUTIONS HAVE BEEN RETURNED AS UNDELIVERABLE, NO FURTHER ATTEMPT TO DELIVER DISTRIBUTIONS TO THE SHAREHOLDER NEED BE MADE UNTIL ANOTHER ADDRESS FOR THE SHAREHOLDER IS MADE KNOWN TO THE CORPORATION, AT WHICH TIME ALL DISTRIBUTIONS ACCUMULATED BY REASON OF THIS SECTION SHALL, EXCEPT

AS OTHERWISE PROVIDED BY LAW, BE MAILED TO THE SHAREHOLDER AT SUCH OTHER ADDRESS.

**ARTICLE 107**  
**Shareholders**

**PART 1**  
**MEETINGS**

**7-107-101. Annual meeting.** (1) A CORPORATION SHALL HOLD A MEETING OF SHAREHOLDERS ANNUALLY AT A TIME STATED IN OR FIXED IN ACCORDANCE WITH THE BYLAWS.

(2) ANNUAL SHAREHOLDERS' MEETINGS MAY BE HELD IN OR OUT OF THIS STATE AT THE PLACE STATED IN OR FIXED IN ACCORDANCE WITH THE BYLAWS. IF NO PLACE IS STATED IN OR FIXED IN ACCORDANCE WITH THE BYLAWS, ANNUAL MEETINGS SHALL BE HELD AT THE CORPORATION'S PRINCIPAL OFFICE.

(3) THE FAILURE TO HOLD AN ANNUAL MEETING AT THE TIME STATED IN OR FIXED IN ACCORDANCE WITH THE BYLAWS DOES NOT AFFECT THE VALIDITY OF ANY CORPORATE ACTION AND DOES NOT WORK A FORFEITURE OR DISSOLUTION OF THE CORPORATION.

**7-107-102. Special meeting.** (1) A CORPORATION SHALL HOLD A SPECIAL MEETING OF SHAREHOLDERS:

(a) ON CALL OF ITS BOARD OF DIRECTORS OR THE PERSON OR PERSONS AUTHORIZED BY THE BYLAWS TO CALL SUCH A MEETING; OR

(b) IF THE CORPORATION RECEIVES ONE OR MORE WRITTEN DEMANDS FOR THE MEETING, STATING THE PURPOSE OR PURPOSES FOR WHICH IT IS TO BE HELD, SIGNED AND DATED BY THE HOLDERS OF SHARES REPRESENTING AT LEAST TEN PERCENT OF ALL THE VOTES ENTITLED TO BE CAST ON ANY ISSUE PROPOSED TO BE CONSIDERED AT THE MEETING.

(2) IF NOT OTHERWISE FIXED UNDER SECTION 7-107-103 OR 7-107-107, THE RECORD DATE FOR DETERMINING SHAREHOLDERS ENTITLED TO DEMAND A SPECIAL MEETING PURSUANT TO SUBSECTION (1) (b) OF THIS SECTION IS THE DATE OF THE EARLIEST OF ANY OF THE DEMANDS PURSUANT TO WHICH THE MEETING IS CALLED, OR THE DATE THAT IS SIXTY DAYS BEFORE THE DATE THE FIRST OF SUCH DEMANDS IS RECEIVED BY THE CORPORATION, WHICHEVER IS LATER.

(3) SPECIAL SHAREHOLDERS' MEETINGS MAY BE HELD IN OR OUT OF THIS STATE AT THE PLACE STATED IN OR FIXED IN ACCORDANCE WITH THE BYLAWS. IF NO PLACE IS STATED IN OR FIXED IN ACCORDANCE WITH THE BYLAWS, SPECIAL MEETINGS SHALL BE HELD AT THE CORPORATION'S PRINCIPAL OFFICE.

(4) ONLY BUSINESS WITHIN THE PURPOSE OR PURPOSES DESCRIBED IN THE NOTICE OF THE MEETING REQUIRED BY SECTION 7-107-105 (3) MAY BE CONDUCTED AT A SPECIAL SHAREHOLDERS' MEETING.



**7-107-103. Court-ordered meeting.** (1) THE HOLDING OF A MEETING OF THE SHAREHOLDERS MAY BE SUMMARILY ORDERED BY THE DISTRICT COURT OF THE COUNTY IN THIS STATE WHERE THE CORPORATION'S PRINCIPAL OFFICE IS LOCATED OR, IF THE CORPORATION HAS NO PRINCIPAL OFFICE IN THIS STATE, BY THE DISTRICT COURT OF THE COUNTY IN WHICH ITS REGISTERED OFFICE IS LOCATED:

(a) ON APPLICATION OF ANY SHAREHOLDER ENTITLED TO PARTICIPATE IN AN ANNUAL MEETING IF AN ANNUAL MEETING WAS NOT HELD WITHIN THE EARLIER OF SIX MONTHS AFTER THE CLOSE OF THE CORPORATION'S MOST RECENTLY ENDED FISCAL YEAR OR FIFTEEN MONTHS AFTER ITS LAST ANNUAL MEETING; OR

(b) ON APPLICATION OF ANY PERSON WHO PARTICIPATED IN A CALL OF OR DEMAND FOR A SPECIAL MEETING EFFECTIVE UNDER SECTION 7-107-102 (1), IF:

(I) NOTICE OF THE SPECIAL MEETING WAS NOT GIVEN WITHIN THIRTY DAYS AFTER THE DATE OF THE CALL OR THE DATE THE LAST OF THE DEMANDS NECESSARY TO REQUIRE THE CALLING OF THE MEETING WAS RECEIVED BY THE CORPORATION PURSUANT TO SECTION 7-107-102 (1) (b), AS THE CASE MAY BE; OR

(II) THE SPECIAL MEETING WAS NOT HELD IN ACCORDANCE WITH THE NOTICE.

(2) THE COURT MAY FIX THE TIME AND PLACE OF THE MEETING, DETERMINE THE SHARES ENTITLED TO PARTICIPATE IN THE MEETING, SPECIFY A RECORD DATE FOR DETERMINING SHAREHOLDERS ENTITLED TO NOTICE OF AND TO VOTE AT THE MEETING, PRESCRIBE THE FORM AND CONTENT OF THE NOTICE OF THE MEETING, FIX THE QUORUM REQUIRED FOR SPECIFIC MATTERS TO BE CONSIDERED AT THE MEETING OR DIRECT THAT THE VOTES REPRESENTED AT THE MEETING CONSTITUTE A QUORUM FOR ACTION ON THOSE MATTERS, AND ENTER OTHER ORDERS NECESSARY OR APPROPRIATE TO ACCOMPLISH THE HOLDING OF THE MEETING.

**7-107-104. Action without meeting.** (1) UNLESS THE ARTICLES OF INCORPORATION REQUIRE THAT SUCH ACTION BE TAKEN AT A SHAREHOLDERS' MEETING, ANY ACTION REQUIRED OR PERMITTED BY ARTICLES 101 TO 117 OF THIS TITLE TO BE TAKEN AT A SHAREHOLDERS' MEETING MAY BE TAKEN WITHOUT A MEETING IF ALL OF THE SHAREHOLDERS ENTITLED TO VOTE THEREON CONSENT TO SUCH ACTION IN WRITING.

(2) NO ACTION TAKEN PURSUANT TO THIS SECTION SHALL BE EFFECTIVE UNLESS THE CORPORATION HAS RECEIVED WRITINGS THAT DESCRIBE AND CONSENT TO THE ACTION, SIGNED BY SHAREHOLDERS SUFFICIENT UNDER SUBSECTION (1) OF THIS SECTION TO TAKE THE ACTION. UNLESS OTHERWISE PROVIDED BY THE BYLAWS, ANY SUCH WRITING MAY BE RECEIVED BY THE CORPORATION BY ELECTRONICALLY TRANSMITTED FACSIMILE OR OTHER FORM OF WIRE OR WIRELESS COMMUNICATION PROVIDING THE CORPORATION WITH A COMPLETE COPY THEREOF, INCLUDING A COPY OF THE SIGNATURE THERETO. ACTION TAKEN PURSUANT TO THIS SECTION SHALL BE EFFECTIVE AS OF THE DATE THE LAST WRITING NECESSARY TO EFFECT THE ACTION IS RECEIVED BY THE CORPORATION, UNLESS ALL OF THE WRITINGS NECESSARY TO EFFECT THE ACTION SPECIFY A LATER DATE AS THE EFFECTIVE DATE OF THE ACTION, IN WHICH CASE SUCH LATER DATE SHALL BE THE EFFECTIVE DATE OF THE ACTION. IF THE CORPORATION HAS RECEIVED WRITINGS DESCRIBING AND CONSENTING TO THE ACTION SIGNED BY ALL OF THE SHAREHOLDERS ENTITLED TO VOTE WITH RESPECT TO

THE ACTION, THE EFFECTIVE DATE OF THE ACTION MAY BE ANY DATE THAT IS SPECIFIED IN ALL OF THE WRITINGS AS THE EFFECTIVE DATE OF THE ACTION.

(3) ANY SHAREHOLDER WHO HAS SIGNED A WRITING DESCRIBING AND CONSENTING TO ACTION TAKEN PURSUANT TO THIS SECTION MAY REVOKE SUCH CONSENT BY A WRITING SIGNED BY THE SHAREHOLDER DESCRIBING THE ACTION AND STATING THAT THE SHAREHOLDER'S PRIOR CONSENT THERETO IS REVOKED, IF SUCH WRITING IS RECEIVED BY THE CORPORATION BEFORE THE EFFECTIVENESS OF THE ACTION.

(4) SUBJECT TO SUBSECTION (7) OF THIS SECTION, THE RECORD DATE FOR DETERMINING SHAREHOLDERS ENTITLED TO TAKE ACTION WITHOUT A MEETING OR ENTITLED TO BE GIVEN NOTICE IS THE DATE A WRITING UPON WHICH THE ACTION IS TAKEN PURSUANT TO SUBSECTION (1) OF THIS SECTION IS FIRST RECEIVED BY THE CORPORATION.

(5) ACTION TAKEN UNDER THIS SECTION HAS THE SAME EFFECT AS ACTION TAKEN AT A MEETING OF SHAREHOLDERS AND MAY BE DESCRIBED AS SUCH IN ANY DOCUMENT.

(6) IN THE EVENT SHARES ARE ENTITLED TO BE VOTED CUMULATIVELY IN THE ELECTION OF DIRECTORS, SHAREHOLDERS MAY TAKE ACTION UNDER THIS SECTION TO ELECT OR REMOVE DIRECTORS ONLY IF ALL OF THE SHAREHOLDERS ENTITLED TO VOTE IN THE ELECTION OR REMOVAL SIGN WRITINGS DESCRIBING AND CONSENTING TO THE ELECTION OR REMOVAL OF THE SAME DIRECTORS.

(7) THE DISTRICT COURT OF THE COUNTY IN THIS STATE WHERE THE CORPORATION'S PRINCIPAL OFFICE OR, IF IT HAS NO PRINCIPAL OFFICE IN THIS STATE, ITS REGISTERED OFFICE IS LOCATED MAY, UPON APPLICATION OF THE CORPORATION OR ANY SHAREHOLDER WHO WOULD BE ENTITLED TO VOTE ON THE ACTION AT A SHAREHOLDERS' MEETING, SUMMARILY SPECIFY A RECORD DATE FOR DETERMINING SHAREHOLDERS ENTITLED TO SIGN WRITINGS CONSENTING TO AN ACTION UNDER THIS SECTION AND MAY ENTER OTHER ORDERS NECESSARY OR APPROPRIATE TO EFFECT THE PURPOSES OF THIS SECTION.

**7-107-105. Notice of meeting.** (1) A CORPORATION SHALL GIVE NOTICE TO SHAREHOLDERS OF THE DATE, TIME, AND PLACE OF EACH ANNUAL AND SPECIAL SHAREHOLDERS' MEETING NO FEWER THAN TEN NOR MORE THAN SIXTY DAYS BEFORE THE DATE OF THE MEETING; EXCEPT THAT, IF THE NUMBER OF AUTHORIZED SHARES IS TO BE INCREASED, AT LEAST THIRTY DAYS' NOTICE SHALL BE GIVEN. UNLESS ARTICLES 101 TO 117 OF THIS TITLE OR THE ARTICLES OF INCORPORATION REQUIRE OTHERWISE, THE CORPORATION IS REQUIRED TO GIVE NOTICE ONLY TO SHAREHOLDERS ENTITLED TO VOTE AT THE MEETING.

(2) UNLESS ARTICLES 101 TO 117 OF THIS TITLE OR THE ARTICLES OF INCORPORATION REQUIRE OTHERWISE, NOTICE OF AN ANNUAL MEETING NEED NOT INCLUDE A DESCRIPTION OF THE PURPOSE OR PURPOSES FOR WHICH THE MEETING IS CALLED.

(3) NOTICE OF A SPECIAL MEETING SHALL INCLUDE A DESCRIPTION OF THE PURPOSE OR PURPOSES FOR WHICH THE MEETING IS CALLED.

(4) IF NOT OTHERWISE FIXED UNDER SECTION 7-107-103 OR 7-107-107, THE RECORD DATE FOR DETERMINING SHAREHOLDERS ENTITLED TO BE GIVEN NOTICE OF AND TO VOTE AT AN ANNUAL OR SPECIAL SHAREHOLDERS' MEETING IS THE DAY BEFORE THE FIRST NOTICE IS GIVEN TO SHAREHOLDERS.

(5) SUBJECT TO THE NEXT SENTENCE OF THIS SUBSECTION (5) AND UNLESS OTHERWISE REQUIRED BY THE BYLAWS, IF AN ANNUAL OR SPECIAL SHAREHOLDERS' MEETING IS ADJOURNED TO A DIFFERENT DATE, TIME, OR PLACE, NOTICE NEED NOT BE GIVEN OF THE NEW DATE, TIME, OR PLACE IF THE NEW DATE, TIME, OR PLACE IS ANNOUNCED AT THE MEETING BEFORE ADJOURNMENT. IF A NEW RECORD DATE FOR THE ADJOURNED MEETING IS OR MUST BE FIXED UNDER SECTION 7-107-107, NOTICE OF THE ADJOURNED MEETING SHALL BE GIVEN UNDER THIS SECTION TO PERSONS WHO ARE SHAREHOLDERS AS OF THE NEW RECORD DATE.

**7-107-106. Waiver of notice.** (1) A SHAREHOLDER MAY WAIVE ANY NOTICE REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE OR BY THE ARTICLES OF INCORPORATION OR THE BYLAWS, WHETHER BEFORE OR AFTER THE DATE OR TIME STATED IN THE NOTICE AS THE DATE OR TIME WHEN ANY ACTION WILL OCCUR OR HAS OCCURRED. THE WAIVER SHALL BE IN WRITING, BE SIGNED BY THE SHAREHOLDER ENTITLED TO THE NOTICE, AND BE DELIVERED TO THE CORPORATION FOR INCLUSION IN THE MINUTES OR FILING WITH THE CORPORATE RECORDS, BUT SUCH DELIVERY AND FILING SHALL NOT BE CONDITIONS OF THE EFFECTIVENESS OF THE WAIVER.

(2) A SHAREHOLDER'S ATTENDANCE AT A MEETING:

(a) WAIVES OBJECTION TO LACK OF NOTICE OR DEFECTIVE NOTICE OF THE MEETING, UNLESS THE SHAREHOLDER AT THE BEGINNING OF THE MEETING OBJECTS TO HOLDING THE MEETING OR TRANSACTING BUSINESS AT THE MEETING BECAUSE OF LACK OF NOTICE OR DEFECTIVE NOTICE; AND

(b) WAIVES OBJECTION TO CONSIDERATION OF A PARTICULAR MATTER AT THE MEETING THAT IS NOT WITHIN THE PURPOSE OR PURPOSES DESCRIBED IN THE MEETING NOTICE, UNLESS THE SHAREHOLDER OBJECTS TO CONSIDERING THE MATTER WHEN IT IS PRESENTED.

**7-107-107. Record date.** (1) THE BYLAWS MAY FIX OR PROVIDE THE MANNER OF FIXING A FUTURE DATE AS THE RECORD DATE FOR ONE OR MORE VOTING GROUPS IN ORDER TO DETERMINE THE SHAREHOLDERS ENTITLED TO BE GIVEN NOTICE OF A SHAREHOLDERS' MEETING, TO DEMAND A SPECIAL MEETING, TO VOTE, OR TO TAKE ANY OTHER ACTION, AND IF THE BYLAWS DO NOT FIX OR PROVIDE FOR FIXING A RECORD DATE, THE BOARD OF DIRECTORS MAY FIX A FUTURE DATE AS THE RECORD DATE; EXCEPT THAT THE RECORD DATE FOR DETERMINING THE SHAREHOLDERS ENTITLED TO TAKE ACTION WITHOUT A MEETING OR ENTITLED TO BE GIVEN NOTICE OF ACTION SO TAKEN SHALL BE DETERMINED AS PROVIDED IN SECTION 7-107-104 (4).

(2) A RECORD DATE FIXED UNDER THIS SECTION SHALL NOT BE MORE THAN SEVENTY DAYS BEFORE THE MEETING OR ACTION REQUIRING A DETERMINATION OF SHAREHOLDERS.

(3) A DETERMINATION OF SHAREHOLDERS ENTITLED TO BE GIVEN NOTICE OF OR TO VOTE AT A SHAREHOLDERS' MEETING IS EFFECTIVE FOR ANY ADJOURNMENT OF THE

MEETING UNLESS THE BOARD OF DIRECTORS FIXES A NEW RECORD DATE, WHICH IT SHALL DO IF THE MEETING IS ADJOURNED TO A DATE MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE DATE FIXED FOR THE ORIGINAL MEETING.

(4) IF A COURT ORDERS A MEETING ADJOURNED TO A DATE MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE DATE FIXED FOR THE ORIGINAL MEETING, IT MAY PROVIDE THAT THE ORIGINAL RECORD DATE CONTINUES IN EFFECT OR IT MAY FIX A NEW RECORD DATE.

**7-107-108. Meetings by telecommunication.** UNLESS OTHERWISE PROVIDED IN THE BYLAWS, ANY OR ALL OF THE SHAREHOLDERS MAY PARTICIPATE IN AN ANNUAL OR SPECIAL SHAREHOLDERS' MEETING BY, OR THE MEETING MAY BE CONDUCTED THROUGH THE USE OF, ANY MEANS OF COMMUNICATION BY WHICH ALL PERSONS PARTICIPATING IN THE MEETING MAY HEAR EACH OTHER DURING THE MEETING. A SHAREHOLDER PARTICIPATING IN A MEETING BY THIS MEANS IS DEEMED TO BE PRESENT IN PERSON AT THE MEETING.

## PART 2 VOTING

**7-107-201. Shareholders' list for meeting.** (1) AFTER FIXING A RECORD DATE FOR A SHAREHOLDERS' MEETING, THE CORPORATION SHALL PREPARE A LIST OF THE NAMES OF ALL ITS SHAREHOLDERS WHO ARE ENTITLED TO BE GIVEN NOTICE OF THE MEETING. THE LIST SHALL BE ARRANGED BY VOTING GROUPS AND WITHIN EACH VOTING GROUP BY CLASS OR SERIES OF SHARES, SHALL BE ALPHABETICAL WITHIN EACH CLASS OR SERIES, AND SHALL SHOW THE ADDRESS OF, AND THE NUMBER OF SHARES OF EACH SUCH CLASS AND SERIES THAT ARE HELD BY, EACH SHAREHOLDER.

(2) THE SHAREHOLDERS' LIST SHALL BE AVAILABLE FOR INSPECTION BY ANY SHAREHOLDER, BEGINNING THE EARLIER OF TEN DAYS BEFORE THE MEETING FOR WHICH THE LIST WAS PREPARED OR TWO BUSINESS DAYS AFTER NOTICE OF THE MEETING IS GIVEN AND CONTINUING THROUGH THE MEETING, AND ANY ADJOURNMENT THEREOF, AT THE CORPORATION'S PRINCIPAL OFFICE OR AT A PLACE IDENTIFIED IN THE NOTICE OF THE MEETING IN THE CITY WHERE THE MEETING WILL BE HELD. A SHAREHOLDER OR HIS AGENT OR ATTORNEY IS ENTITLED ON WRITTEN DEMAND TO INSPECT AND, SUBJECT TO THE REQUIREMENTS OF SECTION 7-116-102 (3) AND THE PROVISIONS OF SUBSECTIONS (2) AND (3) OF SECTION 7-116-103, TO COPY THE LIST DURING REGULAR BUSINESS HOURS AND DURING THE PERIOD IT IS AVAILABLE FOR INSPECTION.

(3) THE CORPORATION SHALL MAKE THE SHAREHOLDERS' LIST AVAILABLE AT THE MEETING, AND ANY SHAREHOLDER OR HIS AGENT OR ATTORNEY IS ENTITLED TO INSPECT THE LIST AT ANY TIME DURING THE MEETING OR ANY ADJOURNMENT.

(4) IF THE CORPORATION REFUSES TO ALLOW A SHAREHOLDER OR AN AGENT OR ATTORNEY OF THE SHAREHOLDER TO INSPECT THE SHAREHOLDERS' LIST BEFORE OR AT THE MEETING OR TO COPY THE LIST, AS PERMITTED BY SUBSECTION (2) OR (3) OF THIS SECTION, THE DISTRICT COURT OF THE COUNTY IN THIS STATE WHERE THE CORPORATION'S PRINCIPAL OFFICE OR, IF IT HAS NO PRINCIPAL OFFICE IN THIS STATE, ITS REGISTERED OFFICE IS LOCATED MAY, ON APPLICATION OF THE SHAREHOLDER, SUMMARILY ORDER THE INSPECTION OR COPYING OF THE LIST AT THE CORPORATION'S

EXPENSE AND MAY POSTPONE OR ADJOURN THE MEETING FOR WHICH THE LIST WAS PREPARED UNTIL THE INSPECTION OR COPYING IS COMPLETE.

(5) IF A COURT ORDERS INSPECTION OR COPYING OF THE SHAREHOLDERS' LIST PURSUANT TO SUBSECTION (4) OF THIS SECTION, UNLESS THE CORPORATION PROVES THAT IT REFUSED INSPECTION OR COPYING OF THE LIST IN GOOD FAITH BECAUSE IT HAD A REASONABLE BASIS FOR DOUBT ABOUT THE RIGHT OF THE SHAREHOLDER OR THE AGENT OR ATTORNEY OF THE SHAREHOLDER TO INSPECT OR COPY THE SHAREHOLDERS' LIST:

(a) THE COURT SHALL ALSO ORDER THE CORPORATION TO PAY THE SHAREHOLDER'S COSTS, INCLUDING REASONABLE COUNSEL FEES, INCURRED IN OBTAINING THE ORDER;

(b) THE COURT MAY ORDER THE CORPORATION TO PAY THE SHAREHOLDER FOR ANY DAMAGES THE SHAREHOLDER INCURRED; AND

(c) THE COURT MAY GRANT THE SHAREHOLDER ANY OTHER REMEDY AFFORDED THE SHAREHOLDER BY LAW.

(6) IF A COURT ORDERS INSPECTION OR COPYING OF THE SHAREHOLDERS' LIST PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE COURT MAY IMPOSE REASONABLE RESTRICTIONS ON THE USE OR DISTRIBUTION OF THE LIST BY THE SHAREHOLDER.

(7) FAILURE TO PREPARE OR MAKE AVAILABLE THE SHAREHOLDERS' LIST DOES NOT AFFECT THE VALIDITY OF ACTION TAKEN AT THE MEETING.

**7-107-202. Voting entitlement of shares.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (2) AND (4) OF THIS SECTION OR IN THE ARTICLES OF INCORPORATION, EACH OUTSTANDING SHARE, REGARDLESS OF CLASS, IS ENTITLED TO ONE VOTE, AND EACH FRACTIONAL SHARE IS ENTITLED TO A CORRESPONDING FRACTIONAL VOTE, ON EACH MATTER VOTED ON AT A SHAREHOLDERS' MEETING. ONLY SHARES ARE ENTITLED TO VOTE.

(2) EXCEPT AS OTHERWISE ORDERED BY A COURT OF COMPETENT JURISDICTION UPON A FINDING THAT THE PURPOSE OF THIS SUBSECTION (2) WOULD NOT BE VIOLATED IN THE CIRCUMSTANCES PRESENTED TO THE COURT, THE SHARES OF A CORPORATION ARE NOT ENTITLED TO BE VOTED IF THEY ARE OWNED, DIRECTLY OR INDIRECTLY, BY A SECOND CORPORATION, DOMESTIC OR FOREIGN, AND THE FIRST CORPORATION OWNS, DIRECTLY OR INDIRECTLY, A MAJORITY OF THE SHARES ENTITLED TO VOTE FOR DIRECTORS OF THE SECOND CORPORATION.

(3) SUBSECTION (2) OF THIS SECTION DOES NOT LIMIT THE POWER OF A CORPORATION TO VOTE ANY SHARES, INCLUDING ITS OWN SHARES, HELD BY IT IN A FIDUCIARY CAPACITY.

(4) REDEEMABLE SHARES ARE NOT ENTITLED TO BE VOTED AFTER NOTICE OF REDEMPTION IS MAILED TO THE HOLDERS AND A SUM SUFFICIENT TO REDEEM THE SHARES HAS BEEN DEPOSITED WITH A BANK, TRUST COMPANY, OR OTHER FINANCIAL INSTITUTION UNDER AN IRREVOCABLE OBLIGATION TO PAY THE HOLDERS THE REDEMPTION PRICE ON SURRENDER OF THE SHARES.

**7-107-203. Proxies.** (1) A SHAREHOLDER MAY VOTE THE SHAREHOLDER'S SHARES IN PERSON OR BY PROXY.

(2) WITHOUT LIMITING THE MANNER IN WHICH A SHAREHOLDER MAY APPOINT A PROXY TO VOTE OR OTHERWISE ACT FOR THE SHAREHOLDER, THE FOLLOWING SHALL CONSTITUTE VALID MEANS OF SUCH APPOINTMENT:

(a) A SHAREHOLDER MAY APPOINT A PROXY BY SIGNING AN APPOINTMENT FORM, EITHER PERSONALLY OR BY THE SHAREHOLDER'S ATTORNEY-IN-FACT.

(b) A SHAREHOLDER MAY APPOINT A PROXY BY TRANSMITTING OR AUTHORIZING THE TRANSMISSION OF A TELEGRAM, TELETYPE, OR OTHER ELECTRONIC TRANSMISSION PROVIDING A WRITTEN STATEMENT OF THE APPOINTMENT TO THE PROXY, TO A PROXY SOLICITOR, PROXY SUPPORT SERVICE ORGANIZATION, OR OTHER PERSON DULY AUTHORIZED BY THE PROXY TO RECEIVE APPOINTMENTS AS AGENT FOR THE PROXY, OR TO THE CORPORATION; EXCEPT THAT THE TRANSMITTED APPOINTMENT SHALL SET FORTH OR BE TRANSMITTED WITH WRITTEN EVIDENCE FROM WHICH IT CAN BE DETERMINED THAT THE SHAREHOLDER TRANSMITTED OR AUTHORIZED THE TRANSMISSION OF THE APPOINTMENT.

(3) AN APPOINTMENT OF A PROXY IS EFFECTIVE AGAINST THE CORPORATION WHEN RECEIVED BY THE CORPORATION, INCLUDING RECEIPT BY THE CORPORATION OF AN APPOINTMENT TRANSMITTED PURSUANT TO SUBSECTION (2) (b) OF THIS SECTION. AN APPOINTMENT IS VALID FOR ELEVEN MONTHS UNLESS A DIFFERENT PERIOD IS EXPRESSLY PROVIDED IN THE APPOINTMENT FORM.

(4) ANY COMPLETE COPY, INCLUDING AN ELECTRONICALLY TRANSMITTED FACSIMILE, OF AN APPOINTMENT OF A PROXY MAY BE SUBSTITUTED FOR OR USED IN LIEU OF THE ORIGINAL APPOINTMENT FOR ANY PURPOSE FOR WHICH THE ORIGINAL APPOINTMENT COULD BE USED.

(5) AN APPOINTMENT OF A PROXY IS REVOCABLE BY THE SHAREHOLDER UNLESS THE APPOINTMENT FORM CONSPICUOUSLY STATES THAT IT IS IRREVOCABLE AND THE APPOINTMENT IS COUPLED WITH AN INTEREST. APPOINTMENTS COUPLED WITH AN INTEREST INCLUDE THE APPOINTMENT OF ANY OF THE FOLLOWING PERSONS OR THEIR DESIGNEES:

(a) A PLEDGEE;

(b) A PERSON WHO PURCHASED OR AGREED TO PURCHASE THE SHARES;

(c) A CREDITOR OF THE CORPORATION WHO EXTENDED CREDIT TO THE CORPORATION UNDER TERMS REQUIRING THE APPOINTMENT;

(d) AN EMPLOYEE OF THE CORPORATION WHOSE EMPLOYMENT CONTRACT REQUIRES THE APPOINTMENT; OR

(e) A PARTY TO A VOTING AGREEMENT CREATED UNDER SECTION 7-107-302.

(6) THE DEATH OR INCAPACITY OF THE SHAREHOLDER APPOINTING A PROXY DOES NOT AFFECT THE RIGHT OF THE CORPORATION TO ACCEPT THE PROXY'S AUTHORITY

UNLESS NOTICE OF THE DEATH OR INCAPACITY IS RECEIVED BY THE SECRETARY OR OTHER OFFICER OR AGENT AUTHORIZED TO TABULATE VOTES BEFORE THE PROXY EXERCISES HIS OR HER AUTHORITY UNDER THE APPOINTMENT.

(7) AN APPOINTMENT MADE IRREVOCABLE UNDER SUBSECTION (5) OF THIS SECTION IS REVOKED WHEN THE INTEREST WITH WHICH IT IS COUPLED IS EXTINGUISHED, BUT SUCH REVOCATION DOES NOT AFFECT THE RIGHT OF THE CORPORATION TO ACCEPT THE PROXY'S AUTHORITY UNLESS:

(a) THE CORPORATION HAD NOTICE THAT THE APPOINTMENT WAS COUPLED WITH THAT INTEREST AND NOTICE THAT THE INTEREST IS EXTINGUISHED IS RECEIVED BY THE SECRETARY OR OTHER OFFICER OR AGENT AUTHORIZED TO TABULATE VOTES BEFORE THE PROXY EXERCISES HIS OR HER AUTHORITY UNDER THE APPOINTMENT; OR

(b) OTHER NOTICE OF THE REVOCATION OF THE APPOINTMENT IS RECEIVED BY THE SECRETARY OR OTHER OFFICER OR AGENT AUTHORIZED TO TABULATE VOTES BEFORE THE PROXY EXERCISES HIS OR HER AUTHORITY UNDER THE APPOINTMENT.

(8) THE CORPORATION SHALL NOT BE REQUIRED TO RECOGNIZE AN APPOINTMENT MADE IRREVOCABLE UNDER SUBSECTION (5) OF THIS SECTION IF IT HAS RECEIVED A WRITING REVOKING THE APPOINTMENT SIGNED BY THE SHAREHOLDER EITHER PERSONALLY OR BY THE SHAREHOLDER'S ATTORNEY-IN-FACT, NOTWITHSTANDING THAT THE REVOCATION MAY BE A BREACH OF AN OBLIGATION OF THE SHAREHOLDER TO ANOTHER PERSON NOT TO REVOKE THE APPOINTMENT. THIS PROVISION SHALL NOT AFFECT ANY CLAIMS SUCH OTHER PERSON MAY HAVE AGAINST THE SHAREHOLDER WITH RESPECT TO THE REVOCATION.

(9) A TRANSFEREE FOR VALUE OF SHARES SUBJECT TO AN IRREVOCABLE APPOINTMENT MAY REVOKE THE APPOINTMENT IF THE TRANSFEREE DID NOT KNOW OF ITS EXISTENCE WHEN HE OR SHE ACQUIRED THE SHARES AND THE EXISTENCE OF THE IRREVOCABLE APPOINTMENT WAS NOT NOTED ON THE CERTIFICATE REPRESENTING THE SHARES OR ON THE INFORMATION STATEMENT FOR SHARES WITHOUT CERTIFICATES.

(10) SUBJECT TO SECTION 7-107-205 AND TO ANY EXPRESS LIMITATION ON THE PROXY'S AUTHORITY APPEARING ON THE APPOINTMENT FORM, A CORPORATION IS ENTITLED TO ACCEPT THE PROXY'S VOTE OR OTHER ACTION AS THAT OF THE SHAREHOLDER MAKING THE APPOINTMENT.

**7-107-204. Shares held by nominees.** (1) A CORPORATION MAY ESTABLISH A PROCEDURE BY WHICH THE BENEFICIAL OWNER OF SHARES THAT ARE REGISTERED IN THE NAME OF A NOMINEE IS RECOGNIZED BY THE CORPORATION AS THE SHAREHOLDER. THE EXTENT OF THIS RECOGNITION MAY BE DETERMINED IN THE PROCEDURE THUS ESTABLISHED.

(2) THE PROCEDURE DESCRIBED IN SUBSECTION (1) OF THIS SECTION MAY SET FORTH:

(a) THE TYPES OF NOMINEES TO WHICH IT APPLIES;

(b) THE RIGHTS OR PRIVILEGES THAT THE CORPORATION RECOGNIZES IN A

BENEFICIAL OWNER, WHICH MAY INCLUDE RIGHTS OR PRIVILEGES OTHER THAN VOTING;

(c) THE MANNER IN WHICH THE PROCEDURE MAY BE USED BY THE NOMINEE;

(d) THE INFORMATION THAT SHALL BE PROVIDED BY THE NOMINEE WHEN THE PROCEDURE IS USED;

(e) THE PERIOD FOR WHICH THE NOMINEE'S USE OF THE PROCEDURE IS EFFECTIVE; AND

(f) OTHER ASPECTS OF THE RIGHTS AND DUTIES THEREBY CREATED.

**7-107-205. Corporation's acceptance of votes.** (1) IF THE NAME SIGNED ON A VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION CORRESPONDS TO THE NAME OF A SHAREHOLDER, THE CORPORATION, IF ACTING IN GOOD FAITH, IS ENTITLED TO ACCEPT THE VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION AND TO GIVE IT EFFECT AS THE ACT OF THE SHAREHOLDER.

(2) IF THE NAME SIGNED ON A VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION DOES NOT CORRESPOND TO THE NAME OF A SHAREHOLDER, THE CORPORATION, IF ACTING IN GOOD FAITH, IS NEVERTHELESS ENTITLED TO ACCEPT THE VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION AND TO GIVE IT EFFECT AS THE ACT OF THE SHAREHOLDER IF:

(a) THE SHAREHOLDER IS AN ENTITY AND THE NAME SIGNED PURPORTS TO BE THAT OF AN OFFICER OR AGENT OF THE ENTITY;

(b) THE NAME SIGNED PURPORTS TO BE THAT OF AN ADMINISTRATOR, EXECUTOR, GUARDIAN, OR CONSERVATOR REPRESENTING THE SHAREHOLDER AND, IF THE CORPORATION REQUESTS, EVIDENCE OF FIDUCIARY STATUS ACCEPTABLE TO THE CORPORATION HAS BEEN PRESENTED WITH RESPECT TO THE VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION;

(c) THE NAME SIGNED PURPORTS TO BE THAT OF A RECEIVER OR TRUSTEE IN BANKRUPTCY OF THE SHAREHOLDER AND, IF THE CORPORATION REQUESTS, EVIDENCE OF THIS STATUS ACCEPTABLE TO THE CORPORATION HAS BEEN PRESENTED WITH RESPECT TO THE VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION;

(d) THE NAME SIGNED PURPORTS TO BE THAT OF A PLEDGEE, BENEFICIAL OWNER, OR ATTORNEY-IN-FACT OF THE SHAREHOLDER AND, IF THE CORPORATION REQUESTS, EVIDENCE ACCEPTABLE TO THE CORPORATION OF THE SIGNATORY'S AUTHORITY TO SIGN FOR THE SHAREHOLDER HAS BEEN PRESENTED WITH RESPECT TO THE VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION;

(e) TWO OR MORE PERSONS ARE THE SHAREHOLDER AS COTENANTS OR FIDUCIARIES AND THE NAME SIGNED PURPORTS TO BE THE NAME OF AT LEAST ONE OF THE COTENANTS OR FIDUCIARIES AND THE PERSON SIGNING APPEARS TO BE ACTING ON



BEHALF OF ALL THE COTENANTS OR FIDUCIARIES; OR

(f) THE ACCEPTANCE OF THE VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION IS OTHERWISE PROPER UNDER RULES ESTABLISHED BY THE CORPORATION THAT ARE NOT INCONSISTENT WITH THE PROVISIONS OF THIS SUBSECTION (2).

(3) THE CORPORATION IS ENTITLED TO REJECT A VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION IF THE SECRETARY OR OTHER OFFICER OR AGENT AUTHORIZED TO TABULATE VOTES, ACTING IN GOOD FAITH, HAS REASONABLE BASIS FOR DOUBT ABOUT THE VALIDITY OF THE SIGNATURE ON IT OR ABOUT THE SIGNATORY'S AUTHORITY TO SIGN FOR THE SHAREHOLDER.

(4) THE CORPORATION AND ITS OFFICER OR AGENT WHO ACCEPTS OR REJECTS A VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION IN GOOD FAITH AND IN ACCORDANCE WITH THE STANDARDS OF THIS SECTION ARE NOT LIABLE IN DAMAGES FOR THE CONSEQUENCES OF THE ACCEPTANCE OR REJECTION.

(5) CORPORATE ACTION BASED ON THE ACCEPTANCE OR REJECTION OF A VOTE, CONSENT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT REVOCATION UNDER THIS SECTION IS VALID UNLESS A COURT OF COMPETENT JURISDICTION DETERMINES OTHERWISE.

**7-107-206. Quorum and voting requirements for voting groups.** (1) SHARES ENTITLED TO VOTE AS A SEPARATE VOTING GROUP MAY TAKE ACTION ON A MATTER AT A MEETING ONLY IF A QUORUM OF THOSE SHARES EXISTS WITH RESPECT TO THAT MATTER. UNLESS OTHERWISE PROVIDED IN ARTICLES 101 TO 117 OF THIS TITLE OR IN THE ARTICLES OF INCORPORATION, A MAJORITY OF THE VOTES ENTITLED TO BE CAST ON THE MATTER BY THE VOTING GROUP CONSTITUTES A QUORUM OF THAT VOTING GROUP FOR ACTION ON THAT MATTER, BUT A QUORUM SHALL NOT CONSIST OF FEWER THAN ONE-THIRD OF THE VOTES ENTITLED TO BE CAST ON THE MATTER BY THE VOTING GROUP.

(2) ONCE A SHARE IS REPRESENTED FOR ANY PURPOSE AT A MEETING, INCLUDING THE PURPOSE OF DETERMINING THAT A QUORUM EXISTS, IT IS DEEMED PRESENT FOR QUORUM PURPOSES FOR THE REMAINDER OF THE MEETING AND FOR ANY ADJOURNMENT OF THAT MEETING, UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION OR UNLESS A NEW RECORD DATE IS OR SHALL BE SET FOR THAT ADJOURNED MEETING.

(3) IF A QUORUM EXISTS, ACTION ON A MATTER OTHER THAN THE ELECTION OF DIRECTORS BY A VOTING GROUP IS APPROVED IF THE VOTES CAST WITHIN THE VOTING GROUP FAVORING THE ACTION EXCEED THE VOTES CAST WITHIN THE VOTING GROUP OPPOSING THE ACTION, UNLESS A GREATER NUMBER OF AFFIRMATIVE VOTES IS REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE OR THE ARTICLES OF INCORPORATION.

(4) AN AMENDMENT TO THE ARTICLES OF INCORPORATION ADDING, CHANGING, OR DELETING A QUORUM OR VOTING REQUIREMENT FOR A VOTING GROUP GREATER THAN THAT SPECIFIED IN SUBSECTION (1) OR (3) OF THIS SECTION IS GOVERNED BY SECTION

7-107-208 (2).

(5) THE ELECTION OF DIRECTORS IS GOVERNED BY SECTION 7-107-209.

**7-107-207. Action by single and multiple voting groups.** (1) IF ARTICLES 101 TO 117 OF THIS TITLE OR THE ARTICLES OF INCORPORATION PROVIDE FOR VOTING BY A SINGLE VOTING GROUP ON A MATTER, ACTION ON THAT MATTER IS TAKEN WHEN VOTED UPON BY THAT VOTING GROUP AS PROVIDED IN SECTION 7-107-206.

(2) IF ARTICLES 101 TO 117 OF THIS TITLE OR THE ARTICLES OF INCORPORATION PROVIDE FOR VOTING BY TWO OR MORE VOTING GROUPS ON A MATTER, ACTION ON THAT MATTER IS TAKEN ONLY WHEN VOTED UPON BY EACH OF THOSE VOTING GROUPS COUNTED SEPARATELY AS PROVIDED IN SECTION 7-107-206. ONE VOTING GROUP MAY VOTE ON A MATTER EVEN THOUGH NO ACTION IS TAKEN BY ANOTHER VOTING GROUP ENTITLED TO VOTE ON THE MATTER.

**7-107-208. Greater quorum or voting requirements.** (1) THE ARTICLES OF INCORPORATION OR, IF AUTHORIZED BY THE ARTICLES OF INCORPORATION, BYLAWS ADOPTED BY THE SHAREHOLDERS MAY PROVIDE FOR A GREATER QUORUM OR VOTING REQUIREMENT FOR SHAREHOLDERS OR VOTING GROUPS THAN IS PROVIDED FOR BY ARTICLES 101 TO 117 OF THIS TITLE.

(2) AN AMENDMENT TO THE ARTICLES OF INCORPORATION THAT ADDS, CHANGES, OR DELETES A GREATER QUORUM OR VOTING REQUIREMENT SHALL MEET THE SAME QUORUM REQUIREMENT AND BE ADOPTED BY THE SAME VOTE AND VOTING GROUPS REQUIRED TO TAKE ACTION UNDER THE QUORUM AND VOTING REQUIREMENTS THEN IN EFFECT OR PROPOSED TO BE ADOPTED, WHICHEVER IS GREATER.

**7-107-209. Voting for directors; cumulative voting.** (1) AT EACH ELECTION FOR DIRECTORS, EVERY SHAREHOLDER ENTITLED TO VOTE AT SUCH ELECTION HAS THE RIGHT:

(a) TO VOTE, IN PERSON OR BY PROXY, ALL OF THE SHAREHOLDER'S VOTES FOR AS MANY PERSONS AS THERE ARE DIRECTORS TO BE ELECTED AND FOR WHOSE ELECTION THE SHAREHOLDER HAS A RIGHT TO VOTE UNLESS THE ARTICLES OF INCORPORATION PROVIDE OTHERWISE; OR

(b) TO THE EXTENT THAT THE PRIVILEGE OF CUMULATIVE VOTING IN THE ELECTION OF DIRECTORS IS IN EFFECT PURSUANT TO THE PROVISIONS OF SECTION 7-102-102 (3), TO CUMULATE VOTES BY MULTIPLYING THE NUMBER OF VOTES THE SHAREHOLDER IS ENTITLED TO CAST BY THE NUMBER OF DIRECTORS FOR WHOM THE SHAREHOLDER IS ENTITLED TO VOTE AND CASTING THE PRODUCT FOR A SINGLE CANDIDATE OR DISTRIBUTING THE PRODUCT AMONG TWO OR MORE CANDIDATES.

(2) THE ARTICLES OF INCORPORATION MAY PROVIDE THAT SHARES OTHERWISE ENTITLED TO VOTE CUMULATIVELY MAY NOT BE VOTED CUMULATIVELY AT A MEETING UNLESS:

(a) THE NOTICE OF THE MEETING OR THE PROXY STATEMENT ACCOMPANYING THE NOTICE STATES CONSPICUOUSLY THAT CUMULATIVE VOTING IS AUTHORIZED; OR

(b) A SHAREHOLDER WHO HAS THE RIGHT TO CUMULATE VOTES GIVES NOTICE TO THE CORPORATION NOT LESS THAN FORTY-EIGHT HOURS BEFORE THE TIME SET FOR THE MEETING OF THE SHAREHOLDER'S INTENT TO CUMULATE VOTES DURING THE MEETING. IF ONE SHAREHOLDER GIVES THE NOTICE PROVIDED FOR IN THIS PARAGRAPH (b), ALL OTHER SHAREHOLDERS IN THE SAME VOTING GROUP PARTICIPATING IN THE ELECTION SHALL BE ENTITLED TO CUMULATE THEIR VOTES WITHOUT GIVING FURTHER NOTICE.

(3) IF, BEFORE A MEETING OF SHAREHOLDERS AT WHICH DIRECTORS ARE TO BE ELECTED, THE CORPORATION RECEIVES NOTICE PURSUANT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION WITH RESPECT TO THAT MEETING, THEN:

(a) IF SUCH NOTICE IS RECEIVED SUFFICIENTLY EARLY THAT THE INFORMATION REQUIRED BY PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION CAN BE INCLUDED, WITHOUT SIGNIFICANT ADDITIONAL EXPENSE, IN THE NOTICE OF THE MEETING OR IN A PROXY STATEMENT ACCOMPANYING THE NOTICE, THE CORPORATION SHALL INCLUDE SUCH INFORMATION IN THAT NOTICE OR PROXY STATEMENT; OR

(b) IF SUCH NOTICE IS RECEIVED LATER THAN CONTEMPLATED IN PARAGRAPH (a) OF THIS SUBSECTION (3), THE CORPORATION MAY TAKE SUCH OTHER ACTION AS IT MAY DEEM APPROPRIATE TO PROVIDE NOTICE, TO THE VOTING GROUP OR GROUPS THAT ARE AFFECTED BY THE SHAREHOLDER'S NOTICE, THAT CUMULATIVE VOTING IS AUTHORIZED AT THE MEETING FOR SUCH VOTING GROUP OR GROUPS; AND, IN ANY EVENT, THE CORPORATION SHALL CAUSE AN ANNOUNCEMENT TO BE MADE AT THE MEETING, BEFORE THE TAKING OF ANY VOTE WITH RESPECT TO WHICH CUMULATIVE VOTING IS IN EFFECT, THAT CUMULATIVE VOTING IS AUTHORIZED AT THE MEETING.

(4) IN AN ELECTION OF DIRECTORS, THAT NUMBER OF CANDIDATES EQUALING THE NUMBER OF DIRECTORS TO BE ELECTED, HAVING THE HIGHEST NUMBER OF VOTES CAST IN FAVOR OF THEIR ELECTION, ARE ELECTED TO THE BOARD OF DIRECTORS.

### PART 3 VOTING TRUSTS AND AGREEMENTS

**7-107-301. Voting trusts.** (1) ONE OR MORE SHAREHOLDERS MAY CREATE A VOTING TRUST, CONFERRING ON A TRUSTEE THE RIGHT TO VOTE OR OTHERWISE ACT FOR THEM, BY SIGNING AN AGREEMENT SETTING OUT THE PROVISIONS OF THE TRUST AND BY TRANSFERRING THEIR SHARES TO THE TRUSTEE. WHEN A VOTING TRUST AGREEMENT IS SIGNED, THE TRUSTEE SHALL PREPARE A LIST OF THE NAMES AND ADDRESSES OF ALL OWNERS OF BENEFICIAL INTERESTS IN THE TRUST, TOGETHER WITH THE NUMBER AND CLASS OF SHARES EACH TRANSFERRED TO THE TRUST, AND PROMPTLY CAUSE THE CORPORATION TO RECEIVE COPIES OF THE LIST AND AGREEMENT. THEREAFTER, THE TRUSTEE SHALL CAUSE THE CORPORATION TO RECEIVE CHANGES TO THE LIST PROMPTLY AS THEY OCCUR AND AMENDMENTS TO THE AGREEMENT PROMPTLY AS THEY ARE MADE.

(2) A VOTING TRUST BECOMES EFFECTIVE ON THE DATE THE FIRST SHARES SUBJECT TO THE TRUST ARE REGISTERED IN THE TRUSTEE'S NAME. A VOTING TRUST IS VALID FOR NOT MORE THAN TEN YEARS AFTER ITS EFFECTIVE DATE UNLESS EXTENDED UNDER SUBSECTION (3) OF THIS SECTION.

(3) ALL OR SOME OF THE PARTIES TO A VOTING TRUST MAY EXTEND IT FOR ADDITIONAL TERMS OF NOT MORE THAN TEN YEARS EACH BY SIGNING AN EXTENSION AGREEMENT AND OBTAINING THE TRUSTEE'S WRITTEN CONSENT TO THE EXTENSION. AN EXTENSION IS VALID FOR NOT MORE THAN TEN YEARS AFTER THE DATE THE FIRST SHAREHOLDER SIGNS THE EXTENSION AGREEMENT, UNLESS SUCH SIGNING OCCURS WITHIN TWO YEARS BEFORE THE EXPIRATION DATE OF THE VOTING TRUST AS ORIGINALLY FIXED OR AS LAST EXTENDED, IN WHICH CASE THE EXTENSION IS VALID FOR NOT MORE THAN TEN YEARS AFTER THE EXPIRATION DATE OF THE VOTING TRUST AS ORIGINALLY FIXED OR LAST EXTENDED. THE TRUSTEE SHALL CAUSE THE CORPORATION TO RECEIVE COPIES OF THE EXTENSION AGREEMENT. AN EXTENSION AGREEMENT BINDS ONLY THOSE PARTIES SIGNING IT.

**7-107-302. Voting agreements.** (1) TWO OR MORE SHAREHOLDERS MAY PROVIDE FOR THE MANNER IN WHICH THEY WILL VOTE THEIR SHARES BY SIGNING AN AGREEMENT FOR THAT PURPOSE. A VOTING AGREEMENT CREATED UNDER THIS SECTION IS NOT SUBJECT TO THE PROVISIONS OF SECTION 7-107-301.

(2) A VOTING AGREEMENT CREATED UNDER THIS SECTION IS SPECIFICALLY ENFORCEABLE.

#### PART 4 ACTIONS BY SHAREHOLDERS

**7-107-401. Definition of "shareholder".** AS USED IN THIS PART 4, "SHAREHOLDER" INCLUDES A BENEFICIAL OWNER WHOSE SHARES ARE HELD IN A VOTING TRUST OR HELD BY A NOMINEE ON THE BENEFICIAL OWNER'S BEHALF.

**7-107-402. Actions by shareholders.** (1) NO ACTION SHALL BE COMMENCED BY A SHAREHOLDER IN THE RIGHT OF A DOMESTIC CORPORATION, AND NO ACTION SHALL BE COMMENCED IN THIS STATE BY A SHAREHOLDER IN THE RIGHT OF A FOREIGN CORPORATION, UNLESS THE PLAINTIFF WAS A SHAREHOLDER OF THE CORPORATION AT THE TIME OF THE TRANSACTION OF WHICH THE PLAINTIFF COMPLAINS OR THE PLAINTIFF IS A PERSON UPON WHOM SHARES OR VOTING TRUST CERTIFICATES THEREAFTER DEVOLVED BY OPERATION OF LAW FROM A PERSON WHO WAS A SHAREHOLDER AT SUCH TIME.

(2) IN ANY ACTION INSTITUTED ON OR AFTER JANUARY 1, 1959, IN THE RIGHT OF ANY DOMESTIC OR FOREIGN CORPORATION BY A SHAREHOLDER, THE COURT HAVING JURISDICTION, UPON FINAL JUDGMENT AND A FINDING THAT THE ACTION WAS COMMENCED WITHOUT REASONABLE CAUSE, SHALL REQUIRE THE PLAINTIFF TO PAY TO THE PARTIES NAMED AS DEFENDANTS THE COSTS AND REASONABLE EXPENSES DIRECTLY ATTRIBUTABLE TO THE DEFENSE OF SUCH ACTION, BUT NOT INCLUDING FEES OF ATTORNEYS.

(3) IN ANY ACTION PENDING, INSTITUTED, OR MAINTAINED ON OR AFTER JANUARY 1, 1959, IN THE RIGHT OF ANY DOMESTIC OR FOREIGN CORPORATION BY A SHAREHOLDER HOLDING LESS THAN FIVE PERCENT OF THE OUTSTANDING SHARES OF ANY CLASS OF SUCH CORPORATION OR OF VOTING TRUST CERTIFICATES THEREFOR, UNLESS THE SHARES OR VOTING TRUST CERTIFICATES SO HELD HAVE A MARKET VALUE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS, THE CORPORATION IN WHOSE RIGHT SUCH ACTION IS COMMENCED SHALL BE ENTITLED, AT ANY TIME BEFORE FINAL

JUDGMENT, TO REQUIRE THE PLAINTIFF TO GIVE SECURITY FOR THE COSTS AND REASONABLE EXPENSES WHICH MAY BE DIRECTLY ATTRIBUTABLE TO AND INCURRED BY IT IN THE DEFENSE OF SUCH ACTION OR MAY BE INCURRED BY OTHER PARTIES NAMED AS DEFENDANT FOR WHICH IT MAY BECOME LEGALLY LIABLE, BUT NOT INCLUDING FEES OF ATTORNEYS. MARKET VALUE SHALL BE DETERMINED AS OF THE DATE THAT THE PLAINTIFF INSTITUTES THE ACTION OR, IN THE CASE OF AN INTERVENOR, AS OF THE DATE THAT THE PLAINTIFF BECOMES A PARTY TO THE ACTION. THE AMOUNT OF SUCH SECURITY MAY FROM TIME TO TIME BE INCREASED OR DECREASED, IN THE DISCRETION OF THE COURT, UPON SHOWING THAT THE SECURITY PROVIDED HAS OR MAY BECOME INADEQUATE OR IS EXCESSIVE. IF THE COURT FINDS THAT THE ACTION WAS COMMENCED WITHOUT REASONABLE CAUSE, THE CORPORATION SHALL HAVE RECOURSE TO SUCH SECURITY IN SUCH AMOUNT AS THE COURT SHALL DETERMINE UPON THE TERMINATION OF SUCH ACTION.

**ARTICLE 108**  
**Directors and Officers**

**PART 1**  
**BOARD OF DIRECTORS**

**7-108-101. Requirement for board of directors.** (1) EXCEPT AS OTHERWISE PROVIDED IN ITS ARTICLES OF INCORPORATION, EACH CORPORATION SHALL HAVE A BOARD OF DIRECTORS.

(2) SUBJECT TO ANY PROVISION SET FORTH IN THE ARTICLES OF INCORPORATION, ALL CORPORATE POWERS SHALL BE EXERCISED BY OR UNDER THE AUTHORITY OF, AND THE BUSINESS AND AFFAIRS OF THE CORPORATION MANAGED UNDER THE DIRECTION OF, THE BOARD OF DIRECTORS OR SUCH OTHER PERSONS AS THE ARTICLES OF INCORPORATION PROVIDE SHALL HAVE THE AUTHORITY AND PERFORM THE DUTIES OF A BOARD OF DIRECTORS.

**7-108-102. Qualifications of directors.** A DIRECTOR SHALL BE A NATURAL PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER. THE BYLAWS MAY PRESCRIBE OTHER QUALIFICATIONS FOR DIRECTORS. A DIRECTOR NEED NOT BE A RESIDENT OF THIS STATE OR A SHAREHOLDER UNLESS THE BYLAWS SO PRESCRIBE.

**7-108-103. Number and election of directors.** (1) A BOARD OF DIRECTORS SHALL CONSIST OF ONE OR MORE MEMBERS, WITH THE NUMBER SPECIFIED IN OR FIXED IN ACCORDANCE WITH THE BYLAWS.

(2) THE BYLAWS MAY ESTABLISH A RANGE FOR THE SIZE OF THE BOARD OF DIRECTORS BY FIXING A MINIMUM AND MAXIMUM NUMBER OF DIRECTORS. IF A RANGE IS ESTABLISHED, THE NUMBER OF DIRECTORS MAY BE FIXED OR CHANGED FROM TIME TO TIME WITHIN THE RANGE BY THE SHAREHOLDERS OR THE BOARD OF DIRECTORS.

(3) DIRECTORS ARE ELECTED AT EACH ANNUAL MEETING OF THE SHAREHOLDERS EXCEPT AS PROVIDED IN SECTION 7-108-106.

**7-108-104. Election of directors by certain classes of shareholders.** IF THE ARTICLES OF INCORPORATION AUTHORIZE DIVIDING THE SHARES OF THE CORPORATION INTO CLASSES OR SERIES, THE ARTICLES OF INCORPORATION MAY AUTHORIZE THE

ELECTION OF ALL OR A SPECIFIED NUMBER OR PORTION OF DIRECTORS BY THE HOLDERS OF ONE OR MORE AUTHORIZED CLASSES OR SERIES OF SHARES. A CLASS OR SERIES OF SHARES ENTITLED TO ELECT ONE OR MORE DIRECTORS IS A SEPARATE VOTING GROUP FOR PURPOSES OF THE ELECTION OF DIRECTORS.

**7-108-105. Terms of directors generally.** (1) EXCEPT AS PROVIDED IN SECTION 7-108-106, THE TERMS OF THE INITIAL DIRECTORS OF A CORPORATION EXPIRE AT THE FIRST SHAREHOLDERS' MEETING AT WHICH DIRECTORS ARE ELECTED.

(2) EXCEPT AS PROVIDED IN SECTION 7-108-106, THE TERMS OF ALL OTHER DIRECTORS EXPIRE AT THE NEXT ANNUAL SHAREHOLDERS' MEETING FOLLOWING THEIR ELECTION.

(3) A DECREASE IN THE NUMBER OF DIRECTORS DOES NOT SHORTEN AN INCUMBENT DIRECTOR'S TERM.

(4) THE TERM OF A DIRECTOR ELECTED TO FILL A VACANCY PURSUANT TO SECTION 7-108-110 (1) (b) OR 7-108-110 (1) (c) EXPIRES AT THE NEXT ANNUAL SHAREHOLDERS' MEETING AT WHICH DIRECTORS ARE ELECTED. THE TERM OF A DIRECTOR ELECTED TO FILL A VACANCY PURSUANT TO SECTION 7-108-110 (1) (a) SHALL BE THE UNEXPIRED TERM OF HIS OR HER PREDECESSOR IN OFFICE; EXCEPT THAT, IF THE DIRECTOR'S PREDECESSOR HAD BEEN ELECTED TO FILL A VACANCY PURSUANT TO SECTION 7-108-110 (1) (b) OR 7-108-110 (1) (c), THE TERM OF A DIRECTOR ELECTED PURSUANT TO SECTION 7-108-110 (1) (a) SHALL BE THE UNEXPIRED TERM OF THE LAST PREDECESSOR ELECTED BY THE SHAREHOLDERS.

(5) DESPITE THE EXPIRATION OF HIS OR HER TERM, A DIRECTOR CONTINUES TO SERVE UNTIL HIS OR HER SUCCESSOR IS ELECTED AND QUALIFIES.

(6) A DIRECTOR WHOSE TERM HAS ENDED MAY DELIVER TO THE SECRETARY OF STATE FOR FILING A STATEMENT TO THAT EFFECT PURSUANT TO SECTION 7-116-108.

**7-108-106. Staggered terms for directors.** THE ARTICLES OF INCORPORATION MAY PROVIDE FOR STAGGERING THE TERMS OF DIRECTORS BY DIVIDING THE TOTAL NUMBER OF DIRECTORS INTO TWO OR THREE GROUPS, WITH EACH GROUP CONTAINING ONE-HALF OR ONE-THIRD OF THE TOTAL, AS NEAR AS MAY BE. IN THAT EVENT, THE TERMS OF DIRECTORS IN THE FIRST GROUP EXPIRE AT THE FIRST ANNUAL SHAREHOLDERS' MEETING AFTER THEIR ELECTION, THE TERMS OF DIRECTORS IN THE SECOND GROUP EXPIRE AT THE SECOND ANNUAL SHAREHOLDERS' MEETING AFTER THEIR ELECTION, AND THE TERMS OF DIRECTORS IN THE THIRD GROUP, IF ANY, EXPIRE AT THE THIRD ANNUAL SHAREHOLDERS' MEETING AFTER THEIR ELECTION. UPON THE EXPIRATION OF THE INITIAL STAGGERED TERMS, DIRECTORS SHALL BE ELECTED FOR TERMS OF TWO YEARS OR THREE YEARS, AS THE CASE MAY BE, TO SUCCEED THOSE WHOSE TERMS EXPIRE.

**7-108-107. Resignation of directors.** (1) A DIRECTOR MAY RESIGN AT ANY TIME BY GIVING WRITTEN NOTICE OF RESIGNATION TO THE CORPORATION.

(2) A RESIGNATION OF A DIRECTOR IS EFFECTIVE WHEN THE NOTICE IS RECEIVED BY THE CORPORATION UNLESS THE NOTICE SPECIFIES A LATER EFFECTIVE DATE.

(3) A DIRECTOR WHO RESIGNS MAY DELIVER TO THE SECRETARY OF STATE FOR FILING A STATEMENT TO THAT EFFECT PURSUANT TO SECTION 7-116-108.

**7-108-108. Removal of directors by shareholders.** (1) THE SHAREHOLDERS MAY REMOVE ONE OR MORE DIRECTORS WITH OR WITHOUT CAUSE UNLESS THE ARTICLES OF INCORPORATION PROVIDE THAT DIRECTORS MAY BE REMOVED ONLY FOR CAUSE.

(2) IF A DIRECTOR IS ELECTED BY A VOTING GROUP OF SHAREHOLDERS, ONLY THE SHAREHOLDERS OF THAT VOTING GROUP MAY PARTICIPATE IN THE VOTE TO REMOVE THAT DIRECTOR.

(3) A DIRECTOR MAY BE REMOVED ONLY IF THE NUMBER OF VOTES CAST IN FAVOR OF REMOVAL EXCEEDS THE NUMBER OF VOTES CAST AGAINST REMOVAL; EXCEPT THAT, IF CUMULATIVE VOTING IS IN EFFECT, A DIRECTOR MAY NOT BE REMOVED IF THE NUMBER OF VOTES SUFFICIENT TO ELECT THE DIRECTOR UNDER CUMULATIVE VOTING IS VOTED AGAINST SUCH REMOVAL.

(4) A DIRECTOR MAY BE REMOVED BY THE SHAREHOLDERS ONLY AT A MEETING CALLED FOR THE PURPOSE OF REMOVING HIM OR HER, AND THE MEETING NOTICE SHALL STATE THAT THE PURPOSE, OR ONE OF THE PURPOSES, OF THE MEETING IS REMOVAL OF THE DIRECTOR.

(5) A DIRECTOR WHO IS REMOVED PURSUANT TO THIS SECTION MAY DELIVER TO THE SECRETARY OF STATE FOR FILING A STATEMENT TO THAT EFFECT PURSUANT TO SECTION 7-116-108.

**7-108-109. Removal of directors by judicial proceeding.** (1) A DIRECTOR MAY BE REMOVED BY THE DISTRICT COURT OF THE COUNTY IN THIS STATE WHERE A CORPORATION'S PRINCIPAL OFFICE IS LOCATED OR, IF THE CORPORATION HAS NO PRINCIPAL OFFICE IN THIS STATE, BY THE DISTRICT COURT OF THE COUNTY IN WHICH ITS REGISTERED OFFICE IS LOCATED, IN A PROCEEDING COMMENCED EITHER BY THE CORPORATION OR BY SHAREHOLDERS HOLDING AT LEAST TEN PERCENT OF THE OUTSTANDING SHARES OF ANY CLASS, IF THE COURT FINDS THAT THE DIRECTOR ENGAGED IN FRAUDULENT OR DISHONEST CONDUCT OR GROSS ABUSE OF AUTHORITY OR DISCRETION WITH RESPECT TO THE CORPORATION AND THAT REMOVAL IS IN THE BEST INTERESTS OF THE CORPORATION.

(2) THE COURT THAT REMOVES A DIRECTOR MAY BAR THE DIRECTOR FROM REELECTION FOR A PERIOD PRESCRIBED BY THE COURT.

(3) IF SHAREHOLDERS COMMENCE A PROCEEDING UNDER SUBSECTION (1) OF THIS SECTION, THEY SHALL MAKE THE CORPORATION A PARTY DEFENDANT.

(4) A DIRECTOR WHO IS REMOVED PURSUANT TO THIS SECTION MAY DELIVER TO THE SECRETARY OF STATE FOR FILING A STATEMENT TO THAT EFFECT PURSUANT TO SECTION 7-116-108.

**7-108-110. Vacancy on board.** (1) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, IF A VACANCY OCCURS ON A BOARD OF DIRECTORS, INCLUDING A VACANCY RESULTING FROM AN INCREASE IN THE NUMBER OF DIRECTORS:

(a) THE SHAREHOLDERS MAY FILL THE VACANCY;

(b) THE BOARD OF DIRECTORS MAY FILL THE VACANCY; OR

(c) IF THE DIRECTORS REMAINING IN OFFICE CONSTITUTE FEWER THAN A QUORUM OF THE BOARD, THEY MAY FILL THE VACANCY BY THE AFFIRMATIVE VOTE OF A MAJORITY OF ALL THE DIRECTORS REMAINING IN OFFICE.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, IF THE VACANT OFFICE WAS HELD BY A DIRECTOR ELECTED BY A VOTING GROUP OF SHAREHOLDERS:

(a) IF ONE OR MORE OF THE REMAINING DIRECTORS WERE ELECTED BY THE SAME VOTING GROUP, ONLY SUCH DIRECTORS ARE ENTITLED TO VOTE TO FILL THE VACANCY IF IT IS FILLED BY DIRECTORS, AND THEY MAY DO SO BY THE AFFIRMATIVE VOTE OF A MAJORITY OF SUCH DIRECTORS REMAINING IN OFFICE; AND

(b) ONLY THE HOLDERS OF SHARES OF THAT VOTING GROUP ARE ENTITLED TO VOTE TO FILL THE VACANCY IF IT IS FILLED BY THE SHAREHOLDERS.

(3) A VACANCY THAT WILL OCCUR AT A SPECIFIC LATER DATE, BY REASON OF A RESIGNATION EFFECTIVE AT A LATER DATE UNDER SECTION 7-108-107 (2) OR OTHERWISE, MAY BE FILLED BEFORE THE VACANCY OCCURS, BUT THE NEW DIRECTOR MAY NOT TAKE OFFICE UNTIL THE VACANCY OCCURS.

**7-108-111. Compensation of directors.** UNLESS OTHERWISE PROVIDED IN THE BYLAWS, THE BOARD OF DIRECTORS MAY FIX THE COMPENSATION OF DIRECTORS.

## PART 2

### MEETINGS AND ACTION OF THE BOARD OF DIRECTORS

**7-108-201. Meetings.** (1) THE BOARD OF DIRECTORS MAY HOLD REGULAR OR SPECIAL MEETINGS IN OR OUT OF THIS STATE.

(2) UNLESS OTHERWISE PROVIDED IN THE BYLAWS, THE BOARD OF DIRECTORS MAY PERMIT ANY DIRECTOR TO PARTICIPATE IN A REGULAR OR SPECIAL MEETING BY, OR CONDUCT THE MEETING THROUGH THE USE OF, ANY MEANS OF COMMUNICATION BY WHICH ALL DIRECTORS PARTICIPATING MAY HEAR EACH OTHER DURING THE MEETING. A DIRECTOR PARTICIPATING IN A MEETING BY THIS MEANS IS DEEMED TO BE PRESENT IN PERSON AT THE MEETING.

**7-108-202. Action without meeting.** (1) UNLESS THE BYLAWS REQUIRE THAT THE ACTION BE TAKEN AT A MEETING, ANY ACTION REQUIRED OR PERMITTED BY ARTICLES 101 TO 117 OF THIS TITLE TO BE TAKEN AT A BOARD OF DIRECTORS' MEETING MAY BE TAKEN WITHOUT A MEETING IF ALL MEMBERS OF THE BOARD CONSENT TO SUCH ACTION IN WRITING.

(2) ACTION IS TAKEN UNDER THIS SECTION AT THE TIME THE LAST DIRECTOR SIGNS A WRITING DESCRIBING THE ACTION TAKEN, UNLESS, BEFORE SUCH TIME, ANY DIRECTOR HAS REVOKED HIS OR HER CONSENT BY A WRITING SIGNED BY THE DIRECTOR AND RECEIVED BY THE SECRETARY OR ANY OTHER PERSON AUTHORIZED BY



THE BYLAWS OR THE BOARD OF DIRECTORS TO RECEIVE SUCH A REVOCATION.

(3) ACTION UNDER THIS SECTION IS EFFECTIVE AT THE TIME IT IS TAKEN AS PROVIDED BY SUBSECTION (2) OF THIS SECTION, UNLESS THE DIRECTORS ESTABLISH A DIFFERENT EFFECTIVE DATE.

(4) ACTION TAKEN PURSUANT TO THIS SECTION HAS THE SAME EFFECT AS ACTION TAKEN AT A MEETING OF DIRECTORS AND MAY BE DESCRIBED AS SUCH IN ANY DOCUMENT.

**7-108-203. Notice of meeting.** (1) UNLESS OTHERWISE PROVIDED IN THE BYLAWS, REGULAR MEETINGS OF THE BOARD OF DIRECTORS MAY BE HELD WITHOUT NOTICE OF THE DATE, TIME, PLACE, OR PURPOSE OF THE MEETING.

(2) UNLESS THE BYLAWS PROVIDE FOR A LONGER OR SHORTER PERIOD, SPECIAL MEETINGS OF THE BOARD OF DIRECTORS SHALL BE PRECEDED BY AT LEAST TWO DAYS' NOTICE OF THE DATE, TIME, AND PLACE OF THE MEETING. THE NOTICE NEED NOT DESCRIBE THE PURPOSE OF THE SPECIAL MEETING UNLESS REQUIRED BY THE BYLAWS.

**7-108-204. Waiver of notice.** (1) A DIRECTOR MAY WAIVE ANY NOTICE OF A MEETING BEFORE OR AFTER THE TIME AND DATE OF THE MEETING STATED IN THE NOTICE. EXCEPT AS PROVIDED BY SUBSECTION (2) OF THIS SECTION, THE WAIVER SHALL BE IN WRITING AND SIGNED BY THE DIRECTOR ENTITLED TO THE NOTICE. SUCH WAIVER SHALL BE DELIVERED TO THE CORPORATION FOR FILING WITH THE CORPORATE RECORDS, BUT SUCH DELIVERY AND FILING SHALL NOT BE CONDITIONS OF THE EFFECTIVENESS OF THE WAIVER.

(2) A DIRECTOR'S ATTENDANCE AT OR PARTICIPATION IN A MEETING WAIVES ANY REQUIRED NOTICE TO HIM OR HER OF THE MEETING UNLESS:

(a) AT THE BEGINNING OF THE MEETING OR PROMPTLY UPON HIS OR HER LATER ARRIVAL, THE DIRECTOR OBJECTS TO HOLDING THE MEETING OR TRANSACTING BUSINESS AT THE MEETING BECAUSE OF LACK OF NOTICE OR DEFECTIVE NOTICE AND DOES NOT THEREAFTER VOTE FOR OR ASSENT TO ACTION TAKEN AT THE MEETING; OR

(b) IF SPECIAL NOTICE WAS REQUIRED OF A PARTICULAR PURPOSE PURSUANT TO SECTION 7-108-203 (2), THE DIRECTOR OBJECTS TO TRANSACTING BUSINESS WITH RESPECT TO THE PURPOSE FOR WHICH SUCH SPECIAL NOTICE WAS REQUIRED AND DOES NOT THEREAFTER VOTE FOR OR ASSENT TO ACTION TAKEN AT THE MEETING WITH RESPECT TO SUCH PURPOSE.

**7-108-205. Quorum and voting.** (1) UNLESS A GREATER OR LESSER NUMBER IS REQUIRED BY THE BYLAWS, A QUORUM OF A BOARD OF DIRECTORS CONSISTS OF:

(a) A MAJORITY OF THE NUMBER OF DIRECTORS FIXED IF THE CORPORATION HAS A FIXED BOARD SIZE; OR

(b) A MAJORITY OF THE NUMBER OF DIRECTORS FIXED OR, IF NO NUMBER IS FIXED, OF THE NUMBER IN OFFICE IMMEDIATELY BEFORE THE MEETING BEGINS, IF A RANGE FOR THE SIZE OF THE BOARD IS ESTABLISHED PURSUANT TO SECTION 7-108-103 (2).

(2) THE BYLAWS MAY AUTHORIZE A QUORUM OF A BOARD OF DIRECTORS TO CONSIST OF:

(a) NO FEWER THAN A MAJORITY OF THE NUMBER OF DIRECTORS FIXED IF THE CORPORATION HAS A FIXED BOARD SIZE; OR

(b) NO FEWER THAN A MAJORITY OF THE NUMBER OF DIRECTORS FIXED OR, IF NO NUMBER IS FIXED, OF THE NUMBER IN OFFICE IMMEDIATELY BEFORE THE MEETING BEGINS, IF A RANGE FOR THE SIZE OF THE BOARD IS ESTABLISHED PURSUANT TO SECTION 7-108-103 (2).

(3) IF A QUORUM IS PRESENT WHEN A VOTE IS TAKEN, THE AFFIRMATIVE VOTE OF A MAJORITY OF DIRECTORS PRESENT IS THE ACT OF THE BOARD OF DIRECTORS UNLESS THE VOTE OF A GREATER NUMBER OF DIRECTORS IS REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE OR THE BYLAWS.

(4) A DIRECTOR WHO IS PRESENT AT A MEETING OF THE BOARD OF DIRECTORS WHEN CORPORATE ACTION IS TAKEN IS DEEMED TO HAVE ASSENTED TO ALL ACTION TAKEN AT THE MEETING UNLESS:

(a) THE DIRECTOR OBJECTS AT THE BEGINNING OF THE MEETING, OR PROMPTLY UPON HIS OR HER ARRIVAL, TO HOLDING THE MEETING OR TRANSACTING BUSINESS AT THE MEETING AND DOES NOT THEREAFTER VOTE FOR OR ASSENT TO ANY ACTION TAKEN AT THE MEETING;

(b) THE DIRECTOR CONTEMPORANEOUSLY REQUESTS THAT HIS OR HER DISSENT OR ABSTENTION AS TO ANY SPECIFIC ACTION TAKEN BE ENTERED IN THE MINUTES OF THE MEETING; OR

(c) THE DIRECTOR CAUSES WRITTEN NOTICE OF HIS OR HER DISSENT OR ABSTENTION AS TO ANY SPECIFIC ACTION TO BE RECEIVED BY THE PRESIDING OFFICER OF THE MEETING BEFORE ADJOURNMENT OF THE MEETING OR BY THE CORPORATION PROMPTLY AFTER ADJOURNMENT OF THE MEETING.

(5) THE RIGHT OF DISSENT OR ABSTENTION PURSUANT TO SUBSECTION (4) OF THIS SECTION AS TO A SPECIFIC ACTION IS NOT AVAILABLE TO A DIRECTOR WHO VOTES IN FAVOR OF THE ACTION TAKEN.

**7-108-206. Committees.** (1) EXCEPT AS OTHERWISE PROVIDED IN THE BYLAWS AND SUBJECT TO THE PROVISIONS OF SECTION 7-109-106, THE BOARD OF DIRECTORS MAY CREATE ONE OR MORE COMMITTEES AND APPOINT ONE OR MORE MEMBERS OF THE BOARD OF DIRECTORS TO SERVE ON THEM.

(2) THE CREATION OF A COMMITTEE AND APPOINTMENT OF MEMBERS TO IT SHALL BE APPROVED BY THE GREATER OF A MAJORITY OF ALL THE DIRECTORS IN OFFICE WHEN THE ACTION IS TAKEN OR THE NUMBER OF DIRECTORS REQUIRED BY THE BYLAWS TO TAKE ACTION UNDER SECTION 7-108-205.

(3) SECTIONS 7-108-201 TO 7-108-205, WHICH GOVERN MEETINGS, ACTION WITHOUT MEETING, NOTICE, WAIVER OF NOTICE, AND QUORUM AND VOTING REQUIREMENTS OF THE BOARD OF DIRECTORS, APPLY TO COMMITTEES AND THEIR

MEMBERS AS WELL.

(4) TO THE EXTENT SPECIFIED IN THE BYLAWS OR BY THE BOARD OF DIRECTORS, EACH COMMITTEE SHALL EXERCISE THE AUTHORITY OF THE BOARD OF DIRECTORS UNDER SECTION 7-108-101; EXCEPT THAT A COMMITTEE SHALL NOT:

(a) AUTHORIZE DISTRIBUTIONS;

(b) APPROVE OR PROPOSE TO SHAREHOLDERS ACTION THAT ARTICLES 101 TO 117 OF THIS TITLE REQUIRE TO BE APPROVED BY SHAREHOLDERS;

(c) FILL VACANCIES ON THE BOARD OF DIRECTORS OR ON ANY OF ITS COMMITTEES;

(d) AMEND ARTICLES OF INCORPORATION PURSUANT TO SECTION 7-110-102;

(e) ADOPT, AMEND, OR REPEAL BYLAWS;

(f) APPROVE A PLAN OF MERGER NOT REQUIRING SHAREHOLDER APPROVAL;

(g) AUTHORIZE OR APPROVE REACQUISITION OF SHARES, EXCEPT ACCORDING TO A FORMULA OR METHOD PRESCRIBED BY THE BOARD OF DIRECTORS; OR

(h) AUTHORIZE OR APPROVE THE ISSUANCE OR SALE OF SHARES, OR A CONTRACT FOR THE SALE OF SHARES, OR DETERMINE THE DESIGNATION AND RELATIVE RIGHTS, PREFERENCES, AND LIMITATIONS OF A CLASS OR SERIES OF SHARES; EXCEPT THAT THE BOARD OF DIRECTORS MAY AUTHORIZE A COMMITTEE OR AN OFFICER TO DO SO WITHIN LIMITS SPECIFICALLY PRESCRIBED BY THE BOARD OF DIRECTORS.

(5) THE CREATION OF, DELEGATION OF AUTHORITY TO, OR ACTION BY A COMMITTEE DOES NOT ALONE CONSTITUTE COMPLIANCE BY A DIRECTOR WITH THE STANDARDS OF CONDUCT DESCRIBED IN SECTION 7-108-401.

### PART 3 OFFICERS

**7-108-301. Officers.** (1) A CORPORATION SHALL HAVE THE OFFICERS DESIGNATED IN ITS BYLAWS OR BY THE BOARD OF DIRECTORS. AN OFFICER SHALL BE A NATURAL PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER.

(2) OFFICERS MAY BE APPOINTED BY THE BOARD OF DIRECTORS OR IN SUCH OTHER MANNER AS THE BOARD OF DIRECTORS OR BYLAWS MAY PROVIDE. A DULY APPOINTED OFFICER MAY APPOINT ONE OR MORE OFFICERS OR ASSISTANT OFFICERS IF AUTHORIZED BY THE BYLAWS OR THE BOARD OF DIRECTORS.

(3) THE BYLAWS OR THE BOARD OF DIRECTORS SHALL DELEGATE TO ONE OR MORE OF THE OFFICERS RESPONSIBILITY FOR THE PREPARATION AND MAINTENANCE OF MINUTES OF THE DIRECTORS' AND SHAREHOLDERS' MEETINGS AND OTHER RECORDS AND INFORMATION REQUIRED TO BE KEPT BY THE CORPORATION UNDER SECTION 7-116-101 AND FOR AUTHENTICATING RECORDS OF THE CORPORATION.

(4) THE SAME INDIVIDUAL MAY SIMULTANEOUSLY HOLD MORE THAN ONE OFFICE

IN THE CORPORATION.

**7-108-302. Duties of officers.** EACH OFFICER SHALL HAVE THE AUTHORITY AND SHALL PERFORM THE DUTIES SET FORTH WITH RESPECT TO HIS OR HER OFFICE IN THE BYLAWS OR, TO THE EXTENT NOT INCONSISTENT WITH THE BYLAWS, PRESCRIBED WITH RESPECT TO HIS OR HER OFFICE BY THE BOARD OF DIRECTORS OR BY AN OFFICER AUTHORIZED BY THE BOARD OF DIRECTORS.

**7-108-303. Resignation and removal of officers.** (1) AN OFFICER MAY RESIGN AT ANY TIME BY GIVING WRITTEN NOTICE OF RESIGNATION TO THE CORPORATION.

(2) A RESIGNATION OF AN OFFICER IS EFFECTIVE WHEN THE NOTICE IS RECEIVED BY THE CORPORATION UNLESS THE NOTICE SPECIFIES A LATER EFFECTIVE DATE.

(3) IF A RESIGNATION IS MADE EFFECTIVE AT A LATER DATE, THE BOARD OF DIRECTORS MAY PERMIT THE OFFICER TO REMAIN IN OFFICE UNTIL THE EFFECTIVE DATE AND MAY FILL THE PENDING VACANCY BEFORE THE EFFECTIVE DATE IF THE BOARD OF DIRECTORS PROVIDES THAT THE SUCCESSOR DOES NOT TAKE OFFICE UNTIL THE EFFECTIVE DATE, OR THE BOARD OF DIRECTORS MAY REMOVE THE OFFICER AT ANY TIME BEFORE THE EFFECTIVE DATE AND MAY FILL THE RESULTING VACANCY.

(4) UNLESS OTHERWISE PROVIDED IN THE BYLAWS, THE BOARD OF DIRECTORS MAY REMOVE ANY OFFICER AT ANY TIME WITH OR WITHOUT CAUSE. THE BYLAWS OR THE BOARD OF DIRECTORS MAY MAKE PROVISION FOR THE REMOVAL OF OFFICERS BY OTHER OFFICERS OR BY THE SHAREHOLDERS.

(5) AN OFFICER WHO RESIGNS OR IS REMOVED OR WHOSE APPOINTMENT HAS EXPIRED MAY DELIVER TO THE SECRETARY OF STATE FOR FILING A STATEMENT TO THAT EFFECT PURSUANT TO SECTION 7-116-108.

**7-108-304. Contract rights with respect to officers.** (1) THE APPOINTMENT OF AN OFFICER DOES NOT ITSELF CREATE CONTRACT RIGHTS.

(2) AN OFFICER'S REMOVAL DOES NOT AFFECT THE OFFICER'S CONTRACT RIGHTS, IF ANY, WITH THE CORPORATION. AN OFFICER'S RESIGNATION DOES NOT AFFECT THE CORPORATION'S CONTRACT RIGHTS, IF ANY, WITH THE OFFICER.

#### PART 4 STANDARDS OF CONDUCT

**7-108-401. General standards of conduct for directors and officers.** (1) EACH DIRECTOR SHALL DISCHARGE HIS OR HER DUTIES AS A DIRECTOR, INCLUDING HIS OR HER DUTIES AS A MEMBER OF A COMMITTEE, AND EACH OFFICER WITH DISCRETIONARY AUTHORITY SHALL DISCHARGE HIS OR HER DUTIES UNDER THAT AUTHORITY:

(a) IN GOOD FAITH;

(b) WITH THE CARE AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES; AND

(c) IN A MANNER HE OR SHE REASONABLY BELIEVES TO BE IN THE BEST INTERESTS

OF THE CORPORATION.

(2) IN DISCHARGING HIS OR HER DUTIES, A DIRECTOR OR OFFICER IS ENTITLED TO RELY ON INFORMATION, OPINIONS, REPORTS, OR STATEMENTS, INCLUDING FINANCIAL STATEMENTS AND OTHER FINANCIAL DATA, IF PREPARED OR PRESENTED BY:

(a) ONE OR MORE OFFICERS OR EMPLOYEES OF THE CORPORATION WHOM THE DIRECTOR OR OFFICER REASONABLY BELIEVES TO BE RELIABLE AND COMPETENT IN THE MATTERS PRESENTED;

(b) LEGAL COUNSEL, A PUBLIC ACCOUNTANT, OR ANOTHER PERSON AS TO MATTERS THE DIRECTOR OR OFFICER REASONABLY BELIEVES ARE WITHIN SUCH PERSON'S PROFESSIONAL OR EXPERT COMPETENCE; OR

(c) IN THE CASE OF A DIRECTOR, A COMMITTEE OF THE BOARD OF DIRECTORS OF WHICH THE DIRECTOR IS NOT A MEMBER IF THE DIRECTOR REASONABLY BELIEVES THE COMMITTEE MERITS CONFIDENCE.

(3) A DIRECTOR OR OFFICER IS NOT ACTING IN GOOD FAITH IF HE OR SHE HAS KNOWLEDGE CONCERNING THE MATTER IN QUESTION THAT MAKES RELIANCE OTHERWISE PERMITTED BY SUBSECTION (2) OF THIS SECTION UNWARRANTED.

(4) A DIRECTOR OR OFFICER IS NOT LIABLE AS SUCH TO THE CORPORATION OR ITS SHAREHOLDERS FOR ANY ACTION HE OR SHE TAKES OR OMITTS TO TAKE AS A DIRECTOR OR OFFICER, AS THE CASE MAY BE, IF, IN CONNECTION WITH SUCH ACTION OR OMISSION, HE OR SHE PERFORMED THE DUTIES OF THE POSITION IN COMPLIANCE WITH THIS SECTION.

**7-108-402. Limitation of certain liabilities of directors and officers.** (1) IF SO PROVIDED IN THE ARTICLES OF INCORPORATION, THE CORPORATION SHALL ELIMINATE OR LIMIT THE PERSONAL LIABILITY OF A DIRECTOR TO THE CORPORATION OR TO ITS SHAREHOLDERS FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY DUTY AS A DIRECTOR; EXCEPT THAT ANY SUCH PROVISION SHALL NOT ELIMINATE OR LIMIT THE LIABILITY OF A DIRECTOR TO THE CORPORATION OR TO ITS SHAREHOLDERS FOR MONETARY DAMAGES FOR ANY BREACH OF THE DIRECTOR'S DUTY OF LOYALTY TO THE CORPORATION OR TO ITS SHAREHOLDERS, ACTS OR OMISSIONS NOT IN GOOD FAITH OR WHICH INVOLVE INTENTIONAL MISCONDUCT OR A KNOWING VIOLATION OF LAW, ACTS SPECIFIED IN SECTION 7-108-403, OR ANY TRANSACTION FROM WHICH THE DIRECTOR DIRECTLY OR INDIRECTLY DERIVED AN IMPROPER PERSONAL BENEFIT. NO SUCH PROVISION SHALL ELIMINATE OR LIMIT THE LIABILITY OF A DIRECTOR TO THE CORPORATION OR TO ITS SHAREHOLDERS FOR MONETARY DAMAGES FOR ANY ACT OR OMISSION OCCURRING BEFORE THE DATE WHEN SUCH PROVISION BECOMES EFFECTIVE.

(2) NO DIRECTOR OR OFFICER SHALL BE PERSONALLY LIABLE FOR ANY INJURY TO PERSON OR PROPERTY ARISING OUT OF A TORT COMMITTED BY AN EMPLOYEE UNLESS SUCH DIRECTOR OR OFFICER WAS PERSONALLY INVOLVED IN THE SITUATION GIVING RISE TO THE LITIGATION OR UNLESS SUCH DIRECTOR OR OFFICER COMMITTED A CRIMINAL OFFENSE IN CONNECTION WITH SUCH SITUATION. THE PROTECTION AFFORDED IN THIS SUBSECTION (2) SHALL NOT RESTRICT OTHER COMMON-LAW PROTECTIONS AND RIGHTS THAT A DIRECTOR OR OFFICER MAY HAVE. THIS SUBSECTION (2) SHALL NOT RESTRICT THE CORPORATION'S RIGHT TO ELIMINATE OR

LIMIT THE PERSONAL LIABILITY OF A DIRECTOR TO THE CORPORATION OR TO ITS SHAREHOLDERS FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY DUTY AS A DIRECTOR AS PROVIDED IN SUBSECTION (1) OF THIS SECTION.

**7-108-403. Liability of directors for unlawful distributions.** (1) A DIRECTOR WHO VOTES FOR OR ASSENTS TO A DISTRIBUTION MADE IN VIOLATION OF SECTION 7-106-401 OR THE ARTICLES OF INCORPORATION IS PERSONALLY LIABLE TO THE CORPORATION FOR THE AMOUNT OF THE DISTRIBUTION THAT EXCEEDS WHAT COULD HAVE BEEN DISTRIBUTED WITHOUT VIOLATING SAID SECTION OR THE ARTICLES OF INCORPORATION IF IT IS ESTABLISHED THAT THE DIRECTOR DID NOT PERFORM THE DIRECTOR'S DUTIES IN COMPLIANCE WITH SECTION 7-108-401. IN ANY PROCEEDING COMMENCED UNDER THIS SECTION, A DIRECTOR SHALL HAVE ALL OF THE DEFENSES ORDINARILY AVAILABLE TO A DIRECTOR.

(2) A DIRECTOR HELD LIABLE UNDER SUBSECTION (1) OF THIS SECTION FOR AN UNLAWFUL DISTRIBUTION IS ENTITLED TO CONTRIBUTION:

(a) FROM EVERY OTHER DIRECTOR WHO COULD BE HELD LIABLE UNDER SUBSECTION (1) OF THIS SECTION FOR THE UNLAWFUL DISTRIBUTION; AND

(b) FROM EACH SHAREHOLDER WHO ACCEPTED THE DISTRIBUTION KNOWING THE DISTRIBUTION WAS MADE IN VIOLATION OF SECTION 7-106-401 OR THE ARTICLES OF INCORPORATION, THE AMOUNT OF THE CONTRIBUTION FROM SUCH SHAREHOLDER BEING THE AMOUNT OF THE DISTRIBUTION TO THAT SHAREHOLDER THAT EXCEEDS WHAT COULD HAVE BEEN DISTRIBUTED TO THAT SHAREHOLDER WITHOUT VIOLATING SAID SECTION OR THE ARTICLES OF INCORPORATION.

#### PART 5 DIRECTOR - CONFLICTS OF INTEREST

**7-108-501. Conflicting interest transaction.** (1) AS USED IN THIS SECTION, "CONFLICTING INTEREST TRANSACTION" MEANS ANY OF THE FOLLOWING:

(a) A LOAN OR OTHER ASSISTANCE BY A CORPORATION TO A DIRECTOR OF THE CORPORATION OR TO AN ENTITY IN WHICH A DIRECTOR OF THE CORPORATION IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST;

(b) A GUARANTY BY A CORPORATION OF AN OBLIGATION OF A DIRECTOR OF THE CORPORATION OR OF AN OBLIGATION OF AN ENTITY IN WHICH A DIRECTOR OF THE CORPORATION IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST; OR

(c) A CONTRACT OR TRANSACTION BETWEEN A CORPORATION AND A DIRECTOR OF THE CORPORATION OR BETWEEN THE CORPORATION AND AN ENTITY IN WHICH A DIRECTOR OF THE CORPORATION IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST.

(2) NO CONFLICTING INTEREST TRANSACTION SHALL BE VOID OR VOIDABLE OR BE ENJOINED, SET ASIDE, OR GIVE RISE TO AN AWARD OF DAMAGES OR OTHER SANCTIONS IN A PROCEEDING BY A SHAREHOLDER OR BY OR IN THE RIGHT OF THE CORPORATION, SOLELY BECAUSE THE CONFLICTING INTEREST TRANSACTION INVOLVES A DIRECTOR OF THE CORPORATION OR AN ENTITY IN WHICH A DIRECTOR OF THE CORPORATION IS

A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST OR SOLELY BECAUSE THE DIRECTOR IS PRESENT AT OR PARTICIPATES IN THE MEETING OF THE CORPORATION'S BOARD OF DIRECTORS OR OF THE COMMITTEE OF THE BOARD OF DIRECTORS WHICH AUTHORIZES, APPROVES, OR RATIFIES THE CONFLICTING INTEREST TRANSACTION OR SOLELY BECAUSE THE DIRECTOR'S VOTE IS COUNTED FOR SUCH PURPOSE IF:

(a) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR INTEREST AND AS TO THE CONFLICTING INTEREST TRANSACTION ARE DISCLOSED OR ARE KNOWN TO THE BOARD OF DIRECTORS OR THE COMMITTEE, AND THE BOARD OF DIRECTORS OR COMMITTEE IN GOOD FAITH AUTHORIZES, APPROVES, OR RATIFIES THE CONFLICTING INTEREST TRANSACTION BY THE AFFIRMATIVE VOTE OF A MAJORITY OF THE DISINTERESTED DIRECTORS, EVEN THOUGH THE DISINTERESTED DIRECTORS ARE LESS THAN A QUORUM; OR

(b) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR INTEREST AND AS TO THE CONFLICTING INTEREST TRANSACTION ARE DISCLOSED OR ARE KNOWN TO THE SHAREHOLDERS ENTITLED TO VOTE THEREON, AND THE CONFLICTING INTEREST TRANSACTION IS SPECIFICALLY AUTHORIZED, APPROVED, OR RATIFIED IN GOOD FAITH BY A VOTE OF THE SHAREHOLDERS; OR

(c) THE CONFLICTING INTEREST TRANSACTION IS FAIR AS TO THE CORPORATION AS OF THE TIME IT IS AUTHORIZED, APPROVED, OR RATIFIED BY THE BOARD OF DIRECTORS, A COMMITTEE THEREOF, OR THE SHAREHOLDERS.

(3) COMMON OR INTERESTED DIRECTORS MAY BE COUNTED IN DETERMINING THE PRESENCE OF A QUORUM AT A MEETING OF THE BOARD OF DIRECTORS OR OF A COMMITTEE WHICH AUTHORIZES, APPROVES, OR RATIFIES THE CONFLICTING INTEREST TRANSACTION.

(4) A BOARD OF DIRECTORS OR A COMMITTEE THEREOF SHALL NOT AUTHORIZE A LOAN, BY THE CORPORATION TO A DIRECTOR OF THE CORPORATION OR TO AN ENTITY IN WHICH A DIRECTOR OF THE CORPORATION IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST, OR A GUARANTY, BY THE CORPORATION OF AN OBLIGATION OF A DIRECTOR OF THE CORPORATION OR OF AN OBLIGATION OF AN ENTITY IN WHICH A DIRECTOR OF THE CORPORATION IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST, PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION UNTIL AT LEAST TEN DAYS AFTER WRITTEN NOTICE OF THE PROPOSED AUTHORIZATION OF THE LOAN OR GUARANTY HAS BEEN GIVEN TO THE SHAREHOLDERS WHO WOULD BE ENTITLED TO VOTE THEREON IF THE ISSUE OF THE LOAN OR GUARANTY WERE SUBMITTED TO A VOTE OF THE SHAREHOLDERS.

## **ARTICLE 109**

### **Indemnification**

**7-109-101. Definitions.** AS USED IN THIS ARTICLE:

(1) "CORPORATION" INCLUDES ANY DOMESTIC OR FOREIGN ENTITY THAT IS A PREDECESSOR OF A CORPORATION BY REASON OF A MERGER OR OTHER TRANSACTION IN WHICH THE PREDECESSOR'S EXISTENCE CEASED UPON CONSUMMATION OF THE TRANSACTION.

(2) "DIRECTOR" MEANS AN INDIVIDUAL WHO IS OR WAS A DIRECTOR OF A CORPORATION OR AN INDIVIDUAL WHO, WHILE A DIRECTOR OF A CORPORATION, IS OR WAS SERVING AT THE CORPORATION'S REQUEST AS A DIRECTOR, OFFICER, PARTNER, TRUSTEE, EMPLOYEE, FIDUCIARY, OR AGENT OF ANOTHER DOMESTIC OR FOREIGN CORPORATION OR OTHER PERSON OR OF AN EMPLOYEE BENEFIT PLAN. A DIRECTOR IS CONSIDERED TO BE SERVING AN EMPLOYEE BENEFIT PLAN AT THE CORPORATION'S REQUEST IF HIS OR HER DUTIES TO THE CORPORATION ALSO IMPOSE DUTIES ON, OR OTHERWISE INVOLVE SERVICES BY, THE DIRECTOR TO THE PLAN OR TO PARTICIPANTS IN OR BENEFICIARIES OF THE PLAN. "DIRECTOR" INCLUDES, UNLESS THE CONTEXT REQUIRES OTHERWISE, THE ESTATE OR PERSONAL REPRESENTATIVE OF A DIRECTOR.

(3) "EXPENSES" INCLUDES COUNSEL FEES.

(4) "LIABILITY" MEANS THE OBLIGATION INCURRED WITH RESPECT TO A PROCEEDING TO PAY A JUDGMENT, SETTLEMENT, PENALTY, FINE, INCLUDING AN EXCISE TAX ASSESSED WITH RESPECT TO AN EMPLOYEE BENEFIT PLAN, OR REASONABLE EXPENSES.

(5) "OFFICIAL CAPACITY" MEANS, WHEN USED WITH RESPECT TO A DIRECTOR, THE OFFICE OF DIRECTOR IN A CORPORATION AND, WHEN USED WITH RESPECT TO A PERSON OTHER THAN A DIRECTOR AS CONTEMPLATED IN SECTION 7-109-107, THE OFFICE IN A CORPORATION HELD BY THE OFFICER OR THE EMPLOYMENT, FIDUCIARY, OR AGENCY RELATIONSHIP UNDERTAKEN BY THE EMPLOYEE, FIDUCIARY, OR AGENT ON BEHALF OF THE CORPORATION. "OFFICIAL CAPACITY" DOES NOT INCLUDE SERVICE FOR ANY OTHER DOMESTIC OR FOREIGN CORPORATION OR OTHER PERSON OR EMPLOYEE BENEFIT PLAN.

(6) "PARTY" INCLUDES A PERSON WHO WAS, IS, OR IS THREATENED TO BE MADE A NAMED DEFENDANT OR RESPONDENT IN A PROCEEDING.

(7) "PROCEEDING" MEANS ANY THREATENED, PENDING, OR COMPLETED ACTION, SUIT, OR PROCEEDING, WHETHER CIVIL, CRIMINAL, ADMINISTRATIVE, OR INVESTIGATIVE AND WHETHER FORMAL OR INFORMAL.

**7-109-102. Authority to indemnify directors.** (1) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, A CORPORATION MAY INDEMNIFY A PERSON MADE A PARTY TO A PROCEEDING BECAUSE THE PERSON IS OR WAS A DIRECTOR AGAINST LIABILITY INCURRED IN THE PROCEEDING IF:

(a) THE PERSON CONDUCTED HIMSELF OR HERSELF IN GOOD FAITH; AND

(b) THE PERSON REASONABLY BELIEVED:

(I) IN THE CASE OF CONDUCT IN AN OFFICIAL CAPACITY WITH THE CORPORATION, THAT HIS OR HER CONDUCT WAS IN THE CORPORATION'S BEST INTERESTS; AND

(II) IN ALL OTHER CASES, THAT HIS OR HER CONDUCT WAS AT LEAST NOT OPPOSED TO THE CORPORATION'S BEST INTERESTS; AND

(c) IN THE CASE OF ANY CRIMINAL PROCEEDING, THE PERSON HAD NO REASONABLE CAUSE TO BELIEVE HIS OR HER CONDUCT WAS UNLAWFUL.



(2) A DIRECTOR'S CONDUCT WITH RESPECT TO AN EMPLOYEE BENEFIT PLAN FOR A PURPOSE THE DIRECTOR REASONABLY BELIEVED TO BE IN THE INTERESTS OF THE PARTICIPANTS IN OR BENEFICIARIES OF THE PLAN IS CONDUCT THAT SATISFIES THE REQUIREMENT OF SUBPARAGRAPH (II) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION. A DIRECTOR'S CONDUCT WITH RESPECT TO AN EMPLOYEE BENEFIT PLAN FOR A PURPOSE THAT THE DIRECTOR DID NOT REASONABLY BELIEVE TO BE IN THE INTERESTS OF THE PARTICIPANTS IN OR BENEFICIARIES OF THE PLAN SHALL BE DEEMED NOT TO SATISFY THE REQUIREMENTS OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION.

(3) THE TERMINATION OF A PROCEEDING BY JUDGMENT, ORDER, SETTLEMENT, CONVICTION, OR UPON A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT IS NOT, OF ITSELF, DETERMINATIVE THAT THE DIRECTOR DID NOT MEET THE STANDARD OF CONDUCT DESCRIBED IN THIS SECTION.

(4) A CORPORATION MAY NOT INDEMNIFY A DIRECTOR UNDER THIS SECTION:

(a) IN CONNECTION WITH A PROCEEDING BY OR IN THE RIGHT OF THE CORPORATION IN WHICH THE DIRECTOR WAS ADJUDGED LIABLE TO THE CORPORATION; OR

(b) IN CONNECTION WITH ANY OTHER PROCEEDING CHARGING THAT THE DIRECTOR DERIVED AN IMPROPER PERSONAL BENEFIT, WHETHER OR NOT INVOLVING ACTION IN AN OFFICIAL CAPACITY, IN WHICH PROCEEDING THE DIRECTOR WAS ADJUDGED LIABLE ON THE BASIS THAT HE OR SHE DERIVED AN IMPROPER PERSONAL BENEFIT.

(5) INDEMNIFICATION PERMITTED UNDER THIS SECTION IN CONNECTION WITH A PROCEEDING BY OR IN THE RIGHT OF THE CORPORATION IS LIMITED TO REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE PROCEEDING.

**7-109-103. Mandatory indemnification of directors.** UNLESS LIMITED BY ITS ARTICLES OF INCORPORATION, A CORPORATION SHALL INDEMNIFY A PERSON WHO WAS WHOLLY SUCCESSFUL, ON THE MERITS OR OTHERWISE, IN THE DEFENSE OF ANY PROCEEDING TO WHICH THE PERSON WAS A PARTY BECAUSE THE PERSON IS OR WAS A DIRECTOR, AGAINST REASONABLE EXPENSES INCURRED BY HIM OR HER IN CONNECTION WITH THE PROCEEDING.

**7-109-104. Advance of expenses to directors.** (1) A CORPORATION MAY PAY FOR OR REIMBURSE THE REASONABLE EXPENSES INCURRED BY A DIRECTOR WHO IS A PARTY TO A PROCEEDING IN ADVANCE OF FINAL DISPOSITION OF THE PROCEEDING IF:

(a) THE DIRECTOR FURNISHES TO THE CORPORATION A WRITTEN AFFIRMATION OF THE DIRECTOR'S GOOD FAITH BELIEF THAT HE OR SHE HAS MET THE STANDARD OF CONDUCT DESCRIBED IN SECTION 7-109-102;

(b) THE DIRECTOR FURNISHES TO THE CORPORATION A WRITTEN UNDERTAKING, EXECUTED PERSONALLY OR ON THE DIRECTOR'S BEHALF, TO REPAY THE ADVANCE IF IT IS ULTIMATELY DETERMINED THAT HE OR SHE DID NOT MEET THE STANDARD OF CONDUCT; AND

(c) A DETERMINATION IS MADE THAT THE FACTS THEN KNOWN TO THOSE MAKING THE DETERMINATION WOULD NOT PRECLUDE INDEMNIFICATION UNDER THIS ARTICLE.

(2) THE UNDERTAKING REQUIRED BY PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION SHALL BE AN UNLIMITED GENERAL OBLIGATION OF THE DIRECTOR BUT NEED NOT BE SECURED AND MAY BE ACCEPTED WITHOUT REFERENCE TO FINANCIAL ABILITY TO MAKE REPAYMENT.

(3) DETERMINATIONS AND AUTHORIZATIONS OF PAYMENTS UNDER THIS SECTION SHALL BE MADE IN THE MANNER SPECIFIED IN SECTION 7-109-106.

**7-109-105. Court-ordered indemnification of directors.** (1) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, A DIRECTOR WHO IS OR WAS A PARTY TO A PROCEEDING MAY APPLY FOR INDEMNIFICATION TO THE COURT CONDUCTING THE PROCEEDING OR TO ANOTHER COURT OF COMPETENT JURISDICTION. ON RECEIPT OF AN APPLICATION, THE COURT, AFTER GIVING ANY NOTICE THE COURT CONSIDERS NECESSARY, MAY ORDER INDEMNIFICATION IN THE FOLLOWING MANNER:

(a) IF IT DETERMINES THAT THE DIRECTOR IS ENTITLED TO MANDATORY INDEMNIFICATION UNDER SECTION 7-109-103, THE COURT SHALL ORDER INDEMNIFICATION, IN WHICH CASE THE COURT SHALL ALSO ORDER THE CORPORATION TO PAY THE DIRECTOR'S REASONABLE EXPENSES INCURRED TO OBTAIN COURT-ORDERED INDEMNIFICATION.

(b) IF IT DETERMINES THAT THE DIRECTOR IS FAIRLY AND REASONABLY ENTITLED TO INDEMNIFICATION IN VIEW OF ALL THE RELEVANT CIRCUMSTANCES, WHETHER OR NOT THE DIRECTOR MET THE STANDARD OF CONDUCT SET FORTH IN SECTION 7-109-102 (1) OR WAS ADJUDGED LIABLE IN THE CIRCUMSTANCES DESCRIBED IN SECTION 7-109-102 (4), THE COURT MAY ORDER SUCH INDEMNIFICATION AS THE COURT DEEMS PROPER; EXCEPT THAT THE INDEMNIFICATION WITH RESPECT TO ANY PROCEEDING IN WHICH LIABILITY SHALL HAVE BEEN ADJUDGED IN THE CIRCUMSTANCES DESCRIBED IN SECTION 7-109-102 (4) IS LIMITED TO REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE PROCEEDING AND REASONABLE EXPENSES INCURRED TO OBTAIN COURT-ORDERED INDEMNIFICATION.

**7-109-106. Determination and authorization of indemnification of directors.** (1) A CORPORATION MAY NOT INDEMNIFY A DIRECTOR UNDER SECTION 7-109-102 UNLESS AUTHORIZED IN THE SPECIFIC CASE AFTER A DETERMINATION HAS BEEN MADE THAT INDEMNIFICATION OF THE DIRECTOR IS PERMISSIBLE IN THE CIRCUMSTANCES BECAUSE THE DIRECTOR HAS MET THE STANDARD OF CONDUCT SET FORTH IN SECTION 7-109-102. A CORPORATION SHALL NOT ADVANCE EXPENSES TO A DIRECTOR UNDER SECTION 7-109-104 UNLESS AUTHORIZED IN THE SPECIFIC CASE AFTER THE WRITTEN AFFIRMATION AND UNDERTAKING REQUIRED BY SECTION 7-109-104 (1) (a) AND (1) (b) ARE RECEIVED AND THE DETERMINATION REQUIRED BY SECTION 7-109-104 (1) (c) HAS BEEN MADE.

(2) THE DETERMINATIONS REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL BE MADE:

(a) BY THE BOARD OF DIRECTORS BY A MAJORITY VOTE OF THOSE PRESENT AT A MEETING AT WHICH A QUORUM IS PRESENT, AND ONLY THOSE DIRECTORS NOT PARTIES TO THE PROCEEDING SHALL BE COUNTED IN SATISFYING THE QUORUM; OR

(b) IF A QUORUM CANNOT BE OBTAINED, BY A MAJORITY VOTE OF A COMMITTEE OF

THE BOARD OF DIRECTORS DESIGNATED BY THE BOARD OF DIRECTORS, WHICH COMMITTEE SHALL CONSIST OF TWO OR MORE DIRECTORS NOT PARTIES TO THE PROCEEDING; EXCEPT THAT DIRECTORS WHO ARE PARTIES TO THE PROCEEDING MAY PARTICIPATE IN THE DESIGNATION OF DIRECTORS FOR THE COMMITTEE.

(3) IF A QUORUM CANNOT BE OBTAINED AS CONTEMPLATED IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, AND A COMMITTEE CANNOT BE ESTABLISHED UNDER PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, OR, EVEN IF A QUORUM IS OBTAINED OR A COMMITTEE IS DESIGNATED, IF A MAJORITY OF THE DIRECTORS CONSTITUTING SUCH QUORUM OR SUCH COMMITTEE SO DIRECTS, THE DETERMINATION REQUIRED TO BE MADE BY SUBSECTION (1) OF THIS SECTION SHALL BE MADE:

(a) BY INDEPENDENT LEGAL COUNSEL SELECTED BY A VOTE OF THE BOARD OF DIRECTORS OR THE COMMITTEE IN THE MANNER SPECIFIED IN PARAGRAPH (a) OR (b) OF SUBSECTION (2) OF THIS SECTION OR, IF A QUORUM OF THE FULL BOARD CANNOT BE OBTAINED AND A COMMITTEE CANNOT BE ESTABLISHED, BY INDEPENDENT LEGAL COUNSEL SELECTED BY A MAJORITY VOTE OF THE FULL BOARD OF DIRECTORS; OR

(b) BY THE SHAREHOLDERS.

(4) AUTHORIZATION OF INDEMNIFICATION AND ADVANCE OF EXPENSES SHALL BE MADE IN THE SAME MANNER AS THE DETERMINATION THAT INDEMNIFICATION OR ADVANCE OF EXPENSES IS PERMISSIBLE; EXCEPT THAT, IF THE DETERMINATION THAT INDEMNIFICATION OR ADVANCE OF EXPENSES IS PERMISSIBLE IS MADE BY INDEPENDENT LEGAL COUNSEL, AUTHORIZATION OF INDEMNIFICATION AND ADVANCE OF EXPENSES SHALL BE MADE BY THE BODY THAT SELECTED SUCH COUNSEL.

**7-109-107. Indemnification of officers, employees, fiduciaries, and agents.**

(1) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION:

(a) AN OFFICER IS ENTITLED TO MANDATORY INDEMNIFICATION UNDER SECTION 7-109-103, AND IS ENTITLED TO APPLY FOR COURT-ORDERED INDEMNIFICATION UNDER SECTION 7-109-105, IN EACH CASE TO THE SAME EXTENT AS A DIRECTOR;

(b) A CORPORATION MAY INDEMNIFY AND ADVANCE EXPENSES TO AN OFFICER, EMPLOYEE, FIDUCIARY, OR AGENT OF THE CORPORATION TO THE SAME EXTENT AS TO A DIRECTOR; AND

(c) A CORPORATION MAY ALSO INDEMNIFY AND ADVANCE EXPENSES TO AN OFFICER, EMPLOYEE, FIDUCIARY, OR AGENT WHO IS NOT A DIRECTOR TO A GREATER EXTENT, IF NOT INCONSISTENT WITH PUBLIC POLICY, AND IF PROVIDED FOR BY ITS BYLAWS, GENERAL OR SPECIFIC ACTION OF ITS BOARD OF DIRECTORS OR SHAREHOLDERS, OR CONTRACT.

**7-109-108. Insurance.** A CORPORATION MAY PURCHASE AND MAINTAIN INSURANCE ON BEHALF OF A PERSON WHO IS OR WAS A DIRECTOR, OFFICER, EMPLOYEE, FIDUCIARY, OR AGENT OF THE CORPORATION, OR WHO, WHILE A DIRECTOR, OFFICER, EMPLOYEE, FIDUCIARY, OR AGENT OF THE CORPORATION, IS OR WAS SERVING AT THE REQUEST OF THE CORPORATION AS A DIRECTOR, OFFICER, PARTNER, TRUSTEE, EMPLOYEE, FIDUCIARY, OR AGENT OF ANOTHER DOMESTIC OR FOREIGN CORPORATION OR OTHER PERSON OR OF AN EMPLOYEE BENEFIT PLAN, AGAINST LIABILITY ASSERTED

AGAINST OR INCURRED BY THE PERSON IN THAT CAPACITY OR ARISING FROM HIS OR HER STATUS AS A DIRECTOR, OFFICER, EMPLOYEE, FIDUCIARY, OR AGENT, WHETHER OR NOT THE CORPORATION WOULD HAVE POWER TO INDEMNIFY THE PERSON AGAINST THE SAME LIABILITY UNDER SECTION 7-109-102, 7-109-103, OR 7-109-107. ANY SUCH INSURANCE MAY BE PROCURED FROM ANY INSURANCE COMPANY DESIGNATED BY THE BOARD OF DIRECTORS, WHETHER SUCH INSURANCE COMPANY IS FORMED UNDER THE LAWS OF THIS STATE OR ANY OTHER JURISDICTION OF THE UNITED STATES OR ELSEWHERE, INCLUDING ANY INSURANCE COMPANY IN WHICH THE CORPORATION HAS AN EQUITY OR ANY OTHER INTEREST THROUGH STOCK OWNERSHIP OR OTHERWISE.

**7-109-109. Limitation of indemnification of directors.** (1) A PROVISION TREATING A CORPORATION'S INDEMNIFICATION OF, OR ADVANCE OF EXPENSES TO, DIRECTORS THAT IS CONTAINED IN ITS ARTICLES OF INCORPORATION OR BYLAWS, IN A RESOLUTION OF ITS SHAREHOLDERS OR BOARD OF DIRECTORS, OR IN A CONTRACT, EXCEPT AN INSURANCE POLICY, OR OTHERWISE, IS VALID ONLY TO THE EXTENT THE PROVISION IS NOT INCONSISTENT WITH SECTIONS 7-109-101 TO 7-109-108. IF THE ARTICLES OF INCORPORATION LIMIT INDEMNIFICATION OR ADVANCE OF EXPENSES, INDEMNIFICATION AND ADVANCE OF EXPENSES ARE VALID ONLY TO THE EXTENT NOT INCONSISTENT WITH THE ARTICLES OF INCORPORATION.

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

**7-109-110. Notice to shareholders of indemnification of director.** IF A CORPORATION INDEMNIFIES OR ADVANCES EXPENSES TO A DIRECTOR UNDER THIS ARTICLE IN CONNECTION WITH A PROCEEDING BY OR IN THE RIGHT OF THE CORPORATION, THE CORPORATION SHALL GIVE WRITTEN NOTICE OF THE INDEMNIFICATION OR ADVANCE TO THE SHAREHOLDERS WITH OR BEFORE THE NOTICE OF THE NEXT SHAREHOLDERS' MEETING. IF THE NEXT SHAREHOLDER ACTION IS TAKEN WITHOUT A MEETING AT THE INSTIGATION OF THE BOARD OF DIRECTORS, SUCH NOTICE SHALL BE GIVEN TO THE SHAREHOLDERS AT OR BEFORE THE TIME THE FIRST SHAREHOLDER SIGNS A WRITING CONSENTING TO SUCH ACTION.

## ARTICLE 110

### Amendment of Articles of Incorporation and Bylaws

#### PART 1

#### AMENDMENT OF ARTICLES OF INCORPORATION

**7-110-101. Authority to amend articles of incorporation.** (1) A CORPORATION MAY AMEND ITS ARTICLES OF INCORPORATION AT ANY TIME TO ADD OR CHANGE A PROVISION THAT IS REQUIRED OR PERMITTED IN THE ARTICLES OF INCORPORATION OR TO DELETE A PROVISION NOT REQUIRED IN THE ARTICLES OF INCORPORATION. WHETHER A PROVISION IS REQUIRED OR PERMITTED IN THE ARTICLES OF INCORPORATION IS DETERMINED AS OF THE EFFECTIVE DATE OF THE AMENDMENT.

(2) A SHAREHOLDER DOES NOT HAVE A VESTED PROPERTY RIGHT RESULTING FROM ANY PROVISION IN THE ARTICLES OF INCORPORATION, INCLUDING ANY PROVISION RELATING TO MANAGEMENT, CONTROL, CAPITAL STRUCTURE, DIVIDEND

ENTITLEMENT, PURPOSE, OR DURATION OF THE CORPORATION.

**7-110-102. Amendment of articles of incorporation by board of directors.**

(1) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, THE BOARD OF DIRECTORS MAY ADOPT, WITHOUT SHAREHOLDER ACTION, ONE OR MORE AMENDMENTS TO THE ARTICLES OF INCORPORATION TO:

(a) DELETE THE NAMES AND ADDRESSES OF THE INITIAL DIRECTORS;

(b) DELETE THE NAME AND ADDRESS OF THE INITIAL REGISTERED AGENT OR REGISTERED OFFICE, IF A STATEMENT OF CHANGE IS ON FILE WITH THE SECRETARY OF STATE;

(c) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9 OF ARTICLE XV OF THE COLORADO CONSTITUTION, CHANGE EACH ISSUED AND UNISSUED SHARE OF A CLASS INTO A GREATER NUMBER OF WHOLE SHARES IF THE CORPORATION HAS ONLY SHARES OF THAT CLASS OUTSTANDING;

(d) CHANGE THE CORPORATE NAME BY SUBSTITUTING THE WORD "CORPORATION", "INCORPORATED", "COMPANY", "LIMITED", OR AN ABBREVIATION OF ANY THEREOF FOR A SIMILAR WORD OR ABBREVIATION IN THE NAME, OR BY ADDING, DELETING, OR CHANGING A GEOGRAPHICAL ATTRIBUTION; OR

(e) MAKE ANY OTHER CHANGE EXPRESSLY PERMITTED BY ARTICLES 101 TO 117 OF THIS TITLE TO BE MADE WITHOUT SHAREHOLDER ACTION.

(2) THE BOARD OF DIRECTORS MAY ADOPT, WITHOUT SHAREHOLDER ACTION, ONE OR MORE AMENDMENTS TO THE ARTICLES OF INCORPORATION TO CHANGE THE CORPORATE NAME, IF NECESSARY, IN CONNECTION WITH THE REINSTATEMENT OF A CORPORATION PURSUANT TO SECTION 7-114-203.

**7-110-103. Amendment of articles of incorporation by board of directors and shareholders.** (1) THE BOARD OF DIRECTORS OR THE HOLDERS OF SHARES REPRESENTING AT LEAST TEN PERCENT OF ALL OF THE VOTES ENTITLED TO BE CAST ON THE AMENDMENT MAY PROPOSE AN AMENDMENT TO THE ARTICLES OF INCORPORATION FOR SUBMISSION TO THE SHAREHOLDERS.

(2) FOR AN AMENDMENT TO THE ARTICLES OF INCORPORATION TO BE ADOPTED PURSUANT TO SUBSECTION (1) OF THIS SECTION:

(a) THE BOARD OF DIRECTORS SHALL RECOMMEND THE AMENDMENT TO THE SHAREHOLDERS UNLESS THE AMENDMENT IS PROPOSED BY SHAREHOLDERS OR UNLESS THE BOARD OF DIRECTORS DETERMINES THAT, BECAUSE OF CONFLICT OF INTEREST OR OTHER SPECIAL CIRCUMSTANCES, IT SHOULD MAKE NO RECOMMENDATION AND COMMUNICATES THE BASIS FOR ITS DETERMINATION TO THE SHAREHOLDERS WITH THE AMENDMENT; AND

(b) THE SHAREHOLDERS ENTITLED TO VOTE ON THE AMENDMENT SHALL APPROVE THE AMENDMENT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION.

(3) THE PROPOSING BOARD OF DIRECTORS OR THE PROPOSING SHAREHOLDERS MAY

CONDITION THE EFFECTIVENESS OF THE AMENDMENT ON ANY BASIS.

(4) THE CORPORATION SHALL GIVE NOTICE, IN ACCORDANCE WITH SECTION 7-107-105, TO EACH SHAREHOLDER ENTITLED TO VOTE ON THE AMENDMENT OF THE SHAREHOLDERS' MEETING AT WHICH THE AMENDMENT WILL BE VOTED UPON. THE NOTICE OF THE MEETING SHALL STATE THAT THE PURPOSE, OR ONE OF THE PURPOSES, OF THE MEETING IS TO CONSIDER THE AMENDMENT, AND THE NOTICE SHALL CONTAIN OR BE ACCOMPANIED BY A COPY OR A SUMMARY OF THE AMENDMENT.

(5) UNLESS ARTICLES 101 TO 117 OF THIS TITLE (INCLUDING THE PROVISIONS OF SECTION 7-117-101(7)), THE ARTICLES OF INCORPORATION, BYLAWS ADOPTED BY THE SHAREHOLDERS, OR THE PROPOSING BOARD OF DIRECTORS OR THE PROPOSING SHAREHOLDERS ACTING PURSUANT TO SUBSECTION (3) OF THIS SECTION REQUIRE A GREATER VOTE, THE AMENDMENT SHALL BE APPROVED BY:

(a) A MAJORITY OF THE VOTES ENTITLED TO BE CAST ON THE AMENDMENT BY ANY VOTING GROUP WITH RESPECT TO WHICH THE AMENDMENT WOULD CREATE DISSENTERS' RIGHTS; AND

(b) THE VOTES REQUIRED BY SECTIONS 7-107-206 AND 7-107-207 BY EVERY OTHER VOTING GROUP ENTITLED TO VOTE ON THE AMENDMENT.

**7-110-104. Voting on amendments of articles of incorporation by voting groups.** (1) IF SHAREHOLDER VOTING IS OTHERWISE REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE, THE HOLDERS OF THE SHARES OF A CLASS ARE ENTITLED TO VOTE AS A SEPARATE VOTING GROUP ON AN AMENDMENT IF THE AMENDMENT WOULD:

(a) INCREASE OR DECREASE THE AGGREGATE NUMBER OF AUTHORIZED SHARES OF THE CLASS;

(b) EFFECT AN EXCHANGE OR RECLASSIFICATION OF ALL OR PART OF THE SHARES OF THE CLASS INTO SHARES OF ANOTHER CLASS;

(c) EFFECT AN EXCHANGE OR RECLASSIFICATION, OR CREATE THE RIGHT OF EXCHANGE, OF ALL OR PART OF THE SHARES OF ANOTHER CLASS INTO SHARES OF THE CLASS;

(d) CHANGE THE DESIGNATION, PREFERENCES, LIMITATIONS, OR RELATIVE RIGHTS OF ALL OR PART OF THE SHARES OF THE CLASS;

(e) CHANGE THE SHARES OF ALL OR PART OF THE CLASS INTO A DIFFERENT NUMBER OF SHARES OF THE SAME CLASS;

(f) CREATE A NEW CLASS OF SHARES HAVING RIGHTS OR PREFERENCES WITH RESPECT TO DISTRIBUTIONS OR DISSOLUTION THAT ARE PRIOR, SUPERIOR, OR SUBSTANTIALLY EQUAL TO THE SHARES OF THE CLASS;

(g) INCREASE THE RIGHTS, PREFERENCES, OR NUMBER OF AUTHORIZED SHARES OF ANY CLASS THAT, AFTER GIVING EFFECT TO THE AMENDMENT, HAVE RIGHTS OR PREFERENCES WITH RESPECT TO DISTRIBUTIONS OR TO DISSOLUTION THAT ARE PRIOR, SUPERIOR, OR SUBSTANTIALLY EQUAL TO THE SHARES OF THE CLASS;

(h) LIMIT OR DENY AN EXISTING PREEMPTIVE RIGHT OF ALL OR PART OF THE SHARES OF THE CLASS; OR

(i) CANCEL OR OTHERWISE AFFECT RIGHTS TO DISTRIBUTIONS OR DIVIDENDS THAT HAVE ACCUMULATED BUT HAVE NOT YET BEEN DECLARED ON ALL OR PART OF THE SHARES OF THE CLASS.

(2) IF AN AMENDMENT WOULD AFFECT A SERIES OF A CLASS OF SHARES IN ONE OR MORE OF THE WAYS DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE SHARES OF THAT SERIES ARE ENTITLED TO VOTE AS A SEPARATE VOTING GROUP ON THE AMENDMENT.

(3) IF AN AMENDMENT THAT ENTITLES TWO OR MORE SERIES OF A CLASS OF SHARES TO VOTE AS SEPARATE VOTING GROUPS UNDER THIS SECTION WOULD AFFECT THOSE TWO OR MORE SERIES IN THE SAME OR A SUBSTANTIALLY SIMILAR WAY, THE SHARES OF ALL THE SERIES SO AFFECTED SHALL, INSTEAD, VOTE TOGETHER AS A SINGLE VOTING GROUP ON THE AMENDMENT.

(4) A CLASS OR SERIES OF SHARES IS ENTITLED TO THE VOTING RIGHTS GRANTED BY THIS SECTION NOTWITHSTANDING ANY PROVISION IN THE ARTICLES OF INCORPORATION THAT THE SHARES ARE NONVOTING SHARES.

**7-110-105. Amendment of articles of incorporation before issuance of shares.**

IF A CORPORATION HAS NOT YET ISSUED SHARES, ITS BOARD OF DIRECTORS OR, IF NO DIRECTORS HAVE BEEN ELECTED, ITS INCORPORATORS MAY ADOPT ONE OR MORE AMENDMENTS TO THE ARTICLES OF INCORPORATION.

**7-110-106. Articles of amendment to articles of incorporation.** (1) A CORPORATION AMENDING ITS ARTICLES OF INCORPORATION SHALL DELIVER TO THE SECRETARY OF STATE FOR FILING ARTICLES OF AMENDMENT SETTING FORTH:

(a) THE NAME OF THE CORPORATION;

(b) THE TEXT OF EACH AMENDMENT ADOPTED;

(c) IF THE AMENDMENT PROVIDES FOR AN EXCHANGE, RECLASSIFICATION, OR CANCELLATION OF ISSUED SHARES, PROVISIONS FOR IMPLEMENTING THE AMENDMENT IF NOT CONTAINED IN THE AMENDMENT ITSELF;

(d) THE DATE OF EACH AMENDMENT'S ADOPTION;

(e) IF THE AMENDMENT WAS ADOPTED BY THE BOARD OF DIRECTORS OR INCORPORATORS WITHOUT SHAREHOLDER ACTION, A STATEMENT TO THAT EFFECT AND THAT SHAREHOLDER ACTION WAS NOT REQUIRED; AND

(f) IF THE AMENDMENT WAS ADOPTED BY THE SHAREHOLDERS, A STATEMENT THAT THE NUMBER OF VOTES CAST FOR THE AMENDMENT BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE AMENDMENT WAS SUFFICIENT FOR APPROVAL BY THAT VOTING GROUP.

**7-110-107. Restated articles of incorporation.** (1) THE BOARD OF DIRECTORS

MAY RESTATE THE ARTICLES OF INCORPORATION AT ANY TIME WITH OR WITHOUT SHAREHOLDER ACTION. IF THE CORPORATION HAS NOT YET ISSUED SHARES AND NO DIRECTORS HAVE BEEN ELECTED, ITS INCORPORATORS MAY RESTATE THE ARTICLES OF INCORPORATION AT ANY TIME.

(2) THE RESTATEMENT MAY INCLUDE ONE OR MORE AMENDMENTS TO THE ARTICLES OF INCORPORATION. IF THE RESTATEMENT INCLUDES AN AMENDMENT REQUIRING SHAREHOLDER APPROVAL, IT SHALL BE ADOPTED AS PROVIDED IN SECTION 7-110-103.

(3) IF THE BOARD OF DIRECTORS SUBMITS A RESTATEMENT FOR SHAREHOLDER ACTION, THE CORPORATION SHALL GIVE NOTICE, IN ACCORDANCE WITH SECTION 7-107-105, TO EACH SHAREHOLDER ENTITLED TO VOTE ON THE RESTATEMENT OF THE SHAREHOLDERS' MEETING AT WHICH THE RESTATEMENT WILL BE VOTED UPON. THE NOTICE SHALL STATE THAT THE PURPOSE, OR ONE OF THE PURPOSES, OF THE MEETING IS TO CONSIDER THE RESTATEMENT, AND THE NOTICE SHALL CONTAIN OR BE ACCOMPANIED BY A COPY OF THE RESTATEMENT THAT IDENTIFIES ANY AMENDMENT OR OTHER CHANGE IT WOULD MAKE IN THE ARTICLES OF INCORPORATION.

(4) A CORPORATION RESTATING ITS ARTICLES OF INCORPORATION SHALL DELIVER TO THE SECRETARY OF STATE FOR FILING ARTICLES OF RESTATEMENT SETTING FORTH:

(a) THE NAME OF THE CORPORATION;

(b) THE TEXT OF THE RESTATED ARTICLES OF INCORPORATION;

(c) IF THE RESTATEMENT CONTAINS AN AMENDMENT TO THE ARTICLES OF INCORPORATION THAT WAS ADOPTED BY THE SHAREHOLDERS, THE INFORMATION REQUIRED BY SECTION 7-110-106 (1) (f); AND

(d) IF THE RESTATEMENT WAS ADOPTED BY THE BOARD OF DIRECTORS OR INCORPORATORS WITHOUT SHAREHOLDER ACTION, A STATEMENT TO THAT EFFECT AND THAT SHAREHOLDER ACTION WAS NOT REQUIRED.

(5) UPON FILING BY THE SECRETARY OF STATE OR AT ANY LATER EFFECTIVE DATE DETERMINED PURSUANT TO SECTION 7-101-204, RESTATED ARTICLES OF INCORPORATION SUPERSEDE THE ORIGINAL ARTICLES OF INCORPORATION AND ALL PRIOR AMENDMENTS TO THEM.

**7-110-108. Amendment of articles of incorporation pursuant to reorganization.** (1) ARTICLES OF INCORPORATION MAY BE AMENDED, WITHOUT ACTION BY THE BOARD OF DIRECTORS OR SHAREHOLDERS, TO CARRY OUT A PLAN OF REORGANIZATION ORDERED OR DECREED BY A COURT OF COMPETENT JURISDICTION UNDER A STATUTE OF THE UNITED STATES IF THE ARTICLES OF INCORPORATION AFTER AMENDMENT CONTAIN ONLY PROVISIONS REQUIRED OR PERMITTED BY SECTION 7-102-102.

(2) FOR AN AMENDMENT TO THE ARTICLES OF INCORPORATION TO BE MADE PURSUANT TO SUBSECTION (1) OF THIS SECTION, AN INDIVIDUAL OR INDIVIDUALS DESIGNATED BY THE COURT SHALL DELIVER TO THE SECRETARY OF STATE FOR FILING ARTICLES OF AMENDMENT SETTING FORTH:



- (a) THE NAME OF THE CORPORATION;
- (b) THE TEXT OF EACH AMENDMENT APPROVED BY THE COURT;
- (c) THE DATE OF THE COURT'S ORDER OR DECREE APPROVING THE ARTICLES OF AMENDMENT;
- (d) THE TITLE OF THE REORGANIZATION PROCEEDING IN WHICH THE ORDER OR DECREE WAS ENTERED; AND
- (e) A STATEMENT THAT THE COURT HAD JURISDICTION OF THE PROCEEDING UNDER A SPECIFIED STATUTE OF THE UNITED STATES.

(3) SHAREHOLDERS OF A CORPORATION UNDERGOING REORGANIZATION DO NOT HAVE DISSENTERS' RIGHTS EXCEPT AS PROVIDED IN THE REORGANIZATION PLAN.

(4) THIS SECTION DOES NOT APPLY AFTER ENTRY OF A FINAL DECREE IN THE REORGANIZATION PROCEEDING EVEN THOUGH THE COURT RETAINS JURISDICTION OF THE PROCEEDING FOR LIMITED PURPOSES UNRELATED TO CONSUMMATION OF THE REORGANIZATION PLAN.

**7-110-109. Effect of amendment of articles of incorporation.** AN AMENDMENT TO THE ARTICLES OF INCORPORATION DOES NOT AFFECT ANY EXISTING RIGHT OF PERSONS OTHER THAN SHAREHOLDERS, ANY CAUSE OF ACTION EXISTING AGAINST OR IN FAVOR OF THE CORPORATION, OR ANY PROCEEDING TO WHICH THE CORPORATION IS A PARTY. AN AMENDMENT CHANGING A CORPORATION'S CORPORATE NAME DOES NOT ABATE A PROCEEDING BROUGHT BY OR AGAINST A CORPORATION IN ITS FORMER CORPORATE NAME.

## PART 2 AMENDMENT OF BYLAWS

**7-110-201. Amendment of bylaws by board of directors or shareholders.**

(1) THE BOARD OF DIRECTORS MAY AMEND THE BYLAWS AT ANY TIME TO ADD, CHANGE, OR DELETE A PROVISION, UNLESS:

(a) ARTICLES 101 TO 117 OF THIS TITLE OR THE ARTICLES OF INCORPORATION RESERVE SUCH POWER EXCLUSIVELY TO THE SHAREHOLDERS IN WHOLE OR PART; OR

(b) A PARTICULAR BYLAW EXPRESSLY PROHIBITS THE BOARD OF DIRECTORS FROM DOING SO.

(2) THE SHAREHOLDERS MAY AMEND THE BYLAWS EVEN THOUGH THE BYLAWS MAY ALSO BE AMENDED BY THE BOARD OF DIRECTORS.

**7-110-202. Bylaw changing quorum or voting requirement for shareholders.**

(1) IF AUTHORIZED BY THE ARTICLES OF INCORPORATION, THE SHAREHOLDERS MAY AMEND THE BYLAWS TO FIX A GREATER QUORUM OR VOTING REQUIREMENT FOR SHAREHOLDERS, OR VOTING GROUPS OF SHAREHOLDERS, THAN IS REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE. AN AMENDMENT TO THE BYLAWS TO ADD, CHANGE, OR DELETE A GREATER QUORUM OR VOTING REQUIREMENT FOR

SHAREHOLDERS SHALL MEET THE SAME QUORUM REQUIREMENT AND BE ADOPTED BY THE SAME VOTE AND VOTING GROUPS REQUIRED TO TAKE ACTION UNDER THE QUORUM AND VOTING REQUIREMENTS THEN IN EFFECT OR PROPOSED TO BE ADOPTED, WHICHEVER ARE GREATER.

(2) A BYLAW THAT FIXES A GREATER QUORUM OR VOTING REQUIREMENT FOR SHAREHOLDERS UNDER SUBSECTION (1) OF THIS SECTION SHALL NOT BE AMENDED BY THE BOARD OF DIRECTORS.

**7-110-203. Bylaw changing quorum or voting requirement for directors.**

(1) A BYLAW THAT FIXES A GREATER QUORUM OR VOTING REQUIREMENT FOR THE BOARD OF DIRECTORS MAY BE AMENDED:

(a) IF ADOPTED BY THE SHAREHOLDERS, ONLY BY THE SHAREHOLDERS; OR

(b) IF ADOPTED BY THE BOARD OF DIRECTORS, EITHER BY THE SHAREHOLDERS OR BY THE BOARD OF DIRECTORS.

(2) A BYLAW ADOPTED OR AMENDED BY THE SHAREHOLDERS THAT FIXES A GREATER QUORUM OR VOTING REQUIREMENT FOR THE BOARD OF DIRECTORS MAY PROVIDE THAT IT MAY BE AMENDED ONLY BY A SPECIFIED VOTE OF EITHER THE SHAREHOLDERS OR THE BOARD OF DIRECTORS.

(3) ACTION BY THE BOARD OF DIRECTORS UNDER PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION TO ADOPT OR AMEND A BYLAW THAT CHANGES THE QUORUM OR VOTING REQUIREMENT FOR THE BOARD OF DIRECTORS SHALL MEET THE SAME QUORUM REQUIREMENT AND BE ADOPTED BY THE SAME VOTE REQUIRED TO TAKE ACTION UNDER THE QUORUM AND VOTING REQUIREMENT THEN IN EFFECT OR PROPOSED TO BE ADOPTED, WHICHEVER IS GREATER.

**ARTICLE 111**

**Merger, Share Exchange, and Redomestication**

**7-111-101. Merger.** (1) ONE OR MORE DOMESTIC CORPORATIONS MAY MERGE INTO ANOTHER DOMESTIC CORPORATION IF THE BOARD OF DIRECTORS OF EACH CORPORATION ADOPTS A PLAN OF MERGER AND THE SHAREHOLDERS OF EACH CORPORATION, IF REQUIRED BY SECTION 7-111-103, APPROVE THE PLAN OF MERGER.

(2) THE PLAN OF MERGER REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL SET FORTH:

(a) THE NAME OF EACH CORPORATION PLANNING TO MERGE AND THE NAME OF THE SURVIVING CORPORATION INTO WHICH EACH CORPORATION PLANS TO MERGE;

(b) THE TERMS AND CONDITIONS OF THE MERGER;

(c) THE MANNER AND BASIS OF CONVERTING THE SHARES OF EACH CORPORATION INTO SHARES, OBLIGATIONS, OR OTHER SECURITIES OF THE SURVIVING OR ANY OTHER CORPORATION OR INTO MONEY OR OTHER PROPERTY IN WHOLE OR PART; AND

(d) ANY AMENDMENTS TO THE ARTICLES OF INCORPORATION OF THE SURVIVING

CORPORATION TO BE EFFECTED BY THE MERGER.

(3) THE PLAN OF MERGER MAY SET FORTH OTHER PROVISIONS RELATING TO THE MERGER.

**7-111-102. Share exchange.** (1) A DOMESTIC CORPORATION MAY ACQUIRE ALL OF THE OUTSTANDING SHARES OF ONE OR MORE CLASSES OR SERIES OF ONE OR MORE DOMESTIC CORPORATIONS IF THE BOARD OF DIRECTORS OF EACH CORPORATION ADOPTS A PLAN OF SHARE EXCHANGE AND THE SHAREHOLDERS OF EACH CORPORATION, IF REQUIRED BY SECTION 7-111-103, APPROVE THE PLAN OF SHARE EXCHANGE.

(2) THE PLAN OF SHARE EXCHANGE REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL SET FORTH:

(a) THE NAME OF EACH CORPORATION WHOSE SHARES WILL BE ACQUIRED AND THE NAME OF THE ACQUIRING CORPORATION;

(b) THE TERMS AND CONDITIONS OF THE SHARE EXCHANGE;

(c) THE MANNER AND BASIS OF EXCHANGING THE SHARES TO BE ACQUIRED FOR SHARES, OBLIGATIONS, OR OTHER SECURITIES OF THE ACQUIRING OR ANY OTHER CORPORATION OR FOR MONEY OR OTHER PROPERTY IN WHOLE OR PART.

(3) THE PLAN OF SHARE EXCHANGE MAY SET FORTH OTHER PROVISIONS RELATING TO THE SHARE EXCHANGE.

(4) THIS SECTION DOES NOT LIMIT THE POWER OF A CORPORATION TO ACQUIRE ALL OR PART OF THE SHARES OF ONE OR MORE CLASSES OR SERIES OF ANOTHER CORPORATION THROUGH A VOLUNTARY EXCHANGE OF SHARES OR OTHERWISE.

**7-111-103. Action on plan.** (1) AFTER ADOPTING A PLAN OF MERGER OR SHARE EXCHANGE, THE BOARD OF DIRECTORS OF EACH CORPORATION PARTY TO THE MERGER, AND THE BOARD OF DIRECTORS OF EACH CORPORATION WHOSE SHARES WILL BE ACQUIRED IN THE SHARE EXCHANGE, SHALL SUBMIT THE PLAN OF MERGER, EXCEPT AS PROVIDED IN SUBSECTION (7) OF THIS SECTION OR IN SECTION 7-111-104, OR THE PLAN OF SHARE EXCHANGE TO ITS SHAREHOLDERS FOR APPROVAL.

(2) FOR A PLAN OF MERGER OR SHARE EXCHANGE TO BE APPROVED BY THE SHAREHOLDERS:

(a) THE BOARD OF DIRECTORS SHALL RECOMMEND THE PLAN OF MERGER OR SHARE EXCHANGE TO THE SHAREHOLDERS UNLESS THE BOARD OF DIRECTORS DETERMINES THAT, BECAUSE OF CONFLICT OF INTEREST OR OTHER SPECIAL CIRCUMSTANCES, IT SHOULD MAKE NO RECOMMENDATION AND COMMUNICATES THE BASIS FOR ITS DETERMINATION TO THE SHAREHOLDERS WITH THE PLAN; AND

(b) THE SHAREHOLDERS ENTITLED TO VOTE ON THE PLAN OF MERGER OR SHARE EXCHANGE SHALL APPROVE THE PLAN AS PROVIDED IN SUBSECTION (5) OF THIS SECTION.

(3) THE BOARD OF DIRECTORS MAY CONDITION THE EFFECTIVENESS OF THE PLAN OF MERGER OR SHARE EXCHANGE ON ANY BASIS.

(4) THE CORPORATION SHALL GIVE NOTICE, IN ACCORDANCE WITH SECTION 7-107-105, TO EACH SHAREHOLDER ENTITLED TO VOTE ON THE PLAN OF MERGER OR SHARE EXCHANGE OF THE SHAREHOLDERS' MEETING AT WHICH THE PLAN WILL BE VOTED UPON. THE NOTICE SHALL STATE THAT THE PURPOSE, OR ONE OF THE PURPOSES, OF THE MEETING IS TO CONSIDER THE PLAN OF MERGER OR SHARE EXCHANGE, AND THE NOTICE SHALL CONTAIN OR BE ACCOMPANIED BY A COPY OF THE PLAN OR A SUMMARY THEREOF.

(5) UNLESS ARTICLES 101 TO 117 OF THIS TITLE (INCLUDING THE PROVISIONS OF SECTION 7-117-101 (8)), THE ARTICLES OF INCORPORATION, BYLAWS ADOPTED BY THE SHAREHOLDERS, OR THE BOARD OF DIRECTORS ACTING PURSUANT TO SUBSECTION (3) OF THIS SECTION REQUIRE A GREATER VOTE, THE PLAN OF MERGER OR SHARE EXCHANGE SHALL BE APPROVED BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE PLAN BY A MAJORITY OF ALL THE VOTES ENTITLED TO BE CAST ON THE PLAN BY THAT VOTING GROUP.

(6) SEPARATE VOTING BY VOTING GROUPS IS REQUIRED:

(a) ON A PLAN OF MERGER IF THE PLAN CONTAINS A PROVISION THAT, IF CONTAINED IN AN AMENDMENT TO THE ARTICLES OF INCORPORATION, WOULD REQUIRE ACTION BY ONE OR MORE SEPARATE VOTING GROUPS ON THE AMENDMENT UNDER SECTION 7-110-104;

(b) ON A PLAN OF SHARE EXCHANGE BY EACH CLASS OR SERIES OF SHARES INCLUDED IN THE SHARE EXCHANGE, WITH EACH CLASS OR SERIES CONSTITUTING A SEPARATE VOTING GROUP.

(7) ACTION BY THE SHAREHOLDERS OF THE SURVIVING CORPORATION ON A PLAN OF MERGER IS NOT REQUIRED IF:

(a) THE ARTICLES OF INCORPORATION OF THE SURVIVING CORPORATION WILL NOT DIFFER, EXCEPT FOR AMENDMENTS ENUMERATED IN SECTION 7-110-102, FROM ITS ARTICLES OF INCORPORATION BEFORE THE MERGER;

(b) EACH SHAREHOLDER OF THE SURVIVING CORPORATION WHOSE SHARES WERE OUTSTANDING IMMEDIATELY BEFORE THE MERGER WILL HOLD THE SAME NUMBER OF SHARES, WITH IDENTICAL DESIGNATIONS, PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS, IMMEDIATELY AFTER THE MERGER;

(c) THE NUMBER OF VOTING SHARES OUTSTANDING IMMEDIATELY AFTER THE MERGER, PLUS THE NUMBER OF VOTING SHARES ISSUABLE AS A RESULT OF THE MERGER EITHER BY THE CONVERSION OF SECURITIES ISSUED PURSUANT TO THE MERGER OR BY THE EXERCISE OF RIGHTS AND WARRANTS ISSUED PURSUANT TO THE MERGER, WILL NOT EXCEED BY MORE THAN TWENTY PERCENT THE TOTAL NUMBER OF VOTING SHARES OF THE SURVIVING CORPORATION OUTSTANDING IMMEDIATELY BEFORE THE MERGER; AND

(d) THE NUMBER OF PARTICIPATING SHARES OUTSTANDING IMMEDIATELY AFTER

THE MERGER, PLUS THE NUMBER OF PARTICIPATING SHARES ISSUABLE AS A RESULT OF THE MERGER EITHER BY THE CONVERSION OF SECURITIES ISSUED PURSUANT TO THE MERGER OR BY THE EXERCISE OF RIGHTS AND WARRANTS ISSUED PURSUANT TO THE MERGER, WILL NOT EXCEED BY MORE THAN TWENTY PERCENT THE TOTAL NUMBER OF PARTICIPATING SHARES OUTSTANDING IMMEDIATELY BEFORE THE MERGER.

(8) AS USED IN SUBSECTION (7) OF THIS SECTION:

(a) "PARTICIPATING SHARES" MEANS SHARES THAT ENTITLE THEIR HOLDERS TO PARTICIPATE WITHOUT LIMITATION IN DISTRIBUTIONS.

(b) "VOTING SHARES" MEANS SHARES THAT ENTITLE THEIR HOLDERS TO VOTE UNCONDITIONALLY IN ELECTIONS OF DIRECTORS.

(9) AFTER A PLAN OF MERGER OR SHARE EXCHANGE IS AUTHORIZED, AND AT ANY TIME BEFORE THE MERGER OR SHARE EXCHANGE BECOMES EFFECTIVE, THE MERGER OR SHARE EXCHANGE MAY BE ABANDONED, SUBJECT TO ANY CONTRACTUAL RIGHTS, WITHOUT FURTHER SHAREHOLDER ACTION, IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN THE PLAN OF MERGER OR SHARE EXCHANGE OR, IF NONE IS SET FORTH, IN THE MANNER DETERMINED BY THE BOARD OF DIRECTORS. IF A MERGER OR SHARE EXCHANGE IS ABANDONED AFTER ARTICLES OF MERGER OR SHARE EXCHANGE HAVE BEEN FILED BY THE SECRETARY OF STATE PURSUANT TO SECTION 7-111-105 SPECIFYING A DELAYED EFFECTIVE DATE, THE MERGER OR SHARE EXCHANGE MAY BE PREVENTED FROM BECOMING EFFECTIVE BY DELIVERING TO THE SECRETARY OF STATE FOR FILING, BEFORE THE DATE THE MERGER OR SHARE EXCHANGE BECOMES EFFECTIVE PURSUANT TO SECTION 7-101-204 (2), A STATEMENT OF ABANDONMENT STATING THAT, BY APPROPRIATE CORPORATE ACTION, THE MERGER OR SHARE EXCHANGE HAS BEEN ABANDONED. SUCH STATEMENT OF ABANDONMENT SHALL BE EXECUTED IN THE SAME MANNER AS THE ARTICLES OF MERGER OR SHARE EXCHANGE.

**7-111-104. Merger of parent and subsidiary.** (1) BY COMPLYING WITH THE PROVISIONS OF THIS SECTION, A PARENT CORPORATION OWNING AT LEAST NINETY PERCENT OF THE OUTSTANDING SHARES OF EACH CLASS OF A SUBSIDIARY CORPORATION MAY EITHER MERGE SUCH SUBSIDIARY INTO ITSELF OR MERGE ITSELF INTO SUCH SUBSIDIARY.

(2) THE BOARD OF DIRECTORS OF SUCH PARENT CORPORATION SHALL ADOPT, AND ITS SHAREHOLDERS, IF REQUIRED BY SUBSECTION (3) OF THIS SECTION, SHALL APPROVE, A PLAN OF MERGER THAT SETS FORTH:

(a) THE NAMES OF SUCH PARENT CORPORATION AND SUBSIDIARY AND THE NAME OF THE SURVIVING CORPORATION;

(b) THE TERMS AND CONDITIONS OF THE MERGER;

(c) THE MANNER AND BASIS OF CONVERTING THE SHARES OF EACH CORPORATION INTO SHARES, OBLIGATIONS, OR OTHER SECURITIES OF THE SURVIVING OR ANY OTHER CORPORATION OR INTO MONEY OR OTHER PROPERTY IN WHOLE OR PART;

(d) ANY AMENDMENTS TO THE ARTICLES OF INCORPORATION OF THE SURVIVING CORPORATION TO BE EFFECTED BY THE MERGER; AND

(e) ANY OTHER PROVISIONS RELATING TO THE MERGER AS ARE DEEMED NECESSARY OR DESIRABLE.

(3) NO VOTE OF THE SHAREHOLDERS OF SUCH SUBSIDIARY SHALL BE REQUIRED WITH RESPECT TO THE MERGER. IF THE SUBSIDIARY WILL BE THE SURVIVING CORPORATION, THE APPROVAL OF THE SHAREHOLDERS OF THE PARENT CORPORATION SHALL BE SOUGHT IN THE MANNER PROVIDED IN SUBSECTIONS (1) TO (6) OF SECTION 7-111-103. IF THE PARENT WILL BE THE SURVIVING CORPORATION, NO VOTE OF ITS SHAREHOLDERS SHALL BE REQUIRED IF ALL OF THE PROVISIONS OF SECTION 7-111-103 (7) ARE MET WITH RESPECT TO THE MERGER. IF ALL OF SUCH PROVISIONS ARE NOT MET, THE APPROVAL OF THE SHAREHOLDERS OF THE PARENT SHALL BE SOUGHT IN THE MANNER PROVIDED IN SUBSECTIONS (1) TO (6) OF SECTION 7-111-103.

(4) THE PARENT CORPORATION SHALL MAIL A COPY OR SUMMARY OF THE PLAN OF MERGER TO EACH SHAREHOLDER OF THE SUBSIDIARY, OTHER THAN THE PARENT CORPORATION, WHO DOES NOT WAIVE THIS MAILING REQUIREMENT IN WRITING.

(5) THE EFFECTIVE DATE OF THE MERGER SHALL BE NO EARLIER THAN:

(a) THE DATE ON WHICH ALL SHAREHOLDERS OF THE SUBSIDIARY WAIVED THE MAILING REQUIREMENT OF SUBSECTION (4) OF THIS SECTION; OR

(b) TEN DAYS AFTER THE DATE THE PARENT MAILED A COPY OR SUMMARY OF THE PLAN OF MERGER TO EACH SHAREHOLDER OF THE SUBSIDIARY WHO DID NOT WAIVE THE MAILING REQUIREMENT.

**7-111-105. Articles of merger or share exchange.** (1) AFTER A PLAN OF MERGER OR SHARE EXCHANGE IS APPROVED BY THE SHAREHOLDERS, OR ADOPTED BY THE BOARD OF DIRECTORS IF SHAREHOLDER APPROVAL IS NOT REQUIRED, THE SURVIVING OR ACQUIRING CORPORATION SHALL DELIVER TO THE SECRETARY OF STATE FOR FILING ARTICLES OF MERGER OR SHARE EXCHANGE SETTING FORTH:

(a) THE PLAN OF MERGER OR SHARE EXCHANGE;

(b) IF SHAREHOLDER APPROVAL WAS NOT REQUIRED, A STATEMENT TO THAT EFFECT;

(c) IF APPROVAL OF THE SHAREHOLDERS OF ONE OR MORE CORPORATIONS PARTY TO THE MERGER OR SHARE EXCHANGE WAS REQUIRED, A STATEMENT THAT THE NUMBER OF VOTES CAST FOR THE PLAN BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE MERGER OR SHARE EXCHANGE WAS SUFFICIENT FOR APPROVAL BY THAT VOTING GROUP; AND

(d) IF THE MERGER IS BEING EFFECTED PURSUANT TO SECTION 7-111-104:

(I) A STATEMENT THAT IMMEDIATELY BEFORE THE MERGER THE PARENT CORPORATION OWNED AT LEAST NINETY PERCENT OF THE OUTSTANDING SHARES OF EACH CLASS OF THE SUBSIDIARY; AND

(II) THE EFFECTIVE DATE OF THE MERGER AND A STATEMENT THAT SUCH EFFECTIVE DATE COMPLIES WITH SECTION 7-111-104 (5).

(2) SUBJECT TO SECTION 7-111-104 (5), A MERGER OR SHARE EXCHANGE TAKES EFFECT UPON THE EFFECTIVE DATE THEREOF STATED IN THE ARTICLES OF MERGER OR SHARE EXCHANGE OR, IF EARLIER, ON THE NINETIETH DAY AFTER THE ARTICLES OF MERGER OR SHARE EXCHANGE ARE FILED BY THE SECRETARY OF STATE.

(3) ARTICLES OF MERGER OR SHARE EXCHANGE SHALL BE EXECUTED BY EACH CORPORATION PARTY TO THE MERGER OR SHARE EXCHANGE; EXCEPT THAT IN A MERGER EFFECTED PURSUANT TO SECTION 7-111-104 THE ARTICLES OF MERGER NEED ONLY BE EXECUTED BY THE SURVIVING CORPORATION.

**7-111-106. Effect of merger or share exchange.** (1) WHEN A MERGER TAKES EFFECT:

(a) EVERY OTHER CORPORATION PARTY TO THE MERGER MERGES INTO THE SURVIVING CORPORATION AND THE SEPARATE EXISTENCE OF EVERY CORPORATION PARTY TO THE MERGER EXCEPT THE SURVIVING CORPORATION CEASES;

(b) THE TITLE TO ALL REAL ESTATE AND OTHER PROPERTY OWNED BY EACH OTHER CORPORATION PARTY TO THE MERGER IS TRANSFERRED TO AND VESTED IN THE SURVIVING CORPORATION WITHOUT REVERSION OR IMPAIRMENT; AND SUCH TRANSFER TO AND VESTING IN THE SURVIVING CORPORATION SHALL BE DEEMED TO OCCUR BY OPERATION OF LAW, AND NO CONSENT OR APPROVAL OF ANY OTHER PERSON SHALL BE REQUIRED IN CONNECTION WITH ANY SUCH TRANSFER OR VESTING UNLESS SUCH CONSENT OR APPROVAL IS SPECIFICALLY REQUIRED IN THE EVENT OF MERGER BY LAW OR BY EXPRESS PROVISION IN ANY CONTRACT, AGREEMENT, DECREE, ORDER, OR OTHER INSTRUMENT TO WHICH ANY OF THE CORPORATIONS SO MERGED IS A PARTY OR BY WHICH IT IS BOUND;

(c) THE SURVIVING CORPORATION HAS ALL LIABILITIES OF EACH CORPORATION PARTY TO THE MERGER;

(d) A PROCEEDING PENDING AGAINST ANY CORPORATION PARTY TO THE MERGER MAY BE CONTINUED AS IF THE MERGER DID NOT OCCUR OR THE SURVIVING CORPORATION MAY BE SUBSTITUTED IN THE PROCEEDING FOR THE CORPORATION WHOSE EXISTENCE CEASED;

(e) THE ARTICLES OF INCORPORATION OF THE SURVIVING CORPORATION ARE AMENDED TO THE EXTENT PROVIDED IN THE PLAN OF MERGER; AND

(f) THE SHARES OF EACH CORPORATION PARTY TO THE MERGER THAT ARE TO BE CONVERTED INTO SHARES, OBLIGATIONS, OR OTHER SECURITIES OF THE SURVIVING OR ANY OTHER CORPORATION OR INTO MONEY OR OTHER PROPERTY ARE CONVERTED, AND THE FORMER HOLDERS OF THE SHARES ARE ENTITLED ONLY TO THE RIGHTS PROVIDED IN THE ARTICLES OF MERGER OR TO THEIR RIGHTS UNDER ARTICLE 113 OF THIS TITLE.

(2) WHEN A SHARE EXCHANGE TAKES EFFECT, THE SHARES OF EACH ACQUIRED CORPORATION ARE EXCHANGED AS PROVIDED IN THE PLAN, AND THE FORMER HOLDERS OF THE SHARES ARE ENTITLED ONLY TO THE EXCHANGE RIGHTS PROVIDED IN THE ARTICLES OF SHARE EXCHANGE OR TO THEIR RIGHTS UNDER ARTICLE 113 OF THIS TITLE.

**7-111-107. Merger or share exchange with foreign corporation.** (1) ONE OR MORE DOMESTIC CORPORATIONS MAY MERGE OR ENTER INTO A SHARE EXCHANGE WITH ONE OR MORE FOREIGN CORPORATIONS IF:

(a) IN A MERGER, THE MERGER IS PERMITTED BY THE LAW OF THE STATE OR COUNTRY UNDER WHOSE LAW EACH FOREIGN CORPORATION IS INCORPORATED AND EACH FOREIGN CORPORATION COMPLIES WITH THAT LAW IN EFFECTING THE MERGER;

(b) IN A SHARE EXCHANGE, THE CORPORATION WHOSE SHARES WILL BE ACQUIRED IS A DOMESTIC CORPORATION, WHETHER OR NOT A SHARE EXCHANGE IS PERMITTED BY THE LAW OF THE STATE OR COUNTRY UNDER WHOSE LAW THE ACQUIRING CORPORATION IS INCORPORATED;

(c) THE FOREIGN CORPORATION COMPLIES WITH SECTION 7-111-105 IF IT IS THE SURVIVING CORPORATION OF THE MERGER OR ACQUIRING CORPORATION OF THE SHARE EXCHANGE AND PROVIDES, IN ADDITION TO THE INFORMATION REQUIRED BY SUCH SECTION, THE ADDRESS OF ITS PRINCIPAL OFFICE; AND

(d) EACH DOMESTIC CORPORATION COMPLIES WITH THE APPLICABLE PROVISIONS OF SECTIONS 7-111-101 TO 7-111-104 AND, IF IT IS THE SURVIVING CORPORATION OF THE MERGER OR ACQUIRING CORPORATION OF THE SHARE EXCHANGE, WITH SECTION 7-111-105.

(2) UPON THE MERGER OR SHARE EXCHANGE TAKING EFFECT, THE SURVIVING FOREIGN CORPORATION OF A MERGER AND THE ACQUIRING FOREIGN CORPORATION OF A SHARE EXCHANGE:

(a) SHALL EITHER:

(I) MAINTAIN A REGISTERED AGENT IN THIS STATE TO ACCEPT SERVICE IN ANY PROCEEDING TO ENFORCE ANY OBLIGATION OR RIGHTS OF DISSENTING SHAREHOLDERS OF EACH DOMESTIC CORPORATION PARTY TO THE MERGER OR SHARE EXCHANGE OR IN ANY PROCEEDING BASED ON A CAUSE OF ACTION ARISING WITH RESPECT TO ANY DOMESTIC CORPORATION THAT IS MERGED INTO THE FOREIGN CORPORATION; OR

(II) BE DEEMED TO HAVE AUTHORIZED SERVICE OF PROCESS ON IT IN CONNECTION WITH ANY SUCH PROCEEDING BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESS OF ITS PRINCIPAL OFFICE AS SET FORTH IN THE ARTICLES OF MERGER OR SHARE EXCHANGE OR AS LAST CHANGED BY NOTICE DELIVERED TO THE SECRETARY OF STATE FOR FILING;

(b) SHALL PROMPTLY PAY TO THE DISSENTING SHAREHOLDERS OF EACH DOMESTIC CORPORATION PARTY TO THE MERGER OR SHARE EXCHANGE THE AMOUNT, IF ANY, TO WHICH THEY ARE ENTITLED UNDER ARTICLE 113 OF THIS TITLE; AND

(c) SHALL COMPLY WITH ARTICLE 115 OF THIS TITLE IF IT IS TO TRANSACT BUSINESS IN THIS STATE.

(3) SERVICE EFFECTED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION IS PERFECTED AT THE EARLIEST OF:



(a) THE DATE THE FOREIGN CORPORATION RECEIVES THE PROCESS, NOTICE, OR DEMAND;

(b) THE DATE SHOWN ON THE RETURN RECEIPT, IF SIGNED ON BEHALF OF THE FOREIGN CORPORATION; OR

(c) FIVE DAYS AFTER MAILING.

(4) SUBSECTION (2) OF THIS SECTION DOES NOT PRESCRIBE THE ONLY MEANS, OR NECESSARILY THE REQUIRED MEANS, OF SERVING A SURVIVING FOREIGN CORPORATION OF A MERGER OR AN ACQUIRING FOREIGN CORPORATION OF A SHARE EXCHANGE.

(5) THIS SECTION DOES NOT LIMIT THE POWER OF A FOREIGN CORPORATION TO ACQUIRE ALL OR PART OF THE SHARES OF ONE OR MORE CLASSES OR SERIES OF A DOMESTIC CORPORATION THROUGH A VOLUNTARY EXCHANGE OF SHARES OR OTHERWISE.

**7-111-108. Redomestication as a domestic insurer.** (1) A FOREIGN OR ALIEN INSURER WHICH SEEKS TO CHANGE ITS DOMICILE UNDER SECTION 10-3-125 OR 10-3-126, C.R.S., SHALL SUBMIT ARTICLES OF REDOMESTICATION IN TRIPPLICATE TO THE COMMISSIONER OF INSURANCE AND THE ATTORNEY GENERAL FOR EXAMINATION. AFTER BEING APPROVED BY THEM, THE ARTICLES OF REDOMESTICATION SHALL BE DELIVERED TO THE SECRETARY OF STATE FOR FILING. A COPY OF SUCH ARTICLES, CERTIFIED BY THE SECRETARY OF STATE, SHALL BE FILED WITH THE COMMISSIONER OF INSURANCE.

(2) THE ARTICLES OF REDOMESTICATION SHALL SET FORTH:

(a) A CORPORATE NAME FOR THE CORPORATION THAT SATISFIES THE REQUIREMENTS OF SECTIONS 7-104-101 AND 10-3-103, C.R.S.;

(b) THE STATE IN WHICH THE CORPORATION WAS ORIGINALLY INCORPORATED, THE NAME UNDER WHICH IT WAS SO INCORPORATED, THE DATE OF SUCH INCORPORATION, AND THE DATE THE CORPORATION WAS AUTHORIZED TO DO BUSINESS AS AN INSURANCE COMPANY IN THE STATE OF ITS ORIGINAL INCORPORATION;

(c) IF THE STATE IN WHICH THE CORPORATION WAS LAST INCORPORATED IS DIFFERENT FROM THE STATE IN WHICH IT WAS ORIGINALLY INCORPORATED, THE STATE IN WHICH THE CORPORATION WAS LAST INCORPORATED, THE NAME UNDER WHICH IT WAS SO INCORPORATED, THE DATE OF SUCH INCORPORATION, AND THE DATE THE CORPORATION WAS AUTHORIZED TO DO BUSINESS AS AN INSURANCE COMPANY IN THE STATE OF ITS LAST INCORPORATION;

(d) THE INFORMATION REGARDING SHARES REQUIRED BY SECTION 7-106-101;

(e) THE STREET ADDRESS OF THE CORPORATION'S CURRENT REGISTERED OFFICE AND THE NAME OF ITS CURRENT REGISTERED AGENT AT THAT OFFICE, OR, IF THE CORPORATION DOES NOT HAVE A CURRENT REGISTERED OFFICE, THE STREET ADDRESS OF ITS INITIAL REGISTERED OFFICE AND THE NAME OF ITS INITIAL REGISTERED AGENT AT THAT OFFICE AND THE WRITTEN CONSENT OF THE INITIAL REGISTERED AGENT TO THE APPOINTMENT UNLESS SUCH CONSENT IS PROVIDED IN AN ACCOMPANYING

DOCUMENT;

(f) THE ADDRESS OF THE CORPORATION'S PRINCIPAL OFFICE;

(g) THE NAMES AND ADDRESSES OF THE PERSONS SERVING AS THE DIRECTORS AND OFFICERS OF SUCH CORPORATION; AND

(h) A STATEMENT THAT, UPON REDOMESTICATION, THE CORPORATION ACCEPTS AND WILL BE SUBJECT TO THE LAWS OF THIS STATE.

(3) THE ARTICLES OF INCORPORATION MAY BUT NEED NOT SET FORTH:

(a) PROVISIONS NOT INCONSISTENT WITH LAW REGARDING:

(I) THE CURRENT PURPOSE OR PURPOSES OF THE CORPORATION AND THE PURPOSE OR PURPOSES WHICH IT INTENDS TO PURSUE AFTER REDOMESTICATION;

(II) MANAGING THE BUSINESS OF THE CORPORATION AND REGULATING ITS AFFAIRS;

(III) DEFINING, LIMITING, AND REGULATING THE POWERS OF THE CORPORATION, ITS BOARD OF DIRECTORS, AND ITS SHAREHOLDERS;

(IV) A PAR VALUE FOR AUTHORIZED SHARES OR CLASSES OF SHARES; AND

(V) THE IMPOSITION OF PERSONAL LIABILITY ON SHAREHOLDERS FOR THE DEBTS OF THE CORPORATION TO A SPECIFIED EXTENT AND UPON SPECIFIED CONDITIONS; AND

(b) ANY PROVISION THAT UNDER ARTICLES 101 TO 117 OF THIS TITLE IS REQUIRED OR PERMITTED TO BE SET FORTH IN THE BYLAWS.

(4) IT SHALL NOT BE NECESSARY TO SET FORTH IN THE ARTICLES OF REDOMESTICATION ANY OF THE CORPORATE POWERS ENUMERATED IN ARTICLES 101 TO 117 OF THIS TITLE.

(5) IN ITS ARTICLES OF REDOMESTICATION, THE CORPORATION MAY AMEND, RESTATE, OR REVISE ITS ARTICLES OF INCORPORATION OR CHARTER TO THE SAME EXTENT, SUBJECT TO THE SAME LIMITATIONS, AND BY THE SAME PROCEDURES AS THOSE PROVISIONS GOVERNING THE AMENDMENT, RESTATEMENT, AND REVISION OF ARTICLES OF INCORPORATION AS PROVIDED IN ARTICLES 101 TO 117 OF THIS TITLE.

(6) THE CORPORATION SHALL ATTACH TO THE ARTICLES OF REDOMESTICATION:

(a) ITS ARTICLES OF INCORPORATION OR CHARTER, AS AMENDED OR RESTATED, AS IN EFFECT IMMEDIATELY BEFORE THE FILING OF ITS ARTICLES OF REDOMESTICATION, DULY AUTHENTICATED BY THE PROPER OFFICER IN THE JURISDICTION OF ITS LAST INCORPORATION;

(b) A CERTIFICATE TO THE EFFECT THAT THE CORPORATION IS IN GOOD STANDING IN THE JURISDICTION OF ITS LAST INCORPORATION, DULY AUTHENTICATED BY THE PROPER OFFICER IN THE JURISDICTION OF ITS LAST INCORPORATION. THE CERTIFICATE SHALL BE DATED WITHIN NINETY DAYS BEFORE THE FILING OF THE ARTICLES OF

## REDOMESTICATION.

(c) A RESOLUTION, DULY CERTIFIED BY THE SECRETARY OF THE CORPORATION, ADOPTED BY THE AFFIRMATIVE VOTE OF THE SHAREHOLDERS ENTITLED TO CAST AT LEAST A MAJORITY OF THE VOTES WHICH ALL SHAREHOLDERS ARE ENTITLED TO CAST THEREON, AND, IF ANY CLASS OF SHARES IS ENTITLED TO VOTE THEREON AS A CLASS, THE AFFIRMATIVE VOTE OF THE HOLDERS OF AT LEAST A MAJORITY OF THE OUTSTANDING SHARES IN EACH CLASS OF SHARES ENTITLED TO VOTE AS A CLASS THEREON, CONSENTING TO THE FILING OF THE ARTICLES OF REDOMESTICATION AND THE RENUNCIATION, CONDITIONED UPON ITS REDOMESTICATION AS A DOMESTIC INSURER, OF ITS LAST ARTICLES OF INCORPORATION OR CHARTER.

(7) UPON THE ISSUANCE BY THE SECRETARY OF STATE OF A CERTIFICATE OF REDOMESTICATION, A CORPORATION SHALL BE DEEMED TO BE DOMICILED IN AND INCORPORATED UNDER THE LAWS OF THIS STATE; EXCEPT THAT AN INSURER WHICH HAS REDOMESTICATED IN THIS STATE PURSUANT TO SECTION 10-3-125 OR 10-3-126, C.R.S., SHALL BE CONSIDERED TO BE THE SAME CORPORATION AS THAT CORPORATION WHICH EXISTED UNDER THE LAWS OF THE JURISDICTION IN WHICH IT WAS FORMERLY DOMICILED AND SHALL BE CONSIDERED AS HAVING BEEN AN OPERATING INSURER FROM THE DATE THAT THE CORPORATION WAS AUTHORIZED TO DO BUSINESS AS AN INSURER IN SUCH JURISDICTION.

(8) THE CERTIFICATE OF REDOMESTICATION SHALL SERVE THE SAME PURPOSE AS A CERTIFICATE OF INCORPORATION UNDER ARTICLES 101 TO 117 OF THIS TITLE, AND, AT THE REQUEST OF THE REDOMESTICATED INSURER, THE SECRETARY OF STATE SHALL ISSUE A CERTIFICATE OF INCORPORATION IN PLACE OF THE CERTIFICATE OF REDOMESTICATION.

(9) THE CERTIFICATE OF REDOMESTICATION, SUBJECT TO THE PROVISIONS OF THE LAWS OF THIS STATE RELATING TO INSURANCE, SHALL ENTITLE THE REDOMESTICATED CORPORATION TO ALL THE POWERS, RIGHTS, AND PRIVILEGES GRANTED TO CORPORATIONS INCORPORATED IN THIS STATE AND SHALL SUBJECT THE REDOMESTICATED CORPORATION TO ALL OF THE DUTIES, LIABILITIES, AND LIMITATIONS IMPOSED UPON DOMESTIC CORPORATIONS BUT SHALL CONTINUE THE CORPORATION AS IF IT HAD BEEN ORIGINALLY INCORPORATED UNDER THE LAWS OF THIS STATE. UPON THE ISSUANCE OF THE CERTIFICATE OF REDOMESTICATION BY THE SECRETARY OF STATE, THE ARTICLES OF REDOMESTICATION SHALL CONSTITUTE THE ARTICLES OF INCORPORATION OF THE CORPORATION.

(10) ANY DOMESTIC INSURER, SUBJECT TO AND IN COMPLIANCE WITH SECTION 10-3-125 (2), C.R.S., MAY CHANGE ITS DOMICILE FROM THIS STATE TO ANY OTHER STATE IN WHICH IT IS AUTHORIZED TO TRANSACT BUSINESS AND, IN CONNECTION THEREWITH, SHALL SUBMIT TO THE COMMISSIONER OF INSURANCE A COPY OF THE ARTICLES OF REDOMESTICATION OR THEIR EQUIVALENT, DULY AUTHENTICATED BY THE PROPER OFFICER OF ITS NEW STATE OF DOMICILE, AND A CERTIFICATE OF GOOD STANDING OR ITS EQUIVALENT FROM THAT STATE. UPON APPROVAL BY THE COMMISSIONER OF INSURANCE, THE COPY OF THE ARTICLES OF REDOMESTICATION AND CERTIFICATE OF GOOD STANDING, OR THEIR EQUIVALENTS, FROM THE NEW STATE OF DOMICILE SHALL BE DELIVERED TO THE SECRETARY OF STATE FOR FILING. UPON THE FILING OF SUCH DOCUMENTS BY THE SECRETARY OF STATE, THE DOMESTIC INSURER SHALL CEASE TO BE A DOMESTIC CORPORATION AND A DOMESTIC INSURER AND, IF

OTHERWISE QUALIFIED, SHALL BECOME A FOREIGN CORPORATION AND FOREIGN INSURER AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE EFFECTIVE AS OF THE DATE OF ITS REDOMESTICATION BY THE NEW STATE OF DOMICILE AS SET FORTH IN ITS ARTICLES OF REDOMESTICATION.

(11) ALL CERTIFICATES OF REDOMESTICATION ISSUED BY THE SECRETARY OF STATE SHALL SET FORTH THE DATE ON WHICH THE ARTICLES OF REDOMESTICATION WERE FILED AND, BASED UPON THE INFORMATION SUBMITTED TO THE SECRETARY OF STATE PURSUANT TO THIS SECTION, THE DATE FROM WHICH THE CORPORATION EXISTED AND OPERATED AS AN INSURER, WHICH SHALL BE THE DATE THE INSURER WAS INCORPORATED IN THE JURISDICTION OF ITS ORIGINAL INCORPORATION.

## **ARTICLE 112**

### **Sale of Property**

#### **7-112-101. Sale or mortgage of property without shareholder approval.**

(1) A CORPORATION MAY, ON THE TERMS AND CONDITIONS AND FOR THE CONSIDERATION DETERMINED BY THE BOARD OF DIRECTORS:

(a) SELL, LEASE, EXCHANGE, OR OTHERWISE DISPOSE OF ANY OR ALL OF ITS PROPERTY IN THE USUAL AND REGULAR COURSE OF BUSINESS;

(b) MORTGAGE, PLEDGE, DEDICATE TO THE REPAYMENT OF INDEBTEDNESS, WHETHER WITH OR WITHOUT RECOURSE, OR OTHERWISE ENCUMBER ANY OR ALL OF ITS PROPERTY WHETHER OR NOT IN THE USUAL AND REGULAR COURSE OF BUSINESS; OR

(c) TRANSFER ANY OR ALL OF ITS PROPERTY TO A DOMESTIC CORPORATION ALL THE SHARES OF WHICH ARE OWNED, DIRECTLY OR INDIRECTLY, BY THE CORPORATION.

(2) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, APPROVAL BY THE SHAREHOLDERS OF A TRANSACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION IS NOT REQUIRED.

**7-112-102. Sale of property requiring shareholder approval.** (1) A CORPORATION MAY SELL, LEASE, EXCHANGE, OR OTHERWISE DISPOSE OF ALL, OR SUBSTANTIALLY ALL, OF ITS PROPERTY, WITH OR WITHOUT ITS GOOD WILL, OTHER THAN IN THE USUAL AND REGULAR COURSE OF BUSINESS ON THE TERMS AND CONDITIONS AND FOR THE CONSIDERATION DETERMINED BY THE BOARD OF DIRECTORS, IF THE BOARD OF DIRECTORS PROPOSES AND THE SHAREHOLDERS APPROVE THE TRANSACTION. A SALE, LEASE, EXCHANGE, OR OTHER DISPOSITION OF ALL, OR SUBSTANTIALLY ALL, OF THE PROPERTY OF A CORPORATION, WITH OR WITHOUT ITS GOOD WILL, IN CONNECTION WITH ITS DISSOLUTION, OTHER THAN IN THE USUAL AND REGULAR COURSE OF BUSINESS, AND OTHER THAN PURSUANT TO A COURT ORDER, SHALL BE SUBJECT TO THE REQUIREMENTS OF THIS SECTION; BUT A SALE, LEASE, EXCHANGE, OR OTHER DISPOSITION OF ALL, OR SUBSTANTIALLY ALL, OF THE PROPERTY OF A CORPORATION, WITH OR WITHOUT ITS GOOD WILL, PURSUANT TO A COURT ORDER SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

(2) IF A CORPORATION IS ENTITLED TO VOTE OR OTHERWISE CONSENT, OTHER THAN IN THE USUAL AND REGULAR COURSE OF ITS BUSINESS, WITH RESPECT TO THE SALE,

LEASE, EXCHANGE, OR OTHER DISPOSITION OF ALL, OR SUBSTANTIALLY ALL, OF THE PROPERTY WITH OR WITHOUT THE GOOD WILL OF ANOTHER ENTITY WHICH IT CONTROLS, AND IF THE SHARES OR OTHER INTERESTS HELD BY THE CORPORATION IN SUCH OTHER ENTITY CONSTITUTE ALL, OR SUBSTANTIALLY ALL, OF THE PROPERTY OF THE CORPORATION, THEN THE CORPORATION SHALL CONSENT TO SUCH TRANSACTION ONLY IF THE BOARD OF DIRECTORS PROPOSES AND THE SHAREHOLDERS APPROVE THE GIVING OF CONSENT.

(3) FOR A TRANSACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION OR A CONSENT DESCRIBED IN SUBSECTION (2) OF THIS SECTION TO BE APPROVED BY THE SHAREHOLDERS:

(a) THE BOARD OF DIRECTORS SHALL RECOMMEND THE TRANSACTION OR THE CONSENT TO THE SHAREHOLDERS UNLESS THE BOARD OF DIRECTORS DETERMINES THAT, BECAUSE OF CONFLICT OF INTEREST OR OTHER SPECIAL CIRCUMSTANCES, IT SHOULD MAKE NO RECOMMENDATION AND COMMUNICATES THE BASIS FOR ITS DETERMINATION TO THE SHAREHOLDERS WITH THE SUBMISSION OF THE TRANSACTION; AND

(b) THE SHAREHOLDERS ENTITLED TO VOTE ON THE TRANSACTION OR THE CONSENT SHALL APPROVE THE TRANSACTION OR THE CONSENT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION.

(4) THE BOARD OF DIRECTORS MAY CONDITION THE EFFECTIVENESS OF THE TRANSACTION OR THE CONSENT ON ANY BASIS.

(5) THE CORPORATION SHALL GIVE NOTICE, IN ACCORDANCE WITH SECTION 7-107-105, TO EACH SHAREHOLDER ENTITLED TO VOTE ON THE TRANSACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION OR THE CONSENT DESCRIBED IN SUBSECTION (2) OF THIS SECTION, OF THE SHAREHOLDERS' MEETING AT WHICH THE TRANSACTION OR THE CONSENT WILL BE VOTED UPON. THE NOTICE SHALL:

(a) STATE THAT THE PURPOSE, OR ONE OF THE PURPOSES, OF THE MEETING IS TO CONSIDER:

(I) IN THE CASE OF ACTION PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE SALE, LEASE, EXCHANGE, OR OTHER DISPOSITION OF ALL, OR SUBSTANTIALLY ALL, OF THE PROPERTY OF THE CORPORATION; OR

(II) IN THE CASE OF ACTION PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE CORPORATION'S CONSENT TO THE SALE, LEASE, EXCHANGE, OR OTHER DISPOSITION OF ALL, OR SUBSTANTIALLY ALL, OF THE PROPERTY OF ANOTHER ENTITY (WHICH ENTITY SHALL BE IDENTIFIED IN THE NOTICE), SHARES OR OTHER INTERESTS OF WHICH ARE HELD BY THE CORPORATION AND CONSTITUTE ALL, OR SUBSTANTIALLY ALL, OF THE PROPERTY OF THE CORPORATION; AND

(b) CONTAIN OR BE ACCOMPANIED BY A DESCRIPTION OF THE TRANSACTION, IN THE CASE OF ACTION PURSUANT TO SUBSECTION (1) OF THIS SECTION, OR BY A DESCRIPTION OF THE TRANSACTION UNDERLYING THE CONSENT, IN THE CASE OF ACTION PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(6) UNLESS ARTICLES 101 TO 117 OF THIS TITLE (INCLUDING THE PROVISIONS OF SECTION 7-117-101 (9)), THE ARTICLES OF INCORPORATION, BYLAWS ADOPTED BY THE SHAREHOLDERS, OR THE BOARD OF DIRECTORS ACTING PURSUANT TO SUBSECTION (4) OF THIS SECTION REQUIRE A GREATER VOTE, THE TRANSACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION OR THE CONSENT DESCRIBED IN SUBSECTION (2) OF THIS SECTION SHALL BE APPROVED BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE TRANSACTION OR CONSENT BY A MAJORITY OF ALL THE VOTES ENTITLED TO BE CAST ON THE TRANSACTION OR THE CONSENT BY THAT VOTING GROUP.

(7) AFTER A TRANSACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION OR A CONSENT DESCRIBED IN SUBSECTION (2) OF THIS SECTION IS AUTHORIZED, THE TRANSACTION MAY BE ABANDONED OR THE CONSENT WITHHELD OR REVOKED, SUBJECT TO ANY CONTRACTUAL RIGHTS OR OTHER LIMITATIONS ON SUCH ABANDONMENT, WITHHOLDING, OR REVOCATION, WITHOUT FURTHER SHAREHOLDER ACTION.

(8) A TRANSACTION THAT CONSTITUTES A DISTRIBUTION IS GOVERNED BY SECTION 7-106-401 AND NOT BY THIS SECTION.

### **ARTICLE 113 Dissenters' Rights**

#### **PART 1 RIGHT OF DISSENT - PAYMENT FOR SHARES**

**7-113-101. Definitions.** FOR PURPOSES OF THIS ARTICLE:

(1) "BENEFICIAL SHAREHOLDER" MEANS THE BENEFICIAL OWNER OF SHARES HELD IN A VOTING TRUST OR BY A NOMINEE AS THE RECORD SHAREHOLDER.

(2) "CORPORATION" MEANS THE ISSUER OF THE SHARES HELD BY A DISSENTER BEFORE THE CORPORATE ACTION, OR THE SURVIVING OR ACQUIRING DOMESTIC OR FOREIGN CORPORATION, BY MERGER OR SHARE EXCHANGE OF THAT ISSUER.

(3) "DISSENTER" MEANS A SHAREHOLDER WHO IS ENTITLED TO DISSENT FROM CORPORATE ACTION UNDER SECTION 7-113-102 AND WHO EXERCISES THAT RIGHT AT THE TIME AND IN THE MANNER REQUIRED BY PART 2 OF THIS ARTICLE.

(4) "FAIR VALUE", WITH RESPECT TO A DISSENTER'S SHARES, MEANS THE VALUE OF THE SHARES IMMEDIATELY BEFORE THE EFFECTIVE DATE OF THE CORPORATE ACTION TO WHICH THE DISSENTER OBJECTS, EXCLUDING ANY APPRECIATION OR DEPRECIATION IN ANTICIPATION OF THE CORPORATE ACTION EXCEPT TO THE EXTENT THAT EXCLUSION WOULD BE INEQUITABLE.

(5) "INTEREST" MEANS INTEREST FROM THE EFFECTIVE DATE OF THE CORPORATE ACTION UNTIL THE DATE OF PAYMENT, AT THE AVERAGE RATE CURRENTLY PAID BY THE CORPORATION ON ITS PRINCIPAL BANK LOANS OR, IF NONE, AT THE LEGAL RATE AS SPECIFIED IN SECTION 5-12-101, C.R.S.

(6) "RECORD SHAREHOLDER" MEANS THE PERSON IN WHOSE NAME SHARES ARE REGISTERED IN THE RECORDS OF A CORPORATION OR THE BENEFICIAL OWNER OF SHARES THAT ARE REGISTERED IN THE NAME OF A NOMINEE TO THE EXTENT SUCH OWNER IS RECOGNIZED BY THE CORPORATION AS THE SHAREHOLDER AS PROVIDED IN SECTION 7-107-204.

(7) "SHAREHOLDER" MEANS EITHER A RECORD SHAREHOLDER OR A BENEFICIAL SHAREHOLDER.

**7-113-102. Right to dissent.** (1) A SHAREHOLDER, WHETHER OR NOT ENTITLED TO VOTE, IS ENTITLED TO DISSENT AND OBTAIN PAYMENT OF THE FAIR VALUE OF HIS OR HER SHARES IN THE EVENT OF ANY OF THE FOLLOWING CORPORATE ACTIONS:

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

(I) APPROVAL BY THE SHAREHOLDERS OF THAT CORPORATION IS REQUIRED FOR THE MERGER BY SECTION 7-111-103 OR 7-111-104 OR BY THE ARTICLES OF INCORPORATION, OR

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

(b) CONSUMMATION OF A PLAN OF SHARE EXCHANGE TO WHICH THE CORPORATION IS A PARTY AS THE CORPORATION WHOSE SHARES WILL BE ACQUIRED;

(c) CONSUMMATION OF A SALE, LEASE, EXCHANGE, OR OTHER DISPOSITION OF ALL, OR SUBSTANTIALLY ALL, OF THE PROPERTY OF THE CORPORATION FOR WHICH A SHAREHOLDER VOTE IS REQUIRED UNDER SECTION 7-112-102 (1); AND

(d) CONSUMMATION OF A SALE, LEASE, EXCHANGE, OR OTHER DISPOSITION OF ALL, OR SUBSTANTIALLY ALL, OF THE PROPERTY OF AN ENTITY CONTROLLED BY THE CORPORATION IF THE SHAREHOLDERS OF THE CORPORATION WERE ENTITLED TO VOTE UPON THE CONSENT OF THE CORPORATION TO THE DISPOSITION PURSUANT TO SECTION 7-112-102 (2).

(2) A SHAREHOLDER, WHETHER OR NOT ENTITLED TO VOTE, IS ENTITLED TO DISSENT AND OBTAIN PAYMENT OF THE FAIR VALUE OF THE SHAREHOLDER'S SHARES IN THE EVENT OF:

(a) AN AMENDMENT TO THE ARTICLES OF INCORPORATION THAT MATERIALLY AND ADVERSELY AFFECTS RIGHTS IN RESPECT OF THE SHARES BECAUSE IT:

(I) ALTERS OR ABOLISHES A PREFERENTIAL RIGHT OF THE SHARES; OR

(II) CREATES, ALTERS, OR ABOLISHES A RIGHT IN RESPECT OF REDEMPTION OF THE SHARES, INCLUDING A PROVISION RESPECTING A SINKING FUND FOR THEIR REDEMPTION OR REPURCHASE; OR

(b) AN AMENDMENT TO THE ARTICLES OF INCORPORATION THAT AFFECTS RIGHTS IN RESPECT OF THE SHARES BECAUSE IT:

(I) EXCLUDES OR LIMITS THE RIGHT OF THE SHARES TO VOTE ON ANY MATTER, OR TO CUMULATE VOTES, OTHER THAN A LIMITATION BY DILUTION THROUGH ISSUANCE OF SHARES OR OTHER SECURITIES WITH SIMILAR VOTING RIGHTS; OR

(II) REDUCES THE NUMBER OF SHARES OWNED BY THE SHAREHOLDER TO A FRACTION OF A SHARE OR TO SCRIP IF THE FRACTIONAL SHARE OR SCRIP SO CREATED IS TO BE ACQUIRED FOR CASH OR THE SCRIP IS TO BE VOIDED UNDER SECTION 7-106-104.

(3) A SHAREHOLDER IS ENTITLED TO DISSENT AND OBTAIN PAYMENT OF THE FAIR VALUE OF THE SHAREHOLDER'S SHARES IN THE EVENT OF ANY CORPORATE ACTION TO THE EXTENT PROVIDED BY THE BYLAWS OR A RESOLUTION OF THE BOARD OF DIRECTORS.

(4) A SHAREHOLDER ENTITLED TO DISSENT AND OBTAIN PAYMENT FOR THE SHAREHOLDER'S SHARES UNDER THIS ARTICLE MAY NOT CHALLENGE THE CORPORATE ACTION CREATING SUCH ENTITLEMENT UNLESS THE ACTION IS UNLAWFUL OR FRAUDULENT WITH RESPECT TO THE SHAREHOLDER OR THE CORPORATION.

**7-113-103. Dissent by nominees and beneficial owners.** (1) A RECORD SHAREHOLDER MAY ASSERT DISSENTERS' RIGHTS AS TO FEWER THAN ALL THE SHARES REGISTERED IN THE RECORD SHAREHOLDER'S NAME ONLY IF THE RECORD SHAREHOLDER DISSENTS WITH RESPECT TO ALL SHARES BENEFICIALLY OWNED BY ANY ONE PERSON AND CAUSES THE CORPORATION TO RECEIVE WRITTEN NOTICE WHICH STATES SUCH DISSENT AND THE NAME, ADDRESS, AND FEDERAL TAXPAYER IDENTIFICATION NUMBER, IF ANY, OF EACH PERSON ON WHOSE BEHALF THE RECORD SHAREHOLDER ASSERTS DISSENTERS' RIGHTS. THE RIGHTS OF A RECORD SHAREHOLDER UNDER THIS SUBSECTION (1) ARE DETERMINED AS IF THE SHARES AS TO WHICH THE RECORD SHAREHOLDER DISSENTS AND THE OTHER SHARES OF THE RECORD SHAREHOLDER WERE REGISTERED IN THE NAMES OF DIFFERENT SHAREHOLDERS.

(2) A BENEFICIAL SHAREHOLDER MAY ASSERT DISSENTERS' RIGHTS AS TO THE SHARES HELD ON THE BENEFICIAL SHAREHOLDER'S BEHALF ONLY IF:

(a) THE BENEFICIAL SHAREHOLDER CAUSES THE CORPORATION TO RECEIVE THE RECORD SHAREHOLDER'S WRITTEN CONSENT TO THE DISSENT NOT LATER THAN THE TIME THE BENEFICIAL SHAREHOLDER ASSERTS DISSENTERS' RIGHTS; AND

(b) THE BENEFICIAL SHAREHOLDER DISSENTS WITH RESPECT TO ALL SHARES BENEFICIALLY OWNED BY THE BENEFICIAL SHAREHOLDER.

(3) THE CORPORATION MAY REQUIRE THAT, WHEN A RECORD SHAREHOLDER DISSENTS WITH RESPECT TO THE SHARES HELD BY ANY ONE OR MORE BENEFICIAL SHAREHOLDERS, EACH SUCH BENEFICIAL SHAREHOLDER MUST CERTIFY TO THE CORPORATION THAT THE BENEFICIAL SHAREHOLDER AND THE RECORD SHAREHOLDER OR RECORD SHAREHOLDERS OF ALL SHARES OWNED BENEFICIALLY BY THE BENEFICIAL SHAREHOLDER HAVE ASSERTED, OR WILL TIMELY ASSERT, DISSENTERS' RIGHTS AS TO ALL SUCH SHARES AS TO WHICH THERE IS NO LIMITATION ON THE ABILITY TO EXERCISE DISSENTERS' RIGHTS. ANY SUCH REQUIREMENT SHALL BE STATED IN THE DISSENTERS' NOTICE GIVEN PURSUANT TO SECTION 7-113-203.



PART 2  
PROCEDURE FOR EXERCISE  
OF DISSENTERS' RIGHTS

**7-113-201. Notice of dissenters' rights.** (1) IF A PROPOSED CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 IS SUBMITTED TO A VOTE AT A SHAREHOLDERS' MEETING, THE NOTICE OF THE MEETING SHALL BE GIVEN TO ALL SHAREHOLDERS, WHETHER OR NOT ENTITLED TO VOTE. THE NOTICE SHALL STATE THAT SHAREHOLDERS ARE OR MAY BE ENTITLED TO ASSERT DISSENTERS' RIGHTS UNDER THIS ARTICLE AND SHALL BE ACCOMPANIED BY A COPY OF THIS ARTICLE AND THE MATERIALS, IF ANY, THAT, UNDER ARTICLES 101 TO 117 OF THIS TITLE, ARE REQUIRED TO BE GIVEN TO SHAREHOLDERS ENTITLED TO VOTE ON THE PROPOSED ACTION AT THE MEETING. FAILURE TO GIVE NOTICE AS PROVIDED BY THIS SUBSECTION (1) TO SHAREHOLDERS NOT ENTITLED TO VOTE SHALL NOT AFFECT ANY ACTION TAKEN AT THE SHAREHOLDERS' MEETING FOR WHICH THE NOTICE WAS TO HAVE BEEN GIVEN.

(2) IF A PROPOSED CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 IS AUTHORIZED WITHOUT A MEETING OF SHAREHOLDERS PURSUANT TO SECTION 7-107-104, ANY WRITTEN OR ORAL SOLICITATION OF A SHAREHOLDER TO EXECUTE A WRITING CONSENTING TO SUCH ACTION CONTEMPLATED IN SECTION 7-107-104 SHALL BE ACCOMPANIED OR PRECEDED BY A WRITTEN NOTICE STATING THAT SHAREHOLDERS ARE OR MAY BE ENTITLED TO ASSERT DISSENTERS' RIGHTS UNDER THIS ARTICLE, BY A COPY OF THIS ARTICLE, AND BY THE MATERIALS, IF ANY, THAT, UNDER ARTICLES 101 TO 117 OF THIS TITLE, WOULD HAVE BEEN REQUIRED TO BE GIVEN TO SHAREHOLDERS ENTITLED TO VOTE ON THE PROPOSED ACTION IF THE PROPOSED ACTION WERE SUBMITTED TO A VOTE AT A SHAREHOLDERS' MEETING. FAILURE TO GIVE NOTICE AS PROVIDED BY THIS SUBSECTION (2) TO SHAREHOLDERS NOT ENTITLED TO VOTE SHALL NOT AFFECT ANY ACTION TAKEN PURSUANT TO SECTION 7-107-104 FOR WHICH THE NOTICE WAS TO HAVE BEEN GIVEN.

**7-113-202. Notice of intent to demand payment.** (1) IF A PROPOSED CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 IS SUBMITTED TO A VOTE AT A SHAREHOLDERS' MEETING, A SHAREHOLDER WHO WISHES TO ASSERT DISSENTERS' RIGHTS SHALL:

(a) CAUSE THE CORPORATION TO RECEIVE, BEFORE THE VOTE IS TAKEN, WRITTEN NOTICE OF THE SHAREHOLDER'S INTENTION TO DEMAND PAYMENT FOR THE SHAREHOLDER'S SHARES IF THE PROPOSED CORPORATE ACTION IS EFFECTUATED; AND

(b) NOT VOTE THE SHARES IN FAVOR OF THE PROPOSED CORPORATE ACTION.

(2) IF A PROPOSED CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 IS AUTHORIZED WITHOUT A MEETING OF SHAREHOLDERS PURSUANT TO SECTION 7-107-104, A SHAREHOLDER WHO WISHES TO ASSERT DISSENTERS' RIGHTS SHALL NOT EXECUTE A WRITING CONSENTING TO THE PROPOSED CORPORATE ACTION.

(3) A SHAREHOLDER WHO DOES NOT SATISFY THE REQUIREMENTS OF SUBSECTION (1) OR (2) OF THIS SECTION IS NOT ENTITLED TO DEMAND PAYMENT FOR THE SHAREHOLDER'S SHARES UNDER THIS ARTICLE.

**7-113-203. Dissenters' notice.** (1) IF A PROPOSED CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 IS AUTHORIZED, THE CORPORATION SHALL GIVE A WRITTEN DISSENTERS' NOTICE TO ALL SHAREHOLDERS WHO ARE ENTITLED TO DEMAND PAYMENT FOR THEIR SHARES UNDER THIS ARTICLE.

(2) THE DISSENTERS' NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL BE GIVEN NO LATER THAN TEN DAYS AFTER THE EFFECTIVE DATE OF THE CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 AND SHALL:

(a) STATE THAT THE CORPORATE ACTION WAS AUTHORIZED AND STATE THE EFFECTIVE DATE OR PROPOSED EFFECTIVE DATE OF THE CORPORATE ACTION;

(b) STATE AN ADDRESS AT WHICH THE CORPORATION WILL RECEIVE PAYMENT DEMANDS AND THE ADDRESS OF A PLACE WHERE CERTIFICATES FOR CERTIFICATED SHARES MUST BE DEPOSITED;

(c) INFORM HOLDERS OF UNCERTIFICATED SHARES TO WHAT EXTENT TRANSFER OF THE SHARES WILL BE RESTRICTED AFTER THE PAYMENT DEMAND IS RECEIVED;

(d) SUPPLY A FORM FOR DEMANDING PAYMENT, WHICH FORM SHALL REQUEST A DISSENTER TO STATE AN ADDRESS TO WHICH PAYMENT IS TO BE MADE;

(e) SET THE DATE BY WHICH THE CORPORATION MUST RECEIVE THE PAYMENT DEMAND AND CERTIFICATES FOR CERTIFICATED SHARES, WHICH DATE SHALL NOT BE LESS THAN THIRTY DAYS AFTER THE DATE THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION IS GIVEN;

(f) STATE THE REQUIREMENT CONTEMPLATED IN SECTION 7-113-103 (3), IF SUCH REQUIREMENT IS IMPOSED; AND

(g) BE ACCOMPANIED BY A COPY OF THIS ARTICLE.

**7-113-204. Procedure to demand payment.** (1) A SHAREHOLDER WHO IS GIVEN A DISSENTERS' NOTICE PURSUANT TO SECTION 7-113-203 AND WHO WISHES TO ASSERT DISSENTERS' RIGHTS SHALL, IN ACCORDANCE WITH THE TERMS OF THE DISSENTERS' NOTICE:

(a) CAUSE THE CORPORATION TO RECEIVE A PAYMENT DEMAND, WHICH MAY BE THE PAYMENT DEMAND FORM CONTEMPLATED IN SECTION 7-113-203 (2) (d), DULY COMPLETED, OR MAY BE STATED IN ANOTHER WRITING; AND

(b) DEPOSIT THE SHAREHOLDER'S CERTIFICATES FOR CERTIFICATED SHARES.

(2) A SHAREHOLDER WHO DEMANDS PAYMENT IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION RETAINS ALL RIGHTS OF A SHAREHOLDER, EXCEPT THE RIGHT TO TRANSFER THE SHARES, UNTIL THE EFFECTIVE DATE OF THE PROPOSED CORPORATE ACTION GIVING RISE TO THE SHAREHOLDER'S EXERCISE OF DISSENTERS' RIGHTS AND HAS ONLY THE RIGHT TO RECEIVE PAYMENT FOR THE SHARES AFTER THE EFFECTIVE DATE OF SUCH CORPORATE ACTION.

(3) EXCEPT AS PROVIDED IN SECTION 7-113-207 OR 7-113-209 (1) (b), THE

DEMAND FOR PAYMENT AND DEPOSIT OF CERTIFICATES ARE IRREVOCABLE.

(4) A SHAREHOLDER WHO DOES NOT DEMAND PAYMENT AND DEPOSIT THE SHAREHOLDER'S SHARE CERTIFICATES AS REQUIRED BY THE DATE OR DATES SET IN THE DISSENTERS' NOTICE IS NOT ENTITLED TO PAYMENT FOR THE SHARES UNDER THIS ARTICLE.

**7-113-205. Uncertificated shares.** (1) UPON RECEIPT OF A DEMAND FOR PAYMENT UNDER SECTION 7-113-204 FROM A SHAREHOLDER HOLDING UNCERTIFICATED SHARES, AND IN LIEU OF THE DEPOSIT OF CERTIFICATES REPRESENTING THE SHARES, THE CORPORATION MAY RESTRICT THE TRANSFER THEREOF.

(2) IN ALL OTHER RESPECTS, THE PROVISIONS OF SECTION 7-113-204 SHALL BE APPLICABLE TO SHAREHOLDERS WHO OWN UNCERTIFICATED SHARES.

**7-113-206. Payment.** (1) EXCEPT AS PROVIDED IN SECTION 7-113-208, UPON THE EFFECTIVE DATE OF THE CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 OR UPON RECEIPT OF A PAYMENT DEMAND PURSUANT TO SECTION 7-113-204, WHICHEVER IS LATER, THE CORPORATION SHALL PAY EACH DISSENTER WHO COMPLIED WITH SECTION 7-113-204, AT THE ADDRESS STATED IN THE PAYMENT DEMAND, OR IF NO SUCH ADDRESS IS STATED IN THE PAYMENT DEMAND, AT THE ADDRESS SHOWN ON THE CORPORATION'S CURRENT RECORD OF SHAREHOLDERS FOR THE RECORD SHAREHOLDER HOLDING THE DISSENTER'S SHARES, THE AMOUNT THE CORPORATION ESTIMATES TO BE THE FAIR VALUE OF THE DISSENTER'S SHARES, PLUS ACCRUED INTEREST.

(2) THE PAYMENT MADE PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE ACCOMPANIED BY:

(a) THE CORPORATION'S BALANCE SHEET AS OF THE END OF ITS MOST RECENT FISCAL YEAR OR, IF THAT IS NOT AVAILABLE, THE CORPORATION'S BALANCE SHEET AS OF THE END OF A FISCAL YEAR ENDING NOT MORE THAN SIXTEEN MONTHS BEFORE THE DATE OF PAYMENT, AN INCOME STATEMENT FOR THAT YEAR, AND, IF THE CORPORATION CUSTOMARILY PROVIDES SUCH STATEMENTS TO SHAREHOLDERS, A STATEMENT OF CHANGES IN SHAREHOLDERS' EQUITY FOR THAT YEAR AND A STATEMENT OF CASH FLOW FOR THAT YEAR, WHICH BALANCE SHEET AND STATEMENTS SHALL HAVE BEEN AUDITED IF THE CORPORATION CUSTOMARILY PROVIDES AUDITED FINANCIAL STATEMENTS TO SHAREHOLDERS, AS WELL AS THE LATEST AVAILABLE FINANCIAL STATEMENTS, IF ANY, FOR THE INTERIM OR FULL-YEAR PERIOD, WHICH FINANCIAL STATEMENTS NEED NOT BE AUDITED;

(b) A STATEMENT OF THE CORPORATION'S ESTIMATE OF THE FAIR VALUE OF THE SHARES;

(c) AN EXPLANATION OF HOW THE INTEREST WAS CALCULATED;

(d) A STATEMENT OF THE DISSENTER'S RIGHT TO DEMAND PAYMENT UNDER SECTION 7-113-209; AND

(e) A COPY OF THIS ARTICLE.

**7-113-207. Failure to take action.** (1) IF THE EFFECTIVE DATE OF THE CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 DOES NOT OCCUR WITHIN SIXTY DAYS AFTER THE DATE SET BY THE CORPORATION BY WHICH THE CORPORATION MUST RECEIVE THE PAYMENT DEMAND AS PROVIDED IN SECTION 7-113-203, THE CORPORATION SHALL RETURN THE DEPOSITED CERTIFICATES AND RELEASE THE TRANSFER RESTRICTIONS IMPOSED ON UNCERTIFICATED SHARES.

(2) IF THE EFFECTIVE DATE OF THE CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 OCCURS MORE THAN SIXTY DAYS AFTER THE DATE SET BY THE CORPORATION BY WHICH THE CORPORATION MUST RECEIVE THE PAYMENT DEMAND AS PROVIDED IN SECTION 7-113-203, THEN THE CORPORATION SHALL SEND A NEW DISSENTERS' NOTICE, AS PROVIDED IN SECTION 7-113-203, AND THE PROVISIONS OF SECTIONS 7-113-204 TO 7-113-209 SHALL AGAIN BE APPLICABLE.

**7-113-208. Special provisions relating to shares acquired after announcement of proposed corporate action.** (1) THE CORPORATION MAY, IN OR WITH THE DISSENTERS' NOTICE GIVEN PURSUANT TO SECTION 7-113-203, STATE THE DATE OF THE FIRST ANNOUNCEMENT TO NEWS MEDIA OR TO SHAREHOLDERS OF THE TERMS OF THE PROPOSED CORPORATE ACTION CREATING DISSENTERS' RIGHTS UNDER SECTION 7-113-102 AND STATE THAT THE DISSENTER SHALL CERTIFY IN WRITING, IN OR WITH THE DISSENTER'S PAYMENT DEMAND UNDER SECTION 7-113-204, WHETHER OR NOT THE DISSENTER (OR THE PERSON ON WHOSE BEHALF DISSENTERS' RIGHTS ARE ASSERTED) ACQUIRED BENEFICIAL OWNERSHIP OF THE SHARES BEFORE THAT DATE. WITH RESPECT TO ANY DISSENTER WHO DOES NOT SO CERTIFY IN WRITING, IN OR WITH THE PAYMENT DEMAND, THAT THE DISSENTER OR THE PERSON ON WHOSE BEHALF THE DISSENTER ASSERTS DISSENTERS' RIGHTS ACQUIRED BENEFICIAL OWNERSHIP OF THE SHARES BEFORE SUCH DATE, THE CORPORATION MAY, IN LIEU OF MAKING THE PAYMENT PROVIDED IN SECTION 7-113-206, OFFER TO MAKE SUCH PAYMENT IF THE DISSENTER AGREES TO ACCEPT IT IN FULL SATISFACTION OF THE DEMAND.

(2) AN OFFER TO MAKE PAYMENT UNDER SUBSECTION (1) OF THIS SECTION SHALL INCLUDE OR BE ACCOMPANIED BY THE INFORMATION REQUIRED BY SECTION 7-113-206 (2).

**7-113-209. Procedure if dissenter is dissatisfied with payment or offer.** (1) A DISSENTER MAY GIVE NOTICE TO THE CORPORATION IN WRITING OF THE DISSENTER'S ESTIMATE OF THE FAIR VALUE OF THE DISSENTER'S SHARES AND OF THE AMOUNT OF INTEREST DUE AND MAY DEMAND PAYMENT OF SUCH ESTIMATE, LESS ANY PAYMENT MADE UNDER SECTION 7-113-206, OR REJECT THE CORPORATION'S OFFER UNDER SECTION 7-113-208 AND DEMAND PAYMENT OF THE FAIR VALUE OF THE SHARES AND INTEREST DUE, IF:

(a) THE DISSENTER BELIEVES THAT THE AMOUNT PAID UNDER SECTION 7-113-206 OR OFFERED UNDER SECTION 7-113-208 IS LESS THAN THE FAIR VALUE OF THE SHARES OR THAT THE INTEREST DUE WAS INCORRECTLY CALCULATED;

(b) THE CORPORATION FAILS TO MAKE PAYMENT UNDER SECTION 7-113-206 WITHIN SIXTY DAYS AFTER THE DATE SET BY THE CORPORATION BY WHICH THE CORPORATION MUST RECEIVE THE PAYMENT DEMAND; OR

(c) THE CORPORATION DOES NOT RETURN THE DEPOSITED CERTIFICATES OR

RELEASE THE TRANSFER RESTRICTIONS IMPOSED ON UNCERTIFICATED SHARES AS REQUIRED BY SECTION 7-113-207 (1).

(2) A DISSENTER WAIVES THE RIGHT TO DEMAND PAYMENT UNDER THIS SECTION UNLESS THE DISSENTER CAUSES THE CORPORATION TO RECEIVE THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION WITHIN THIRTY DAYS AFTER THE CORPORATION MADE OR OFFERED PAYMENT FOR THE DISSENTER'S SHARES.

### PART 3 JUDICIAL APPRAISAL OF SHARES

**7-113-301. Court action.** (1) IF A DEMAND FOR PAYMENT UNDER SECTION 7-113-209 REMAINS UNRESOLVED, THE CORPORATION MAY, WITHIN SIXTY DAYS AFTER RECEIVING THE PAYMENT DEMAND, COMMENCE A PROCEEDING AND PETITION THE COURT TO DETERMINE THE FAIR VALUE OF THE SHARES AND ACCRUED INTEREST. IF THE CORPORATION DOES NOT COMMENCE THE PROCEEDING WITHIN THE SIXTY-DAY PERIOD, IT SHALL PAY TO EACH DISSENTER WHOSE DEMAND REMAINS UNRESOLVED THE AMOUNT DEMANDED.

(2) THE CORPORATION SHALL COMMENCE THE PROCEEDING DESCRIBED IN SUBSECTION (1) OF THIS SECTION IN THE DISTRICT COURT OF THE COUNTY IN THIS STATE WHERE THE CORPORATION'S PRINCIPAL OFFICE IS LOCATED OR, IF IT HAS NO PRINCIPAL OFFICE IN THIS STATE, IN THE DISTRICT COURT OF THE COUNTY IN WHICH ITS REGISTERED OFFICE IS LOCATED. IF THE CORPORATION IS A FOREIGN CORPORATION WITHOUT A REGISTERED OFFICE IN THIS STATE, IT SHALL COMMENCE THE PROCEEDING IN THE COUNTY IN THIS STATE WHERE THE REGISTERED OFFICE OF THE DOMESTIC CORPORATION MERGED INTO, OR WHOSE SHARES WERE ACQUIRED BY, THE FOREIGN CORPORATION WAS LOCATED.

(3) THE CORPORATION SHALL MAKE ALL DISSENTERS, WHETHER OR NOT RESIDENTS OF THIS STATE, WHOSE DEMANDS REMAIN UNRESOLVED PARTIES TO THE PROCEEDING COMMENCED UNDER SUBSECTION (2) OF THIS SECTION AS IN AN ACTION AGAINST THEIR SHARES, AND ALL PARTIES SHALL BE SERVED WITH A COPY OF THE PETITION. SERVICE ON EACH DISSENTER SHALL BE BY REGISTERED OR CERTIFIED MAIL, TO THE ADDRESS STATED IN SUCH DISSENTER'S PAYMENT DEMAND, OR IF NO SUCH ADDRESS IS STATED IN THE PAYMENT DEMAND, AT THE ADDRESS SHOWN ON THE CORPORATION'S CURRENT RECORD OF SHAREHOLDERS FOR THE RECORD SHAREHOLDER HOLDING THE DISSENTER'S SHARES, OR AS PROVIDED BY LAW.

(4) THE JURISDICTION OF THE COURT IN WHICH THE PROCEEDING IS COMMENCED UNDER SUBSECTION (2) OF THIS SECTION IS PLENARY AND EXCLUSIVE. THE COURT MAY APPOINT ONE OR MORE PERSONS AS APPRAISERS TO RECEIVE EVIDENCE AND RECOMMEND A DECISION ON THE QUESTION OF FAIR VALUE. THE APPRAISERS HAVE THE POWERS DESCRIBED IN THE ORDER APPOINTING THEM, OR IN ANY AMENDMENT TO SUCH ORDER. THE PARTIES TO THE PROCEEDING ARE ENTITLED TO THE SAME DISCOVERY RIGHTS AS PARTIES IN OTHER CIVIL PROCEEDINGS.

(5) EACH DISSENTER MADE A PARTY TO THE PROCEEDING COMMENCED UNDER SUBSECTION (2) OF THIS SECTION IS ENTITLED TO JUDGMENT FOR THE AMOUNT, IF ANY, BY WHICH THE COURT FINDS THE FAIR VALUE OF THE DISSENTER'S SHARES, PLUS INTEREST, EXCEEDS THE AMOUNT PAID BY THE CORPORATION, OR FOR THE FAIR

VALUE, PLUS INTEREST, OF THE DISSENTER'S SHARES FOR WHICH THE CORPORATION ELECTED TO WITHHOLD PAYMENT UNDER SECTION 7-113-208.

**7-113-302. Court costs and counsel fees.** (1) THE COURT IN AN APPRAISAL PROCEEDING COMMENCED UNDER SECTION 7-113-301 SHALL DETERMINE ALL COSTS OF THE PROCEEDING, INCLUDING THE REASONABLE COMPENSATION AND EXPENSES OF APPRAISERS APPOINTED BY THE COURT. THE COURT SHALL ASSESS THE COSTS AGAINST THE CORPORATION; EXCEPT THAT THE COURT MAY ASSESS COSTS AGAINST ALL OR SOME OF THE DISSENTERS, IN AMOUNTS THE COURT FINDS EQUITABLE, TO THE EXTENT THE COURT FINDS THE DISSENTERS ACTED ARBITRARILY, VEXATIOUSLY, OR NOT IN GOOD FAITH IN DEMANDING PAYMENT UNDER SECTION 7-113-209.

(2) THE COURT MAY ALSO ASSESS THE FEES AND EXPENSES OF COUNSEL AND EXPERTS FOR THE RESPECTIVE PARTIES, IN AMOUNTS THE COURT FINDS EQUITABLE:

(a) AGAINST THE CORPORATION AND IN FAVOR OF ANY DISSENTERS IF THE COURT FINDS THE CORPORATION DID NOT SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF PART 2 OF THIS ARTICLE; OR

(b) AGAINST EITHER THE CORPORATION OR ONE OR MORE DISSENTERS, IN FAVOR OF ANY OTHER PARTY, IF THE COURT FINDS THAT THE PARTY AGAINST WHOM THE FEES AND EXPENSES ARE ASSESSED ACTED ARBITRARILY, VEXATIOUSLY, OR NOT IN GOOD FAITH WITH RESPECT TO THE RIGHTS PROVIDED BY THIS ARTICLE.

(3) IF THE COURT FINDS THAT THE SERVICES OF COUNSEL FOR ANY DISSENTER WERE OF SUBSTANTIAL BENEFIT TO OTHER DISSENTERS SIMILARLY SITUATED, AND THAT THE FEES FOR THOSE SERVICES SHOULD NOT BE ASSESSED AGAINST THE CORPORATION, THE COURT MAY AWARD TO SAID COUNSEL REASONABLE FEES TO BE PAID OUT OF THE AMOUNTS AWARDED TO THE DISSENTERS WHO WERE BENEFITTED.

## ARTICLE 114 Dissolution

### PART 1 VOLUNTARY DISSOLUTION

**7-114-101. Authorization of dissolution before issuance of shares.** IF A CORPORATION HAS NOT YET ISSUED SHARES, A MAJORITY OF ITS DIRECTORS OR, IF NO DIRECTORS HAVE BEEN ELECTED, A MAJORITY OF ITS INCORPORATORS MAY AUTHORIZE THE DISSOLUTION OF THE CORPORATION.

**7-114-102. Authorization of dissolution after issuance of shares.** (1) AFTER SHARES HAVE BEEN ISSUED, DISSOLUTION OF A CORPORATION MAY BE AUTHORIZED IN THE MANNER PROVIDED IN SUBSECTION (2) OF THIS SECTION.

(2) FOR A PROPOSAL TO DISSOLVE THE CORPORATION TO BE AUTHORIZED:

(a) THE BOARD OF DIRECTORS SHALL ADOPT THE PROPOSAL TO DISSOLVE;

(b) THE BOARD OF DIRECTORS SHALL RECOMMEND THE PROPOSAL TO DISSOLVE TO THE SHAREHOLDERS UNLESS THE BOARD OF DIRECTORS DETERMINES THAT, BECAUSE

OF CONFLICT OF INTEREST OR OTHER SPECIAL CIRCUMSTANCES, IT SHOULD MAKE NO RECOMMENDATION AND COMMUNICATES THE BASIS FOR ITS DETERMINATION TO THE SHAREHOLDERS; AND

(c) THE SHAREHOLDERS ENTITLED TO VOTE ON THE PROPOSAL TO DISSOLVE SHALL APPROVE THE PROPOSAL TO DISSOLVE AS PROVIDED IN SUBSECTION (5) OF THIS SECTION.

(3) THE BOARD OF DIRECTORS MAY CONDITION THE EFFECTIVENESS OF THE DISSOLUTION ON ANY BASIS.

(4) THE CORPORATION SHALL GIVE NOTICE, IN ACCORDANCE WITH SECTION 7-107-105, TO EACH SHAREHOLDER ENTITLED TO VOTE ON THE PROPOSAL OF THE SHAREHOLDERS' MEETING AT WHICH THE PROPOSAL TO DISSOLVE WILL BE VOTED UPON. THE NOTICE SHALL STATE THAT THE PURPOSE, OR ONE OF THE PURPOSES, OF THE MEETING IS TO CONSIDER THE PROPOSAL TO DISSOLVE THE CORPORATION, AND THE NOTICE SHALL CONTAIN OR BE ACCOMPANIED BY A COPY OF THE PROPOSAL OR A SUMMARY THEREOF.

(5) UNLESS ARTICLES 101 TO 117 OF THIS TITLE (INCLUDING THE PROVISIONS OF SECTION 7-117-101 (10)), THE ARTICLES OF INCORPORATION, BYLAWS ADOPTED BY THE SHAREHOLDERS, OR THE BOARD OF DIRECTORS ACTING PURSUANT TO SUBSECTION (3) OF THIS SECTION REQUIRE A GREATER VOTE, THE PROPOSAL TO DISSOLVE SHALL BE APPROVED BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE PROPOSAL BY A MAJORITY OF ALL THE VOTES ENTITLED TO BE CAST ON THE PROPOSAL BY THAT VOTING GROUP.

**7-114-103. Articles of dissolution.** (1) AT ANY TIME AFTER DISSOLUTION IS AUTHORIZED, THE CORPORATION MAY DISSOLVE BY DELIVERING TO THE SECRETARY OF STATE FOR FILING ARTICLES OF DISSOLUTION SETTING FORTH:

(a) THE NAME OF THE CORPORATION;

(b) THE ADDRESS OF THE CORPORATION'S PRINCIPAL OFFICE OR, IF NONE IS TO BE MAINTAINED, A STATEMENT THAT THE CORPORATION WILL NOT MAINTAIN A PRINCIPAL OFFICE, AND, IF DIFFERENT FROM THE ADDRESS OF THE PRINCIPAL OFFICE OR IF NO PRINCIPAL OFFICE IS TO BE MAINTAINED, THE ADDRESS TO WHICH SERVICE OF PROCESS MAY BE MAILED PURSUANT TO SECTION 7-114-109;

(c) THE DATE DISSOLUTION WAS AUTHORIZED;

(d) IF DISSOLUTION WAS AUTHORIZED BY THE DIRECTORS OR THE INCORPORATORS PURSUANT TO SECTION 7-114-101, A STATEMENT TO THAT EFFECT;

(e) IF DISSOLUTION WAS APPROVED BY THE SHAREHOLDERS PURSUANT TO SECTION 7-114-102, A STATEMENT THAT THE NUMBER OF VOTES CAST FOR THE PROPOSAL TO DISSOLVE BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE PROPOSAL WAS SUFFICIENT FOR APPROVAL BY THAT VOTING GROUP; AND

(f) SUCH ADDITIONAL INFORMATION AS THE SECRETARY OF STATE DETERMINES IS NECESSARY OR APPROPRIATE.

(2) A CORPORATION IS DISSOLVED UPON THE EFFECTIVE DATE OF ITS ARTICLES OF DISSOLUTION.

(3) ON AND AFTER THE EFFECTIVE DATE OF THE DISSOLUTION, THE CORPORATE NAME OF A DISSOLVED CORPORATION SHALL INCLUDE THE WORDS "A DISSOLVED COLORADO CORPORATION" AND THE YEAR OF DISSOLUTION.

**7-114-104. Revocation of dissolution.** (1) A CORPORATION MAY REVOKE ITS DISSOLUTION WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THE DISSOLUTION.

(2) REVOCATION OF DISSOLUTION SHALL BE AUTHORIZED IN THE SAME MANNER AS THE DISSOLUTION WAS AUTHORIZED UNLESS, IN CASE OF AUTHORIZATION PURSUANT TO SECTION 7-114-102, THAT AUTHORIZATION PERMITTED REVOCATION BY ACTION OF THE BOARD OF DIRECTORS ALONE, IN WHICH EVENT THE BOARD OF DIRECTORS MAY REVOKE THE DISSOLUTION WITHOUT SHAREHOLDER ACTION.

(3) AFTER THE REVOCATION OF DISSOLUTION IS AUTHORIZED, THE CORPORATION MAY REVOKE THE DISSOLUTION BY DELIVERING TO THE SECRETARY OF STATE FOR FILING, WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF DISSOLUTION, ARTICLES OF REVOCATION OF DISSOLUTION, TOGETHER WITH A COPY OF ITS ARTICLES OF DISSOLUTION, THAT SET FORTH:

- (a) THE NAME OF THE CORPORATION;
- (b) THE EFFECTIVE DATE OF THE DISSOLUTION THAT WAS REVOKED;
- (c) THE DATE THAT THE REVOCATION OF DISSOLUTION WAS AUTHORIZED;

(d) IF PURSUANT TO SUBSECTION (2) OF THIS SECTION THE DIRECTORS OR THE INCORPORATORS REVOKED A DISSOLUTION AUTHORIZED UNDER SECTION 7-114-101, A STATEMENT THAT THE REVOCATION OF DISSOLUTION WAS AUTHORIZED BY THE DIRECTORS OR THE INCORPORATORS, AS THE CASE MAY BE;

(e) IF PURSUANT TO SUBSECTION (2) OF THIS SECTION THE DIRECTORS REVOKED A DISSOLUTION APPROVED BY THE SHAREHOLDERS, A STATEMENT THAT THE REVOCATION WAS PERMITTED BY ACTION BY THE DIRECTORS PURSUANT TO THAT APPROVAL; AND

(f) IF THE REVOCATION OF DISSOLUTION WAS APPROVED PURSUANT TO SUBSECTION (2) OF THIS SECTION BY THE SHAREHOLDERS, A STATEMENT THAT THE NUMBER OF VOTES CAST FOR REVOCATION OF DISSOLUTION BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE PROPOSAL TO DISSOLVE WAS SUFFICIENT FOR APPROVAL BY THAT VOTING GROUP.

(4) REVOCATION OF DISSOLUTION IS EFFECTIVE AS PROVIDED IN SECTION 7-101-204 (1) (a), AND NO DELAYED EFFECTIVE DATE MAY BE SPECIFIED PURSUANT TO SECTION 7-101-204 (2).

(5) WHEN THE REVOCATION OF DISSOLUTION IS EFFECTIVE, IT RELATES BACK TO AND TAKES EFFECT AS OF THE EFFECTIVE DATE OF THE DISSOLUTION, AND THE



CORPORATION MAY CARRY ON ITS BUSINESS AND USE ITS CORPORATE NAME AS IF DISSOLUTION HAD NEVER OCCURRED.

**7-114-105. Effect of dissolution.** (1) A DISSOLVED CORPORATION CONTINUES ITS CORPORATE EXISTENCE BUT MAY NOT CARRY ON ANY BUSINESS EXCEPT AS IS APPROPRIATE TO WIND UP AND LIQUIDATE ITS BUSINESS AND AFFAIRS, INCLUDING:

- (a) COLLECTING ITS ASSETS;
- (b) DISPOSING OF ITS PROPERTIES THAT WILL NOT BE DISTRIBUTED IN KIND TO ITS SHAREHOLDERS;
- (c) DISCHARGING OR MAKING PROVISION FOR DISCHARGING ITS LIABILITIES;
- (d) DISTRIBUTING ITS REMAINING PROPERTY AMONG ITS SHAREHOLDERS ACCORDING TO THEIR INTERESTS; AND
- (e) DOING EVERY OTHER ACT NECESSARY TO WIND UP AND LIQUIDATE ITS BUSINESS AND AFFAIRS.

(2) DISSOLUTION OF A CORPORATION DOES NOT:

- (a) TRANSFER TITLE TO THE CORPORATION'S PROPERTY;
- (b) PREVENT TRANSFER OF ITS SHARES OR SECURITIES, ALTHOUGH THE AUTHORIZATION TO DISSOLVE MAY PROVIDE FOR CLOSING THE CORPORATION'S SHARE TRANSFER RECORDS;
- (c) SUBJECT ITS DIRECTORS OR OFFICERS TO STANDARDS OF CONDUCT DIFFERENT FROM THOSE PRESCRIBED IN ARTICLE 108 OF THIS TITLE;
- (d) CHANGE QUORUM OR VOTING REQUIREMENTS FOR ITS BOARD OF DIRECTORS OR SHAREHOLDERS; CHANGE PROVISIONS FOR SELECTION, RESIGNATION, OR REMOVAL OF ITS DIRECTORS OR OFFICERS OR BOTH; OR CHANGE PROVISIONS FOR AMENDING ITS BYLAWS OR ITS ARTICLES OF INCORPORATION;
- (e) PREVENT COMMENCEMENT OF A PROCEEDING BY OR AGAINST THE CORPORATION IN ITS CORPORATE NAME; OR
- (f) ABATE OR SUSPEND A PROCEEDING PENDING BY OR AGAINST THE CORPORATION ON THE EFFECTIVE DATE OF DISSOLUTION.

**7-114-106. Disposition of known claims by notification.** (1) A DISSOLVED CORPORATION SHALL DISPOSE OF THE KNOWN CLAIMS AGAINST IT BY FOLLOWING THE PROCEDURES DESCRIBED IN THIS SECTION.

(2) A DISSOLVED CORPORATION SHALL GIVE WRITTEN NOTICE OF THE DISSOLUTION TO KNOWN CLAIMANTS WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THE DISSOLUTION. THE NOTICE SHALL:

- (a) DESCRIBE THE INFORMATION THAT MUST BE INCLUDED IN A CLAIM;

(b) PROVIDE AN ADDRESS TO WHICH WRITTEN NOTICE OF ANY CLAIM MUST BE GIVEN TO THE CORPORATION;

(c) STATE THE DEADLINE, WHICH MAY NOT BE FEWER THAN TWO YEARS AFTER THE GIVING OF THE NOTICE OF DISSOLUTION, BY WHICH AN ACTION TO ENFORCE THE CLAIM MUST BE COMMENCED; AND

(d) STATE THAT, UNLESS SOONER BARRED BY ANY OTHER STATUTE LIMITING ACTIONS, THE CLAIM WILL BE BARRED IF AN ACTION TO ENFORCE THE CLAIM IS NOT COMMENCED BY THE DEADLINE.

(3) UNLESS SOONER BARRED BY ANY OTHER STATUTE LIMITING ACTIONS, A CLAIM AGAINST THE DISSOLVED CORPORATION IS BARRED IF A CLAIMANT RECEIVED THE NOTICE OF DISSOLUTION GIVEN PURSUANT TO SUBSECTION (2) AND AN ACTION TO ENFORCE THE CLAIM IS NOT COMMENCED BY THE DEADLINE STATED IN THE NOTICE OF DISSOLUTION.

(4) THE FAILURE OF THE DISSOLVED CORPORATION TO GIVE NOTICE TO ANY KNOWN CLAIMANT PURSUANT TO SUBSECTION (2) SHALL NOT AFFECT THE DISPOSITION UNDER THIS SECTION OF ANY CLAIM HELD BY ANY OTHER KNOWN CLAIMANT.

(5) FOR PURPOSES OF THIS SECTION, "CLAIM" DOES NOT INCLUDE A CONTINGENT LIABILITY OR A CLAIM BASED ON AN EVENT OCCURRING AFTER THE EFFECTIVE DATE OF DISSOLUTION. FOR PURPOSES OF THIS SECTION, AN ACTION TO ENFORCE A CLAIM INCLUDES AN ARBITRATION UNDER ANY AGREEMENT FOR BINDING ARBITRATION BETWEEN THE DISSOLVED CORPORATION AND THE CLAIMANT AND INCLUDES A CIVIL ACTION.

**7-114-107. Disposition of claims by publication.** (1) A DISSOLVED CORPORATION MAY PUBLISH NOTICE OF ITS DISSOLUTION AND REQUEST THAT PERSONS WITH CLAIMS AGAINST THE CORPORATION PRESENT THEM IN ACCORDANCE WITH THE NOTICE.

(2) THE NOTICE CONTEMPLATED IN SUBSECTION (1) SHALL:

(a) BE PUBLISHED ONE TIME IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE DISSOLVED CORPORATION'S PRINCIPAL OFFICE OR, IF IT HAS NO PRINCIPAL OFFICE IN THIS STATE, WHERE ITS REGISTERED OFFICE IS OR WAS LAST LOCATED;

(b) DESCRIBE THE INFORMATION THAT MUST BE INCLUDED IN A CLAIM AND PROVIDE AN ADDRESS AT WHICH ANY CLAIM MUST BE GIVEN TO THE CORPORATION; AND

(c) STATE THAT, UNLESS SOONER BARRED BY ANY OTHER STATUTE LIMITING ACTIONS, THE CLAIM WILL BE BARRED IF AN ACTION TO ENFORCE THE CLAIM IS NOT COMMENCED WITHIN FIVE YEARS AFTER THE PUBLICATION OF THE NOTICE OR WITHIN FOUR MONTHS AFTER THE CLAIM ARISES, WHICHEVER IS LATER.

(3) IF THE DISSOLVED CORPORATION PUBLISHES A NOTICE IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION, THEN, UNLESS SOONER BARRED UNDER SECTION

7-114-106 OR UNDER ANY OTHER STATUTE LIMITING ACTIONS, THE CLAIM OF ANY CLAIMANT AGAINST THE DISSOLVED CORPORATION IS BARRED UNLESS THE CLAIMANT COMMENCES AN ACTION TO ENFORCE THE CLAIM WITHIN FIVE YEARS AFTER THE PUBLICATION DATE OF THE NOTICE OR WITHIN FOUR MONTHS AFTER THE CLAIM ARISES, WHICHEVER IS LATER.

(4) FOR PURPOSES OF THIS SECTION AND EXCEPT WHERE REQUIRED TO BE DISPOSED OF UNDER SECTION 7-114-106, "CLAIM" MEANS ANY CLAIM, EXCLUDING CLAIMS OF THIS STATE, WHETHER KNOWN, DUE OR TO BECOME DUE, ABSOLUTE OR CONTINGENT, LIQUIDATED OR UNLIQUIDATED, FOUNDED ON CONTRACT, TORT, OR OTHER LEGAL BASIS, OR OTHERWISE. FOR PURPOSES OF THIS SECTION, AN ACTION TO ENFORCE A CLAIM INCLUDES AN ARBITRATION UNDER ANY AGREEMENT FOR BINDING ARBITRATION BETWEEN THE DISSOLVED CORPORATION AND THE CLAIMANT AND INCLUDES A CIVIL ACTION.

**7-114-108. Enforcement of claims against dissolved corporation.** (1) A CLAIM MAY BE ENFORCED UNDER SECTION 7-114-106 OR 7-114-107:

(a) AGAINST THE DISSOLVED CORPORATION TO THE EXTENT OF ITS UNDISTRIBUTED ASSETS; AND

(b) IF ASSETS HAVE BEEN DISTRIBUTED IN LIQUIDATION, AGAINST A SHAREHOLDER OF THE DISSOLVED CORPORATION; EXCEPT THAT A SHAREHOLDER'S TOTAL LIABILITY FOR ALL CLAIMS UNDER THIS SECTION MAY NOT EXCEED THE TOTAL VALUE OF ASSETS DISTRIBUTED TO THE SHAREHOLDER, AS SUCH VALUE IS DETERMINED AT THE TIME OF DISTRIBUTION. ANY SHAREHOLDER REQUIRED TO RETURN ANY PORTION OF THE VALUE OF ASSETS RECEIVED BY THE SHAREHOLDER IN LIQUIDATION SHALL BE ENTITLED TO CONTRIBUTION FROM ALL OTHER SHAREHOLDERS. EACH SUCH CONTRIBUTION SHALL BE IN ACCORDANCE WITH THE CONTRIBUTING SHAREHOLDER'S RIGHTS AND INTERESTS AND SHALL NOT EXCEED THE VALUE OF THE ASSETS RECEIVED BY THE CONTRIBUTING SHAREHOLDER IN LIQUIDATION.

**7-114-109. Service on dissolved corporation.** (1) A DISSOLVED CORPORATION SHALL EITHER:

(a) MAINTAIN A REGISTERED AGENT IN THIS STATE TO ACCEPT SERVICE OF PROCESS ON ITS BEHALF; OR

(b) BE DEEMED TO HAVE AUTHORIZED SERVICE OF PROCESS ON IT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESS OF ITS PRINCIPAL OFFICE, IF ANY, AS SET FORTH IN ITS ARTICLES OF DISSOLUTION OR AS LAST CHANGED BY NOTICE DELIVERED TO THE SECRETARY OF STATE FOR FILING OR TO THE ADDRESS FOR SERVICE OF PROCESS THAT IS STATED IN ITS ARTICLES OF DISSOLUTION OR AS LAST CHANGED BY NOTICE DELIVERED TO THE SECRETARY OF STATE FOR FILING.

(2) SERVICE EFFECTED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION IS PERFECTED AT THE EARLIEST OF:

(a) THE DATE THE DISSOLVED CORPORATION RECEIVES THE PROCESS, NOTICE, OR DEMAND;

(b) THE DATE SHOWN ON THE RETURN RECEIPT, IF SIGNED ON BEHALF OF THE DISSOLVED CORPORATION; OR

(c) FIVE DAYS AFTER MAILING.

(3) SUBSECTION (1) OF THIS SECTION DOES NOT PRESCRIBE THE ONLY MEANS, OR NECESSARILY THE REQUIRED MEANS, OF SERVING A DISSOLVED CORPORATION.

## PART 2 ADMINISTRATIVE DISSOLUTION

**7-114-201. Grounds for administrative dissolution.** (1) THE SECRETARY OF STATE MAY COMMENCE A PROCEEDING UNDER SECTION 7-114-202 FOR ADMINISTRATIVE DISSOLUTION OF A CORPORATION IF:

(a) THE CORPORATION DOES NOT PAY ANY TAXES, FEES, OR PENALTIES IMPOSED BY ARTICLES 101 TO 117 OF THIS TITLE WHEN THEY ARE DUE;

(b) THE CORPORATION DOES NOT DELIVER ITS CORPORATE REPORT TO THE SECRETARY OF STATE WHEN IT IS DUE;

(c) THE CORPORATION IS WITHOUT A REGISTERED AGENT OR REGISTERED OFFICE IN THIS STATE;

(d) THE CORPORATION DOES NOT GIVE NOTICE TO THE SECRETARY OF STATE THAT ITS REGISTERED AGENT OR REGISTERED OFFICE HAS BEEN CHANGED, THAT ITS REGISTERED AGENT HAS RESIGNED, OR THAT ITS REGISTERED OFFICE HAS BEEN DISCONTINUED; OR

(e) THE CORPORATION'S PERIOD OF DURATION STATED IN ITS ARTICLES OF INCORPORATION EXPIRES.

**7-114-202. Procedure for and effect of administrative dissolution.** (1) IF THE SECRETARY OF STATE DETERMINES THAT ONE OR MORE GROUNDS EXIST UNDER SECTION 7-114-201 FOR DISSOLVING A CORPORATION, THE SECRETARY OF STATE SHALL SERVE WRITTEN NOTICE OF THE DETERMINATION, STATING SUCH GROUND OR GROUNDS, ON THE CORPORATION IN THE MANNER PROVIDED IN SECTION 7-105-104.

(2) IF THE CORPORATION DOES NOT CORRECT EACH GROUND FOR DISSOLUTION, OR DEMONSTRATE TO THE REASONABLE SATISFACTION OF THE SECRETARY OF STATE THAT EACH GROUND DETERMINED BY THE SECRETARY OF STATE DOES NOT EXIST, WITHIN SIXTY DAYS AFTER SERVICE OF THE NOTICE CONTEMPLATED IN SUBSECTION (1) OF THIS SECTION, THE SECRETARY OF STATE MAY ADMINISTRATIVELY DISSOLVE THE CORPORATION. THE SECRETARY OF STATE SHALL SERVE WRITTEN NOTICE OF THE ADMINISTRATIVE DISSOLUTION, STATING THE EFFECTIVE DATE THEREOF, ON THE DISSOLVED CORPORATION IN THE MANNER PROVIDED IN SECTION 7-105-104 AND SHALL DELIVER A COPY OF SUCH NOTICE TO THE LAST REGISTERED AGENT OF THE DISSOLVED CORPORATION.

(3) A CORPORATION ADMINISTRATIVELY DISSOLVED CONTINUES ITS CORPORATE EXISTENCE BUT MAY NOT CARRY ON ANY BUSINESS EXCEPT AS IS APPROPRIATE TO

WIND UP AND LIQUIDATE ITS BUSINESS AND AFFAIRS UNDER SECTION 7-114-105 AND TO GIVE NOTICE TO CLAIMANTS IN THE MANNER PROVIDED IN SECTIONS 7-114-106 AND 7-114-107. IF THE CORPORATION HAS NOT BEEN REINSTATED PURSUANT TO SECTION 7-114-203 WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THE ADMINISTRATIVE DISSOLUTION UNDER SUBSECTION (2) OF THIS SECTION, THE CORPORATE NAME SHALL INCLUDE THE WORDS "A DISSOLVED COLORADO CORPORATION" AND THE YEAR OF DISSOLUTION.

(4) THE ADMINISTRATIVE DISSOLUTION OF A CORPORATION TERMINATES THE AUTHORITY OF ITS REGISTERED AGENT.

(5) UPON THE ADMINISTRATIVE DISSOLUTION OF A CORPORATION, THE SECRETARY OF STATE SHALL BE THE DISSOLVED CORPORATION'S AGENT FOR SERVICE OF PROCESS. SERVICE OF PROCESS ON THE SECRETARY OF STATE UNDER THIS SUBSECTION (5) IS SERVICE ON THE DISSOLVED CORPORATION. UPON RECEIPT OF PROCESS, THE SECRETARY OF STATE SHALL DELIVER A COPY OF THE PROCESS TO THE DISSOLVED CORPORATION AT ITS PRINCIPAL OFFICE.

**7-114-203. Reinstatement following administrative dissolution.** (1) A CORPORATION ADMINISTRATIVELY DISSOLVED UNDER SECTION 7-114-202 MAY APPLY TO THE SECRETARY OF STATE FOR REINSTATEMENT WITHIN TWO YEARS AFTER THE EFFECTIVE DATE OF DISSOLUTION BY DELIVERING TO THE SECRETARY OF STATE FOR FILING AN APPLICATION FOR REINSTATEMENT THAT STATES:

(a) THE EFFECTIVE DATE OF ITS ADMINISTRATIVE DISSOLUTION AND ITS CORPORATE NAME AT THAT DATE;

(b) THAT THE GROUND OR GROUNDS FOR DISSOLUTION EITHER DID NOT EXIST OR HAVE BEEN ELIMINATED;

(c) THE CORPORATE NAME UNDER WHICH THE CORPORATION IS BEING REINSTATED AND THAT SUCH NAME SATISFIES THE REQUIREMENTS OF SECTION 7-104-101;

(d) THAT ALL TAXES, FEES, OR PENALTIES IMPOSED BY ARTICLES 101 TO 117 OF THIS TITLE HAVE BEEN PAID;

(e) THE ADDRESS OF ITS REGISTERED OFFICE IN THIS STATE AND THE NAME OF ITS REGISTERED AGENT AT THAT OFFICE; AND

(f) SUCH ADDITIONAL INFORMATION AS THE SECRETARY OF STATE DETERMINES IS NECESSARY OR APPROPRIATE.

(2) THE CORPORATION SHALL INCLUDE IN THE APPLICATION FOR REINSTATEMENT, OR IN AN ACCOMPANYING DOCUMENT, THE WRITTEN CONSENT TO APPOINTMENT BY THE DESIGNATED REGISTERED AGENT.

(3) IF THE SECRETARY OF STATE DETERMINES THAT THE APPLICATION FOR REINSTATEMENT CONTAINS THE INFORMATION REQUIRED BY SUBSECTIONS (1) AND (2) OF THIS SECTION AND THAT THE INFORMATION IS CORRECT, THE SECRETARY OF STATE SHALL REVOKE THE ADMINISTRATIVE DISSOLUTION. THE SECRETARY OF STATE SHALL SERVE WRITTEN NOTICE OF THE REVOCATION, STATING THE EFFECTIVE DATE THEREOF,

ON THE CORPORATION IN THE MANNER PROVIDED IN SECTION 7-105-104.

(4) WHEN THE REINSTATEMENT IS EFFECTIVE, IT RELATES BACK TO AND TAKES EFFECT AS OF THE EFFECTIVE DATE OF THE ADMINISTRATIVE DISSOLUTION, AND THE CORPORATION MAY CARRY ON ITS BUSINESS, UNDER THE NAME STATED PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION, AS IF THE ADMINISTRATIVE DISSOLUTION HAD NEVER OCCURRED.

**7-114-204. Appeal from denial of reinstatement.** (1) IF THE SECRETARY OF STATE DENIES A CORPORATION'S APPLICATION FOR REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION, THE SECRETARY OF STATE SHALL SERVE ON THE CORPORATION, IN THE MANNER PROVIDED IN SECTION 7-105-104, WRITTEN NOTICE SETTING FORTH THE REASON OR REASONS FOR SUCH DENIAL.

(2) THE CORPORATION MAY APPEAL THE DENIAL OF REINSTATEMENT TO THE DISTRICT COURT OF THE COUNTY WHERE THE REGISTERED OR PRINCIPAL OFFICE OF THE CORPORATION IS LOCATED WITHIN THIRTY DAYS AFTER SERVICE OF THE NOTICE OF DENIAL IS PERFECTED UNDER SECTION 7-105-104, BY PETITIONING THE COURT TO SET ASIDE THE DISSOLUTION AND ATTACHING TO THE PETITION COPIES OF THE SECRETARY OF STATE'S NOTICE OF DISSOLUTION, THE CORPORATION'S APPLICATION FOR REINSTATEMENT, AND THE SECRETARY OF STATE'S NOTICE OF DENIAL.

(3) THE COURT MAY SUMMARILY ORDER THE SECRETARY OF STATE TO REINSTATE THE DISSOLVED CORPORATION OR MAY TAKE ANY OTHER ACTION THE COURT CONSIDERS APPROPRIATE.

(4) THE COURT'S ORDER OR DECISION MAY BE APPEALED AS IN OTHER CIVIL PROCEEDINGS.

### PART 3 JUDICIAL DISSOLUTION

**7-114-301. Grounds for judicial dissolution.** (1) A CORPORATION MAY BE DISSOLVED IN A PROCEEDING BY THE ATTORNEY GENERAL IF IT IS ESTABLISHED THAT:

(a) THE CORPORATION OBTAINED ITS ARTICLES OF INCORPORATION THROUGH FRAUD; OR

(b) THE CORPORATION HAS CONTINUED TO EXCEED OR ABUSE THE AUTHORITY CONFERRED UPON IT BY LAW.

(2) A CORPORATION MAY BE DISSOLVED IN A PROCEEDING BY A SHAREHOLDER IF IT IS ESTABLISHED THAT:

(a) THE DIRECTORS ARE DEADLOCKED IN THE MANAGEMENT OF THE CORPORATE AFFAIRS, THE SHAREHOLDERS ARE UNABLE TO BREAK THE DEADLOCK, AND IRREPARABLE INJURY TO THE CORPORATION IS THREATENED OR BEING SUFFERED, OR THE BUSINESS AND AFFAIRS OF THE CORPORATION CAN NO LONGER BE CONDUCTED TO THE ADVANTAGE OF THE SHAREHOLDERS GENERALLY, BECAUSE OF THE DEADLOCK;

(b) THE DIRECTORS OR THOSE IN CONTROL OF THE CORPORATION HAVE ACTED, ARE

ACTING, OR WILL ACT IN A MANNER THAT IS ILLEGAL, OPPRESSIVE, OR FRAUDULENT;

(c) THE SHAREHOLDERS ARE DEADLOCKED IN VOTING POWER AND HAVE FAILED, FOR A PERIOD THAT INCLUDES AT LEAST TWO CONSECUTIVE ANNUAL MEETING DATES, TO ELECT SUCCESSORS TO DIRECTORS WHOSE TERMS HAVE EXPIRED OR WOULD HAVE EXPIRED UPON THE ELECTION OF THEIR SUCCESSORS; OR

(d) THE CORPORATE ASSETS ARE BEING MISAPPLIED OR WASTED.

(3) A CORPORATION MAY BE DISSOLVED IN A PROCEEDING BY A CREDITOR IF IT IS ESTABLISHED THAT:

(a) THE CREDITOR'S CLAIM HAS BEEN REDUCED TO JUDGMENT, THE EXECUTION ON THE JUDGMENT HAS BEEN RETURNED UNSATISFIED, AND THE CORPORATION IS INSOLVENT; OR

(b) THE CORPORATION IS INSOLVENT AND THE CORPORATION HAS ADMITTED IN WRITING THAT THE CREDITOR'S CLAIM IS DUE AND OWING.

(4) (a) IF A CORPORATION HAS BEEN DISSOLVED BY VOLUNTARY OR ADMINISTRATIVE ACTION TAKEN UNDER PART 1 OR 2 OF THIS ARTICLE:

(I) THE CORPORATION MAY BRING A PROCEEDING TO WIND UP AND LIQUIDATE ITS BUSINESS AND AFFAIRS UNDER JUDICIAL SUPERVISION IN ACCORDANCE WITH SECTION 7-114-105; AND

(II) THE ATTORNEY GENERAL, A SHAREHOLDER, OR A CREDITOR, AS THE CASE MAY BE, MAY BRING A PROCEEDING TO WIND UP AND LIQUIDATE THE BUSINESS AND AFFAIRS OF THE CORPORATION UNDER JUDICIAL SUPERVISION IN ACCORDANCE WITH SECTION 7-114-105, UPON ESTABLISHING THE GROUNDS SET FORTH FOR SUCH PERSON, RESPECTIVELY, IN SUBSECTIONS (1) TO (3) OF THIS SECTION.

(b) AS USED IN SECTIONS 7-114-302 TO 7-114-304, A "JUDICIAL PROCEEDING TO DISSOLVE THE CORPORATION" INCLUDES A PROCEEDING BROUGHT UNDER THIS SUBSECTION (4), AND A "DECREE OF DISSOLUTION" INCLUDES AN ORDER OF COURT ENTERED IN A PROCEEDING UNDER THIS SUBSECTION (4) WHICH DIRECTS THAT THE BUSINESS AND AFFAIRS OF A CORPORATION SHALL BE WOUND UP AND LIQUIDATED UNDER JUDICIAL SUPERVISION.

**7-114-302. Procedure for judicial dissolution.** (1) A PROCEEDING BY THE ATTORNEY GENERAL TO DISSOLVE A CORPORATION SHALL BE BROUGHT IN THE DISTRICT COURT OF THE COUNTY IN THIS STATE IN WHICH THE PRINCIPAL OFFICE OR REGISTERED OFFICE OF THE CORPORATION IS SITUATED. A PROCEEDING BROUGHT BY ANY OTHER PARTY NAMED IN SECTION 7-114-301 SHALL BE BROUGHT IN THE DISTRICT COURT OF THE COUNTY IN THIS STATE WHERE THE CORPORATION'S PRINCIPAL OFFICE IS LOCATED OR, IF IT HAS NO PRINCIPAL OFFICE IN THIS STATE, IN THE DISTRICT COURT OF THE COUNTY WHERE ITS REGISTERED OFFICE IS OR WAS LAST LOCATED.

(2) IT IS NOT NECESSARY TO MAKE SHAREHOLDERS PARTIES TO A PROCEEDING TO DISSOLVE A CORPORATION UNLESS RELIEF IS SOUGHT AGAINST THEM INDIVIDUALLY.

(3) A COURT IN A PROCEEDING BROUGHT TO DISSOLVE A CORPORATION MAY ISSUE INJUNCTIONS, APPOINT A RECEIVER OR CUSTODIAN PENDENTE LITE WITH ALL POWERS AND DUTIES THE COURT DIRECTS, TAKE OTHER ACTION REQUIRED TO PRESERVE THE CORPORATE ASSETS WHEREVER LOCATED, AND CARRY ON THE BUSINESS OF THE CORPORATION UNTIL A FULL HEARING CAN BE HELD.

**7-114-303. Receivership or custodianship.** (1) A COURT IN A JUDICIAL PROCEEDING BROUGHT TO DISSOLVE A CORPORATION MAY APPOINT ONE OR MORE RECEIVERS TO WIND UP AND LIQUIDATE, OR ONE OR MORE CUSTODIANS TO MANAGE, THE BUSINESS AND AFFAIRS OF THE CORPORATION. THE COURT SHALL HOLD A HEARING, AFTER GIVING NOTICE TO ALL PARTIES TO THE PROCEEDING AND ANY INTERESTED PERSONS DESIGNATED BY THE COURT, BEFORE APPOINTING A RECEIVER OR CUSTODIAN. THE COURT APPOINTING A RECEIVER OR CUSTODIAN HAS EXCLUSIVE JURISDICTION OVER THE CORPORATION AND ALL OF ITS PROPERTY, WHEREVER LOCATED.

(2) THE COURT MAY APPOINT AN INDIVIDUAL OR A DOMESTIC OR FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AS A RECEIVER OR CUSTODIAN. THE COURT MAY REQUIRE THE RECEIVER OR CUSTODIAN TO POST BOND, WITH OR WITHOUT SURETIES, IN AN AMOUNT THE COURT DIRECTS.

(3) THE COURT SHALL DESCRIBE THE POWERS AND DUTIES OF THE RECEIVER OR CUSTODIAN IN ITS APPOINTING ORDER, WHICH MAY BE AMENDED FROM TIME TO TIME. AMONG OTHER POWERS:

(a) THE RECEIVER:

(I) MAY DISPOSE OF ALL OR ANY PART OF THE PROPERTY OF THE CORPORATION WHEREVER LOCATED, AT A PUBLIC OR PRIVATE SALE, IF AUTHORIZED BY THE COURT; AND

(II) MAY SUE AND DEFEND IN THE RECEIVER'S OWN NAME AS RECEIVER OF THE CORPORATION IN ALL COURTS; OR

(b) THE CUSTODIAN MAY EXERCISE ALL OF THE POWERS OF THE CORPORATION, THROUGH OR IN PLACE OF ITS BOARD OF DIRECTORS OR OFFICERS, TO THE EXTENT NECESSARY TO MANAGE THE AFFAIRS OF THE CORPORATION IN THE BEST INTERESTS OF ITS SHAREHOLDERS AND CREDITORS.

(4) THE COURT DURING A RECEIVERSHIP MAY REDESIGNATE THE RECEIVER A CUSTODIAN, AND DURING A CUSTODIANSHIP MAY REDESIGNATE THE CUSTODIAN A RECEIVER, IF DOING SO IS IN THE BEST INTERESTS OF THE CORPORATION AND ITS SHAREHOLDERS AND CREDITORS.

(5) THE COURT FROM TIME TO TIME DURING THE RECEIVERSHIP OR CUSTODIANSHIP MAY ORDER COMPENSATION PAID AND EXPENSE DISBURSEMENTS OR REIMBURSEMENTS MADE TO THE RECEIVER OR CUSTODIAN AND SUCH PERSON'S COUNSEL FROM THE ASSETS OF THE CORPORATION OR PROCEEDS FROM THE SALE OF THE ASSETS.

**7-114-304. Decree of dissolution.** (1) IF AFTER A HEARING THE COURT



DETERMINES THAT ONE OR MORE GROUNDS FOR JUDICIAL DISSOLUTION DESCRIBED IN SECTION 7-114-301 EXIST, IT MAY ENTER A DECREE DISSOLVING THE CORPORATION AND SPECIFYING THE EFFECTIVE DATE OF THE DISSOLUTION, AND THE CLERK OF THE COURT SHALL DELIVER A CERTIFIED COPY OF THE DECREE TO THE SECRETARY OF STATE, WHO SHALL FILE IT.

(2) AFTER ENTERING THE DECREE OF DISSOLUTION, THE COURT SHALL DIRECT THE WINDING UP AND LIQUIDATION OF THE CORPORATION'S BUSINESS AND AFFAIRS IN ACCORDANCE WITH SECTION 7-114-105 AND THE GIVING OF NOTICE TO THE CORPORATION'S REGISTERED AGENT, OR TO THE SECRETARY OF STATE IF IT HAS NO REGISTERED AGENT, AND TO CLAIMANTS IN ACCORDANCE WITH SECTIONS 7-114-106 AND 7-114-107. IN THE DECREE OF DISSOLUTION, OR OTHERWISE, THE COURT MAY DIRECT THAT THE CORPORATE NAME SHALL INCLUDE THE WORDS "A DISSOLVED COLORADO CORPORATION" AND THE YEAR OF DISSOLUTION.

(3) THE COURT'S ORDER OR DECISION MAY BE APPEALED AS IN OTHER CIVIL PROCEEDINGS.

#### PART 4 MISCELLANEOUS

**7-114-401. Deposit with state treasurer.** ASSETS OF A DISSOLVED CORPORATION THAT SHOULD BE TRANSFERRED TO A CREDITOR, CLAIMANT, OR SHAREHOLDER OF THE CORPORATION WHO CANNOT BE FOUND OR WHO IS NOT LEGALLY COMPETENT TO RECEIVE THEM SHALL BE REDUCED TO CASH AND DEPOSITED WITH THE STATE TREASURER AS PROPERTY PRESUMED TO BE ABANDONED UNDER THE PROVISIONS OF ARTICLE 13 OF TITLE 38, C.R.S.

### ARTICLE 115 Foreign Corporations

#### PART 1 AUTHORITY TO TRANSACT BUSINESS

**7-115-101. Authority to transact business required.** (1) A FOREIGN CORPORATION SHALL NOT TRANSACT BUSINESS IN THIS STATE UNTIL ITS APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS IS FILED BY THE SECRETARY OF STATE. THIS ARTICLE SHALL BE APPLICABLE TO FOREIGN CORPORATIONS THAT CONDUCT A BUSINESS GOVERNED BY OTHER STATUTES OF THIS STATE ONLY TO THE EXTENT THIS ARTICLE IS NOT INCONSISTENT WITH SUCH OTHER STATUTES.

(2) A FOREIGN CORPORATION SHALL NOT BE CONSIDERED TO BE TRANSACTING BUSINESS IN THIS STATE WITHIN THE MEANING OF SUBSECTION (1) OF THIS SECTION BY REASON OF CARRYING ON IN THIS STATE ANY ONE OR MORE OF THE FOLLOWING ACTIVITIES:

(a) MAINTAINING, DEFENDING, OR SETTling IN ITS OWN BEHALF ANY PROCEEDING OR DISPUTE;

(b) HOLDING MEETINGS OF ITS BOARD OF DIRECTORS OR SHAREHOLDERS OR CARRYING ON OTHER ACTIVITIES CONCERNING INTERNAL CORPORATE AFFAIRS;

(c) MAINTAINING BANK ACCOUNTS;

(d) MAINTAINING OFFICES OR AGENCIES FOR THE TRANSFER, EXCHANGE, AND REGISTRATION OF ITS OWN SECURITIES OR MAINTAINING TRUSTEES OR DEPOSITARIES WITH RESPECT TO THOSE SECURITIES;

(e) SELLING THROUGH INDEPENDENT CONTRACTORS;

(f) SOLICITING OR OBTAINING ORDERS, WHETHER BY MAIL OR THROUGH EMPLOYEES OR AGENTS OR OTHERWISE, IF THE ORDERS REQUIRE ACCEPTANCE OUTSIDE THIS STATE BEFORE THEY BECOME CONTRACTS;

(g) CREATING, AS BORROWER OR LENDER, OR ACQUIRING INDEBTEDNESS, MORTGAGES, OR OTHER SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY;

(h) SECURING OR COLLECTING DEBTS IN ITS OWN BEHALF OR ENFORCING MORTGAGES OR SECURITY INTERESTS IN PROPERTY SECURING SUCH DEBTS;

(i) OWNING, WITHOUT MORE, REAL OR PERSONAL PROPERTY;

(j) CONDUCTING AN ISOLATED TRANSACTION THAT IS COMPLETED WITHIN THIRTY DAYS AND THAT IS NOT ONE IN THE COURSE OF REPEATED TRANSACTIONS OF A LIKE NATURE;

(k) TRANSACTING BUSINESS IN INTERSTATE COMMERCE.

(3) THE LIST OF ACTIVITIES IN SUBSECTION (2) OF THIS SECTION IS NOT EXHAUSTIVE.

(4) NOTHING IN THIS SECTION SHALL LIMIT OR AFFECT THE RIGHT TO SUBJECT A FOREIGN CORPORATION WHICH DOES NOT, OR IS NOT REQUIRED TO, HAVE AUTHORITY TO TRANSACT BUSINESS IN THIS STATE TO THE JURISDICTION OF THE COURTS OF THIS STATE OR TO SERVE UPON ANY FOREIGN CORPORATION ANY PROCESS, NOTICE, OR DEMAND REQUIRED OR PERMITTED BY LAW TO BE SERVED UPON A CORPORATION PURSUANT TO SECTIONS 13-1-124 AND 13-1-125, C.R.S., OR ANY OTHER PROVISION OF LAW NOT IN ARTICLES 101 TO 117 OF THIS TITLE OR PURSUANT TO THE APPLICABLE RULES OF CIVIL PROCEDURE.

**7-115-102. Consequences of transacting business without authority.** (1) NO FOREIGN CORPORATION TRANSACTING BUSINESS IN THIS STATE WITHOUT AUTHORITY NOR ANYONE ON ITS BEHALF SHALL BE PERMITTED TO MAINTAIN A PROCEEDING IN ANY COURT IN THIS STATE UNTIL AN APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS IS FILED.

(2) A FOREIGN CORPORATION THAT TRANSACTS BUSINESS IN THIS STATE WITHOUT AUTHORITY SHALL BE LIABLE TO THIS STATE IN AN AMOUNT EQUAL TO ALL FEES IMPOSED BY ARTICLES 101 TO 117 OF THIS TITLE OR PRIOR LAW THAT WOULD HAVE BEEN PAID FOR ALL YEARS OR PORTIONS THEREOF DURING WHICH IT TRANSACTED BUSINESS IN THIS STATE WITHOUT AUTHORITY, PLUS ALL PENALTIES IMPOSED BY THIS STATE FOR FAILURE TO PAY SUCH FEES. NO APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS SHALL BE FILED UNTIL PAYMENT OF THE AMOUNTS DUE UNDER

THIS SUBSECTION (2) IS MADE.

(3) A FOREIGN CORPORATION THAT TRANSACTS BUSINESS IN THIS STATE WITHOUT AUTHORITY SHALL BE SUBJECT TO A CIVIL PENALTY, PAYABLE TO THIS STATE, NOT TO EXCEED FIVE THOUSAND DOLLARS. EACH OFFICER OF A FOREIGN CORPORATION WHO AUTHORIZES, DIRECTS, OR PARTICIPATES IN THE TRANSACTION OF BUSINESS IN THIS STATE WITHOUT AUTHORITY AND EACH AGENT OF A FOREIGN CORPORATION WHO TRANSACTS BUSINESS IN THIS STATE ON BEHALF OF A FOREIGN CORPORATION THAT DOES NOT HAVE SUCH AUTHORITY SHALL BE SUBJECT TO A CIVIL PENALTY, PAYABLE TO THIS STATE, NOT TO EXCEED ONE THOUSAND DOLLARS.

(4) THE AMOUNTS DUE TO THIS STATE UNDER THE PROVISIONS OF THIS SECTION, INCLUDING THE CIVIL PENALTIES SET FORTH IN SUBSECTION (3) OF THIS SECTION, MAY BE RECOVERED IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER. UPON A FINDING BY THE COURT THAT A FOREIGN CORPORATION OR ANY OF ITS OFFICERS OR AGENTS HAS TRANSACTED BUSINESS IN THIS STATE IN VIOLATION OF THIS ARTICLE, THE COURT SHALL ISSUE, IN ADDITION TO OR IN LIEU OF THE IMPOSITION OF A CIVIL PENALTY, AN INJUNCTION RESTRAINING THE FURTHER TRANSACTION OF THE BUSINESS OF THE FOREIGN CORPORATION AND THE FURTHER EXERCISE OF ANY CORPORATE RIGHTS AND PRIVILEGES IN THIS STATE. THE FOREIGN CORPORATION SHALL BE ENJOINED FROM TRANSACTING BUSINESS IN THIS STATE UNTIL ALL CIVIL PENALTIES PLUS ANY INTEREST AND COURT COSTS WHICH THE COURT MAY ASSESS HAVE BEEN PAID, AND UNTIL THE FOREIGN CORPORATION HAS OTHERWISE COMPLIED WITH THE PROVISIONS OF THIS ARTICLE.

(5) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THE FAILURE OF A FOREIGN CORPORATION TO HAVE AUTHORITY TO TRANSACT BUSINESS IN THIS STATE DOES NOT IMPAIR THE VALIDITY OF ITS CORPORATE ACTS OR PREVENT IT FROM DEFENDING ANY PROCEEDING IN THIS STATE.

**7-115-103. Application for authority to transact business.** (1) A FOREIGN CORPORATION MAY APPLY FOR AUTHORITY TO TRANSACT BUSINESS IN THIS STATE BY DELIVERING TO THE SECRETARY OF STATE FOR FILING AN APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS SETTING FORTH:

- (a) ITS CORPORATE NAME AND ITS ASSUMED CORPORATE NAME, IF ANY;
- (b) THE NAME OF THE STATE OR COUNTRY UNDER WHOSE LAW IT IS INCORPORATED;
- (c) ITS DATE OF INCORPORATION AND PERIOD OF DURATION;
- (d) THE STREET ADDRESS OF ITS PRINCIPAL OFFICE;
- (e) THE ADDRESS OF ITS REGISTERED OFFICE IN THIS STATE AND THE NAME OF ITS REGISTERED AGENT AT THAT OFFICE;
- (f) THE NAMES AND USUAL BUSINESS ADDRESSES OF ITS DIRECTORS AND OFFICERS;
- (g) THE DATE IT COMMENCED OR EXPECTS TO COMMENCE TRANSACTING BUSINESS IN THIS STATE; AND

(h) SUCH ADDITIONAL INFORMATION AS THE SECRETARY OF STATE DETERMINES IS NECESSARY OR APPROPRIATE TO DETERMINE WHETHER THE APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS SHOULD BE FILED.

(2) THE FOREIGN CORPORATION SHALL DELIVER WITH THE COMPLETED APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS A CERTIFICATE OF EXISTENCE, OR A DOCUMENT OF SIMILAR IMPORT, DULY AUTHENTICATED BY THE SECRETARY OF STATE OR OTHER OFFICIAL HAVING CUSTODY OF CORPORATE RECORDS IN THE STATE OR COUNTRY UNDER WHOSE LAW IT IS INCORPORATED. SUCH CERTIFICATE SHALL BE DATED WITHIN NINETY DAYS BEFORE THE FILING OF THE APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS.

(3) THE FOREIGN CORPORATION SHALL INCLUDE IN THE APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS, OR IN AN ACCOMPANYING DOCUMENT, WRITTEN CONSENT TO APPOINTMENT BY ITS DESIGNATED REGISTERED AGENT.

**7-115-104. Amended application for authority to transact business.** (1) A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE SHALL DELIVER AN AMENDED APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS TO THE SECRETARY OF STATE FOR FILING IF THE FOREIGN CORPORATION CHANGES:

- (a) ITS CORPORATE NAME OR ITS ASSUMED CORPORATE NAME;
- (b) THE PERIOD OF ITS DURATION; OR
- (c) THE STATE OR COUNTRY OF ITS INCORPORATION.

(2) THE REQUIREMENTS OF SECTION 7-115-103 FOR FILING AN ORIGINAL APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS ALSO APPLY TO FILING AN AMENDED APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS UNDER THIS SECTION.

**7-115-105. Effect of filing an application for authority to transact business.** (1) FILING AN APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS AUTHORIZES THE FOREIGN CORPORATION TO TRANSACT BUSINESS IN THIS STATE, SUBJECT TO THE RIGHT OF THE STATE TO REVOKE SUCH AUTHORITY AS PROVIDED IN PART 3 OF THIS ARTICLE.

(2) A FOREIGN CORPORATION WHICH HAS AUTHORITY TO TRANSACT BUSINESS IN THIS STATE HAS THE SAME RIGHTS AND PRIVILEGES AS, BUT NO GREATER RIGHTS OR PRIVILEGES THAN, AND, EXCEPT AS OTHERWISE PROVIDED BY ARTICLES 101 TO 117 OF THIS TITLE, IS SUBJECT TO THE SAME DUTIES, RESTRICTIONS, PENALTIES, AND LIABILITIES NOW IMPOSED ON OR LATER TO BE IMPOSED ON, A DOMESTIC CORPORATION OF LIKE CHARACTER.

(3) ARTICLES 101 TO 117 OF THIS TITLE DO NOT AUTHORIZE THIS STATE TO REGULATE THE ORGANIZATION OR INTERNAL AFFAIRS OF A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE.

**7-115-106. Corporate name and assumed corporate name of foreign corporation.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, IF THE CORPORATE NAME OF A FOREIGN CORPORATION WOULD NOT SATISFY THE REQUIREMENTS OF SUBSECTIONS (1) OR (2) OF SECTION 7-104-101 IF THE

CORPORATION WERE A DOMESTIC CORPORATION, THE FOREIGN CORPORATION, IN ORDER TO OBTAIN AUTHORITY TO TRANSACT BUSINESS IN THIS STATE, SHALL ASSUME FOR USE IN THIS STATE A NAME THAT WOULD SATISFY SUCH REQUIREMENTS.

(2) A FOREIGN CORPORATION MAY OBTAIN AUTHORITY TO TRANSACT BUSINESS IN THIS STATE WITH A NAME THE SAME AS OR DECEPTIVELY SIMILAR TO A NAME OTHERWISE NOT AVAILABLE UNDER SUBSECTION (1) OF THIS SECTION IF THE FOREIGN CORPORATION DELIVERS TO THE SECRETARY OF STATE FOR FILING EITHER:

(a) THE WRITTEN CONSENT OF THE OTHER CORPORATION OR HOLDER OF THE NAME TO USE THE SAME OR A DECEPTIVELY SIMILAR NAME IF ONE OR MORE WORDS ARE ADDED, ALTERED, OR DELETED TO MAKE THE NAME DISTINGUISHABLE ON THE RECORDS OF THE SECRETARY OF STATE FROM THE OTHER NAME; OR

(b) A CERTIFIED COPY OF A FINAL DECREE OF A COURT OF COMPETENT JURISDICTION ESTABLISHING THE PRIOR RIGHT OF THE FOREIGN CORPORATION TO USE SUCH NAME IN THIS STATE.

(3) IF A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE UNDER ITS CORPORATE NAME CHANGES ITS CORPORATE NAME TO ONE THAT DOES NOT SATISFY THE REQUIREMENTS OF THE PROVISIONS OF THIS SECTION, IT MAY NOT TRANSACT BUSINESS IN THIS STATE UNDER ITS CORPORATE NAME AS CHANGED, AND IT SHALL USE AN ASSUMED CORPORATE NAME AND DELIVER TO THE SECRETARY OF STATE FOR FILING AN AMENDED APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS PURSUANT TO SECTION 7-115-104.

**7-115-107. Registered name of foreign corporation.** (1) A FOREIGN CORPORATION MAY REGISTER ITS CORPORATE NAME IF THE CORPORATE NAME IS NOT THE SAME AS OR DECEPTIVELY SIMILAR TO ANY NAME DESCRIBED IN SECTION 7-104-101 (2). SUCH REGISTRATION SHALL BE EFFECTIVE THROUGH DECEMBER 31 OF THE YEAR IN WHICH IT IS EFFECTIVE.

(2) A FOREIGN CORPORATION REGISTERS ITS CORPORATE NAME BY DELIVERING TO THE SECRETARY OF STATE FOR FILING AN APPLICATION FOR REGISTRATION:

(a) SETTING FORTH ITS CORPORATE NAME, THE STATE OR COUNTRY AND DATE OF ITS INCORPORATION, AND A BRIEF DESCRIPTION OF THE NATURE OF THE BUSINESS IN WHICH IT IS ENGAGED; AND

(b) ACCOMPANIED BY A CERTIFICATE OF EXISTENCE, OR A DOCUMENT OF SIMILAR IMPORT, FROM THE STATE OR COUNTRY OF ITS INCORPORATION.

(3) REGISTRATION OF THE CORPORATE NAME OF A FOREIGN CORPORATION SHALL HAVE THE EFFECT PROVIDED IN SECTION 7-104-101 (2) (e).

(4) A FOREIGN CORPORATION WHICH HAS IN EFFECT A REGISTRATION OF ITS CORPORATE NAME MAY RENEW SUCH REGISTRATION FOR THE FOLLOWING YEAR BY DELIVERING TO THE SECRETARY OF STATE FOR FILING, ON OR BEFORE DECEMBER 31 OF THE PRECEDING YEAR, A RENEWAL APPLICATION FOR REGISTRATION WHICH COMPLIES WITH THE REQUIREMENTS OF THIS SECTION. WHEN FILED, THE RENEWAL APPLICATION FOR REGISTRATION RENEWS THE REGISTRATION FOR THE FOLLOWING

YEAR.

(5) A FOREIGN CORPORATION WHICH HAS IN EFFECT A REGISTRATION OF ITS CORPORATE NAME MAY ASSIGN SUCH REGISTRATION TO ANOTHER FOREIGN CORPORATION BY DELIVERY TO THE SECRETARY OF STATE FOR FILING OF AN ASSIGNMENT OF THE REGISTRATION THAT STATES THE REGISTERED NAME, THE NAME OF THE FOREIGN CORPORATION, AND THE NAME OF THE ASSIGNEE CONCURRENTLY WITH THE DELIVERY TO THE SECRETARY OF STATE FOR FILING OF THE ASSIGNEE'S APPLICATION FOR REGISTRATION OF THE NAME AS THE CORPORATE NAME OF THE ASSIGNEE.

(6) A FOREIGN CORPORATION WHICH HAS IN EFFECT A REGISTRATION OF ITS CORPORATE NAME MAY TERMINATE THE REGISTRATION AT ANY TIME BY DELIVERING TO THE SECRETARY OF STATE FOR FILING A STATEMENT OF TERMINATION SETTING FORTH ITS CORPORATE NAME AND STATING THAT ITS REGISTRATION OF THE SAME IS TERMINATED.

**7-115-108. Registered office and registered agent of foreign corporation.**

(1) A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE SHALL CONTINUOUSLY MAINTAIN IN THIS STATE:

(a) A REGISTERED OFFICE; AND

(b) A REGISTERED AGENT, WHO MAY BE:

(I) AN INDIVIDUAL WHO RESIDES IN THIS STATE AND WHOSE BUSINESS OFFICE IS IDENTICAL WITH THE REGISTERED OFFICE;

(II) A DOMESTIC CORPORATION OR DOMESTIC NONPROFIT CORPORATION WHOSE BUSINESS OFFICE IS IDENTICAL WITH THE REGISTERED OFFICE; OR

(III) A FOREIGN CORPORATION OR FOREIGN NONPROFIT CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE WHOSE BUSINESS OFFICE IS IDENTICAL WITH THE REGISTERED OFFICE.

(2) A FOREIGN CORPORATION SHALL NOT SERVE AS ITS OWN REGISTERED AGENT.

**7-115-109. Change of registered office or registered agent of foreign corporation.** (1) A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE MAY CHANGE ITS REGISTERED OFFICE OR REGISTERED AGENT BY DELIVERING TO THE SECRETARY OF STATE FOR FILING A STATEMENT OF CHANGE THAT SETS FORTH:

(a) ITS CORPORATE NAME AND ITS ASSUMED CORPORATE NAME, IF ANY;

(b) THE STREET ADDRESS OF ITS CURRENT REGISTERED OFFICE;

(c) IF THE REGISTERED OFFICE IS TO BE CHANGED, THE STREET ADDRESS OF THE NEW REGISTERED OFFICE;

(d) THE NAME OF ITS CURRENT REGISTERED AGENT;

(e) IF THE REGISTERED AGENT IS TO BE CHANGED, THE NAME OF THE NEW REGISTERED AGENT AND THE NEW REGISTERED AGENT'S WRITTEN CONSENT TO THE APPOINTMENT, EITHER ON THE STATEMENT OF CHANGE OR IN AN ACCOMPANYING DOCUMENT; AND

(f) THAT, AFTER THE CHANGE OR CHANGES ARE MADE, THE STREET ADDRESSES OF ITS REGISTERED OFFICE AND THE BUSINESS OFFICE OF ITS REGISTERED AGENT WILL BE IDENTICAL.

(2) IF A REGISTERED AGENT CHANGES THE STREET ADDRESS OF THE REGISTERED AGENT'S BUSINESS OFFICE, THE REGISTERED AGENT MAY CHANGE THE STREET ADDRESS OF THE REGISTERED OFFICE OF ANY FOREIGN CORPORATION FOR WHICH THE REGISTERED AGENT IS THE REGISTERED AGENT BY GIVING WRITTEN NOTICE TO THE CORPORATION OF THE CHANGE AND EXECUTING, EITHER MANUALLY OR IN FACSIMILE, AND DELIVERING TO THE SECRETARY OF STATE FOR FILING A STATEMENT OF CHANGE THAT COMPLIES WITH THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION AND RECITES THAT NOTICE OF THE CHANGE HAS BEEN GIVEN TO THE CORPORATION.

**7-115-110. Resignation of registered agent of foreign corporation.** (1) THE REGISTERED AGENT OF A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE MAY RESIGN THE AGENCY BY DELIVERING TO THE SECRETARY OF STATE FOR FILING A STATEMENT OF RESIGNATION, WHICH SHALL BE ACCOMPANIED BY TWO EXACT OR CONFORMED COPIES THEREOF. THE STATEMENT OF RESIGNATION MAY INCLUDE A STATEMENT THAT THE REGISTERED OFFICE IS ALSO DISCONTINUED.

(2) AFTER FILING THE STATEMENT OF RESIGNATION, THE SECRETARY OF STATE SHALL DELIVER ONE COPY TO THE REGISTERED OFFICE OF THE FOREIGN CORPORATION AND THE OTHER COPY TO THE PRINCIPAL OFFICE OF THE CORPORATION.

(3) THE AGENCY APPOINTMENT IS TERMINATED, AND THE REGISTERED OFFICE DISCONTINUED IF SO PROVIDED, ON THE THIRTY-FIRST DAY AFTER THE DATE THAT THE STATEMENT OF RESIGNATION WAS FILED.

**7-115-111. Service on foreign corporation.** (1) THE REGISTERED AGENT OF A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE IS THE FOREIGN CORPORATION'S AGENT FOR SERVICE OF ANY PROCESS, NOTICE, OR DEMAND REQUIRED OR PERMITTED BY LAW TO BE SERVED ON THE FOREIGN CORPORATION.

(2) IF A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE HAS NO REGISTERED AGENT, OR THE REGISTERED AGENT CANNOT WITH REASONABLE DILIGENCE BE SERVED, THE FOREIGN CORPORATION MAY BE SERVED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE FOREIGN CORPORATION AT ITS PRINCIPAL OFFICE. SERVICE IS PERFECTED UNDER THIS SUBSECTION (2) AT THE EARLIEST OF:

(a) THE DATE THE FOREIGN CORPORATION RECEIVES THE PROCESS, NOTICE, OR DEMAND;

(b) THE DATE SHOWN ON THE RETURN RECEIPT, IF SIGNED ON BEHALF OF THE FOREIGN CORPORATION; OR

(c) FIVE DAYS AFTER MAILING.

(3) THIS SECTION DOES NOT PRESCRIBE THE ONLY MEANS, OR NECESSARILY THE REQUIRED MEANS, OF SERVING A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE.

## PART 2 WITHDRAWAL

**7-115-201. Withdrawal of foreign corporation.** (1) A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE SHALL NOT WITHDRAW FROM THIS STATE UNTIL ITS APPLICATION FOR WITHDRAWAL HAS BEEN FILED BY THE SECRETARY OF STATE.

(2) A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE SHALL APPLY FOR WITHDRAWAL BY DELIVERING TO THE SECRETARY OF STATE FOR FILING AN APPLICATION FOR WITHDRAWAL SETTING FORTH:

(a) ITS CORPORATE NAME AND ITS ASSUMED CORPORATE NAME, IF ANY;

(b) THE ADDRESS OF ITS PRINCIPAL OFFICE OR, IF NONE IS TO BE MAINTAINED, A STATEMENT THAT THE CORPORATION WILL NOT MAINTAIN A PRINCIPAL OFFICE, AND, IF DIFFERENT FROM THE ADDRESS OF THE PRINCIPAL OFFICE OR IF NO PRINCIPAL OFFICE IS TO BE MAINTAINED, THE ADDRESS TO WHICH SERVICE OF PROCESS MAY BE MAILED PURSUANT TO SECTION 7-115-202;

(c) THE NAME OF THE STATE OR COUNTRY UNDER WHOSE LAW IT IS INCORPORATED;

(d) THAT IT IS NOT TRANSACTING BUSINESS IN THIS STATE AND THAT IT SURRENDERS ITS AUTHORITY TO TRANSACT BUSINESS IN THIS STATE;

(e) ALL TRADE OR ASSUMED NAMES USED BY IT PURSUANT TO SECTION 7-71-101, TOGETHER WITH A STATEMENT THAT THE SAME ARE TO BE CANCELLED; AND

(f) SUCH ADDITIONAL INFORMATION AS THE SECRETARY OF STATE DETERMINES IS NECESSARY OR APPROPRIATE TO DETERMINE WHETHER IT IS ENTITLED TO WITHDRAW AND TO DETERMINE AND ASSESS ANY UNPAID TAXES, FEES, AND PENALTIES PAYABLE BY IT AS PRESCRIBED IN ARTICLES 101 TO 117 OF THIS TITLE.

(3) IF A FOREIGN CORPORATION DELIVERS TO THE SECRETARY OF STATE AN APPLICATION FOR WITHDRAWAL BEFORE THE DATE ON WHICH A CORPORATE REPORT IS DUE, AND THE APPLICATION FOR WITHDRAWAL IS FILED WITHIN THIRTY DAYS AFTER THE DATE OF ITS DELIVERY TO THE SECRETARY OF STATE, THE FOREIGN CORPORATION SHALL BE RELIEVED OF ITS OBLIGATION TO FILE SUCH CORPORATE REPORT OR PAY THE FEE THEREFOR.

**7-115-202. Service on withdrawn foreign corporation.** (1) A FOREIGN CORPORATION THAT HAS WITHDRAWN FROM THIS STATE PURSUANT TO SECTION 7-115-201 SHALL EITHER:

(a) MAINTAIN A REGISTERED AGENT IN THIS STATE TO ACCEPT SERVICE ON ITS



BEHALF IN ANY PROCEEDING BASED ON A CAUSE OF ACTION ARISING DURING THE TIME IT WAS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE; OR

(b) BE DEEMED TO HAVE AUTHORIZED SERVICE OF PROCESS ON IT IN CONNECTION WITH SUCH CAUSES OF ACTION BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESS OF ITS PRINCIPAL OFFICE, IF ANY, AS SET FORTH IN ITS APPLICATION FOR WITHDRAWAL OR AS LAST CHANGED BY NOTICE DELIVERED TO THE SECRETARY OF STATE FOR FILING OR TO THE ADDRESS FOR SERVICE OF PROCESS THAT IS STATED IN ITS APPLICATION FOR WITHDRAWAL OR AS LAST CHANGED BY NOTICE DELIVERED TO THE SECRETARY OF STATE FOR FILING.

(2) SERVICE EFFECTED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION IS PERFECTED AT THE EARLIEST OF:

(a) THE DATE THE WITHDRAWN FOREIGN CORPORATION RECEIVES THE PROCESS, NOTICE, OR DEMAND;

(b) THE DATE SHOWN ON THE RETURN RECEIPT, IF SIGNED ON BEHALF OF THE WITHDRAWN FOREIGN CORPORATION; OR

(c) FIVE DAYS AFTER MAILING.

(3) SUBSECTION (1) OF THIS SECTION DOES NOT PRESCRIBE THE ONLY MEANS, OR NECESSARILY THE REQUIRED MEANS, OF SERVING A WITHDRAWN FOREIGN CORPORATION.

### PART 3 REVOCATION

**7-115-301. Grounds for revocation.** (1) THE SECRETARY OF STATE SHALL COMMENCE A PROCEEDING UNDER SECTION 7-115-302 TO REVOKE THE AUTHORITY OF A FOREIGN CORPORATION TO TRANSACT BUSINESS IN THIS STATE IF:

(a) THE FOREIGN CORPORATION DOES NOT DELIVER ITS CORPORATE REPORT TO THE SECRETARY OF STATE WHEN IT IS DUE;

(b) THE FOREIGN CORPORATION DOES NOT PAY ANY TAXES, FEES, OR PENALTIES IMPOSED BY ARTICLES 101 TO 117 OF THIS TITLE WHEN THEY ARE DUE;

(c) THE FOREIGN CORPORATION IS WITHOUT A REGISTERED AGENT OR REGISTERED OFFICE IN THIS STATE;

(d) THE FOREIGN CORPORATION DOES NOT INFORM THE SECRETARY OF STATE UNDER SECTION 7-115-109 OR 7-115-110 THAT ITS REGISTERED AGENT OR REGISTERED OFFICE HAS CHANGED, THAT ITS REGISTERED AGENT HAS RESIGNED, OR THAT ITS REGISTERED OFFICE HAS BEEN DISCONTINUED;

(e) AN INCORPORATOR, DIRECTOR, OFFICER, OR AGENT OF THE FOREIGN CORPORATION SIGNED A DOCUMENT SUCH PERSON KNEW WAS FALSE IN ANY MATERIAL RESPECT WITH THE INTENT THAT THE DOCUMENT BE DELIVERED TO THE SECRETARY OF STATE FOR FILING; OR

(f) THE SECRETARY OF STATE RECEIVES A DULY AUTHENTICATED CERTIFICATE FROM THE SECRETARY OF STATE OR OTHER OFFICIAL HAVING CUSTODY OF CORPORATE RECORDS IN THE STATE OR COUNTRY UNDER WHOSE LAW THE FOREIGN CORPORATION WAS INCORPORATED TO THE EFFECT THAT IT NO LONGER EXISTS AS THE RESULT OF A DISSOLUTION OR MERGER.

**7-115-302. Procedure for and effect of revocation.** (1) IF THE SECRETARY OF STATE DETERMINES THAT ONE OR MORE GROUNDS EXIST UNDER SECTION 7-115-301 FOR REVOKING THE AUTHORITY OF A FOREIGN CORPORATION TO TRANSACT BUSINESS IN THIS STATE, THE SECRETARY OF STATE SHALL SERVE ON THE FOREIGN CORPORATION, IN THE MANNER PROVIDED IN SECTION 7-115-111, WRITTEN NOTICE OF THE DETERMINATION, STATING SUCH GROUND OR GROUNDS.

(2) IF THE FOREIGN CORPORATION DOES NOT CORRECT EACH GROUND FOR REVOCATION, OR DEMONSTRATE TO THE REASONABLE SATISFACTION OF THE SECRETARY OF STATE THAT EACH SUCH GROUND DOES NOT EXIST, WITHIN SIXTY DAYS AFTER SERVICE OF THE NOTICE CONTEMPLATED IN SUBSECTION (1) OF THIS SECTION, THE SECRETARY OF STATE MAY REVOKE THE FOREIGN CORPORATION'S AUTHORITY TO TRANSACT BUSINESS IN THIS STATE. THE SECRETARY OF STATE SHALL SERVE WRITTEN NOTICE OF THE REVOCATION, STATING THE EFFECTIVE DATE THEREOF, ON THE FOREIGN CORPORATION IN THE MANNER PROVIDED IN SECTION 7-115-111 AND SHALL DELIVER A COPY OF SUCH NOTICE TO THE LAST REGISTERED AGENT OF THE FOREIGN CORPORATION.

(3) REVOCATION OF A FOREIGN CORPORATION'S AUTHORITY TO TRANSACT BUSINESS IN THIS STATE TERMINATES THE AUTHORITY OF THE REGISTERED AGENT OF THE CORPORATION.

(4) UPON THE REVOCATION OF A FOREIGN CORPORATION'S AUTHORITY TO TRANSACT BUSINESS IN THIS STATE, THE SECRETARY OF STATE SHALL BE THE FOREIGN CORPORATION'S AGENT FOR SERVICE OF PROCESS IN ANY PROCEEDING BASED ON A CAUSE OF ACTION WHICH AROSE DURING THE TIME THE FOREIGN CORPORATION TRANSACTED BUSINESS IN THIS STATE OR WAS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE. SERVICE OF PROCESS ON THE SECRETARY OF STATE UNDER THIS SUBSECTION (4) IS SERVICE ON THE FOREIGN CORPORATION. UPON RECEIPT OF PROCESS, THE SECRETARY OF STATE SHALL DELIVER A COPY OF THE PROCESS TO THE FOREIGN CORPORATION AT ITS PRINCIPAL OFFICE.

**7-115-303. Appeal from revocation.** (1) A FOREIGN CORPORATION MAY APPEAL THE SECRETARY OF STATE'S REVOCATION OF ITS AUTHORITY TO TRANSACT BUSINESS IN THIS STATE TO THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER OR TO THE DISTRICT COURT OF THE COUNTY WHERE THE CORPORATION'S REGISTERED OR PRINCIPAL OFFICE IS LOCATED, WITHIN THIRTY DAYS AFTER SERVICE OF THE NOTICE OF REVOCATION IS PERFECTED UNDER SECTION 7-115-111, BY PETITIONING THE COURT TO SET ASIDE THE REVOCATION AND ATTACHING TO THE PETITION COPIES OF ITS APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS AND ANY AMENDED APPLICATIONS, EACH AS FILED, AND THE SECRETARY OF STATE'S NOTICE OF REVOCATION.

(2) THE COURT MAY SUMMARILY ORDER THE SECRETARY OF STATE TO REINSTATE THE AUTHORITY OF A FOREIGN CORPORATION TO TRANSACT BUSINESS IN THIS STATE

OR MAY TAKE ANY OTHER ACTION THE COURT CONSIDERS APPROPRIATE.

(3) THE COURT'S ORDER OR DECISION MAY BE APPEALED AS IN OTHER CIVIL PROCEEDINGS.

**ARTICLE 116**  
**Records, Information, and Reports**

**7-116-101. Corporate records.** (1) A CORPORATION SHALL KEEP AS PERMANENT RECORDS MINUTES OF ALL MEETINGS OF ITS SHAREHOLDERS AND BOARD OF DIRECTORS, A RECORD OF ALL ACTIONS TAKEN BY THE SHAREHOLDERS OR BOARD OF DIRECTORS WITHOUT A MEETING, A RECORD OF ALL ACTIONS TAKEN BY A COMMITTEE OF THE BOARD OF DIRECTORS IN PLACE OF THE BOARD OF DIRECTORS ON BEHALF OF THE CORPORATION, AND A RECORD OF ALL WAIVERS OF NOTICES OF MEETINGS OF SHAREHOLDERS AND OF THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE BOARD OF DIRECTORS.

(2) A CORPORATION SHALL MAINTAIN APPROPRIATE ACCOUNTING RECORDS.

(3) A CORPORATION OR ITS AGENT SHALL MAINTAIN A RECORD OF THE NAMES AND ADDRESSES OF ITS SHAREHOLDERS, IN A FORM THAT PERMITS PREPARATION OF A LIST OF SHAREHOLDERS THAT IS ARRANGED BY VOTING GROUP AND WITHIN EACH VOTING GROUP BY CLASS OR SERIES OF SHARES, THAT IS ALPHABETICAL WITHIN EACH CLASS OR SERIES, AND THAT SHOWS THE ADDRESS OF, AND THE NUMBER OF SHARES OF EACH CLASS AND SERIES HELD BY, EACH SHAREHOLDER.

(4) A CORPORATION SHALL MAINTAIN ITS RECORDS IN WRITTEN FORM OR IN ANOTHER FORM CAPABLE OF CONVERSION INTO WRITTEN FORM WITHIN A REASONABLE TIME.

(5) A CORPORATION SHALL KEEP A COPY OF EACH OF THE FOLLOWING RECORDS AT ITS PRINCIPAL OFFICE:

(a) ITS ARTICLES OF INCORPORATION;

(b) ITS BYLAWS;

(c) THE MINUTES OF ALL SHAREHOLDERS' MEETINGS, AND RECORDS OF ALL ACTION TAKEN BY SHAREHOLDERS WITHOUT A MEETING, FOR THE PAST THREE YEARS;

(d) ALL WRITTEN COMMUNICATIONS WITHIN THE PAST THREE YEARS TO SHAREHOLDERS AS A GROUP OR TO THE HOLDERS OF ANY CLASS OR SERIES OF SHARES AS A GROUP;

(e) A LIST OF THE NAMES AND BUSINESS ADDRESSES OF ITS CURRENT DIRECTORS AND OFFICERS;

(f) A COPY OF ITS MOST RECENT CORPORATE REPORT DELIVERED TO THE SECRETARY OF STATE UNDER SECTION 7-116-107; AND

(g) ALL FINANCIAL STATEMENTS PREPARED FOR PERIODS ENDING DURING THE LAST

THREE YEARS THAT A SHAREHOLDER COULD HAVE REQUESTED UNDER SECTION 7-116-105.

**7-116-102. Inspection of corporate records by shareholder.** (1) A SHAREHOLDER IS ENTITLED TO INSPECT AND COPY, DURING REGULAR BUSINESS HOURS AT THE CORPORATION'S PRINCIPAL OFFICE, ANY OF THE RECORDS OF THE CORPORATION DESCRIBED IN SECTION 7-116-101 (5) IF THE SHAREHOLDER GIVES THE CORPORATION WRITTEN DEMAND AT LEAST FIVE BUSINESS DAYS BEFORE THE DATE ON WHICH THE SHAREHOLDER WISHES TO INSPECT AND COPY SUCH RECORDS.

(2) IN ADDITION TO THE RIGHTS SET FORTH IN SUBSECTION (1) OF THIS SECTION, A SHAREHOLDER IS ENTITLED TO INSPECT AND COPY, DURING REGULAR BUSINESS HOURS AT A REASONABLE LOCATION SPECIFIED BY THE CORPORATION, ANY OF THE FOLLOWING RECORDS OF THE CORPORATION IF THE SHAREHOLDER MEETS THE REQUIREMENTS OF SUBSECTION (3) OF THIS SECTION AND GIVES THE CORPORATION WRITTEN DEMAND AT LEAST FIVE BUSINESS DAYS BEFORE THE DATE ON WHICH THE SHAREHOLDER WISHES TO INSPECT AND COPY SUCH RECORDS:

(a) EXCERPTS FROM MINUTES OF ANY MEETING OF THE BOARD OF DIRECTORS OR FROM RECORDS OF ANY ACTION TAKEN BY THE BOARD OF DIRECTORS WITHOUT A MEETING, MINUTES OF ANY MEETING OF THE SHAREHOLDERS OR RECORDS OF ANY ACTION TAKEN BY THE SHAREHOLDERS WITHOUT A MEETING, EXCERPTS OF RECORDS OF ANY ACTION OF A COMMITTEE OF THE BOARD OF DIRECTORS WHILE ACTING IN PLACE OF THE BOARD OF DIRECTORS ON BEHALF OF THE CORPORATION, AND WAIVERS OF NOTICES OF ANY MEETING OF THE SHAREHOLDERS OR THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE BOARD OF DIRECTORS;

(b) ACCOUNTING RECORDS OF THE CORPORATION; AND

(c) THE RECORD OF SHAREHOLDERS DESCRIBED IN SECTION 7-116-101 (3).

(3) A SHAREHOLDER MAY INSPECT AND COPY THE RECORDS DESCRIBED IN SUBSECTION (2) OF THIS SECTION ONLY IF:

(a) THE SHAREHOLDER HAS BEEN A SHAREHOLDER FOR AT LEAST THREE MONTHS IMMEDIATELY PRECEDING THE DEMAND TO INSPECT OR COPY OR IS A SHAREHOLDER OF AT LEAST FIVE PERCENT OF ALL OF THE OUTSTANDING SHARES OF ANY CLASS OF SHARES OF THE CORPORATION AS OF THE DATE THE DEMAND IS MADE;

(b) THE DEMAND IS MADE IN GOOD FAITH AND FOR A PROPER PURPOSE;

(c) THE SHAREHOLDER DESCRIBES WITH REASONABLE PARTICULARITY THE PURPOSE AND THE RECORDS THE SHAREHOLDER DESIRES TO INSPECT; AND

(d) THE RECORDS ARE DIRECTLY CONNECTED WITH THE DESCRIBED PURPOSE.

(4) FOR PURPOSES OF THIS SECTION:

(a) "PROPER PURPOSE" MEANS A PURPOSE REASONABLY RELATED TO THE DEMANDING SHAREHOLDER'S INTEREST AS A SHAREHOLDER; AND

(b) "SHAREHOLDER" INCLUDES A BENEFICIAL OWNER WHOSE SHARES ARE HELD IN A VOTING TRUST AND ANY OTHER BENEFICIAL OWNER WHO ESTABLISHES BENEFICIAL OWNERSHIP.

(5) THE RIGHT OF INSPECTION GRANTED BY THIS SECTION MAY NOT BE ABOLISHED OR LIMITED BY THE ARTICLES OF INCORPORATION OR BYLAWS.

(6) THIS SECTION DOES NOT AFFECT:

(a) THE RIGHT OF A SHAREHOLDER TO INSPECT RECORDS UNDER SECTION 7-107-201;

(b) THE RIGHT OF A SHAREHOLDER TO INSPECT RECORDS TO THE SAME EXTENT AS ANY OTHER LITIGANT IF THE SHAREHOLDER IS IN LITIGATION WITH THE CORPORATION; OR

(c) THE POWER OF A COURT, INDEPENDENT OF ARTICLES 101 TO 117 OF THIS TITLE, TO COMPEL THE PRODUCTION OF CORPORATE RECORDS FOR EXAMINATION.

**7-116-103. Scope of shareholder's inspection right.** (1) A SHAREHOLDER'S AGENT OR ATTORNEY HAS THE SAME INSPECTION AND COPYING RIGHTS AS THE SHAREHOLDER.

(2) THE RIGHT TO COPY RECORDS UNDER SECTION 7-116-102 INCLUDES, IF REASONABLE, THE RIGHT TO RECEIVE COPIES MADE BY PHOTOGRAPHIC, XEROGRAPHIC, OR OTHER MEANS.

(3) EXCEPT AS PROVIDED IN SECTION 7-116-106, THE CORPORATION MAY IMPOSE A REASONABLE CHARGE, COVERING THE COSTS OF LABOR AND MATERIAL, FOR COPIES OF ANY DOCUMENTS PROVIDED TO THE SHAREHOLDER. THE CHARGE MAY NOT EXCEED THE ESTIMATED COST OF PRODUCTION AND REPRODUCTION OF THE RECORDS.

(4) THE CORPORATION MAY COMPLY WITH A SHAREHOLDER'S DEMAND TO INSPECT THE RECORD OF SHAREHOLDERS UNDER SECTION 7-116-102 (2) (c) BY FURNISHING TO THE SHAREHOLDER A LIST OF SHAREHOLDERS THAT COMPLIES WITH SECTION 7-116-101 (3) AND WAS COMPILED NO EARLIER THAN THE DATE OF THE SHAREHOLDER'S DEMAND.

**7-116-104. Court-ordered inspection of corporate records.** (1) IF A CORPORATION REFUSES TO ALLOW A SHAREHOLDER, OR THE SHAREHOLDER'S AGENT OR ATTORNEY, WHO COMPLIES WITH SECTION 7-116-102 (1) TO INSPECT OR COPY ANY RECORDS WHICH THE SHAREHOLDER IS ENTITLED TO INSPECT OR COPY BY SAID SECTION, THE DISTRICT COURT OF THE COUNTY IN THIS STATE WHERE THE CORPORATION'S PRINCIPAL OFFICE IS LOCATED OR, IF IT HAS NO PRINCIPAL OFFICE IN THIS STATE, THE DISTRICT COURT OF THE COUNTY IN WHICH ITS REGISTERED OFFICE IS LOCATED MAY, ON APPLICATION OF THE SHAREHOLDER, SUMMARILY ORDER THE INSPECTION OR COPYING OF THE RECORDS DEMANDED AT THE CORPORATION'S EXPENSE.

(2) IF A CORPORATION REFUSES TO ALLOW A SHAREHOLDER, OR THE SHAREHOLDER'S AGENT OR ATTORNEY, WHO COMPLIES WITH SUBSECTIONS (2) AND

(3) OF SECTION 7-116-102 TO INSPECT OR COPY ANY RECORDS WHICH THE SHAREHOLDER IS ENTITLED TO INSPECT OR COPY BY SAID SUBSECTIONS (2) AND (3) WITHIN A REASONABLE TIME FOLLOWING THE SHAREHOLDER'S DEMAND, THE DISTRICT COURT OF THE COUNTY IN THIS STATE WHERE THE CORPORATION'S PRINCIPAL OFFICE IS LOCATED OR, IF IT HAS NO PRINCIPAL OFFICE IN THIS STATE, THE DISTRICT COURT OF THE COUNTY IN WHICH ITS REGISTERED OFFICE IS LOCATED MAY, ON APPLICATION OF THE SHAREHOLDER, SUMMARILY ORDER THE INSPECTION OR COPYING OF THE RECORDS DEMANDED. THE COURT SHALL DISPOSE OF AN APPLICATION UNDER THIS SUBSECTION (2) ON AN EXPEDITED BASIS.

(3) IF A COURT ORDERS INSPECTION OR COPYING OF THE RECORDS DEMANDED, UNLESS THE CORPORATION PROVES THAT IT REFUSED INSPECTION OR COPYING IN GOOD FAITH BECAUSE IT HAD A REASONABLE BASIS FOR DOUBT ABOUT THE RIGHT OF THE SHAREHOLDER OR THE SHAREHOLDER'S AGENT OR ATTORNEY TO INSPECT OR COPY THE RECORDS DEMANDED:

(a) THE COURT SHALL ALSO ORDER THE CORPORATION TO PAY THE SHAREHOLDER'S COSTS, INCLUDING REASONABLE COUNSEL FEES, INCURRED TO OBTAIN THE ORDER;

(b) THE COURT MAY ORDER THE CORPORATION TO PAY THE SHAREHOLDER FOR ANY DAMAGES THE SHAREHOLDER INCURRED;

(c) IF INSPECTION OR COPYING IS ORDERED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE COURT MAY ORDER THE CORPORATION TO PAY THE SHAREHOLDER'S INSPECTION AND COPYING EXPENSES; AND

(d) THE COURT MAY GRANT THE SHAREHOLDER ANY OTHER REMEDY PROVIDED BY LAW.

(4) IF A COURT ORDERS INSPECTION OR COPYING OF RECORDS DEMANDED, IT MAY IMPOSE REASONABLE RESTRICTIONS ON THE USE OR DISTRIBUTION OF THE RECORDS BY THE DEMANDING SHAREHOLDER.

**7-116-105. Financial statements.** UPON THE WRITTEN REQUEST OF ANY SHAREHOLDER, A CORPORATION SHALL MAIL TO SUCH SHAREHOLDER ITS MOST RECENT ANNUAL FINANCIAL STATEMENTS, IF ANY, AND ITS MOST RECENTLY PUBLISHED FINANCIAL STATEMENTS, IF ANY, SHOWING IN REASONABLE DETAIL ITS ASSETS AND LIABILITIES AND RESULTS OF ITS OPERATIONS.

**7-116-106. Information respecting shares.** UPON THE WRITTEN REQUEST OF ANY SHAREHOLDER, A CORPORATION SHALL MAIL TO SUCH SHAREHOLDER, AT THE CORPORATION'S EXPENSE, THE INFORMATION SPECIFIED BY SECTION 7-106-206 (4), WHETHER OR NOT SUCH INFORMATION IS ALSO CONTAINED OR SUMMARIZED ON ANY SHARE CERTIFICATE OF THE SHAREHOLDER.

**7-116-107. Corporate report to secretary of state.** (1) EACH DOMESTIC CORPORATION, AND EACH FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, SHALL DELIVER TO THE SECRETARY OF STATE FOR FILING A CORPORATE REPORT THAT SETS FORTH:

(a) THE CORPORATE NAME OF THE DOMESTIC OR FOREIGN CORPORATION AND THE

ASSUMED CORPORATE NAME, IF ANY, OF THE FOREIGN CORPORATION;

(b) THE STATE OR COUNTRY UNDER WHOSE LAW IT IS INCORPORATED;

(c) THE STREET ADDRESS OF ITS REGISTERED OFFICE AND THE NAME OF ITS REGISTERED AGENT AT THAT OFFICE IN THIS STATE;

(d) THE STREET ADDRESS OF ITS PRINCIPAL OFFICE; AND

(e) THE NAMES AND ADDRESSES OF ITS DIRECTORS AND PRINCIPAL OFFICERS.

(2) THE CORPORATE REPORT SHALL BE MADE ON A FORM PRESCRIBED AND FURNISHED BY THE SECRETARY OF STATE, WHO SHALL DELIVER A COPY THEREOF TO EACH DOMESTIC CORPORATION AND EACH FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE. THE COPY OF THE REPORT FORM FOR THE FIRST CORPORATE REPORT OF A DOMESTIC OR FOREIGN CORPORATION SHALL BE DELIVERED TO THE DOMESTIC OR FOREIGN CORPORATION IN THE SECOND CALENDAR YEAR SUCCEEDING THE CALENDAR YEAR IN WHICH THE DOMESTIC CORPORATION IS INCORPORATED OR THE APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS OF THE FOREIGN CORPORATION IS FILED BY THE SECRETARY OF STATE, AS THE CASE MAY BE. THEREAFTER, THE COPY OF THE REPORT FORM SHALL BE DELIVERED EVERY TWO YEARS. INFORMATION IN THE CORPORATE REPORT SHALL BE CURRENT AS OF THE DATE THE CORPORATE REPORT IS EXECUTED ON BEHALF OF THE CORPORATION.

(3) THE CORPORATE REPORT SHALL BE DELIVERED TO THE SECRETARY OF STATE FOR FILING NO LATER THAN THE END OF THE SECOND CALENDAR MONTH FOLLOWING THE CALENDAR MONTH IN WHICH THE COPY OF THE REPORT FORM THAT IS REQUIRED TO BE DELIVERED TO THE DOMESTIC OR FOREIGN CORPORATION PURSUANT TO SUBSECTION (2) OF THIS SECTION IS SO DELIVERED. PROOF TO THE SATISFACTION OF THE SECRETARY OF STATE THAT, BEFORE SUCH DATE, THE CORPORATE REPORT WAS DELIVERED SHALL BE DEEMED A COMPLIANCE WITH THIS SUBSECTION (3).

(4) EACH DOMESTIC CORPORATION AND FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE THAT FAILS OR REFUSES TO FILE ITS CORPORATE REPORT WITHIN THE TIME PRESCRIBED BY SUBSECTION (3) OF THIS SECTION AND PAY THE FEE PRESCRIBED THEREFOR SHALL BE SUBJECT TO A LATE FILING FEE, WHICH SHALL BE DETERMINED AND COLLECTED PURSUANT TO SECTION 24-21-104 (3), C.R.S.; EXCEPT THAT NO SUCH LATE FEE SHALL BE IMPOSED IF THE FORMS REQUIRED TO BE FURNISHED BY THE SECRETARY OF STATE PURSUANT TO SUBSECTION (2) OF THIS SECTION ARE UNAVAILABLE AND SUCH UNAVAILABILITY RESULTS IN FAILURE TO FILE WITHIN THE TIME PRESCRIBED BY SUBSECTION (3) OF THIS SECTION. THE AMOUNT OF ANY UNPAID REPORT FEE AND THE AMOUNT OF THE LATE FEE SHALL BE SEPARATELY STATED IN ANY NOTICE TO THE CORPORATION WITH RESPECT THERETO.

(5) IF A CORPORATE REPORT CONTAINS THE INFORMATION REQUIRED BY THIS SECTION, THE SECRETARY OF STATE SHALL FILE IT. IF A CORPORATE REPORT DOES NOT CONTAIN THE INFORMATION REQUIRED BY THIS SECTION, THE SECRETARY OF STATE SHALL PROMPTLY RETURN THE CORPORATE REPORT TO THE REPORTING DOMESTIC OR FOREIGN CORPORATION FOR CORRECTION, TOGETHER WITH A WRITTEN NOTICE PROVIDING A BRIEF EXPLANATION OF THE REASON FOR ITS REJECTION. IF THE CORPORATE REPORT WAS OTHERWISE TIMELY FILED AND IS CORRECTED TO CONTAIN

THE INFORMATION REQUIRED BY THIS SECTION AND DELIVERED TO THE SECRETARY OF STATE WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE NOTICE OF REJECTION, IT IS DEEMED TO BE TIMELY FILED.

(6) A DOMESTIC OR FOREIGN CORPORATION MAY DELIVER TO THE SECRETARY OF STATE FOR FILING AN AMENDMENT TO ITS CORPORATE REPORT REFLECTING ANY CHANGE IN THE INFORMATION CONTAINED IN ITS CORPORATE REPORT AS LAST AMENDED.

**7-116-108. Statement of person named as director or officer.** (1) ANY PERSON NAMED AS A DIRECTOR OR OFFICER OF A DOMESTIC OR FOREIGN CORPORATION IN A CORPORATE REPORT OR OTHER DOCUMENT ON FILE WITH THE SECRETARY OF STATE MAY, IF SUCH PERSON DOES NOT HOLD SUCH POSITION, DELIVER TO THE SECRETARY OF STATE FOR FILING A STATEMENT SETTING FORTH:

(a) THE PERSON'S NAME;

(b) THE NAME OF THE DOMESTIC OR FOREIGN CORPORATION;

(c) INFORMATION SUFFICIENT TO IDENTIFY THE CORPORATE REPORT OR OTHER DOCUMENT IN WHICH THE PERSON IS NAMED AS A DIRECTOR OR OFFICER; AND

(d) THE DATE ON WHICH THE PERSON CEASED TO BE A DIRECTOR OR OFFICER OF THE DOMESTIC OR FOREIGN CORPORATION, OR A STATEMENT THAT THE PERSON DID NOT HOLD THE POSITION FOR WHICH THE PERSON WAS NAMED IN SUCH CORPORATE REPORT OR OTHER DOCUMENT.

**7-116-109. Interrogatories by secretary of state.** (1) THE SECRETARY OF STATE MAY PROPOUND TO ANY CORPORATION, DOMESTIC OR FOREIGN, SUBJECT TO THE PROVISIONS OF ARTICLES 101 TO 117 OF THIS TITLE AND TO ANY OFFICER OR DIRECTOR THEREOF SUCH INTERROGATORIES AS MAY BE REASONABLY NECESSARY AND PROPER TO ENABLE THE SECRETARY OF STATE TO ASCERTAIN WHETHER THE CORPORATION HAS COMPLIED WITH ALL THE PROVISIONS OF ARTICLES 101 TO 117 OF THIS TITLE APPLICABLE TO THE CORPORATION. THE INTERROGATORIES SHALL BE ANSWERED WITHIN THIRTY DAYS AFTER THE MAILING THEREOF OR WITHIN SUCH ADDITIONAL TIME AS FIXED BY THE SECRETARY OF STATE, AND THE ANSWERS THERETO SHALL BE FULL AND COMPLETE AND SHALL BE MADE IN WRITING. IF THE INTERROGATORIES ARE DIRECTED TO AN INDIVIDUAL THEY SHALL BE ANSWERED BY THE INDIVIDUAL, AND IF DIRECTED TO A CORPORATION THEY SHALL BE ANSWERED BY THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE CORPORATION, BY ALL OF ITS DIRECTORS, BY ONE OF ITS OFFICERS, OR BY ANY OTHER PERSON AUTHORIZED TO ANSWER THE INTERROGATORIES AS ITS AGENT. THE SECRETARY OF STATE NEED NOT FILE ANY DOCUMENT TO WHICH SUCH INTERROGATORIES RELATE UNTIL THE INTERROGATORIES ARE ANSWERED AS PROVIDED IN THIS SECTION, AND NOT THEN IF THE ANSWERS THERETO DISCLOSE THAT THE DOCUMENT IS NOT IN CONFORMITY WITH THE PROVISIONS OF ARTICLES 101 TO 117 OF THIS TITLE. THE SECRETARY OF STATE SHALL CERTIFY TO THE ATTORNEY GENERAL, FOR SUCH ACTION AS THE ATTORNEY GENERAL MAY DEEM APPROPRIATE, ALL INTERROGATORIES AND ANSWERS THERETO WHICH DISCLOSE A VIOLATION OF ANY OF THE PROVISIONS OF ARTICLES 101 TO 117 OF THIS TITLE.



(2) INTERROGATORIES PROPOUNDED BY THE SECRETARY OF STATE AND THE ANSWERS THERETO SHALL NOT BE OPEN TO PUBLIC INSPECTION, NOR SHALL THE SECRETARY OF STATE DISCLOSE ANY FACTS OR INFORMATION OBTAINED THEREFROM, EXCEPT INsofar AS THE OFFICIAL DUTY OF THE SECRETARY OF STATE MAY REQUIRE THE SAME TO BE MADE PUBLIC OR IN THE EVENT SUCH INTERROGATORIES OR THE ANSWERS THERETO ARE REQUIRED FOR EVIDENCE IN ANY CRIMINAL PROCEEDINGS OR IN ANY OTHER ACTION BY THIS STATE.

(3) EACH DOMESTIC OR FOREIGN CORPORATION THAT FAILS OR REFUSES TO ANSWER TRUTHFULLY AND FULLY, WITHIN THE TIME PRESCRIBED BY SUBSECTION (1) OF THIS SECTION, INTERROGATORIES PROPOUNDED TO THE DOMESTIC OR FOREIGN CORPORATION BY THE SECRETARY OF STATE IN ACCORDANCE WITH THE PROVISIONS OF SAID SUBSECTION (1) IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS.

(4) EACH OFFICER AND DIRECTOR OF A DOMESTIC OR FOREIGN CORPORATION WHO FAILS OR REFUSES TO ANSWER TRUTHFULLY AND FULLY, WITHIN THE TIME PRESCRIBED BY SUBSECTION (1) OF THIS SECTION, INTERROGATORIES PROPOUNDED TO THE OFFICER OR DIRECTOR BY THE SECRETARY OF STATE IN ACCORDANCE WITH THE PROVISIONS OF SAID SUBSECTION (1) OR WHO SIGNS A DOCUMENT FILED WITH THE SECRETARY OF STATE PURSUANT TO ANY PROVISION OF ARTICLES 101 TO 117 OF THIS TITLE WHICH IS KNOWN TO SUCH OFFICER OR DIRECTOR TO BE FALSE IN ANY MATERIAL RESPECT IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS.

(5) THE ATTORNEY GENERAL MAY ENFORCE THE PROVISIONS OF THIS SECTION IN AN ACTION BROUGHT IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER.

#### **ARTICLE 117**

##### **Transition Provisions**

**7-117-101. Application to existing corporations.** (1) FOR PURPOSES OF THIS ARTICLE, "EXISTING CORPORATION" MEANS ANY DOMESTIC CORPORATION THAT WAS IN EXISTENCE ON JUNE 30, 1994, AND THAT WAS INCORPORATED UNDER ANY GENERAL STATUTE OF THIS STATE PROVIDING FOR INCORPORATION OF CORPORATIONS FOR PROFIT IF THE POWER TO AMEND OR REPEAL THE STATUTE UNDER WHICH THE CORPORATION WAS INCORPORATED WAS RESERVED.

(2) ARTICLES 101 TO 117 OF THIS TITLE APPLY TO ALL EXISTING CORPORATIONS.

(3) EXCEPT TO THE EXTENT THE ARTICLES OF INCORPORATION OF AN EXISTING CORPORATION LIMIT OR DENY PREEMPTIVE RIGHTS, SHAREHOLDERS OF SUCH CORPORATION SHALL HAVE A PREEMPTIVE RIGHT TO ACQUIRE UNISSUED SHARES OR SECURITIES CONVERTIBLE INTO SUCH SHARES OR CARRYING A RIGHT TO SUBSCRIBE TO OR ACQUIRE SHARES; EXCEPT THAT, UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, SUCH PREEMPTIVE RIGHTS SHALL NOT EXIST:

(a) TO ACQUIRE ANY SHARES ISSUED TO DIRECTORS, OFFICERS, OR EMPLOYEES PURSUANT TO APPROVAL BY THE AFFIRMATIVE VOTE OF THE HOLDERS OF A MAJORITY OF THE SHARES ENTITLED TO VOTE THEREON OR WHEN AUTHORIZED BY AND NOT

INCONSISTENT WITH A PLAN THEREFORE APPROVED BY SUCH A VOTE OF SHAREHOLDERS; OR

(b) TO ACQUIRE ANY SHARES SOLD OTHERWISE THAN FOR CASH.

(4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, UNLESS THE ARTICLES OF INCORPORATION OF AN EXISTING CORPORATION PROVIDE OTHERWISE:

(a) HOLDERS OF SHARES OF ANY CLASS THAT IS PREFERRED OR LIMITED AS TO DIVIDENDS OR ASSETS SHALL NOT BE ENTITLED TO ANY PREEMPTIVE RIGHT;

(b) HOLDERS OF SHARES OF COMMON STOCK SHALL NOT BE ENTITLED TO ANY PREEMPTIVE RIGHT TO SHARES OF ANY CLASS THAT IS PREFERRED OR LIMITED AS TO DIVIDENDS OR ASSETS OR TO ANY OBLIGATIONS UNLESS SUCH SHARES ARE CONVERTIBLE INTO SHARES OF COMMON STOCK OR CARRY A RIGHT TO SUBSCRIBE TO OR ACQUIRE SHARES OF COMMON STOCK; AND

(c) HOLDERS OF COMMON STOCK WITHOUT VOTING POWERS SHALL HAVE NO PREEMPTIVE RIGHT TO SHARES OF COMMON STOCK WITH VOTING POWER.

(5) TO THE EXTENT THAT PREEMPTIVE RIGHTS EXIST PURSUANT TO SUBSECTIONS (3) AND (4) OF THIS SECTION, THE PREEMPTIVE RIGHT SHALL BE ONLY AN OPPORTUNITY TO ACQUIRE SHARES OR OTHER SECURITIES UNDER SUCH TERMS AND CONDITIONS AS THE BOARD OF DIRECTORS MAY FIX FOR THE PURPOSE OF PROVIDING A FAIR AND REASONABLE OPPORTUNITY FOR THE EXERCISE OF SUCH RIGHT.

(6) NOTHING IN SUBSECTIONS (3) AND (4) OF THIS SECTION SHALL CONFER ANY PREEMPTIVE RIGHT WITH RESPECT TO SHARES OF A CORPORATION INCORPORATED BEFORE JANUARY 1, 1959, THAT HAVE BEEN OR MAY BE ISSUED AND SUBSEQUENTLY ACQUIRED BY SUCH CORPORATION AND THAT HAVE NOT BEEN CANCELLED OR RESTORED TO THE STATUS OF AUTHORIZED BUT UNISSUED SHARES. ANY SUCH SHARES IN EXISTENCE ON JUNE 30, 1994, OR ACQUIRED THEREAFTER BY ANY SUCH CORPORATION SHALL NOT BE DEEMED TO BE RESTORED TO THE STATUS OF AUTHORIZED BUT UNISSUED SHARES, FOR PURPOSES OF THIS SUBSECTION (6) ONLY, NOTWITHSTANDING THE PROVISIONS OF SECTION 7-106-302.

(7) UNLESS THE ARTICLES OF INCORPORATION OF AN EXISTING CORPORATION CONTAIN A PROVISION ESTABLISHING THE VOTE OF SHAREHOLDERS REQUIRED TO AMEND THE ARTICLES OF INCORPORATION, AS CONTEMPLATED IN SECTION 7-110-103, SUCH AMENDMENT SHALL BE APPROVED BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE AMENDMENT BY TWO-THIRDS OF ALL THE VOTES ENTITLED TO BE CAST ON THE AMENDMENT BY THAT VOTING GROUP.

(8) UNLESS THE ARTICLES OF INCORPORATION OF AN EXISTING CORPORATION CONTAIN A PROVISION ESTABLISHING THE VOTE OF SHAREHOLDERS REQUIRED TO APPROVE A PLAN OF MERGER OR A PLAN OF SHARE EXCHANGE AS CONTEMPLATED IN SECTION 7-111-103, SUCH PLAN SHALL BE APPROVED BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE PLAN BY TWO-THIRDS OF ALL THE VOTES ENTITLED TO BE CAST ON THE PLAN BY THAT VOTING GROUP. IN THE CASE OF A CORPORATION INCORPORATED BEFORE JULY 1, 1978, EACH OUTSTANDING SHARE OF

THE CORPORATION, OTHER THAN A REDEEMABLE SHARE THAT IS NOT ENTITLED TO VOTE BY REASON OF SECTION 7-107-202 (4), SHALL BE ENTITLED TO VOTE ON THE PLAN OF MERGER OR SHARE EXCHANGE WHETHER OR NOT SUCH SHARE HAS VOTING RIGHTS UNDER THE PROVISIONS OF THE ARTICLES OF INCORPORATION, UNLESS THE ARTICLES OF INCORPORATION HAVE BEEN AMENDED AFTER JUNE 30, 1978, BY THE SAME VOTE OF SHAREHOLDERS WHICH WOULD HAVE BEEN NECESSARY AT THE TIME OF THE AMENDMENT TO APPROVE THE PLAN, SO AS TO RESTRICT OR ELIMINATE THE RIGHT OF SUCH SHARE TO VOTE ON SUCH PLAN.

(9) UNLESS THE ARTICLES OF INCORPORATION OF AN EXISTING CORPORATION CONTAIN A PROVISION ESTABLISHING THE VOTE OF SHAREHOLDERS REQUIRED TO APPROVE A TRANSACTION INVOLVING A SALE, LEASE, EXCHANGE, OR OTHER DISPOSITION OF ALL, OR SUBSTANTIALLY ALL, OF ITS PROPERTY, WITH OR WITHOUT ITS GOOD WILL, OTHERWISE THAN IN THE USUAL AND REGULAR COURSE OF BUSINESS, AS CONTEMPLATED IN SECTION 7-112-102 (1), SUCH TRANSACTION SHALL BE APPROVED BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE TRANSACTION BY TWO-THIRDS OF ALL THE VOTES ENTITLED TO BE CAST ON THE TRANSACTION BY THAT VOTING GROUP.

(10) UNLESS THE ARTICLES OF INCORPORATION OF AN EXISTING CORPORATION CONTAIN A PROVISION ESTABLISHING THE VOTE OF SHAREHOLDERS REQUIRED TO APPROVE A PROPOSAL TO DISSOLVE THE CORPORATION AS CONTEMPLATED IN SECTION 7-114-102 OR A PROPOSAL TO REVOKE THE DISSOLUTION OF THE CORPORATION AS CONTEMPLATED IN SECTION 7-114-104, SUCH PROPOSAL SHALL BE APPROVED BY EACH VOTING GROUP ENTITLED TO VOTE SEPARATELY ON THE PROPOSAL BY TWO-THIRDS OF ALL THE VOTES ENTITLED TO BE CAST ON THE PROPOSAL BY THAT VOTING GROUP. IN THE CASE OF A CORPORATION INCORPORATED BEFORE JULY 1, 1978, EACH OUTSTANDING SHARE OF THE CORPORATION, OTHER THAN A REDEEMABLE SHARE THAT IS NOT ENTITLED TO VOTE BY REASON OF SECTION 7-107-202 (4), SHALL BE ENTITLED TO VOTE ON A PROPOSAL TO DISSOLVE THE CORPORATION WHETHER OR NOT SUCH SHARE HAS VOTING RIGHTS UNDER THE PROVISIONS OF THE ARTICLES OF INCORPORATION, UNLESS THE ARTICLES OF INCORPORATION HAVE BEEN AMENDED AFTER JUNE 30, 1978, BY THE SAME VOTE OF SHAREHOLDERS WHICH WOULD HAVE BEEN NECESSARY AT THE TIME OF THE AMENDMENT TO APPROVE THE PROPOSAL, SO AS TO RESTRICT OR ELIMINATE THE RIGHT OF SUCH SHARE TO VOTE ON SUCH PROPOSAL.

(11) AN AMENDMENT TO THE ARTICLES OF INCORPORATION OF AN EXISTING CORPORATION TO REDUCE THE VOTE REQUIRED TO TAKE ANY ACTION SPECIFIED IN SUBSECTIONS (7) TO (10) OF THIS SECTION, WHICH AMENDMENT MAY NOT REDUCE THE REQUIRED VOTE TO LESS THAN A MAJORITY OF ALL THE VOTES ENTITLED TO BE CAST BY EACH VOTING GROUP ENTITLED TO VOTE, SHALL BE ADOPTED BY THE SAME VOTE AND VOTING GROUPS REQUIRED TO TAKE THE ACTION SPECIFIED IN SAID SUBSECTIONS (7) TO (10).

**7-117-102. Application to foreign corporations.** A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE ON JUNE 30, 1994, IS SUBJECT TO ARTICLES 101 TO 117 OF THIS TITLE BUT IS NOT REQUIRED TO OBTAIN NEW AUTHORIZATION TO TRANSACT BUSINESS UNDER SAID ARTICLES.

**7-117-103. Saving provisions.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF

THIS SECTION, THE REPEAL OF ANY PROVISION OF THE "COLORADO CORPORATION CODE", ARTICLES 1 TO 10 OF THIS TITLE, DOES NOT AFFECT:

(a) THE OPERATION OF THE STATUTE, OR ANY ACTION TAKEN UNDER IT, BEFORE ITS REPEAL;

(b) ANY RATIFICATION, RIGHT, REMEDY, PRIVILEGE, OBLIGATION, OR LIABILITY ACQUIRED, ACCRUED, OR INCURRED UNDER THE PROVISION BEFORE ITS REPEAL;

(c) ANY VIOLATION OF THE PROVISION, OR ANY PENALTY, FORFEITURE, OR PUNISHMENT INCURRED BECAUSE OF THE VIOLATION, BEFORE ITS REPEAL; OR

(d) ANY PROCEEDING, REORGANIZATION, OR DISSOLUTION COMMENCED UNDER THE PROVISION BEFORE ITS REPEAL, AND THE PROCEEDING, REORGANIZATION, OR DISSOLUTION MAY BE COMPLETED IN ACCORDANCE WITH THE PROVISION AS IF IT HAD NOT BEEN REPEALED.

(2) IF A PENALTY OR PUNISHMENT IMPOSED FOR VIOLATION OF ANY PROVISION OF THE "COLORADO CORPORATION CODE", ARTICLES 1 TO 10 OF THIS TITLE, IS REDUCED BY ARTICLES 101 TO 117 OF THIS TITLE, THE PENALTY OR PUNISHMENT, IF NOT ALREADY IMPOSED, SHALL BE IMPOSED IN ACCORDANCE WITH SAID ARTICLES 101 TO 117.

**7-117-104. Severability.** IF ANY PROVISION OF ARTICLES 101 TO 117 OF THIS TITLE OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF SAID ARTICLES THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF SAID ARTICLES ARE SEVERABLE.

**7-117-105. Effective date.** ARTICLES 101 TO 117 OF THIS TITLE ARE EFFECTIVE JULY 1, 1994.

**SECTION 2.** 6-16-112, Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

**6-16-112. Service of process.** Any foreign corporation performing any of the acts prohibited under this article through any salesman or agent is subject to service of process either upon the registered agent specified by said corporation or upon the ~~secretary of state~~ THE CORPORATION ITSELF IF NO AGENT IS SPECIFIED pursuant to section ~~7-9-119~~ 7-115-111, C.R.S. Service of process upon any individual outside this state based upon any action arising out of matters prohibited by this article shall be pursuant to section 13-1-125, C.R.S.

**SECTION 3.** 7-20-102 (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**7-20-102. Definitions.** (5) "Corporation" or "domestic corporation" except as used in subsection (10) of this section means a corporation for profit subject to the provisions of articles ~~1 to 10~~ 101 TO 117 of this title.

**SECTION 4.** 7-22-101.5, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**7-22-101.5. Indemnification and personal liability of directors, officers, employees, and agents.** The nonprofit corporation shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in ~~section 7-3-101.5~~ ARTICLE 109 OF THIS TITLE. Nonprofit corporation directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in ~~section 7-3-101.5~~ ARTICLE 109 OF THIS TITLE. Nonprofit corporation directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in ~~section 7-5-119~~ 7-108-402 (2) for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to voting members, if any, for the purposes of this section.

**SECTION 5.** The introductory portion to 7-22-103 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**7-22-103. Corporate name.** (1) The corporate name of a nonprofit corporation:

(b) Shall not be the same as, or deceptively similar to, the name of any domestic corporation or any domestic nonprofit corporation or any limited partnership which has a certificate of limited partnership filed with the secretary of state pursuant to section 7-62-201 or a limited liability company which has articles of organization filed with the secretary of state pursuant to section 7-80-205 or any foreign corporation or foreign nonprofit corporation or foreign limited partnership or foreign limited liability company authorized to transact business or conduct affairs in this state, or a name the exclusive right to which is at the time reserved in the office of the secretary of state under the laws of this state, or the name of a foreign corporation or foreign nonprofit corporation or foreign limited liability company which has in effect a registration of its corporate name as provided in ~~section 7-3-108~~ or 7-22-108 OR 7-115-107 or its company name as provided in section 7-80-903, respectively, or any trade or assumed name which is registered with the secretary of state under section 7-71-101 or for which application for registration under said section is pending; except that this provision shall not apply if the applicant files with the secretary of state either:

**SECTION 6.** 7-27-103 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**7-27-103. Corporate name of foreign nonprofit corporation.** (1) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation or the name to be assumed by the corporation for its activities in this state:

(b) Shall not be the same as, or deceptively similar to, the name of any domestic corporation or any domestic nonprofit corporation or any limited partnership which has a certificate of limited partnership filed with the secretary of state pursuant to section 7-62-201 or a limited liability company which has articles of organization filed with the secretary of state pursuant to section 7-80-205 or any foreign

corporation or foreign nonprofit corporation or foreign limited partnership or foreign limited liability company authorized to transact business or conduct affairs in this state, or a name the exclusive right to which is at the time reserved in the office of the secretary of state under the laws of this state, or the name of a foreign corporation or foreign nonprofit corporation or foreign limited liability company which has in effect a registration of its corporate name as provided in ~~sections 7-3-108 or~~ SECTION 7-22-108 OR 7-115-107 or its company name as provided in section 7-80-903, respectively, or any trade or assumed name which is registered with the secretary of state under section 7-71-101 or for which application for registration under said section is pending; except that this provision shall not apply if the applicant files with the secretary of state either:

**SECTION 7.** 7-40-104 (2) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**7-40-104. Additional powers - indemnification - liability.** (2) (b) Any such corporation shall have the same powers, rights, and obligations and shall be subject to the same limitations as those which apply to corporations for profit, as set forth in ~~section 7-3-101.5~~ ARTICLE 109 OF THIS TITLE. Corporation directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit, as set forth in ~~section 7-3-101.5~~ ARTICLE 109 OF THIS TITLE. Corporation directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort, as set forth in section ~~7-5-119~~ 7-108-402 (2), for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to voting members or voting stockholders, if any, for the purpose of this section.

**SECTION 8.** 7-42-118, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**7-42-118. Liability of stockholders, directors, and officers.** Stockholders, directors, and officers of corporations formed under the provisions of this article shall enjoy the same measure of immunity from liability for corporate acts or omissions as stockholders, directors, and officers of corporations formed under the "~~Colorado Corporation Code~~" ~~articles 1 to 10~~ "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 of this title, or the "Colorado Nonprofit Corporation Act", articles 20 to 29 of this title.

**SECTION 9.** 7-45-101 (4), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**7-45-101. Additional statements in certificate.** (4) Nothing in articles ~~±~~ 20 to 52 OR 101 TO 117 of this title shall be so construed as to authorize any corporation, formed under the provisions of law, to locate its road, railroad, ditch, or flume, or any part thereof, upon any toll road previously existing, nor upon any public highway heretofore and at the time of the organization of the corporation used and traveled as such, except as may be necessary to cross such toll road or public highway. All rates of toll shall be conspicuously posted at every gate upon said road. Nothing in articles ~~±~~ 20 to 52 OR 101 TO 117 of this title shall be so construed to prevent the erection of a toll gate and check gate on each branch toll road of any toll road company in this

state.

**SECTION 10.** 7-48-103, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**7-48-103. Incorporation - applicability of "Colorado Business Corporation Act".** A business development corporation may be incorporated in this state pursuant to the provisions of article 2 102 of this title, and all the provisions of the "~~Colorado Corporation Code~~" "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 OF THIS TITLE, not in conflict with or inconsistent with the provisions of this article shall apply to such corporation except as otherwise provided in this article. The purpose clause of the articles of incorporation shall recite that the purposes for which the corporation is formed are to stimulate and promote the business prosperity and economic welfare of this state and its citizens; to encourage and assist, through financial aid, advice, technical assistance, and other appropriate means, the location of new businesses and industries and the rehabilitation, improvement, and expansion of existing businesses and industries throughout the state; and, in furtherance of these purposes, to cooperate with the division of commerce and development of this state and with other organizations, public and private.

**SECTION 11.** 7-48-113, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**7-48-113. Members to have rights of stockholders.** The rights given to stockholders under the provisions of sections ~~7-3-105, 7-5-109, 7-8-102, and 7-8-109~~ 7-102-106, 7-103-104, 7-110-203, 7-114-102, AND 7-114-104 shall apply to members as well as to stockholders of a corporation created under this article.

**SECTION 12.** 7-48-115, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**7-48-115. Books and records.** A corporation shall keep, in addition to the books and records required by ~~section 7-5-117~~ SECTIONS 7-116-101 AND 7-116-102, a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to such books and records as are given to stockholders by ~~section 7-5-117~~ SECTIONS 7-116-101 TO 7-116-106.

**SECTION 13.** 7-49-103, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**7-49-103. Corporation authorized.** A corporation, for the purposes enumerated in this article, may be incorporated upon approval of the governor and the state treasurer. The provisions of the "~~Colorado Corporation Code~~" "COLORADO BUSINESS CORPORATION ACT", ~~articles 1 to 10~~ ARTICLES 101 TO 117 of this title, not in conflict with or inconsistent with the provisions of this article shall apply to such corporation. The purpose clause of the articles of incorporation shall recite that the purposes for which the corporation is formed are to stimulate the flow of private investment capital for the purchase and rehabilitation of eligible housing; to encourage and assist through financial aid, advice, technical assistance, and other appropriate means the improvement of existing housing throughout the state; and, in furtherance of these

purposes, to cooperate with the division of housing of the department of local affairs and the Colorado housing and finance authority and with other organizations, public and private.

**SECTION 14.** 7-49-118, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**7-49-118. Books and records.** In addition to the books and records required by ~~section 7-5-117~~ SECTIONS 7-116-101 TO 7-116-105, the corporation shall keep a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to such books and records as are given to stockholders by ~~section 7-5-117~~ SECTIONS 7-116-101 TO 7-116-106.

**SECTION 15.** 7-50-108, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**7-50-108. New corporation formed - when.** Any congregation, church, or society incorporated prior to March 14, 1877, under the provisions of any law for the incorporation of religious, educational, or benevolent societies may become incorporated under the provisions of articles † 20 to 52 OR 101 TO 117 of this title, relative to religious, educational, and benevolent societies in the same manner as if it had not previously been incorporated, in which case the new corporation shall be entitled to and invested with all the real and personal estate of the old corporation, in like manner and to the same extent as the old corporation, subject to all the debts, contracts, and liabilities. The word "trustees", as used in articles † 20 to 52 OR 101 TO 117 of this title relative to religious bodies, shall be construed to include wardens, vestrymen, or such other officers as perform the duties of trustees.

**SECTION 16.** 7-55-107.5, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**7-55-107.5. Indemnification and personal liability of directors, officers, employees, and agents.** The association shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in ~~section 7-3-101.5~~ ARTICLE 109 OF THIS TITLE. Association directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in ~~section 7-3-101.5~~ ARTICLE 109 OF THIS TITLE. Association directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in ~~section 7-5-119~~ 7-108-402 (2) for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to voting members or voting stockholders, if any, for the purpose of this section.

**SECTION 17.** 7-55-112, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**7-55-112. Merger or consolidation.** Two or more corporations formed under articles † 20 to 57 OR 101 TO 117 of this title, or a similar law of any other state, may be merged or consolidated as a cooperative association upon such terms and for such



purpose and by such name as may be agreed upon. Such agreement shall also state all the matters necessary to articles of merger or consolidation and must be approved by a two-thirds majority of the members of the boards of directors and a two-thirds majority vote of the members or stockholders of each association or corporation present and voting in person or by mail ballot at any regular or special meeting at which prior notice, with mail ballot attached, had been mailed to each member or stockholder stating the plan of merger or consolidation; except that cooperative associations with less than one hundred members may post notice of such plan of merger or consolidation in a conspicuous place at its normal place of business for at least thirty days prior to such meeting. The articles of merger or consolidation shall be filed with the secretary of state and the county clerk of the county in which each party to the merger or consolidation is situated. A fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., shall be paid to the secretary of state for filing the articles. From and after the filing of the articles of merger or consolidation, the former associations or corporations comprising the component parts shall cease to exist, and the consolidated or merged cooperative association shall succeed to all rights, duties, and powers prescribed in the agreement of consolidated or merged associations or corporations, not inconsistent with this article, and shall be subject to all liabilities and obligations of the former component associations or corporations and succeed to all property and interest thereof and may adopt bylaws and do all things permitted by this article.

**SECTION 18.** 7-55-116, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**7-55-116. Application of corporation laws.** The provisions of articles 4 to 52 AND 101 TO 117 of this title and all powers and rights thereunder shall apply to the associations organized under this article, except where such provisions are in conflict with or inconsistent with the express provision of this article.

**SECTION 19.** 7-56-107.5, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**7-56-107.5. Indemnification and personal liability of directors, officers, employees, and agents.** The association shall have the same powers, rights, and obligations and shall be subject to the same limitations as those which apply to corporations for profit, as set forth in ~~section 7-3-101.5~~ ARTICLE 109 OF THIS TITLE. Association directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit, as set forth in ~~section 7-3-101.5~~ ARTICLE 109 OF THIS TITLE. Association directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as those set forth in ~~section 7-5-119~~ 7-108-402 for directors and officers, respectively, of corporations for profit. Any reference in said ~~sections 7-3-101.5~~ ARTICLE 109 OF THIS TITLE and ~~7-5-119~~ IN SECTION 7-108-402 (2) to shareholders shall be construed to refer to voting members or voting stockholders, if any, for the purpose of this section.

**SECTION 20.** 7-80-201 (4) (a) and (4) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**7-80-201. Limited liability company name.** (4) Such name shall not be the same

as, or deceptively similar to:

(a) Any name for which an exclusive right has been reserved in the office of the secretary of state pursuant to section ~~7-3-107~~, 7-22-107, 7-62-103, ~~or~~ 7-80-202 OR 7-104-102;

(c) Any name which is registered in the office of the secretary of state pursuant to section ~~7-3-108~~ or 7-80-903 OR 7-104-101.

**SECTION 21.** 10-3-533.5 (1) (c), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**10-3-533.5. Sale of insolvent insurer as a going concern.** (1) (c) As used in this section, "shares" has the same meaning as set forth in section ~~7-1-102 (12)~~ 7-101-401 (30), C.R.S., and includes any secured party or other person or holder who has or claims to have any interest of any kind in any shares of the insurer.

**SECTION 22.** 10-3-604 (1) (m), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**10-3-604. Procedure for exchange.** (1) (m) All shares acquired by the domestic company, upon payment of the value therefor, shall be canceled by the board of directors of the domestic company, upon the plan of exchange becoming effective, or at any time thereafter in the manner provided in section ~~7-6-104~~ 7-106-302 (2) (b), C.R.S., and any statement of cancellation made pursuant to said section shall first be filed with the commissioner prior to filing thereof with the secretary of state. If the commissioner finds such statement of cancellation to have been lawfully executed, and to be in due legal form and not in conflict with the provisions of law governing the domestic company, such statement of cancellation shall be filed with the secretary of state.

**SECTION 23.** 11-3-101 (5), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**11-3-101. General corporate powers.** (5) If the name of a state bank organized under the laws of this state contains the word "bank", said bank need not comply with the requirements of section ~~7-3-106 (1)~~ 7-104-101 (1) (a), C.R.S.

**SECTION 24.** 11-3-121, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**11-3-121. Indemnification and personal liability of directors, officers, employees, and agents.** The state bank shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in section ~~7-3-101.5~~ ARTICLE 109 OF TITLE 7, C.R.S. State bank directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in section ~~7-3-101.5~~ ARTICLE 109 OF TITLE 7, C.R.S. State bank directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section ~~7-5-119~~ 7-108-402 (2), C.R.S., for directors and officers, respectively, of corporations for profit. Any

reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.

**SECTION 25.** 11-11-110, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**11-11-110. General corporation laws applicable.** The provisions of articles ~~1~~ 20 to 52 AND 101 TO 117 of title 7, C.R.S., relating to corporations shall, insofar as the same are not inconsistent with this code, govern corporations operating under the provisions of this code.

**SECTION 26.** 11-22-102 (1) (b), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-22-102. Charter - application - fee - issuance procedure - change in location.** (1) The incorporators of a proposed industrial bank shall submit to the banking board an application for an industrial bank charter and in support thereof shall submit the following:

(b) Proposed articles of incorporation, containing: The name of the proposed industrial bank; the city or county in which it is to be located; the amount of capital; the number and par value of the shares authorized; the number of directors; a statement whether cumulative voting will be permitted for directors; preemptive rights, if any, of stockholders; its term of existence; and such other proper provisions as may be approved by the banking board to govern the affairs and business of the proposed industrial bank, including such provisions required by law for the incorporation of ordinary corporations; but the name selected shall include the words "industrial bank". The name of the industrial bank need not comply with the requirements of section ~~7-3-106 (1)~~ 7-104-101 (1), C.R.S. Only one class of par value stock of not less than ten dollars per share shall be authorized, but the foregoing shall not affect industrial banks chartered prior to July 1, 1965, having other classes of stock or other par value than recited in this article. The articles of incorporation shall not contain any provisions authorizing such proposed industrial bank to engage in any business or activity except as may be authorized by this article.

**SECTION 27.** 11-30-101 (5), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**11-30-101. Definitions - organization - charter.** (5) After the said certified copy of articles of incorporation have been filed with the commissioner, he shall issue a charter for such credit union, at which time the credit union shall become a body corporate having the powers enumerated in section ~~7-3-101~~ 7-103-102, C.R.S., except as otherwise provided or limited in this article.

**SECTION 28.** 11-41-102, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**11-41-102. Restriction on corporate name.** The name of each domestic association incorporated on or after May 17, 1939, shall include the words "savings and loan association". If the name of the domestic association contains the words "savings and loan association", it need not comply with the requirements of section

~~7-3-106(1)~~ 7-104-101 (1), C.R.S. No association shall include in its name the words "guaranty" or "guarantee" or "mutual", unless organized without stock, or "permanent", unless organized with stock. The provisions of this section shall not affect the right of any association existing before May 17, 1939, to continue the use of its name.

**SECTION 29.** 11-41-130.5 (1) and (4), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

**11-41-130.5. Cessation of business as an association - amendment of articles.**

(1) Notwithstanding any provision of this article to the contrary, in connection with the sale of all or a substantial part of its assets, the board of directors of any savings and loan association may propose an amendment to its articles of incorporation to amend the objects and purposes to conform to those authorized in the "~~Colorado Corporation Code~~" "COLORADO BUSINESS CORPORATION ACT", articles ~~1 to 10~~ 101 TO 117 of title 7, C.R.S., and to make such other amendments authorized by and not inconsistent with the provisions of article ~~2~~ 110 of title 7, C.R.S. Such proposed amendments shall be submitted to the members or, if the savings and loan association has permanent stock, to the stockholders of said association for their approval. Upon approval, said amendments shall be submitted to the commissioner, together with a plan pursuant to subsection (2) of this section, for his approval.

(4) Upon approval of a plan and the amendments to the articles of incorporation by the commissioner pursuant to this article and upon the filing of such amendments, along with the applicable filing fees with the secretary of state as provided by section 11-41-129 (4), a corporation shall continue in existence pursuant to the "~~Colorado Corporation Code~~" "COLORADO BUSINESS CORPORATION ACT", articles ~~1 to 10~~ 101 TO 117 of title 7, C.R.S., but said corporation shall cease to be a savings and loan association or an association. The corporation's certificate of authority as a savings and loan association or an association shall automatically be cancelled, without further action, and the corporation shall be deemed to be organized pursuant to the "~~Colorado Corporation Code~~" "COLORADO BUSINESS CORPORATION ACT", articles ~~1 to 10~~ 101 TO 117 of title 7, C.R.S., and shall cease to be subject to the provisions of the "Savings and Loan Association Law", articles 40 to 46 of this title.

**SECTION 30.** 11-41-134, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**11-41-134. Indemnification and personal liability of directors, officers, employees, and agents.** The savings and loan association shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in section ~~7-3-101.5~~ ARTICLE 109 OF TITLE 7, C.R.S. Savings and loan association directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in ~~section 7-3-101.5~~ ARTICLE 109 OF TITLE 7, C.R.S. Savings and loan association directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section ~~7-5-119~~; 7-108-402 (2), C.R.S., for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.

**SECTION 31.** The introductory portion to 12-2-117 (3), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-2-117. Partnerships or professional corporations composed of certified public accountants - registration thereof.** (3) The corporation must be in compliance with the "~~Colorado Corporation Code~~" "COLORADO BUSINESS CORPORATION ACT", articles ~~1 to 10~~ 101 TO 117 of title 7, C.R.S., and the articles of incorporation of such corporation shall contain provisions complying with the following requirements:

**SECTION 32.** The introductory portion to 12-4-110 (2), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-4-110. Partnerships - professional corporations - requirements.** (2) Corporate practice of architecture is permitted in compliance with the "~~Colorado Corporation Code~~" "COLORADO BUSINESS CORPORATION ACT", articles ~~1 to 10~~ 101 TO 117 of title 7, C.R.S., but only if:

**SECTION 33.** 12-32-109.5 (1) (f), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-32-109.5. Professional service corporations for the practice of podiatry.** (1) (f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters. Notwithstanding ~~section 7-5-102~~ SECTIONS 7-108-103 TO 7-108-106, C.R.S., relating to the terms of office of directors, and ~~section 7-5-103, C.R.S., relating to the classification of directors;~~ a professional service corporation for the practice of podiatry may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into either two or three classes, each class to be as nearly equal in number as possible, with the terms of each class staggered to provide for the periodic, but not annual, election of less than all the directors.

**SECTION 34.** 12-36-134 (1) (f), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-36-134. Professional service corporations for the practice of medicine.** (1) (f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters. Notwithstanding ~~section 7-5-102~~ SECTIONS 7-108-103 TO 7-108-106, C.R.S., relating to the terms of office of directors and ~~section 7-5-103, C.R.S., relating to the classification of directors;~~ a professional service corporation for the practice of medicine may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into either two or three classes, each class to be as nearly equal in number as possible, with the terms of each class staggered to provide for the periodic, but not annual, election of less than all the directors.

**SECTION 35.** The introductory portion to 12-41-124 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-41-124. Professional service corporations for the practice of physical therapy.** (1) Persons licensed to practice physical therapy by the director may form professional service corporations for the practice of physical therapy under the "~~Colorado Corporation Code~~", articles ~~1 to 10~~ "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 of title 7, C.R.S., if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

**SECTION 36.** The introductory portion to 12-43-211 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-43-211. Professional service corporations for the practice of psychology, clinical social work, marriage and family therapy, and professional counseling.** (1) Licensees and certified school psychologists may form professional service corporations for the practice of psychology, clinical social work, marriage and family therapy, or professional counseling under the "~~Colorado Corporation Code~~" "COLORADO BUSINESS CORPORATION ACT", articles ~~1 to 10~~ 101 TO 117 of title 7, C.R.S., if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

**SECTION 37.** 12-61-302 (3), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-61-302. Application for payments out of fund - limitations on liability.** (3) Any real estate broker or real estate salesperson who is licensed or who renews a license under part 1 of this article on or after January 1, 1972, and upon whom personal service cannot be made with reasonable diligence shall be deemed to have appointed the secretary of state as agent for service of process for purposes of actions filed against said broker or salesperson pursuant to the provisions of subsection (1) of this section. Service of process pursuant to this subsection (3) shall be made as nearly as practicable in the manner prescribed by section ~~7-3-112~~ 7-105-104, C.R.S.

**SECTION 38.** 24-21-109, Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

**24-21-109. Documents in court proceedings - designation of person to attend court proceedings.** Subject to provisions of section 13-25-115, C.R.S., documents from the office of secretary of state used in court proceedings shall be acknowledged, exemplified, verified, or attested to in a manner which shall make unnecessary the personal appearance of the secretary of state in a court proceeding to acknowledge, exemplify, verify, or attest to the validity of such documents. The secretary of state may designate a person to attend court proceedings if the secretary of state is subpoenaed for the purpose of acknowledging, exemplifying, verifying, or attesting to the validity of documents furnished by that office. The revenues derived from fees as established in section ~~7-10-104(2)~~ 7-101-203 (2), C.R.S., and section 24-21-104 (1) shall be deposited in the department of state cash fund created in section

24-21-104 (3).

**SECTION 39.** 38-30-144 (3) (h), (3) (i), and (4), Colorado Revised Statutes, 1982 Repl. Vol., are amended to read:

**38-30-144. Conveyance by corporation.** (3) (h) A certificate of authority of a foreign corporation or a certified copy thereof; if the articles of incorporation limit the duration of the corporate life to less than perpetuity or if they limit or impose conditions upon the exercise of any corporate power described in section ~~7-3-101~~ 7-103-102, C.R.S., ~~1973~~ with respect to real property, then a certified copy of the articles of incorporation and amendments thereto;

(i) Where an amendment to the articles of incorporation changes the name or the period of duration of a foreign corporation or limits or imposes conditions upon the exercise of any corporate power described in section ~~7-3-101~~ 7-103-102, C.R.S., ~~1973~~ with respect to real property, a certified copy of such amendment;

(4) The failure to file any of the documents set forth in subsection (3) of this section in the office of any county clerk and recorder in this state shall not affect or impair the validity of such document; but any corporation which is required by subsection (3) of this section to file or record documents in addition to the certificate of incorporation or the certificate of authority but which has not filed or recorded such documents at the time any person acquires any interest in or lien upon real property from said corporation shall, as against such person and those claiming under him, be conclusively deemed to be an existing corporation qualified to exercise the powers described in section ~~7-3-101~~ 7-103-102, C.R.S. ~~1973~~.

**SECTION 40.** The introductory portion to 38-33.3-306 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-306. Bylaws.** (1) In addition to complying with applicable sections, if any, of the "~~Colorado Corporation Code~~", ~~articles 1 to 10~~ "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 of title 7, C.R.S., or the "Colorado Nonprofit Corporation Act", articles 20 to 29 of title 7, C.R.S., if the common interest community is organized pursuant thereto, the bylaws of the association must provide:

**SECTION 41.** 38-33.3-319, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-319. Other applicable statutes.** To the extent that provisions of this article conflict with applicable provisions in the "~~Colorado Corporation Code~~", ~~articles 1 to 10~~ "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 of title 7, C.R.S., the "Colorado Nonprofit Corporation Act", articles 20 to 29 of title 7, C.R.S., the "Uniform Partnership Law", article 60 of title 7, C.R.S., the "Colorado Uniform Limited Partnership Act of 1981", article 62 of title 7, C.R.S., article 1 of this title, article 55 of title 7, C.R.S., article 33.5 of this title, and section 39-1-103 (10), C.R.S., and any other laws of the state of Colorado which now exist or which are subsequently enacted, the provisions of this article shall control.

**SECTION 42.** 38-37-104 (1) (g), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-37-104. Duties of public trustees - fees, expenses, and salaries - reports.**

(1) The public trustees of each county of this state shall perform the functions and exercise the powers conferred upon them by statute. They shall be entitled to receive as fees for such services the following sums and no other fees or perquisites whatever:

(g) For performing any duty prescribed by ~~section 7-8-122, C.R.S., and~~ section 38-34-104, the sum of twenty-five dollars or such greater amount as may be approved by a court of competent jurisdiction;

**SECTION 43.** 38-37-106 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-37-106. Public trustee to act as successor in trust.** (1) It is a duty of all public trustees of the several counties of the state of Colorado to accept and discharge the duties of trustee or successor trustee in accordance with the provisions of ~~section 7-8-122, C.R.S., and~~ section 38-34-104.

**SECTION 44.** 39-28-106 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**39-28-106. Nonresident wholesalers.** (1) When the department determines that the collection of the tax imposed by the provisions of this article would be facilitated thereby, it may authorize any person, firm, limited liability company, partnership, or corporation outside of this state and engaged in the business of selling and shipping into this state cigarettes, upon complying with the requirements of this article, to affix or cause to be affixed the stamps, imprints, or impressions required by this article on behalf of the wholesalers within this state. The department may sell such stamps and approve the use of metering machines to such nonresident wholesalers as provided in this article; except that the nonresident wholesaler shall agree in writing to submit his books, accounts, and records to examination during reasonable business hours by any duly authorized agent of the department. Each such nonresident wholesaler shall appoint in writing the secretary of state of the state of Colorado to be his agent in this state for service of process, as provided in ~~section 7-9-119~~ 7-115-111, C.R.S., with respect to foreign corporations.

**SECTION 45.** The introductory portion to 40-20-102 (1), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

**40-20-102. Powers of corporation.** (1) Every such corporation, in addition to the powers conferred in articles ~~1 to 10~~ 101 TO 117 of title 7, C.R.S., has the power:

**SECTION 46. Repeal.** Articles 1 to 10 of title 7, Colorado Revised Statutes, 1986 Repl. Vol., as amended, are repealed.

**SECTION 47. Effective date.** This act shall take effect July 1, 1994.



**SECTION 48. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 6, 1993