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CBA-CLE'S BUSINESS DOCUMENT DRAFTING SERIES

DRAFTING CORPORATE BYLAWS

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I have referred to the Bylaws of a Corporation as its “Rules of Order.” Bylaws can go well beyond mere rules of order and can contain substantive provisions too. According to the Delaware courts, bylaws are third in the hierarchy of corporate governance:

Delaware General Corporation Law, together with a Delaware member corporation’s certificate of incorporation and bylaws, constitute the entity-specific corporate contract for the corporation and also form a hierarchy, comprising from top to bottom: (1) the DGCL, (2) the certificate of incorporation, and (3) the bylaws. Each of the lower components of the contractual hierarchy must conform to the higher components, and a bylaw that conflicts with the charter is void as is a bylaw or charter provision that conflicts with the DGCL. *Bragdon v. Bayshore Property Owners Association, Inc.*, 251 A.3d 661 (Delaware 2021); *In re El Paso Pipeline Partners, L.P. Derivative Litigation*, 132 A.3d 67 (Delaware 2015).

See various statutory provisions for bylaws of a corporation under Delaware law, the Model Business Corporation Act, and the Colorado Business Corporation Act: Note that the Delaware section provides that the bylaws “**may** be adopted . . . by the incorporators, by the initial directors of a corporation, or by its board of directors.” Similarly, the Colorado Business Corporation Act provides that the incorporator or the directors “**may**” adopt bylaws. In neither case are bylaws mandatory – although in using the phrase that the “incorporators or board of directors of a corporation **shall** adopt initial bylaws for the corporation,” the Model Business Corporation Act appears to require that the corporation have bylaws.

DELAWARE GENERAL CORPORATION LAW, SECTION 109 – BYLAWS

(a) The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators, by the initial directors of a corporation other than a nonstock corporation or initial members of the governing body of a nonstock corporation if they were named in the certificate of incorporation, or, before a corporation other than a nonstock corporation has received any payment for any of its stock, by its board of directors. After a corporation other than a nonstock corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote. In the case of a nonstock corporation, the power to adopt, amend or repeal bylaws shall be in its members entitled to vote. Notwithstanding

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the foregoing, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a nonstock corporation, upon its governing body. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the stockholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.

(b) The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees. The bylaws may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.

MODEL BUSINESS CORPORATION ACT, § 2.06 BYLAWS

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

(c) The bylaws may contain one or both of the following provisions:

(1) a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(2) a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures and conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

(d) Notwithstanding section 10.20(b)(2), the shareholders in amending, repealing, or adopting a bylaw described in subsection (c) may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw to provide for a reasonable, practical, and orderly process.

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COLORADO BUSINESS CORPORATION ACT § 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.** [Emphasis supplied.]

CONCLUSION

The “Articles of Incorporation” of a Colorado corporation is a public document easily available to any interested person through the Secretary of State’s filing service. In some cases, the statute specifies that provisions are only effective if contained in the articles of incorporation. For example, see:

- C.R.S. § 7-102-102(1) that requires that the articles set forth a description of the corporation’s capital stock.
- Any deviation from the general powers of the corporation set forth in C.R.S. § 7-103-102.

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- Provision for personal liability of shareholders as described in C.R.S. § 7-106-203(2).
- Shareholders of a Colorado corporation generally do not have preemptive rights unless set forth in the articles of incorporation as required by C.R.S. § 7-106-301.
- Colorado corporations have a unanimous consent requirement for shareholder action unless the articles of incorporation reduce the unanimity requirement to a lesser number as set forth in C.R.S. § 7-107-104(2).
- The articles of incorporation may provide for staggered terms of directors as set forth in C.R.S. § 7-108-106.

On the other hand, Bylaws of a Colorado corporation are not publicly available but may contain provisions that significantly affect shareholder rights. For example, see:

- C.R.S. § 7-107-108 provides specifically that unless the bylaws require that the meeting of shareholders be held at a place, the board of directors may determine that meetings may be entirely virtual.
- C.R.S. § 7-108-205 provides that unless the bylaws establish a greater quorum requirement, a majority of the board constitutes a quorum.
- C.R.S. § 7-108-206 provides that unless otherwise provided by the bylaws, the board of directors of the corporation may create various committees and appoint their members.
- C.R.S. §§ 7-110-201 through -203 includes provisions to be followed for the amendment of corporate bylaws.

As discussed in the hierarchy discussion above, if the Bylaws have any provisions inconsistent with the articles of incorporation or the Colorado Business Corporation Act, the other provisions will govern.

THE FOLLOWING DOCUMENT IS A FORM PREPARED BY HERRICK K. LIDSTONE, JR. OF BURNS, FIGA & WILL, P.C. FOR USE IN A CONTINUING LEGAL EDUCATION SEMINAR. THIS FORM IS INTENDED TO BE INSTRUCTIVE AND ILLUSTRATIVE ONLY, INDICATING CERTAIN TYPES OF PROVISIONS THAT MAY BE APPROPRIATE IN CERTAIN COLORADO CORPORATIONS. THIS FORM IS NOT INTENDED FOR ANY SPECIFIC TRANSACTION AND SHOULD ONLY BE USED AS AN AID BY A LAWYER FAMILIAR WITH THE STRUCTURE OF CORPORATIONS. AS REFLECTED IN GREEN TYPE, THIS FORM HAS BEEN UPDATED FOR THE ADOPTION OF S.B. 2019-086, EFFECTIVE JULY 1, 2020 and H.B. 2021-1124, EFFECTIVE APRIL 19, 2021.

PURSUANT TO INTERNAL REVENUE SERVICE RULES OF PRACTICE, ANY TAX ADVICE SET FORTH IN THIS FORM IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (A) AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER THE INTERNAL REVENUE CODE OR (B) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED MATTER ADDRESSED HEREIN.

MANY OF THE PROVISIONS INCLUDED IN THE ARTICLES OF INCORPORATION COULD BE INCLUDED IN THE BYLAWS INSTEAD. THE VALUE OF INCLUDING INFORMATION IN THE ARTICLES RATHER THAN THE BYLAWS IS THAT THE ARTICLES PROVIDE PUBLIC NOTICE OF THOSE PROVISIONS; THE DOWNSIDE TO INCLUDING THOSE PROVISIONS IN THE ARTICLES IS THAT THE PROVISIONS ARE PUBLIC. FOR EXAMPLE, see § 7-102-108(1) WHICH PROVIDES THAT: “The articles of incorporation or the bylaws may require that any or all internal corporate claims must be brought exclusively in any specified court of this stated”

THIS FORM HAS ALSO BEEN UPDATED TO REFLECT THE BENEFICIAL OWNERSHIP REQUIREMENTS OF THE FEDERAL CORPORATE TRANSPARENCY ACT (31 U.S.C. § 5336) ADOPTED ON JANUARY 1, 2021 AND EFFECTIVE JANUARY 1, 2024. FOR A MORE DETAILED DISCUSSION OF THE CTA, SEE Lidstone, Herrick K., “*Considerations for Attorneys Resulting from the Corporate Transparency Act*,” available at <https://ssrn.com/abstract=4414393> and Lidstone, Herrick K., “*Will FinCEN Be Ready for the CTA*,” available at <https://ssrn.com/abstract=4666412>.

THIS FORM IS KEPT UP TO DATE AT www.bfwlaw.com. CHECK FOR UPDATES.

BYLAWS OF

_____, INC.

(the “Corporation”)

As Adopted _____, 2024

[Note: The statutory provision for corporate bylaws under the Colorado Business Corporation Act is found at CRS § 7-102-106. Bylaws are not required, but “may” be adopted by the Board of Directors or shareholders. As set forth in subsection (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.” Corporate Bylaws are generally considered to be a foundational governance document providing the rules of the road for many of the essential functions of the Board of Directors and provides direction to the shareholders as well.]

**ARTICLE I
OFFICES**

Section 1.1 Principal Office. The principal office of the Corporation shall be located as designated by the Board of Directors, either within or without the State of Colorado. The Corporation may have such other offices, either within or without the State of Colorado, as the Board of Directors may designate or as the business of the Corporation may require from time to time. [*§7-102-102(1)(d)*]

Section 1.2 Registered Office. The registered office of the Corporation, required by the Colorado Business Corporation Act to be maintained in the State of Colorado, may be, but need not be, identical with the principal office if located in the State of Colorado, and the address of the registered office may be changed from time to time by the Board of Directors. [*§7-102-102(1)(c) and §7-105-101*]

**ARTICLE II
SHAREHOLDERS**

Section 2.1 Annual Meeting. The annual meeting of the shareholders shall be held at such time on such day as shall be fixed by the Board of Directors, for the purpose of electing directors and for the transacting of such other business as may come before the meeting. If the election of directors shall not be held on the date designated herein for any annual meeting of the shareholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as may be convenient. [*§7-107-101*]

Section 2.2 Special Meetings. Special meetings of the shareholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors, and shall be called by the President at the request of the holders of not less than one-tenth of all votes entitled to be cast at the meeting; provided, however, that the requesting holders must have held their ownership in the Corporation for at least twelve consecutive months. [*§7-107-102*]

Section 2.3 Place of Meetings. *[Amendments under H.B. 21-1124 permit virtual meetings, unless the Constituent Documents provide otherwise]*

(a) The Board of Directors may determine that a meeting of shareholders will not be held at any place and instead will be held solely by means of remote communication. If a meeting is held solely by means of remote communication, the Board of Directors shall implement reasonable measures to: (i) verify that each person participating remotely as a shareholder is a shareholder; and (ii) provide the shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting, substantially concurrent with the meeting.

(b) If the Board of Directors does not elect to hold the meeting solely by means of remote communication in accordance with subsection (a) above, the Board of Directors may designate any place, either within or without the State of Colorado, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Corporation. *[§7-107-101(2) and §7-107-102(3)]*

[In many cases of older governance documents, the provision may say that meetings will be held at a place designated by the Board of Directors or “at the corporate offices” or some other language indicating a physical location. In those cases, a purely virtual meeting would not be permissible. Unless other language in the governance documents prohibit a hybrid meeting, the notice of the meeting can then identify a place and then limit the attendance at the “place” but make virtual communication available – a “hybrid meeting.”

See the language in the first line of Section 2.4(a), below. If the notice is required to state “the day, hour, and place of the meeting [omitting the parenthetical “(if any)”, then a place likely should be designated.]

Section 2.4 Notice of Meeting.

(a) Notice stating the day, hour, and place (if any) of the meeting of shareholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, unless otherwise prescribed by statute, be delivered not less than ten nor more than 60 days before the date of the meeting, either personally, by electronic transmission, or by mail, by or at the direction of the President, or the Secretary, or the officer or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting; provided, however, that if the authorized shares of the Corporation are to be increased, at least 30 days’ notice shall be given.

(b) If the meeting is to be held without naming a place of the meeting, the notice shall include the means by which shareholders can participate in the meeting. *[H.B. 21-1124 expanded the definitions in the Colorado Corporations and Associations Act allowing for notice by electronic transmission and virtual meetings. See, among other sections, § 7-90-105.]*

(c) If mailed, such notice shall be deemed **effective at the earliest of: (i) the date received; (ii) five days after the notice has been deposited in the United States mail**, addressed to the shareholder at the shareholder's address as it appears on the stock transfer books of the Corporation, with postage thereon prepaid; or (iii) 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.

(d) **If given by electronic transmission, such notice will be deemed effective when the electronic transmission is delivered if: (i) directed to the shareholder's electronic address provided by the shareholder, unless the shareholder has notified the Corporation of an objection to receiving notice by electronic mail; and (ii) the notice includes a prominent legend that the communication is an important notice regarding the entity.** [*§7-107-105 and § 7-90-105*]

Section 2.5 Fixing of Record Date.

(a) The Board of Directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 70 days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken.

(b) If no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which the resolution of the Board of Directors declaring such dividend is adopted shall be the record date for such determination of shareholders entitled to notice.

(c) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof so long as the meeting is not adjourned to a date and time more than 120 days after the date of such meeting of shareholders. [*§7-107-107*]

Section 2.6 Adjournment of Meeting. A meeting of shareholders may be adjourned to another time or place as determined by the chair of the meeting. Unless the Board of Directors fixes a new record date, or if a new record date is required to be fixed pursuant to section 7-107-107(3) of the Colorado Business Corporation Act, shareholders of record for an adjourned meeting shall be as originally determined for the meeting from which the adjournment was taken. If the adjournment is for more than 120 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote. At the adjourned meeting any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.7 Voting Record.

(a) The officer or agent having charge of the stock transfer books for shares of the Corporation shall make a complete record of the shareholders entitled to be given notice of the meeting, arranged in alphabetical order, with the address of and the number of shares held by each.

(i) The record shall be kept on file at the principal office of the Corporation, whether within or without the State of Colorado, **or on a reasonably accessible electronic network if the information required to gain access to the list is provided with the notice of the meeting** and shall be subject to inspection by any shareholder for any purpose germane to the meeting at any time during usual business hours. [*§ 7-107-201*]

(ii) Such record shall be produced and kept open beginning at 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.

(iii) Unless the meeting is not being held at a place but rather solely by remote participation, such record shall also be available at the time and place (if any) of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. [*§7-107-201*]

(b) The original stock transfer books shall be the prima facie evidence as to the identity of the shareholders entitled to examine the record or transfer books or to vote at any meeting of shareholders.

Section 2.8 Quorum. Shares representing one-third of the votes entitled to be cast, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders, except as otherwise provided by the Colorado Business Corporation Act and the Articles of Incorporation. In the absence of a quorum at any such meeting, a majority of the shares so represented may adjourn the meeting from time to time for a period not to exceed 60 days. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the original meeting as originally noticed. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. [*§7-107-206(1)*]

Section 2.9 Manner of Acting. If a quorum is present, action on a matter is approved if the votes cast favoring the action exceed the votes cast opposing such action, unless the vote of a greater proportion or number or voting by classes is otherwise required by statute or by the Articles of Incorporation or these Bylaws. [*§7-107-206(3)*]

Section 2.10 Proxies. At all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing **or by electronic transmission** by the shareholder or by the shareholder's duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy **or the appointment is irrevocable under C.R.S. § 7-107-203(5)**. Proxies shall be in such form as shall be required by the Board and as set forth in the notice of meeting and/or proxy or information statement concerning such meeting. [*§7-107-203*]

Section 2.11 Voting of Shares. Unless otherwise provided by these Bylaws or the Articles of Incorporation, each outstanding share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of shareholders, and each fractional share shall be entitled to a corresponding fractional vote on each such matter. [*§7-107-202*]

Section 2.12 Voting of Shares by Certain Shareholders.

(a) Shares standing in the name of another entity may be voted by such manager, agent or proxy as the constituent operating document of such entity may prescribe, or, in the absence of such provision, as the managers of such other entities may determine. The terms “entity,” “manager,” and “constituent operating document” are as defined in C.R.S. § 7-90-102.

(b) Shares standing in the name of a deceased person, a minor ward or an incompetent person, may be voted by such person’s administrator, executor, court appointed guardian or conservator, either in person or by proxy without a transfer of such shares into the name of such administrator, executor, court appointed guardian or conservator. Shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held by the trustee without a transfer of such shares into the trustee’s name.

(c) Shares standing in the name of a receiver may be voted by such receiver and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver’s name if authority so to do is contained in an appropriate order of the court by which the receiver was appointed.

(d) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(e) Neither treasury shares of its own stock belonging to this corporation, nor shares of its own stock held by it in a fiduciary capacity, nor shares of its own stock held by another corporation if the majority of the shares entitled to vote for the election of directors of such other corporation is held by the Corporation, may be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time.

(f) Redeemable shares which have been called for redemption shall not be entitled to vote on any matter and shall not be deemed outstanding shares on and after the date on which notice of redemption has been **delivered** to shareholders and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders of the shares upon surrender of certificates therefor. [*§7-107-205*]

(g) Shares held of record by a shareholder but which are held for the account of a specified person or persons may be voted by such person or persons, provided the shareholder has certified to the Corporation in writing that all or a portion of the shares registered in the name of the shareholder are held for the account

of such person or persons, as provided in Article VI, Section 6.6 of these Bylaws.
[§7-107-204]

Section 2.13 Informal Action by Shareholders.

(a) Any action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by shareholders holding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted consent to such action in writing. [§7-107-104; Articles, Art. VIII]

(b) All required consents must be received by the Corporation within sixty days after the date the Corporation first receives a document describing and consenting to the action and signed by a sufficient number of shareholders who have not previously revoked their signature. Any such consent will be effective upon the Corporation's receipt of the last document necessary to effect the action unless all of the documents necessary to effect the action state another date as the effective date of the action, in which case such stated date shall be the effective date of the action. [§ 7-107-104]

(c) Any consent may be provided by electronic transmission providing the Corporation with a complete copy thereof, including a copy of the signature thereto. [§ 7-107-104(2)(b)(II).]

(d) If action is taken pursuant to this Section 2.13 by less than unanimous consent, the Corporation shall give notice of the action to all shareholders who were entitled to vote upon the action but who did not consent thereto as required by Section 7-107-104(5.5) of the Colorado Business Corporation Act. [§7-107-104(5.5)]

Section 2.14 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the presiding officer shall order or any shareholder shall demand that voting be by ballot.

Section 2.15 No Cumulative Voting. No shareholder shall be permitted to cumulate the shareholder's votes by giving one candidate as many votes as the number of such directors multiplied by the number of the shares shall equal, or by distributing such votes on the same principle among any number of candidates. [§7-107-209; Articles, Art. V]

Section 2.16 Meetings by Telecommunication. Where an annual or special meeting is held at a place designated by the Board of Directors, and if permitted by resolution of the Board of Directors, any or all of the shareholders may participate in the meeting by, or the meeting may be conducted through the use of, any means of communication by which the Corporation may verify that each person participating as a shareholder is a shareholder and all shareholders have a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting, substantially concurrently with the proceedings. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting. [A

shareholder has the right to participate in meetings by telecommunication “unless otherwise provided in the bylaws.” § 7-107-108.]

Section 2.17 Beneficial Ownership Reporting. [*generally 31 USC § 5336 and the rules in 31 CFR § 1010.380, with interpretations available at www.fincen.gov/boi*]

(a) (i) Each shareholder, officer, and director or other person deemed to be a “Beneficial Owner” as that term is defined in the Corporate Transparency Act, Title LXIV of the 2021 National Defense Authorization Act, 31 U.S.C. § 5336(b) or the rules thereunder (all as amended) (the “CTA”), agrees and covenants to provide to the Corporation such information, including all personal identifying information and an “acceptable identification document,” required by the Corporation to comply with the CTA if the Corporation is a Reporting Company under the CTA not otherwise exempt from the reporting requirements.

(ii) Each such shareholder, officer, and director or other person shall provide such information to the Corporation not later than December 31 of each calendar year or within ten business days following receipt of a request for such information from the Corporation. The Corporation may make that request by email, orally, or in any other form of notice to the shareholder, officer, or director or reporting other person.

(b) After the shareholder, officer, director or other reporting person has responded to the Corporation’s initial request as required above, the shareholder, officer, or director or other reporting person shall provide the Corporation with any corrections or changes to the information provided within ten days after the change have occurred or the error being corrected has been identified.

(c) To the extent that the shareholder, officer, director or other reporting person provides the Corporation with a FinCEN Identifier in lieu of providing the information required in paragraphs (a) and (b) of this Section 2.17, the shareholder, officer, or director or other reporting person providing the FinCEN Identifier will be responsible to ensure the accuracy of the information that such person provided to obtain the FinCEN Identifier and to make any and all amendments to the application for the FinCEN Identifier as necessary.

(d) Should a shareholder, officer, director, or other reporting person fail to respond to the Corporation’s request for information as necessary to comply with the Corporation’s reporting requirements under the CTA or the reporting requirements of any subsidiary of the Corporation, should the information provided by the shareholder, officer, director, or other reporting person be incorrect or incomplete in any respect,¹ or should the shareholder, officer, director, or other reporting person fail to make any corrections or amendments to the information and provide such corrections timely to the Corporation for the Corporation to be able to make its Beneficial Ownership Information Report to FinCEN in accordance with the CTA and the rules promulgated by FinCEN, then:

(i) The shareholder, officer, director, or other reporting person shall fully indemnify the Corporation and hold the Corporation fully harmless for any expenses, liabilities, fines, or penalties to which the Corporation may be subject because of its inability to provide the accurate and complete

¹ Note that the CTA does not have a materiality requirement.

information to FinCEN resulting from the failure by the shareholder, officer, director, or other reporting person to comply with such person's obligation to provide accurate, complete, and timely information as required by this Section 2.17;

- (ii) Until such time as the shareholder, officer, director, or other reporting person shall meet its obligations under this Section 2.17, the shareholder, officer, director, or other reporting person shall not be entitled to vote any shares that such person may either by consent or at a meeting of the Corporation's shareholders, and no such shares shall be counted towards the quorum for a meeting of shareholders;
- (iii) Until such time as the shareholder, officer, director, or other reporting person shall meet its obligations under this Section 2.17, any dividends payable on any shares owned by the shareholder, officer, director, or other reporting person shall be retained by the Corporation and shall not be paid to such person until such time as the Corporation can establish that the shareholder, officer, director or other reporting person has met such person's obligations under this Section 2.17;
- (iv) To the extent that the shareholder, officer, director, or other person who is obligated to file reports under the CTA as a Beneficial Owner is a creditor of the Corporation (whether or not convertible), the Corporation shall have no obligation to make any payments of such debt to the creditor and shall have incur no penalties for such failure until the shareholder, officer, director, or other person provides the Corporation with information sufficient to meet the Corporation's obligation to report under the CTA;²
- (v) To the extent that the shareholder, officer, director, or other person is the holder of an option or other instrument convertible into an owner's interest in the Corporation, the option or other instrument convertible into an owner's interest in the Corporation shall not be exercisable until the shareholder, officer, director, or other person provides the Corporation with information sufficient to meet the Corporation's obligation to report under the CTA; furthermore the expiration of such option or other instrument convertible into an owner's interest in the Corporation shall not be tolled or otherwise extended as a result of such person's failure to provide information to the Corporation;
- (vi) *Other penalties?*

[The Corporate Transparency Act imposes reporting obligations on "reporting companies" for each "beneficial owner." As defined in the Corporate Transparency Act, a beneficial owner is an individual "who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise--(i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity." 31 U.S.C. § 5336(a)(3)(A). For a more detailed discussion of the Corporate

² This of course may conflict with the credit agreements, and the creditor, who may not be a shareholder of the Corporation, may attempt to enforce the credit agreement notwithstanding these bylaws provisions.

Transparency Act, see Lidstone, Herrick K., “*Considerations for Attorneys Resulting from the Corporate Transparency Act,*” available at <https://ssrn.com/abstract=4414393> and Lidstone, Herrick K., “*Will FinCEN Be Ready for the CTA,*” available at <https://ssrn.com/abstract=4666412> and the other sources cited therein.]

Section 2.18 Procedural Requirements for Nomination of Directors by Shareholders. [1934 Act reporting companies only]

(a) Annual Meetings of Shareholders.

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the shareholders may be made at an annual meeting of shareholders only (A) pursuant to the Corporation’s notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors, or (C) by any shareholder of the Corporation who (i) was a shareholder of record of the Corporation at the time the notice provided for in this Section 2.18 is delivered to the Secretary of the Corporation and at the time of the annual meeting, (ii) is entitled to vote at the meeting, and (iii) complies with the notice procedures set forth in this Section 2.18 as to such business or nomination. Clause (C) of the preceding sentence shall be the exclusive means for a shareholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and included in the Corporation’s notice of meeting) before an annual meeting of shareholders.

(2) Without qualification or limitation, for any nominations or any other business to be properly brought before an annual meeting by a shareholder pursuant to clause (C) of paragraph (a)(1) of this Section 2.18, the shareholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business, other than the nominations of persons for election to the Board of Directors, must constitute a proper matter for shareholder action. To be timely, a shareholder’s notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the date announced by the Corporation as to the date by which Shareholder Proposals must be received as required by Item 5.08 of Form 8-K (or any other announcement made by the Corporation in any other report filed by the Corporation with the Securities Exchange Commission) (the “Shareholder Proposal Notice Date”). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above.

(3) To be in proper form, a shareholder’s notice delivered pursuant to this Section 2.18 must set forth:

(A) As to each person, if any, whom the shareholder proposes to nominate for election or reelection as a director (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in contested election, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, (ii) such person’s consent to being named in the proxy statement as a

nominee and to serving as a director if elected and (iii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such shareholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the shareholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the “registrant” for purposes of such rule and the nominee were a director or executive officer of such registrant;

(B) If the notice relates to any business other than a nomination of a director or directors that the shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-laws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such shareholder and the beneficial owner, if any, on whose behalf the proposal is made, and a description of all agreements, arrangements and understandings between such shareholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such shareholder; and

(C) As to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such shareholder, as they appear on the Corporation’s books, and of such beneficial owner, if any, (ii) (a) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and of record by such shareholder and such beneficial owner, (b) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a “Derivative Instrument”) directly or indirectly owned beneficially by such shareholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (c) any proxy, contract, arrangement, understanding, or relationship pursuant to which such shareholder has a right to vote any shares of any security of the Company, (d) any short interest in any security of the Company (for purposes of this By-law a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement,

understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (e) any rights to dividends on the shares of the Corporation owned beneficially by such shareholder that are separated or separable from the underlying shares of the Corporation, (f) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such shareholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (g) any performance-related fees (other than an asset-based fee) that such shareholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such shareholder's immediate family sharing the same household, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such shareholder and such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, (iv) a representation that the shareholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (v) a representation whether the shareholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee or (b) otherwise to solicit proxies from shareholders in support of such proposal or nomination, and (vi) any other information relating to such shareholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

In addition, the shareholder's notice with respect to the election of directors must include, with respect to each nominee for election or reelection to the Board of Directors, the completed and signed questionnaire, representation and agreement required by Section 3.2(d). The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee.

Notwithstanding the foregoing, the information required by clauses (a)(3)(C)(ii) and (a)(3)(C)(iii) of this Section 2.18 shall be updated by such shareholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such information as of the record date.

(4) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 2.18 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at an annual meeting is increased

and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors by the Shareholder Proposal Notice Date, a shareholder's notice required by this Section 2.18 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(b) **Special Meetings of Shareholders.** Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the Corporation's notice of meeting:

(1) By or at the direction of the Board of Directors, or

(2) Provided that the Board of Directors has determined that directors shall be elected at such meeting, by any shareholder of the Corporation who (i) is a shareholder of record of the Corporation at the time the notice provided for in this Section 2.18 is delivered to the Secretary of the Corporation and at the time of the special meeting, (ii) is entitled to vote at the meeting and upon such election, and (iii) complies with the notice procedures set forth in this Section 2.18 as to such nomination.

In the event the Corporation calls a special meeting of shareholders for the purpose of electing one or more directors to the Board of Directors, any such shareholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the shareholder's notice required by paragraph (a)(3) hereof with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by this By-law) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the Shareholder Proposal Notice Date. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above.

(c) **General.**

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 2.18 or the Articles of Incorporation shall be eligible to be elected at an annual or special meeting of shareholders of the Corporation to serve as directors and only such other business shall be conducted at a meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.18. Except as otherwise provided by law, the Articles of Incorporation or these By-laws, the person presiding at the meeting of shareholders shall have the power and duty (A) to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.18 (including whether the shareholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which

solicited) or did not so solicit, as the case may be, proxies in support of such shareholder's nominee or proposal in compliance with such shareholder's representation as required by clause (a)(3)(C)(v) of this Section 2.18) and (B) if any proposed nomination or other business was not made or proposed in compliance with this Section 2.18, to declare that such nomination shall be disregarded or that such proposed other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.18, if the shareholder (or a qualified representative of the shareholder) does not appear at the annual or special meeting of shareholders of the Corporation to present a nomination or other business, such nomination shall be disregarded and such proposed other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.18, to be considered a qualified representative of the shareholder, a person must be a duly authorized officer, manager or partner of such shareholder or must be authorized by a writing executed by such shareholder or an electronic transmission delivered by such shareholder to act for such shareholder as proxy at the meeting of shareholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of shareholders.

(2) For purposes of this Section 2.18, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission (the "SEC") pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Section 2.18, a shareholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.18; provided however, that any references in these By-laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.18 (including clause (a)(1)(C) and paragraph (b) hereof), and compliance with clause (a)(1)(C) and paragraph (b) of this Section 2.18 shall be the exclusive means for a shareholder to make nominations or submit other business, as applicable (other than matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 2.18 shall be deemed to affect any rights (A) of shareholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 of the Exchange Act or (B) of the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation ("Preferred Stock") to elect directors pursuant to any applicable provisions of the Articles of Incorporation.

(4) Notwithstanding any shareholder's compliance with the foregoing procedure, the shareholder does not have the right to have its nominee included in the Corporation's proxy statement for such meeting of shareholders at which directors will be elected unless the Corporation is subject to, and the shareholder has complied with, the requirements of SEC Rule 14a-11.

ARTICLE III
BOARD OF DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by its Board of Directors. [*§7-108-101(2)*]

Section 3.2 Number, Tenure and Qualifications. The initial number of directors shall be not fewer than one. The number of directors fixed by these bylaws may be increased or decreased from time to time by resolution of the board of directors. [*§7-108-103*]

(a) Each director shall hold office until the next annual meeting of shareholders and until the director's successor shall have been elected and qualified. [*§7-108-105(2)*]

(b) The tenure of a director shall not be affected by any decrease or increase in the number of directors so made by the board. [*§7-108-105(3)*]

(c) In addition to the qualifications for directors established in section 7-108-102 of the Colorado Business Corporation Act and subject to Section 3.10 with respect to the Board's power to fill vacancies, a person shall not be eligible for election or re-election as a director at an annual or special meeting unless:

(i) The person is nominated by a Record Shareholder in accordance with Section 2.18, or

(ii) The person is nominated by or at the direction of the Board of Directors. [*§7-108-102*]

(d) In addition to the qualifications set forth in established in section 7-108-102 of the Colorado Business Corporation Act and Section 3.2(c), to be eligible for election or reelection as a director at an annual or special meeting of shareholders, each person shall:

(i) Deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.18 of these By-laws) to the Secretary at the principal executive offices of the Corporation a questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (a) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a 'Voting Commitment') that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law as it presently exists or may hereafter be amended, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect

compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (c) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(ii) Be _____.

[§7-108-102]

(e) The Chair of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defectively proposed business or nomination shall not be presented for shareholder action at the meeting and shall be disregarded.

Section 3.3 Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of shareholders (if any place for such meeting has been designated). The Board of Directors may provide, by resolution, the time and place (if any), either within or without the State of Colorado, for the holding of additional regular meetings, without other notice than such resolution. The Board of Directors may also provide, by resolution, that such meeting will be held by means of remote communication without designating a place. [§§ 7-108-201 and -203(1)]

Section 3.4 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chair, if there be one, the President, any of the directors, or by such persons as are authorized to call special meetings under the Colorado Business Corporation Act. The person or persons authorized to call special meetings of the Board of Directors may fix a place (if any), either within or without the State of Colorado, as the place (if any) for holding any special meeting of the Board of Directors called by them. Notwithstanding the actions of the person or persons calling the meeting to set a place for the meeting, the Board of Directors may provide, by resolution, that such meeting will be held by means of remote communication without designating a place.

Section 3.5 Notice.

(a) (i) Notice of any special meeting of directors shall be given by mail to each director at the director's address at least two business days prior to the meeting or by personal delivery or **electronic transmission** at least 24 hours prior to the meeting to the business address of each director, or in the event such notice is given on a Saturday, Sunday or holiday, to the residence address of each director, or on such shorter notice as the person or persons calling the meeting, acting in good faith, may deem necessary or appropriate in the circumstances. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice is given by fax or electronic mail,

such notice shall be deemed to be delivered when confirmation (either by electronic means or by the person receiving the fax or electronic mail) of such fax is received by the sender. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. [*§7-108-203(2)*]

(ii) If mailed, such notice shall be deemed effective at the earliest of: (A) the date received; (B) five days after the notice has been deposited in the United States mail, addressed to the shareholder at the shareholder's address as it appears on the stock transfer books of the Corporation, with postage thereon prepaid; 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.

(iii) If given by electronic transmission, such notice will be deemed effective when the electronic transmission is delivered if: (A) directed to the shareholder's electronic address provided by the shareholder, unless the shareholder has notified the Corporation of an objection to receiving notice by electronic mail; and (B) the notice includes a prominent legend that the communication is an important notice regarding the entity. [*§ 7-90-105*]

(b) Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. [*§7-108-204*]

(c) Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. [*§7-108-203(2)*]

Section 3.6 Quorum. A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. [*§7-108-205(1)*]

Section 3.7 Manner of Acting. Except as otherwise required by law or by the Articles of Incorporation, the act of the majority of the directors present at a meeting at which a quorum is present shall be an act of the Board of Directors. [*§7-108-205(3)*]

Section 3.8 Action by Directors Without a Meeting. Any action required or permitted to be taken by the Board or Directors or by a committee thereof at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors or all or the committee members entitled to vote with respect to the subject matter thereof. [*§7-108-202*] *If any of the persons signing the consent is a "precluded director" as defined in C.R.S. § 7-108-404(2), the number of directors (not including any precluded director) signing the consent must be not less than a majority of all of the directors. [*§ 7-108-404(1)(b) states that the bylaws may raise the number above a majority.*]* Signatures may be original signatures or by fax or other facsimile method. Signatures on such consent may be made in counterparts.

Section 3.9 Meetings by Telecommunication. Where a meeting is held at a place designated by the Board of Directors, any member of the Board of Directors or any committee designated by such Board may participate in a meeting of the Board of Directors or committee by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting. [*§7-108-201(2)*]. See Section 2.16 for similar provisions regarding shareholders' meetings. C.R.S. § 7-108-201(2) provides that "unless otherwise provided by the bylaws," the board of directors may permit any director to participate in a regular or special board meeting telephonically. If directors want to permit participation in the board meetings by telephonic meetings only in certain circumstances this should be so stated.]

Section 3.10 Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of the director's predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the Board of Directors for a term of office continuing only until the next election of directors by the shareholders. [*§7-108-110*]

Section 3.11 Resignation. Any director of the Corporation may resign at any time by giving notice to the President or the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at any such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. When one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective. [*§7-108-107*]

Section 3.12 Removal. Any director or directors of the Corporation may be removed at any time by the shareholders, with or without cause, in the manner provided in the Colorado Business Corporation Act. [*§7-108-108 and §7-108-109*]

Section 3.13 Committees. By resolution adopted by a majority of the Board of Directors, the directors may designate two or more directors to constitute a committee, any of which shall have such authority in the management of the Corporation as the Board of Directors shall designate and as shall not be proscribed by the Colorado Business Corporation Act. [*§7-108-206*]

Section 3.14 Compensation. By resolution of the Board of Directors and irrespective of any personal interest of any of the members, each director may be paid the director's expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a stated salary as director or a fixed sum for attendance at each meeting of the Board of Directors, or both. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.15 Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter

is taken shall be presumed to have assented to the action taken unless the dissent shall be entered in the minutes of the meeting or unless the director shall file the director's written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. [*§7-108-205(4)*]

ARTICLE IV OFFICERS

Section 4.1 Number. The officers of the Corporation shall be a President, who shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person. [*§7-108-301(1) and §7-108-301(4)*]

Section 4.2 Election and Term of Office. The officers of the Corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after the annual meeting of the shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as practicable. Each officer shall hold office until the officer's successor shall have been duly elected and shall have qualified or until the officer's death or until the officer shall resign or shall have been removed in the manner hereinafter provided. [*§7-108-301(2)*]

Section 4.3 Removal. Any officer or agent may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. [*§7-108-303*]

Section 4.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term. [*§7-108-301(2)*]

Section 4.5 Chair of the Board. If the directors so desire, they may elect a Chair of the Board from among themselves. The Chair of the Board shall preside at all meetings of the shareholders and of the Board of Directors. The Chair shall have such other powers and duties as may be prescribed by the Board of Directors. [*§7-108-301(1) and §7-108-302*]

Section 4.6 President. The President shall be the chief executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation. The President shall, if no Chair be elected, be the chief executive officer of the Corporation and shall preside at all meetings of the shareholders and of the Board of Directors. The President may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Board of Directors, certificates for shares of the

Corporation and deeds, mortgages, bonds, contracts or equipment leases entered into in the ordinary course of business, and other contracts or instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time. [*§7-108-301(1) and §7-108-302*]

Section 4.7 The Vice Presidents. If elected or appointed by the Board of Directors, the Vice President (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall, in the absence of the President or in the event of the President's death or inability to act, perform all duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President may sign, with the Secretary or an Assistant Secretary, certificates for shares of the Corporation, and contracts or equipment leases entered into in the ordinary course of business; and shall perform such other duties as from time to time may be assigned to such person by the President or by the Board of Directors. [*§7-108-301(1) and §7-108-302*]

Section 4.8 The Secretary. If elected or appointed by the Board of Directors, the Secretary shall: (a) keep the minutes of the proceedings of the shareholders and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized; (d) keep a register of the post office address of each shareholder which shall be furnished to the Secretary by such shareholder; (e) sign with the President, or a Vice President, certificates for shares of the Corporation, the issuance of which shall have been authorized by resolution of the Board of Directors; (f) have general charge of the stock transfer books of the Corporation; (g) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board of Directors. [*§7-108-301(1), §7-108-301(3) and §7-108-302*]

Section 4.9 The Treasurer. If elected or appointed by the Board of Directors, the Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Corporation; (b) receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these Bylaws; and (c) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the President or by the Board of Directors. [*§7-108-301(1) and §7-108-302*]

Section 4.10 Assistant Officers, Assistant Secretaries and Assistant Treasurers.

(a) A duly appointed officer may appoint one or more assistant officers.
[§7-108-301(2)]

(b) The Assistant Secretaries, when authorized by the Board of Directors, may sign with the President or a Vice President certificates for shares of the corporation the issuance of which shall have been authorized by a resolution of the Board of Directors. Other assistant officers shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors. No officer may appoint an assistant officer with greater authority to act than the officer appointing such assistant officer. The Board of Directors may limit the authority of any officer to appoint any assistant officer, and the Board of Directors may limit the authority of any officer or assistant officer in any respect. *[§7-108-302]*

Section 4.11 Bonds. If the Board of Directors by resolution shall so require, any officer or agent of the corporation shall give bond to the Corporation in such amount and with such surety as the Board of Directors may deem sufficient, conditioned upon the faithful performance of their respective duties and offices.

Section 4.12 Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that the officer is also a director of the Corporation.

ARTICLE V CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 5.1 Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. The President or any Vice-President may enter into contracts or equipment leases entered into in the ordinary course of business. *[§7-108-304]*

Section 5.2 Loans. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 5.3 Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. *[§7-108-302]*

Section 5.4 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE VI
SHARES, CERTIFICATES FOR SHARES AND TRANSFER OF SHARES

Section 6.1 Regulations. The Board of Directors may make such rules and regulations as it may deem appropriate concerning the issuance, transfer and registration of certificates for shares of the Corporation, including the appointment of transfer agents and registrars.

Section 6.2 Certificates for Shares.³

(a) Subject to the provisions of the Colorado Business Corporation Act, the shares of the Corporation shall be evidenced by certificates; provided, however, that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock of the Corporation shall be uncertificated shares. Any such resolution shall not apply to shares

³ Stock exchanges and (in some cases) the OTC market require that companies with shares listed for trading be DWAC and FAST-DRS eligible. DWAC (Deposit/Withdrawal at Custodian) is an automated system for deposits and withdrawals of securities from the Depository Trust Company (DTC). The Fast Automated Securities Transfer (FAST) system and Direct Registration System (DRS) are also requirements imposed by DTC for computerized stock trading in connection with exchange listings and in some cases the over-the-counter market. As stated in DTC's rule change request and the SEC approval thereof (Release No. 34-60196; June 30, 2009):

Prior to the establishment of DTC's Fast Automated Securities Transfer program ("FAST"), transfers of securities to or from DTC on behalf of its participants occurred by sending securities certificates back and forth between DTC and transfer agents. In the case of securities being deposited with DTC, DTC sent the certificates received by its participants to the transfer agent for registration into the name of DTC's nominee, Cede & Co., and the transfer agent returned the reregistered certificates to DTC. In the case of securities being withdrawn from DTC, DTC sent the certificates registered in the name of Cede & Co. to the transfer agent for re-registration into the name designated by the withdrawing participant, and the transfer agent returned a reregistered security certificate to DTC for delivery to the withdrawing participant or delivered the reregistered security certificate to another entity as directed and sent a security certificate to DTC representing the remainder of DTC's position. The process of physically transporting securities certificates between DTC and transfer agents exposed DTC, its participants, and the transfer agents to the risk of loss during transit and resulted in significant expenses.

DTC's FAST program was designed to eliminate some of the risks and costs related to this production and transportation of securities certificates. Under the FAST program, transfer agents hold FAST eligible securities in the name of Cede & Co. for the benefit of DTC. As additional securities are deposited or withdrawn from DTC, transfer agents adjust the size of DTC's position as appropriate and electronically confirm these changes with DTC. Transfer agents acting as "FAST agents" are holding in custody for DTC those securities that would otherwise be held at DTC. As such, the FAST program reduces the movement of certificates between DTC and the transfer agents and therefore reduces the costs and risks associated with the creation, movement, and storing of certificates for issuers, transfer agents, broker-dealers, and DTC.

The FAST program has grown substantially since first being introduced in 1975. Recently all the major securities exchanges have made changes to the listing requirements to require companies to make their securities eligible to participate in the Direct Registration System ("DRS"). Because FAST eligibility is a prerequisite to an issue being eligible for DRS, DTC expects that the number of FAST eligible securities will continue to expand.

evidenced by a certificate until such certificate is surrendered to the Corporation.

[Uncertificated shares are specifically permitted by C.R.S. § 7-106-207.]

(b) Every holder of one or more shares of the Corporation is entitled, at the option of the holder, to a share certificate, or a non-transferable written certificate of acknowledgement of the right to obtain a share certificate, stating the number and the class of shares held as shown on the securities register. Any certificate shall be signed in accordance with these by-laws and need not be under corporate seal. Certificates may be manually countersigned by at least one director or officer of the Corporation or by or on behalf of a registrar or transfer agent of the Corporation. Subject to the provisions of the Act, the signature of any signing director, officer, transfer agent or registrar may be printed or mechanically reproduced on the certificate. Every printed or mechanically reproduced signature is deemed to be the signature of the person whose signature it reproduces and is binding on the Corporation. A certificate executed as set out in this section is valid even if a director or officer whose printed or mechanically reproduced signature appears on the certificate no longer holds office as of the date of the issue of the certificate.

(c) Where the interest of a holder of stock of the Corporation is evidenced by a certificate or certificates, such certificate shall be in such form as the Board of Directors may from time to time prescribe. Each such certificate shall be signed by or in the name of the Corporation, by the Chair of the Board of Directors or the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Any of, or all of, the signatures on the certificate may be a facsimile. If any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. *[§7-106-206. Note that §7-106-207 provides for “shares without certificates.” The foregoing contemplates electronic transfer of certificated securities.]*

Section 6.3 Cancellation of Certificates. All certificates surrendered to the Corporation for transfer shall be canceled and no new certificates shall be issued in lieu thereof until the former certificate for a like number of shares shall have been surrendered and canceled, except as herein provided with respect to lost, stolen or destroyed certificates.

Section 6.4 Lost, Stolen or Destroyed Certificates. Any shareholder claiming that the shareholder’s certificate for shares is lost, stolen or destroyed may make an affidavit or affirmation of that fact and lodge the same with the Secretary of the Corporation, accompanied by a signed application for a new certificate. Thereupon, and upon the giving of a satisfactory bond of indemnity to the Corporation not exceeding an amount double the value of the shares as represented by such certificate (the necessity for such bond and the amount required to be determined by the President and Treasurer of the Corporation), a new certificate may be issued of the same tenor and representing the same number, class and series of shares as were represented by the certificate alleged to be lost, stolen or destroyed.

Section 6.5 Transfer of Shares.

(a) Subject to the terms of any shareholder agreement relating to the transfer of shares or other transfer restrictions contained in the Articles of Incorporation or authorized therein, shares of stock shall be transferable on the books of the Corporation pursuant to applicable law and such rules and regulations as the Board of Directors shall from time to time prescribe. [*§7-106-208*]

(b) Notwithstanding the foregoing, the transfer of a share may only be registered in the Corporation's securities register upon:

(i) Presentation and surrender of the certificate representing such share with an endorsement, which complies with the rules and regulations established with respect thereto by the Corporation or any transfer agent and registrar appointed by the Corporation, made on the certificate or delivered with the certificate, duly executed by an appropriate person as provided by such rules and regulations, together with reasonable assurance that the endorsement is genuine and effective, upon payment of all applicable taxes and in any reasonable fees prescribed by the Board; or

(ii) In the case of shares electronically issued without a certificate, upon receipt of proper transfer instructions from the registered holder of the shares, a duly authorized attorney of the registered owner of the shares or an individual presenting proper evidence of succession, assignment or authority to the transfer of the shares. [*Companies reporting under the 1934 Act only*]

(c) As against the Corporation, a transfer of shares can be made only on the books of the Corporation and in the manner hereinabove provided, and the Corporation shall be entitled to treat the holder of record of any shares as the owner thereof and shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the statutes of the State of Colorado. [*§7-106-208*]

Section 6.6 Shares Held for the Account of a Specified Person or Persons. The Board of Directors may adopt by resolution a procedure whereby a shareholder of the Corporation may certify in writing to the Corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth:

- (a) The classification of shareholder who may certify;
- (b) The purpose or purposes for which the certification may be made;
- (c) The form of certification and information to be contained therein;

(d) If the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the Corporation; and

(e) Such other provisions with respect to the procedure as are deemed necessary or desirable.

Upon receipt by the Corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification. [*§7-107-204*]

ARTICLE VII TAXABLE YEAR

The taxable year of the Corporation shall be determined by resolution of the Board of Directors.

ARTICLE VIII DIVIDENDS

The Board of Directors may from time to time declare, and the Corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and its Articles of Incorporation. [*§7-106-401*]

ARTICLE IX CORPORATE SEAL

The Board of Directors may provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Corporation and the state of incorporation and the word "Seal."

ARTICLE X WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of these Bylaws or under the provisions of the Articles of Incorporation or under the provisions of the Colorado Business Corporation Act, or otherwise, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the event or other circumstance requiring such notice, shall be deemed equivalent to the giving of such notice. [*§7-107-106 and §7-108-204*]

ARTICLE XI AMENDMENTS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by a majority of the directors present at any meeting of the Board of Directors of the Corporation at which a quorum is present.

ARTICLE XII
EXECUTIVE COMMITTEE

[generally §7-108-206]

Section 12.1 Appointment. The Board of Directors by resolution adopted by a majority of the full Board, may designate two or more of its members to constitute an Executive Committee. The designation of such Committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

Section 12.2 Authority. The Executive Committee, when the Board of Directors is not in session, shall have and may exercise all of the authority of the Board of Directors except to the extent, if any, that such authority shall be limited by the resolution appointing the Executive Committee and except also that the Executive Committee shall not have the authority of the Board of Directors in reference to amending the Articles of Incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease or other disposition of all or substantially all of the property and assets of the Corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the Corporation or a revocation thereof, or amending the Bylaws of the Corporation.

Section 12.3 Tenure and Qualifications. Each member of the Executive Committee shall hold office until the next regular annual meeting of the Board of Directors following the member's designation and until the member's successor is designated as a member of the Executive Committee and is elected and qualified.

Section 12.4 Meetings. Regular meetings of the Executive Committee may be held without notice at such time and places as the Executive Committee may fix from time to time by resolution. Special meetings of the Executive Committee may be called by any member thereof upon not less than one days notice stating the place, date and hour of the meeting, which notice may be written or oral, and if mailed, shall be deemed to be delivered when deposited in the United States mail addressed to the member of the Executive Committee at the Executive Committee member's address. Any member of the Executive Committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the Executive Committee need not state the business proposed to be transacted at the meeting.

Section 12.5 Quorum. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the Executive Committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 12.6 Action by Executive Committee Without a Meeting. Any action required or permitted to be taken by the Executive Committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

Section 12.7 Vacancies. Any vacancy in the Executive Committee may be filled by a resolution adopted by a majority of the full Board of Directors.

Section 12.8 Resignations and Removal. Any member of the Executive Committee may be removed at any time with or without cause by resolution adopted by a majority of the full Board of Directors. Any member of the Executive Committee may resign from the Executive Committee at any time by giving notice to the President or Secretary of the Corporation, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 12.9 Procedure. The Executive Committee shall elect a presiding officer from its members and may fix its own rules of procedure which shall not be inconsistent with these Bylaws. It shall keep regular minutes of its proceedings and report the same to the Board of Directors for its information at the meeting thereof held next after the proceedings shall have been taken.

ARTICLE XIII FORUM SELECTION

[optional if not included in the articles of incorporation]

All internal corporate claims must be brought exclusively in the District Court in and for the County of _____, State of Colorado. This section does not confer jurisdiction on any court or over any person or claim and does not apply if the court specified herein has the requisite personal and subject-matter jurisdiction. If the court specified herein does not have the requisite personal and subject-matter jurisdiction and another court of Colorado does have that jurisdiction, the internal corporate claim may be brought in that court (notwithstanding that such other court is not specified herein). For the purposes of this Article XIII, the phrase “internal corporate claim” means: (i) any claim that is based upon a violation of a duty under the laws of Colorado by a current or former director, officer, or shareholder in that capacity; (ii) a derivative action or proceeding brought on behalf of the Corporation; (iii) an action asserting a claim arising pursuant to any provision of Articles 101 to 117 of Title 7, Colorado Revised Statutes, these articles of incorporation or the bylaws of the Corporation; or (iv) an action asserting a claim governed by the internal affairs doctrine that is not included in the preceding clauses (i), (ii), and (iii). [§ 7-102-108. The statute also provides that this forum selection provision may be incorporated in the bylaws.

§ 7-102-108(3) provides that the articles or bylaws MAY NOT prohibit bringing an internal corporate claim in the courts of Colorado. It also provides that neither the articles nor the bylaws MAY REQUIRE that an internal corporate claim be determined by arbitration. The parties can always agree to bring the matter before a non-judicial forum.

For the purposes of § 7-102-108, the term “internal corporate claim” is defined in § 7-102-108(4). That definition includes claims “based upon a violation of a duty” by a current or former director, officer, or shareholder, a derivative action, claims arising under the articles of incorporation, bylaws, or CBCA, and claims arising under Colorado’s version of the internal affairs doctrine found at C.R.S. § 7-90-805(4).

In Boilermakers Local 154 Retirement Fund v. Chevron Corporation, C.A. No. 7220-CS (Del. Ch. Jun. 25, 2013), the Delaware Chancery Court upheld the enforceability of a bylaws provision, adopted by the directors of Chevron (and a similar one by FedEx), which required

lawsuits regarding the internal affairs of a Delaware corporation to be brought only in Delaware courts. As a result of S.B. 086, this provision is now specifically contemplated by statute. See *discussion in* Lidstone, *Let's Keep All of the Lawsuits in One Place; Choice of Forum Provisions in a Corporation's Bylaws*, <http://ssrn.com/abstract=2293002> and Lidstone, "Wrong Law Applied, Wrong Words Used, But the Correct Result Reached: *Stockdale v. Ellsworth*," originally published in the December 2017 Colorado Bar Association's Business Law Section Newsletter (available at www.cobar.org).]

ARTICLE XIV INSPECTION OF RECORDS

Section 14.1 A shareholder shall have the right to inspect the Corporation's records in accordance with C.R.S. §§ 7-116-102 and 7-116-103, and the following additional requirements.

Section 14.2 Any sensitive information requested, including customer lists, financial records, tax returns, and other proprietary information or other information that the Corporation reasonably believes to be in the nature of trade secrets or that the Corporation is required by law or agreement with a third party to maintain its confidentiality, may be withheld from disclosure or may be disclosed only to the extent that the Person seeking disclosure enters into a confidentiality or non-disclosure agreement as the Corporation may require.

ARTICLE XV EMERGENCY BYLAWS *[generally §7-103-103]*

Section 14.1 The Emergency Bylaws provided in this Article XV shall be operative during any emergency in the conduct of the business of the Corporation resulting from an attack on the United States or any nuclear or atomic disaster, notwithstanding any different provision in the preceding articles of the Bylaws or in the Articles of Incorporation of the Corporation or in the Colorado Business Corporation Act. To the extent not inconsistent with the provisions of this article, the Bylaws provided in the preceding articles shall remain in effect during such emergency and upon its termination the Emergency Bylaws shall cease to be operative.

Section 14.2 During any such emergency:

(i) A meeting of the Board of Directors may be called by any officer or director of the Corporation. Notice of the time and place of the meeting shall be given by the person calling the meeting to such of the directors as it may be feasible to reach by any available means of communication. Such notice shall be given at such time in advance of the meeting as circumstances permit in the judgment of the person calling the meetings.

(ii) At any such meeting of the Board of Directors, a quorum shall consist of the number of directors in attendance at such meeting.

(iii) The Board of Directors, either before or during any such emergency, may, effective in the emergency, change the principal office or designate several alternative principal offices or regional offices, or authorize the officers so to do.

(iv) The Board of Directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such an emergency any or all officers or agents of the Corporation shall for any reason be rendered incapable of discharging their duties.

(v) No officer, director or employee acting in accordance these Emergency Bylaws shall be liable except for willful misconduct.

(vi) These Emergency Bylaws shall be subject to repeal or change by further action of the Board of Directors or by action of the shareholders, but no such repeal or change shall modify the provisions of the next preceding paragraph with regard to action taken prior to the time of such repeal or change. Any amendment of these Emergency Bylaws may make any further or different provision that may be practical and necessary for the circumstances of the emergency.