

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**Current Report
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): **April 27, 2006**

ALLIED MOTION TECHNOLOGIES INC.

(Exact Name of Registrant as Specified in its Charter)

Colorado
(State or Other Jurisdiction
of Incorporation)

0-04041
(Commission File Number)

84-0518115
(IRS Employer
Identification No.)

23 Inverness Way East, Suite. 150, Englewood, CO, 80112
(Address of Principal Executive Offices, including zip code)

303-799-8520
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

On April 27, 2006, the Board of Directors (the "Board") of Allied Motion Technologies (the "Company") upon the recommendation of the Board's Compensation Committee, took the following actions:

The Board approved a Deferred Compensation Plan (the "Plan") to be effective as of January 1, 2006. The purposes of the Plan are (1) to provide eligible key employees with the opportunity to defer the receipt of certain compensation otherwise payable to them, and (2) to permit such eligible key employees to participate in the success of the Company by providing them with the opportunity to earn additional, performance based compensation.

Under the Plan, the Board will determine the employees who are eligible to participate in the Plan. As of the effective date of the Plan, the participants are Richard D. Smith and Richard S. Warzala.

Under the Plan, each participant may (1) make elective deferrals, (2) receive an allocation of any performance contributions to the Plan by the Company, and (3) receive an allocation of any discretionary amount contributed to the Plan by the Company. Deferrals may be made from a participant's salary, bonus, or a combination thereof. Deferrals, which are irrevocable, must be elected no later than the last day of the year preceding the one in respect of which the deferrals will be made.

The Board also approved a discretionary contribution under the Plan for Messrs. Smith and Warzala equal to 5% of their respective base salaries or \$12,500 for Mr. Smith and \$12,000 for Mr. Warzala with such contributions being credited to their respective discretionary contribution accounts on the Company's books and records.

The Board also approved performance criteria for the first year of the Plan as follows: For 2006, the performance contribution will be based on the Company achieving a net profit target, equal to a stated return on investment, as recommended by the Compensation Committee and approved by the Board.

For each succeeding year, the Board shall designate the applicable performance criteria for the year on or before the ninetieth (90th) day of such year, or as soon thereafter as is practicable.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On April 27, 2006, the shareholders of the Company authorized an amendment to Section 9.1 of the Company's Articles of Incorporation to delete the provisions fixing the number of directors of the Company. The proposal to amend the Company's Articles of Incorporation was included in the Company's proxy statement for its 2006 annual meeting. Also on April 27, 2006, the Board of Directors authorized the restatement of the Company's Articles of Incorporation. A copy of the Amended and Restated Articles of Incorporation of the Company as filed with the Secretary of State of the State of Colorado on May 2, 2006 is attached hereto as Exhibit 3.1 and is incorporated into this filing by reference.

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On April 27, 2006, the Board of Directors amended the Company's Bylaws to provide that the number of directors shall be no fewer than three and no more than nine as determined from time to time by Board resolution. A copy of the amended and restated Bylaws of the Company is attached hereto as Exhibit 3.2 and is incorporated into this filing by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following are filed as exhibits to this Current Report on Form 8-K:

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Articles of Incorporation of the Company
3.2	Amended and Restated Bylaws of the Company

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: May 3, 2006

ALLIED MOTION TECHNOLOGIES INC.

By: /s/ Richard D. Smith
Richard D. Smith
Chief Executive Officer
and Chief Financial Officer

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**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
ALLIED MOTION TECHNOLOGIES INC.**

Pursuant to Section 7-110-107 of the Colorado Business Corporation Act, the undersigned Corporation hereby adopts the following Amended and Restated Articles of Incorporation.

1. The name of the corporation is Allied Motion Technologies Inc. (the "Corporation").
2. The following Amended and Restated Articles of Incorporation contain an amendment that was adopted by the shareholders of the Corporation on April 27, 2006. The number of shares voted for the amendment was sufficient for approval of the amendment. These Amended and Restated Articles of Incorporation supersede the original Articles of Incorporation and all amendments thereto. The Board of Directors of the Corporation has adopted this restatement of the Articles of Incorporation of the Corporation, as amended, without action of the shareholders, which was not required.
3. The text of the Articles of Incorporation shall be amended and restated to read in its entirety as follows:

ARTICLE I

The name of the Corporation is Allied Motion Technologies Inc.

ARTICLE II

The period of duration of the Corporation shall be perpetual.

ARTICLE III

The purposes for which the Corporation is organized are as follows:

1. To manufacture, produce, prepare, process, purchase, or otherwise acquire, and to sell, market, trade, and deal in and with products of every kind and character; and to manufacture, produce, purchase, or otherwise acquire, and to sell, trade, market, and deal in and with any and all materials, machinery, appliance, or supplies proper or adapted to be used in or in connection with or incidental to the manufacture, production, processing or preparation of any of the products aforesaid.
2. To carry on research and development of products and processes of every kind and character, including but not being limited to, carrying on investigations and experiments of all kinds, originating, developing, improving, recording and preserving any and all discoveries, inventions, processes, formulae and improvements.

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3. To purchase or otherwise acquire, and to own, hold, maintain, work, develop, sell, convey, mortgage, lease, or otherwise dispose of, without limit as to amount, and in any part of the world, real, personal, and mixed property, and any interests and rights therein.
4. To adopt, apply for, obtain, register, produce, take, purchase, exchange, lease, hire, acquire, secure, own, hold, use, operate, contract, or negotiate for, take licenses or other rights in respect of, sell, transfer, grant licenses and rights in respect of, manufacture under, introduce, sell, assign, collect the royalties on, mortgage, pledge, create liens upon, or otherwise dispose of, deal in, and turn to account, letters patent, patents, patent rights, patents applied for or to be applied for, and all improvements and processes used in connection with or secured under such patents or patent rights, trade-marks, trade names and symbols, distinction marks and indications of origin and ownership, copyrights, syndicate rights, inventions, discoveries, devices, machines, improvements, licenses, processes, data, and formulae of any and all kinds granted by, or recognized under or pursuant to laws of the United States of America, or of any other country or countries whatsoever and with a view to the working and development of same, to carry on any business, whether manufacturing or otherwise, which the Corporation may think calculated directly or indirectly to effectuate these objects or any lawful corporate object.
5. To purchase, lease, exchange, hire, or otherwise acquire, to take, own, use, and hold, and to sell, convey, mortgage, lease or otherwise dispose of any rights, privileges, permits, or franchises suitable or convenient for any of the purposes of the business, including all rights-of-way, easements, franchises, and rights thereto, and to deal in and with the same in every way.
6. To acquire the good will, rights, and property of any kind, and to undertake the whole or any part of the assets, tangible or intangible, or liabilities of any person, firm, association, or corporation useful, necessary, or convenient in connection with the purposes of this Corporation; to become a member of any partnership, or party to any lawful agreement for sharing profits, or to any union or existing agreement for reciprocal concession, joint adventure, or cooperation, or mutual trade arrangements with any person, firm, association, or corporation engaged in or about to engage in any business which this Corporation is authorized to engage in or carry on, or which is engaged in or about to engage in any business or transaction capable of being conducted so as directly or indirectly to benefit this Corporation, and to lend money, subsidize, or otherwise assist any such person, firm, association of which any stocks, bonds, or other evidences of indebtedness, or securities are held, directly or indirectly, by, this Corporation, and for this purpose to guarantee the contracts, dividends, stocks, bonds, notes and other obligations of such other corporations or associations; and to do any other acts or things designed to protect, preserve, improve, or enhance the value of such stocks, bonds or other evidences of indebtedness or securities.
7. To carry on any other business or activity which may be carried on by corporations organized under the statutes of the State of Colorado.
8. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes hereinabove set forth, and to do all other things incidental thereto or connected therewith which are not forbidden by the statutes of the State of Colorado, by any other law, or by these Articles of Incorporation.

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9. To carry out the purposes hereinabove set forth in any state, territory, district, possession, or dependency or any political subdivision thereof, of the United States of America, or in any foreign country, colony or political subdivision thereof, to the extent that such purposes are not forbidden by the law of such state, territory, district, possession or dependency, or political subdivision thereof, of the United States of America or by such foreign country, colony or political subdivision thereof.

ARTICLE IV

In furtherance of the purposes set forth in Article III of these Articles of Incorporation, the Corporation shall have and may exercise all of the rights, powers, and privileges now or hereafter conferred upon corporations organized under and pursuant to the laws of the State of Colorado. In addition, the Corporation may do everything necessary, suitable or proper for the accomplishment of any of its corporate purposes.

ARTICLE V

The Corporation shall have the authority to issue 55,000,000 shares of capital stock, comprised of 5,000,000 shares of Preferred Stock, each of which shall have a par value of \$1.00 per share, and 50,000,000 shares of Common Stock without par value.

The holders of the shares of capital stock shall not have any preemptive right to acquire unissued or treasury shares of capital stock or securities convertible into such shares or carrying a right to subscribe to or acquire such shares. There shall be no cumulative voting of any shares of capital stock with respect to the election of directors. The Corporation shall have the right to restrict the transfer of any or all shares of capital stock at the time of issuance, or thereafter with the consent of the holder or holders of the shares to be restricted, the terms of said restriction to be clearly legended on the certificate or certificates representing such shares and set forth in the stock transfer records of the Corporation.

A statement of the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions granted to or imposed upon the shares of each class of capital stock, except as the Board of Directors of the Corporation is herein authorized to determine by resolution, are as follows:

A. COMMON STOCK

1. Voting Rights. Except as expressly provided by law, or as otherwise provided in Part B below, or by resolution of the Board of Directors pursuant to the authority granted under Part B below, all voting, rights shall be vested in the holders of the Common Stock. Each holder of Common Stock shall be entitled to one vote for each share held on each matter to be voted on by the shareholders of the Corporation, except as otherwise provided in these Articles or by law.

2. Dividends. After all accumulated and unpaid dividends required to be paid upon any shares of Preferred Stock for all previous dividend periods shall have been paid, and sums sufficient for full payment of the dividends on all shares of Preferred Stock declared for the then current dividend period have been set apart, and after or concurrently with the setting aside of any and all amounts then required to be set aside for any sinking fund obligation or obligation of

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a similar nature in respect of any series of Preferred Stock, then and not otherwise, and subject to any other applicable provisions of Part B hereof, dividends may be declared upon and paid to the holders of the Common Stock, to the exclusion of the holders of the Preferred Stock. No other restriction shall be applicable to payment of dividends on the Common Stock of the Corporation.

3. Rights Upon Liquidation. In the event of voluntary or involuntary liquidation or dissolution of the Corporation, after payment in full of all amounts required to be paid to the holders of the Preferred Stock, the holders of the common Stock shall be entitled, to the extent not otherwise limited by the terms of any series of Preferred Stock then outstanding, to share ratably in all remaining assets of the Corporation.

B. PREFERRED STOCK

1. General. The Board of Directors shall have authority, by resolution, to divide any or all of the shares of Preferred Stock into, and to authorize the issuance of, one or more series and with respect to each such series to establish and, prior to issuance, to determine and fix:

- (a) a distinguishing designation for such series and the number of shares comprising such series, which number may be increased or decreased from time to time (but not below the number of shares then outstanding) by action of the Board of Directors;
- (b) the rate and times at which and the other conditions upon which dividends on the shares may be declared and paid or set aside for payment, whether dividends shall be cumulative, and the date from which any dividends shall accrue;
- (c) whether or not the shares shall be redeemable and, if so, the price and the terms and conditions of such redemption;
- (d) the amounts payable by preference or otherwise upon shares in the event of voluntary or involuntary liquidation, dissolution, winding up or distribution of the assets of the Corporation;
- (e) whether any shares shall be redeemed through sinking fund payments and, if so, on what terms;
- (f) whether the shares shall be convertible or exchangeable, and, if so, the terms and conditions of such conversion or exchange;
- (g) whether or not the shares shall have voting rights, including the right to vote as a class on designated matters such as, but not by way of limitation, the merger, consolidation or sale of substantially all the Corporation's assets, or the approval of designated action by a greater than two-thirds affirmative vote, and, if so, the terms and conditions thereof and any limitations thereon.

In the resolution establishing a new series of Preferred Stock, the Board of Directors may provide for any other relative powers, preferences, rights, qualifications, limitations and restrictions of such series as are consistent with the rights of all outstanding shares of capital stock, with all other provisions of this Article V, and with Colorado law.

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All shares of Preferred Stock of all series shall be identical except as to the above mentioned rights and preferences which the Board of Directors is authorized as aforesaid to fix and determine. Except to the extent that the resolution of the Board of Directors establishing a particular series shall otherwise provide, in the event amounts payable upon liquidation of all series are not paid in full, all shares of Preferred Stock of all series having a liquidation preference shall participate ratably in any distribution in accordance with the sums which would be payable on such distribution if all sums payable thereon to holders of all shares of Preferred Stock were discharged in full.

Shares of Preferred Stock of any series redeemed, purchased or otherwise acquired may be cancelled by the Board of Directors and thereupon restored to the status of authorized but unissued shares of Preferred Stock undesignated as to series.

ARTICLE VI

The cumulative system of voting shall not be used for any purpose.

ARTICLE VII

No holder of any of the shares of the capital stock of the Corporation shall be entitled as of right to purchase or subscribe for any unissued or treasury shares of the Corporation of any class or for any additional shares of the Corporation of any class to be issued by reason of any increase of the authorized shares of the Corporation of any class, or for any bonds, certificates of indebtedness, debentures, or other securities, rights, warrants or options convertible into shares of the Corporation of any class or carrying any right to purchase shares of the Corporation of any class.

ARTICLE VIII

No contract or other transaction between the Corporation and any other person, firm, partnership, corporation, joint venture or syndicate shall be in any way affected or invalidated by the fact that any director of the Corporation is pecuniarily or otherwise interested in, or is a director, officer, shareholder, employee or member of such other firm, partnership, corporation, joint venture or syndicate, if such contract shall be authorized, approved or ratified by the affirmative vote of the majority of the directors of the Corporation present who are not so interested. Any director individually, or any firm, partnership, joint venture or syndicate of which any director is a partner or in any way interested, may be a party to or may be interested in any contract or transaction of the Corporation provided that such interest is disclosed or known to the Board of Directors, or a majority thereof, and provided, further, that such contract or transaction is authorized, approved or ratified by the affirmative vote of at least a majority of the directors of the Corporation present who are not so interested. Interested directors may be counted when present at meetings of the Board of Directors for the purpose of determining the existence of a quorum.

ARTICLE IX

9.1 Number. The business and affairs of the Corporation shall be managed by a Board of Directors. The authorized number of directors of the Corporation may be stated in or

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fixed in accordance with the Bylaws of the Corporation, but shall never be less than the minimum number permitted by the general laws of the State of Colorado now or hereafter in force.

9.2 Election of Directors. Directors to be elected shall be elected at the annual meeting of shareholders or an adjournment thereof. Directors shall be elected upon receiving the affirmative vote of the holders of at least two-thirds of the shares of the Corporation entitled to vote thereon. Each Director shall hold office for the term for which he is elected and until his successor has been elected and qualified.

9.3 Removal. The entire Board of Directors or any lesser number may be removed, with or without cause, by a vote of at least two-thirds of the shares then entitled to vote at an election of directors.

ARTICLE X

The Corporation reserves the right to amend, alter, change or repeal any provision contained in, or to add any provisions to, its Articles of Incorporation from time to time, in any manner now or hereafter prescribed or permitted by the provisions of the statutes of the State of Colorado, and all rights and powers conferred upon directors and shareholders hereby are granted subject to this reservation.

ARTICLE XI

No director of the Corporation shall have any liability to the Corporation or to its shareholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the Colorado Corporation Code, as amended from time to time. Any repeal or modification of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation existing hereunder in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XII

12.1 Vote Required for Certain Business Combinations. The affirmative vote of the holders of not less than two-thirds of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the affirmative vote of not less than two-thirds of the shares of each class of shares entitled to vote thereon as a class, and of the total shares entitled to be voted thereon, shall be required for the approval or authorization of

any "Business Combination" (as hereinafter defined) of the Corporation; provided, however, that the two-thirds voting requirement shall not be applicable and the affirmative vote of the holders of not less than a majority of the shares entitled to vote thereon shall be required, unless any class of shares is entitled to vote thereon as a class, in which event the affirmative vote of not less than a majority of the shares of each class of shares entitled to vote thereon as a class, and of the total shares entitled to be voted thereon, shall be required if the "Continuing Directors" (as hereinafter defined) of the Corporation by at least a two-thirds vote have expressly approved such Business Combination.

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12.2 **Definition.** Certain words and terms as used in this Article XII shall have the meanings given to them by the definitions and descriptions in this Section.

(a) **Business Combination.** The term "Business Combination" shall mean (i) any merger, consolidation or share exchange of the Corporation or a Subsidiary of the Corporation with another party, (ii) any sale, lease, exchange, transfer or other disposition, including without limitation, a mortgage or any other security device, of all or any Substantial Part (as hereinafter defined) of the assets either of the Corporation (including without limitation, any voting securities of a Subsidiary of the Corporation) or of a Subsidiary of the Corporation to another party, (iii) any sale, lease, exchange, transfer or other disposition, including without limitation, a mortgage or other security device, of all or any Substantial Part of the assets of another party to the Corporation or a Subsidiary of the Corporation, (iv) the issuance or transfer by the Corporation or any Subsidiary of the Corporation of any securities of the Corporation or a Subsidiary of the Corporation to another party, (v) any reclassification of securities, recapitalization or other comparable transaction involving the Corporation that would have the effect of increasing the voting power of any other party with respect to Voting Stock of the Corporation, and (vi) any agreement, contract or other arrangement providing for any of the transactions described in this definition of Business Combination; provided, however, the term Business Combination shall not include (except for purposes of the definition of Continuing Directors) any such transaction if the approval of such transaction by shareholders of the Corporation is not then required under Colorado law and the Continuing Directors of the Corporation by at least a two-thirds vote have expressly approved or ratified the transaction, and provided, further, the term Business combination does not include a distribution of property in kind (including securities of the Corporation or of a Subsidiary of the Corporation) pro rata to the Corporation's shareholders.

(b) **Voting Stock.** The term "Voting Stock" shall mean all of the outstanding shares of Common Stock of the Corporation and any outstanding shares of Preferred Stock entitled to vote on each matter on which the holders of record of Common Stock shall be entitled to vote, and each reference to a proportion of shares of Voting Stock shall refer to such proportion of shares of Voting Stock shall refer to such proportion of the votes entitled to be cast by such shares.

(c) **Continuing Director.** The term "Continuing Director" shall mean a Director who was a member of the Board of Directors of the Corporation immediately prior to the time that the Corporation became involved in a Business Combination.

(d) **Substantial Part.** The term "Substantial Part" shall mean more than 20 percent of the fair market value as determined by two-thirds of the Continuing Directors of the total consolidated assets of the Corporation and its subsidiaries taken as a whole as of the end of its most recent fiscal year ended prior to the time the determination is being made.

(e) **Subsidiary.** The term "Subsidiary" shall mean, with reference to any entity, any corporation of which an amount of voting securities sufficient to elect at least a majority of the directors of such corporation is beneficially owned directly or indirectly, by such entity, or otherwise controlled by such entity.

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12.3 **Determination by the Continuing Directors.** In making any determinations, the Continuing Directors may engage such persons, including investment banking firms and the independent accountants who have reported on the most recent financial statements of the Corporation, and utilize employees and agents of the Corporation, who will, in the judgment of the Continuing Directors, be of assistance to the Continuing Directors. Any determinations made by the Continuing Directors, acting in good faith on the basis of such information and assistance as was then reasonably available for such purposes, shall be conclusive and binding upon the Corporation and its shareholders.

IN WITNESS WHEREOF, Allied Motion Technologies Inc. has caused these Amended and Restated Articles of Incorporation to be duly executed as of the 27th day of April, 2006.

ALLIED MOTION TECHNOLOGIES INC.

By:

Richard D. Smith
Chief Executive Officer

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BYLAWS
OF
ALLIED MOTION TECHNOLOGIES INC.

ARTICLE I. OFFICES

§ 1.1 Business Office.

The principal office of the corporation shall be located at any place either within or outside the state of Colorado as designated in the corporation's most current Annual Report filed with the Colorado Secretary of State. 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.

§ 1.2 Registered Office.

The registered office of the corporation required by C.R.S. § 7-105-101 may, but need not, be identical with the principal office (if located within Colorado). The address of the registered office may be changed from time to time.

ARTICLE II. SHAREHOLDERS

§ 2.1 Annual Shareholder Meeting.

The annual meeting of the shareholders shall be held within 180 days after the close of the corporation's fiscal year at a time and date as is determined by the board of directors for the purpose of electing directors and for the transaction of such other business as may come before the meeting.

§ 2.2 Special Shareholder Meetings.

(a) *Authority.* Special meetings of the shareholders, for any purpose or purposes described in the meeting notice, 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 outstanding votes of the corporation entitled to be cast on any issues at the meeting.

(b) *Procedure.* If a special meeting is called by any person or persons other than the board of directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the chairman of the board of directors of the corporation. No business may be transacted at such special meeting other than specified in such notice. The board of directors shall determine the time and place of such special meeting, which shall be held not less than 30 nor more than 120 days after the date of the receipt of the request. The chairman shall cause notice to be given to the shareholders entitled to vote. If the notice is not given within 60 days after the receipt of the request, the persons or person requesting the meeting may set the time and place of the meeting and give the notice. Nothing contained in this paragraph (b) shall be construed as limiting, fixing or

affecting the time when a meeting of shareholders called by action of the board of directors may be held.

§ 2.3 Place of Shareholder Meeting.

Meetings of shareholders may be held in or out of the state of Colorado at locations fixed by the board of directors. If no designation is made the place of meeting shall be the principal office of the corporation in the state of Colorado.

§ 2.4 Notice of Shareholder Meeting.

(a) *Time, Place, Purpose, Effective.* Written notice stating the place, date, and hour of the meeting shall be given not less than 10 nor more than 60 days before the date of the meeting, except that (i) if the number of authorized shares is to be increased, at least 30 days notice shall be given, or (ii) any other notice requirement of the Colorado Business Corporation Act (herein referred to as the "Act") shall be provided. Notice of a special meeting shall include a description of the purpose or purposes of the meeting. Notice of an annual meeting need not include a description of the purpose or purposes of the meeting unless required by the Act, the articles of incorporation or these bylaws. Notice shall be given personally or by mail, private carrier, telegraph, teletype, electronically transmitted facsimile or other form of wire or wireless communication by or at the direction of the chairman or the president or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. Notice shall be deemed to be effective at the earlier of: (i) when deposited in the United States mail, addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid; (ii) on the date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; (iii) when received; or (iv) 5 days after deposit in the United States mail if mailed postpaid and correctly addressed to an address other than that shown in the corporation's current record of shareholders.

(b) *Undeliverable Notice.* No notice need be sent to any shareholder if three successive notices mailed to the last known address of such shareholder have been returned as undeliverable until such time as another address for such shareholder is made known to the corporation by such shareholder. In order to be entitled to receive notice of any meeting, a shareholder shall advise the corporation in writing of any change in such shareholder's mailing address as shown on the corporation's books and records.

(c) *Adjourned Meeting.* When a meeting is adjourned to another date, time or place, notice need not be given of the new date, time or place if the new date, time or place of such meeting is announced before adjournment at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which may have been transacted at the original meeting. If the adjournment is for more than 120 days, or if a new

record date is fixed for the adjourned meeting, a new notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting as of the new record date.

§ 2.5 Waiver of Notice.

A shareholder may waive notice of a meeting before or after the time and date of the meeting by a writing signed by such shareholder. Such waiver shall be delivered to the corporation for filing with the corporate records. Further, by attending a meeting either in person or by proxy a shareholder

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waives objection to lack of notice or defective notice of the meeting unless the shareholder objects at the beginning of the meeting to the holding of the meeting or the transaction of business at the meeting because of lack of notice or defective notice. By attending the meeting, the shareholder also waives any objection to consideration at the meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

§ 2.6 Fixing of Record Date.

(a) *Meetings, Distributions.* For the purpose of determining shareholders entitled to (i) notice of or vote at any meeting of shareholders or any adjournment thereof, (ii) receive distributions or share dividends, or (iii) demand a special meeting, or to make a determination of shareholders for any other proper purpose, the board of directors may fix a future date as the record date for any such determination of shareholders, such date in any case to be not more than seventy 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. If no record date is fixed by the directors, the record date shall be the date on which notice of the meeting is mailed to shareholders, or the date on which the resolution of the board of directors providing for a distribution is adopted, as the case may be. When a determination of shareholders entitled to vote at any meeting of shareholders is made as provided in this section such determination shall apply to any adjournment thereof unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(b) *Consent Action, Shareholder Demands.* The record date for determining the shareholders entitled to take action without a meeting shall be the date a writing upon which the action is taken is first received by the corporation. The record date for determining shareholders entitled to demand a special meeting shall be the date of the earliest of any of the demands pursuant to which the meeting is called.

§ 2.7 Organization of Shareholder Meeting.

(a) *Officers of the Meeting.* The chairman of the board of directors shall preside at each meeting of shareholders or, if a chairman of the board of directors has not been appointed or is absent, the chief executive officer or president, in that order, if present, shall preside. In the absence of any such officers, any director present shall preside and if there be more than one director present, a director chosen by majority vote of those directors present shall preside. If no presiding officer is selected as provided above, the meeting shall be chaired by a person chosen by the vote of a majority in interest of the shareholders present in person or represented by proxy and entitled to vote thereat. The secretary or in his or her absence an assistant secretary or in the absence of the secretary and all assistant secretaries a person whom the chairman of the meeting shall appoint shall act as secretary of the meeting and keep a record of the proceedings thereof.

(b) *Conduct of Meeting.* The board of directors of the corporation shall be entitled to make such rules or regulations for conduct of meetings of shareholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the board of directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting including, without limitation, establishing (i) an

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agenda or order of business for the meeting, (ii) rules and procedures for maintaining order at the meeting and the safety of those present, (iii) limitations on participation in such meeting to shareholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof, (v) limitations on the time allotted to questions or comment by participants, and (vi) regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the board of directors or the chairman of the meeting, meetings of shareholders shall not be required to be held in accordance with rules of parliamentary procedure.

(c) *Business Brought Before the Meeting.* At an annual meeting of the shareholders only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting business must be: (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board of directors, (ii) otherwise properly brought before the meeting by or at the direction of the board of directors, or (iii) otherwise properly brought before the meeting by a shareholder. For business to be properly brought before an annual meeting by a shareholder, including any proposal relating to the nomination of a person under § 2.15 to be elected to the Board of Directors of the corporation, the shareholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a shareholder's notice must be delivered to or mailed and received at the principal office of the corporation not less than 60 days nor more than 90 days prior to the first anniversary of the preceding year's annual meeting of shareholders; *provided, however*, that in the event no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 days from the date contemplated at the time of the previous year's proxy statement, notice by the shareholder to be timely must be so received at a reasonable time before the solicitation is made. A shareholder's notice to the secretary shall set forth: (i) as to each person whom the shareholder proposes to nominate for election or reelection as a director, the information required to be provided pursuant to § 2.15, (ii) as to any other business that the shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (iii) the name and address, as they appear on the corporation's books, of the shareholder proposing such business, (iv) the class and number of shares of the corporation which are beneficially owned by the shareholder, and (v) any material interest of the shareholder in such business. Notwithstanding the foregoing, in order to include information with respect to a shareholder proposal in the proxy statement and form of proxy for a shareholder's meeting, shareholders must provide notice as required by the regulations promulgated under the Securities Exchange Act of 1934, as amended (the "1934 Act"). Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at any annual

meeting except in accordance with the procedures set forth in this § 2.7(c). The chairman of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this § 2.7(c), and, if he should so determine, he shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

§ 2.8 Recognition Procedure for Beneficial Owners.

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

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name of such shareholder are held for the account of a specified person or persons. The resolution may set forth (i) the types of nominees to which it applies, (ii) the rights or privileges that the corporation will recognize in a beneficial owner, which may include rights and privileges other than voting, (iii) the form of certification and the information to be contained therein, (iv) if the certification is with respect to a record date, the time within which the certification must be received by the corporation, (v) the period for which the nominee's use of the procedure is effective, and (vi) such other provisions with respect to the procedure as the board deems necessary or desirable. Upon receipt by the corporation of a certificate complying with the procedure established by the board of directors, the persons specified in the certification shall be deemed, for the purpose or purposes set forth in the certification, to be the registered holders of the number of shares specified in place of the shareholder making the certification.

§ 2.9 Shareholder List.

The secretary shall make a complete record of the shareholders entitled to vote at each meeting of shareholders arranged in alphabetical order, with the address of and the number of shares held by each. The list must be arranged by voting group (if such exists), and within each voting group by class or series of shares. The shareholder list must be available for inspection by any shareholder beginning at the earlier of 10 days before the meeting or 2 business days after notice of the meeting is given for which the list was prepared and continuing through the meeting. The list shall be available at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting is to be held. A shareholder, his agent or attorney, is entitled on written demand to inspect and, subject to the requirements of § 2.17, to copy the list during regular business hours, and at his expense, during the period it is available for inspection. The corporation shall maintain the shareholder list in written form or in another form capable of conversion into written form within a reasonable time.

§ 2.10 Shareholder Quorum and Voting Requirements.

Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. A majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

If voting by two or more voting groups on a matter is permitted or required, action on that matter is taken only when voted upon by each of those voting groups counted separately. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Once a share is represented for any purpose at a meeting it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

If a quorum exists, action on a matter by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required.

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§ 2.11 Proxies.

At all meetings of shareholders a shareholder may vote by proxy by signing an appointment form or similar writing, either personally or by his duly authorized attorney-in-fact. A shareholder may also appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype or other electronic transmission providing a written statement of the appointment to the proxy, a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy, or to the corporation. The transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the shareholder transmitted or authorized the transmission of the appointment. The proxy appointment form or similar writing shall be filed with the secretary of the corporation before or at the time of the meeting. The appointment of a proxy is effective when received by the corporation and is valid for eleven months unless a different period is expressly provided in the appointment form or similar writing.

Any complete copy, including an electronically transmitted facsimile, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.

Revocation of a proxy does not affect the right of the corporation to accept the proxy's authority unless (i) the corporation had notice that the appointment was coupled with an interest and notice that such interest has been extinguished is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment, or (ii) other notice of the revocation of the appointment is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment. Other notice of revocation may, in the discretion of the corporation, be deemed to include the appearance at a shareholders' meeting of the shareholder who granted the proxy and his voting in person on any matter subject to a vote at such meeting.

The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

The corporation shall not be required to recognize an appointment made irrevocable if it has received a writing revoking the appointment signed by the shareholder (including a shareholder who is successor to the shareholder who granted the proxy) either personally or by his attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the shareholder to another person not to revoke the appointment.

Subject to § 2.13 and any express limitation on the proxy's authority appearing on the appointment form, the corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

§ 2.12 Voting of Shares.

Each outstanding share entitled to vote shall be entitled to one vote and each fractional share shall be entitled to a corresponding fractional vote upon each matter submitted to a vote at a meeting of shareholders.

Except as provided by specific court order, no shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting; *provided, however*, the prior sentence shall not

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limit the power of the corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

§ 2.13 Corporation's Acceptance of Votes.

(a) *Corresponds to Name of Shareholder.* If the name signed on a vote, consent, waiver, proxy appointment or proxy appointment revocation corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, proxy appointment or proxy appointment revocation and give it effect as the act of the shareholder.

(b) *Does not Correspond.* If the name signed on a vote, consent, waiver, proxy appointment or proxy appointment revocation does not correspond to the name of a shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, proxy appointment or proxy appointment revocation and give it effect as the act of the shareholder if:

(1) the shareholder is an entity as defined in the Act and the name signed purports to be that of an officer or agent of the entity;

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

(3) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, proxy appointment or proxy appointment revocation;

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

(5) two or more persons are the shareholder as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners; or

(6) the acceptance of the vote, consent, waiver, proxy appointment or proxy appointment revocation is otherwise proper under rules established by the corporation that are not inconsistent with this § 2.13(b).

(c) *Rejection Upon Reasonable Doubt.* The corporation is entitled to reject a vote, consent, waiver, proxy appointment or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) *Not Liable In Damages.* The corporation and its officer or agent who accept or reject a vote, consent, waiver, proxy appointment or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) *Corporate Action Valid.* Corporate action based on the acceptance or rejection of a vote, consent, waiver, proxy appointment or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

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§ 2.14 Informal Action by Shareholders.

Any action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting if all of the shareholders entitled to vote consent to such action in writing. Action taken under this section has the same effect as action taken at a meeting and may be described as such in any document.

§ 2.15 Notification of Nominations of Directors.

Only persons who are nominated in accordance with the procedures set forth in this § 2.15 shall be eligible for election as directors. Nominations of persons for election to the board of directors of the corporation may be made at a meeting of shareholders by or at the direction of the board of directors, or by any shareholder of the corporation entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this § 2.15. Such nominations, other than those made by or at the direction of the board of directors, shall be made pursuant to a timely notice in writing to the secretary of the corporation in accordance with the provisions of paragraph (c) of § 2.7. Such shareholder's notice shall set forth (i) as to each person, if any, whom the shareholder proposes to nominate for election or reelection as a director: (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) the class and number of shares of the corporation which are beneficially owned by such person, (D) a description of all arrangements or understandings between the shareholder and each nominee or any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the shareholders, and (E) any other information relating to such person that is required to be disclosed in solicitation of proxies for elections of directors, or as otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person's written consent to be named in the Proxy Statement, if any, as a nominee and to serving as a director if elected); and (ii) as to such shareholder giving notice, the information required to be provided pursuant to paragraph (c) of § 2.7. At the request of the board of directors, any person nominated by a shareholder for election as a director shall furnish to the secretary of the corporation that information required to be set forth in the shareholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this § 2.15. The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these bylaws, and if he should so determine, he shall so declare at the meeting, and the defective nomination shall be disregarded.

§ 2.16 Voting for Directors.

At each election for directors, every shareholder entitled to vote at such election has the right to vote in person or by proxy. Each shareholder may vote one vote per share for as many persons as there are directors to be elected and for whose election the shareholder has the right to vote. That number of candidates equaling the number of directors to be elected having the highest number of votes cast in favor of their election shall be elected to the board of directors; provided, however, to be elected directors must receive the affirmative vote of the holders of at least two-thirds of the shares of the corporation entitled to vote thereon.

§ 2.17 Shareholder's Rights to Inspect Corporate Records.

(a) *Absolute Inspection Rights.* If he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy, a shareholder (or his agent or attorney) has the right to inspect and copy, during regular business hours, any of the following records, all of which the corporation shall keep at its principal office:

- (1) its articles of incorporation;
- (2) its bylaws;
- (3) the minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past three years;
- (4) all written communications within the past three years to shareholders as a group or to the holders of any class or series of shares as a group;
- (5) a list of the names and business addresses of its current directors and officers;
- (6) its most recent corporate report delivered to the Secretary of State; and
- (7) its most recent annual financial statements and its most recently published financial statement showing in reasonable detail its assets and liabilities and results of its operations.

(b) *Conditional Inspection Right.* In addition to the rights set forth in § 2.17(a) a shareholder who has been a shareholder for at least 3 months immediately preceding the demand to inspect or copy, or is a shareholder of at least 5% of all of the outstanding shares of any class of shares of the corporation as of the date the demand is made, is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if (i) the shareholder gives the corporation written demand at least 5 business days before the date on which the shareholder wishes to inspect and copy such records, (ii) such demand is made in good faith and for a proper purpose, (iii) the shareholder describes with reasonable particularity the purpose and the records the shareholder desires to inspect and, (iv) the records are directly connected with the described purpose:

- (1) excerpts from minutes of any meeting of the board of directors or from records of any action taken by the board of directors without a meeting, minutes of any meeting of the shareholders or records of any action taken by the shareholders without a meeting, excerpts of records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, and waivers of notice of any meeting of the shareholders or the board of directors or any committee of the board of directors;
- (2) accounting records of the corporation; and
- (3) a record of the names and addresses of shareholders of the corporation.

(c) *Copy Costs.* The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) *Beneficial Owner.* For purposes of this § 2.17 the term "shareholder" shall include a beneficial owner whose shares are held in a voting trust and any other beneficial owner who establishes beneficial ownership.

ARTICLE III. BOARD OF DIRECTORS

§ 3.1 General Powers.

All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the board of directors.

§ 3.2 Number, Tenure, and Qualifications of Directors.

(a) **Number.** The board of directors shall consist of no fewer than three and no more than nine members, as may be determined from time to time by resolution of the Board of Directors within the limits specified above.

(b) **Tenure.** Each director shall hold office until the next annual meeting of shareholders or until removed; *provided, however*, if a director's term expires the director shall continue to serve until a successor shall have been elected and qualified, or until there is a decrease in the number of directors. No person shall be nominated to a term of office on the Company's Board of Directors who has attained the age of 75 or more before the first day of the proposed term of office; however, the Board of Directors shall have discretion to make exceptions to the mandatory retirement policy if special circumstances warrant such an exception.

(c) **Qualifications.** Directors do not need to be residents of Colorado or shareholders of the corporation.

§ 3.3 Regular Meetings of the Board of Directors.

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. The board of directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

§ 3.4 Special Meetings of the Board of Directors.

Special meetings of the board of directors may be called by or at the request of the chairman or any two directors. The chairman of the board of directors may fix any place as the place for holding any special meeting of the board of directors, or such meeting may be held by telephone.

§ 3.5 Notice of, and Waiver of Notice for, Special Director Meetings.

Notice of the date, time and place of any special meeting of directors shall be given at least three days previously thereto either orally or in writing. Oral notice is effective when communicated. If mailed, notice of any director meeting shall be deemed to be effective at the earlier of: (i) when received; (ii) five days after deposited in the United States mail, addressed to the director's business office, with postage thereon prepaid; or (iii) the date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the director. Any director may waive notice of any meeting. Except as provided in the next sentence, the waiver must be in writing, signed by the director entitled to the notice, and delivered to the corporation for filing with the corporate records. The attendance of a director at a 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 and at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting. Unless required by the articles of incorporation, neither the business to be transacted at, nor the purpose of,

any special meeting of the directors need be specified in the notice or waiver of notice of such meeting.

§ 3.6 Quorum.

A majority of the current number of directors fixed pursuant to § 3.2 shall constitute a quorum for the transaction of business at any meeting of the board of directors.

§ 3.7 Manner of Acting.

The act of the majority of the directors present at a meeting at which a quorum is present when the vote is taken shall be the act of the board of directors unless the articles require a greater number or percentage.

Any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (i) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting; or (ii) he contemporaneously requests that his dissent or abstention from specific action taken be entered in the minutes of the meeting; or (iii) he delivers written notice of his dissent or abstention to specific action to the presiding officer of the meeting, before its adjournment, or to the corporation promptly after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

§ 3.8 Director Action Without a Meeting.

Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if all the directors take the action, and each one signs a written consent describing the action taken. Action taken by consents is effective when the last director signs the consent unless before such time a director has revoked his consent by a writing received by the secretary and unless the consent specifies a different effective date. A signed consent has the effect of a meeting vote and may be described as such in any document.

§ 3.9 Removal of Directors.

The shareholders may remove one or more directors at a meeting if notice has been given that a purpose of the meeting is such removal. The removal may be with or without cause. A director may be removed only by a vote of at least two-thirds of the shares then entitled to vote at an election of directors.

§ 3.10 Board of Director Vacancies.

If a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the shareholders may fill the vacancy, the board of directors may fill the vacancy, or if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office. When a

vacancy has been filled as permitted by this § 3.10 by action of the board of directors or by the directors remaining in office even though fewer than a quorum before action by the shareholders, the shareholders may thereafter act to fill such vacancy only by first removing the director in question.

A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

The term of a director elected by directors to fill a vacancy expires at the next shareholders' meeting at which directors are elected. If elected by the shareholders the director shall hold office for the unexpired term of his predecessor in office. However, if his term expires the director shall continue to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

§ 3.11 Director Compensation.

By resolution of the board of directors each independent director may be paid compensation and be reimbursed for expenses for attendance at board and corporate meetings and may receive additional compensation for other services to the corporation.

§ 3.12 [Omitted.]

§ 3.13 Director Committees.

(a) *Creation of Committees.* The board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(b) *Required Procedures.* Sections 3.4, 3.5, 3.6, 3.7 and 3.8, which govern meetings, notice and waiver of notice, quorum, manner of acting, and action without meetings of the board of directors, apply to committees and their members.

(c) *Authority.* Each committee shall make recommendations to the board of directors on such subjects as are stated in the resolution creating the committee and no committee shall have authority to act for the board of directors.

ARTICLE IV. OFFICERS

§ 4.1 Number of Officers.

The officers of the corporation shall include, if and when appointed by the board of directors, a chairman of the board of directors (sometimes referred to herein as "chairman") a chief executive officer, a president, a chief operating officer, an executive vice president, one or more vice presidents, a secretary, a chief financial officer, a treasurer and a controller. Such other officers and assistant officers as may be deemed necessary may be appointed by the board of directors. The board of directors may assign such additional titles to one or more of the officers as it deems appropriate. If specifically authorized by the board of directors, an officer may appoint one or more officers or assistant officers. The same individual may simultaneously hold more than one office in the corporation, except that an individual may not hold the office of secretary and either the office of chief executive officer or president.

§ 4.2 Appointment and Term of Office.

The officers of the corporation shall be appointed by the board of directors to serve at the pleasure of the board of directors. The designation of a specified term grants to the officer no contract rights, and the board can remove the officer at any time prior to the termination of such term. If no term is specified, they shall hold office until they resign, die, or are removed.

§ 4.3 Removal of Officers.

Any officer or agent may be removed by the board of directors at any time, without notice, with or without cause. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an officer or agent shall not of itself create contract rights.

§ 4.4 Chairman.

The chairman of the board of directors shall preside at all meetings of the shareholders and of the board of directors at which he is present. The chairman shall have such further powers and perform such duties as are incident to his office or as may be granted to or required of him by the board of directors or by these bylaws including the following:

- (1) Provide leadership to the board
- (2) Assist the board in the discharge of its duties
- (3) Together with the CEO and with input from the other directors, determine the agenda and structure for board and shareholders' meetings
- (4) Act as liaison between the board and management
- (5) Undertake to see that the corporation develops and implements effective corporate governance principles and procedures
- (6) Oversee the development and implementation of an effective corporate strategy
- (7) Recommend the proper committee structure including assignments of members and committee chairmen

§ 4.5 Chief Executive Officer.

The chief executive officer is the most senior officer of the corporation, and shall have all power and authority implied by that position. He shall have, subject only to direction of the board of directors, supervision and final authority over all other officers except the chairman, and all of the business, property, affairs and policies of the corporation. In the absence of authority granting the power to another officer, the chief executive officer may vote any shares of another corporation which are owned by this corporation. The chief executive officer shall preside at all meetings of the shareholders and of the board of directors when the chairman is not present. Subject to the oversight and supervision of the board of directors, the chief executive officer shall supervise and control the management of the corporation in accordance with these bylaws. Unless another officer is specifically authorized to do so, he may sign and execute all authorized bonds, certificates for shares, contracts, checks or other obligations in the name of the corporation. All other officers of the corporation, except the chairman, shall report to the chief executive officer from time to time, and shall be subject to supervision by the chief executive officer. The chief executive officer shall have general charge of the operation of the business of the corporation including finance and stockholder relations. In general, the chief executive officer shall perform all duties incident to the office and such other duties as may be prescribed by the board of directors from time to time.

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§ 4.6 President.

Subject to the oversight and supervision of the chief executive officer and the board of directors, and to other provisions of these bylaws, the president shall have general charge of the operation of the business of the corporation. Unless another officer is specifically authorized to do so, the president may sign and execute all authorized bonds, certificates for shares, contracts, checks or other obligations in the name of the corporation. He shall do and perform such other duties as from time to time may be assigned to him by the chief executive officer. The president reports to the chief executive officer. He shall keep the chief executive officer and the board of directors fully informed and shall freely consult with them concerning the business of the corporation in his charge.

§ 4.7 Chief Operating Officer

The chief operating officer shall report to the president of the corporation and shall be responsible for the day-to-day operations of the corporation. He shall do and perform such other duties as from time to time may be assigned to him by the president or the chief executive officer.

§ 4.8 Executive Vice President.

In the absence of the president, or in the event of his death, inability or refusal to act, the executive vice president shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president.

§ 4.9 Vice Presidents.

If there be more than one vice president, the chief executive officer or the board of directors may designate their seniority (such as first vice president, senior vice president, etc.) and/or the particular department of the corporation of which they shall have charge. The vice presidents in order of their seniority by designation, or if not so designated, in the order of their seniority by appointment, shall perform the duties of the executive vice president in his absence or during his inability to act. If there is no executive vice president, then the vice presidents, in order of their seniority by designation, or if not so designated, then the order of their seniority by appointment, shall perform the duties of the president in his absence or during his inability to act. The vice presidents shall have such other duties and powers as may be assigned to or vested in them by the chief executive officer, the president or the board of directors or by the job description relating to any duties associated with management of a particular department.

§ 4.10 Secretary.

The secretary shall: (i) keep the minutes of the proceedings of the shareholders and of the board of directors in one or more books provided for that purpose; (ii) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (iii) be custodian of the corporate records and of any seal of the corporation and if there is a seal of the corporation, see that it is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized; (iv) when requested or required, authenticate any records of the corporation; (v) keep a register of the post office address of each shareholder which shall be furnished to the secretary by such shareholder; (vi) sign with the chief executive officer or the president certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the board of

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directors; (vii) have general charge of the stock transfer books of the corporation; and (viii) 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 chief executive officer or by the board of directors.

§ 4.11 Chief Financial Officer.

The chief financial officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the board of directors or the chief executive officer. The chief financial officer shall perform other duties commonly incident to the office and shall also perform such other duties and such other powers as the board of directors or the chief executive officer shall designate from time to time. The individual holding the office of chief executive officer may perform the duties of chief financial officer and may direct the treasurer or any assistant treasurer, or the controller or any assistant controller to assume and perform the duties of the chief financial officer.

§ 4.12 Treasurer.

The treasurer shall: (i) have charge and custody of and be responsible for all funds and securities of the corporation; (ii) receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected by the board of directors; and (iii) 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 by the chief executive officer or by the board of directors. If required by the board of directors, and at company expense, the treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the board of directors shall determine.

§ 4.13 Assistant Secretaries and Assistant Treasurers.

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 resolution of the board of directors. The assistant treasurers shall, if required by the board of directors, and at company expense, give bonds for the faithful discharge of their duties in such sums and with such sureties as the board of directors shall determine. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or the treasurer, respectively, or by the chief executive officer or the board of directors.

§ 4.14 Controller.

The controller shall keep financial records for the corporation and report the financial condition of the corporation as requested from time to time.

§ 4.15 Salaries.

The compensation of the officers shall be fixed by or in the manner determined by the board of directors.

ARTICLE V. INDEMNIFICATION OF DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES

§ 5.1 Indemnification of Directors.

The corporation shall indemnify any individual made a party to a proceeding because he is or was a director of the corporation against liability incurred in the proceeding, but only if the corporation has authorized the payment in accordance with C.R.S. § 7-109.106(1) and a determination has been made in accordance with the procedures set forth in C.R.S. § 7-109-106(2) that the director met the standards of conduct in paragraph (a), (b), and (c) below.

(a) *Standard of Conduct* The individual shall demonstrate that:

(1) he conducted himself in good faith; and

(2) he reasonably believed:

(i) in the case of conduct in his official capacity with the corporation that his conduct was in its best interests; and

(ii) in all other cases, that his conduct was at least not opposed to its best interests; and

(3) in the case of any criminal proceeding he had no reasonable cause to believe his conduct was unlawful.

(b) *No Indemnification Permitted in Certain Circumstances.* The corporation shall not indemnify a director under this § 5.1:

(1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation;
or

(2) in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(c) *Indemnification in Derivative Actions Limited.* Indemnification permitted under this § 5.1 in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

§ 5.2 Advance Expenses for Directors.

If a determination is made, following the procedures of C.R.S. § 7-109-106(2), that the director has met the following requirements; and if an authorization of payment is made, following the procedures and standards set forth in C.R.S. § 7-109-106(1), the corporation shall pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

- (1) the director furnishes the corporation a written affirmation of his good faith belief that he has met the standard of conduct described in § 5.1(a);
- (2) the director furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct (which undertaking must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment); and
- (3) a determination is made that the facts then known to those making the determination would not preclude indemnification under § 5.1.

§ 5.3 Indemnification of Officers, Agents, and Employees Who Are Not Directors.

The corporation shall indemnify and advance expenses to any officer of the corporation or of any of its subsidiaries or any general manager of any division of the corporation which indemnitee is not a director of the corporation to the maximum extent not inconsistent with public policy. The corporation may indemnify and advance expenses to any employee, fiduciary, or agent of the corporation who is not a director of the corporation if not inconsistent with public policy, as determined by the general or specific action of the board of directors.

ARTICLE VI. CERTIFICATES FOR SHARES AND THEIR TRANSFER

§ 6.1 Certificates for Shares.

(a) *Content.* Certificates representing shares of the corporation shall at a minimum state on their face the name of the corporation and that it is formed under the laws of Colorado, the name of the person to whom issued, and the number and class of shares and the designation of the series, if any, the certificate represents, and be in such form as determined by the board of directors. Such certificates shall be signed (either manually or by facsimile) by the president or a vice-president and by the secretary or an assistant secretary and may be sealed with a corporate seal or a facsimile thereof. Each certificate for shares shall be consecutively numbered or otherwise identified.

(b) *Legend as to Class or Series.* The designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(c) *Transferring Shares.* All certificates surrendered to the corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor as provided in § 6.1(d)

(d) *Lost Certificates.* A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

§ 6.2 Registration of the Transfer of Shares.

Registration of the transfer of shares of the corporation shall be made only on the stock transfer books of the corporation. In order to register a transfer the record owner shall surrender the shares to the corporation for cancellation properly endorsed by the appropriate person or persons with reasonable assurances that the endorsements are genuine and effective. Unless the corporation has established a procedure by which a beneficial owner of shares held by a nominee is to be recognized by the corporation as the owner, the person in whose name shares stand on the books of the corporation shall be deemed by the corporation to be the owner thereof for all purposes.

§ 6.3 Restrictions on Transfer of Shares Permitted.

The board of directors (or shareholders) may impose restrictions on the transfer or registration of transfer of shares (including any security convertible into or carrying a right to subscribe for or acquire shares). A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate. Unless so noted a restriction is not enforceable against a person without knowledge of the restriction.

ARTICLE VII. DISTRIBUTIONS

§ 7.1 Distributions.

The board of directors may authorize, and the corporation may make, distributions (including dividends on its outstanding shares) in the manner and upon the terms and conditions provided by law and in the corporation's articles of incorporation.

§ 7.2 Dividend Reserves.

Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the board of directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the board of directors shall think best in the interests of the corporation, and the board of directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE VIII. CORPORATE SEAL

§ 8.1 Corporate Seal.

The board of directors may provide a corporate seal which may be circular in form and have inscribed thereon any designation including the name of the corporation, Colorado as the state of incorporation, and the words "Corporate Seal."

ARTICLE IX. AMENDMENTS

§ 9.1 Amendments.

The corporation's board of directors may amend or repeal the corporation's bylaws unless (i) such power is reserved exclusively to the shareholders, or (ii) the bylaws prohibit the board of directors from doing so. The corporation's shareholders may amend the bylaws even though the bylaws may also be amended by its board of directors.