
Section 1: 8-K12B (8-K12B)

**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): **December 31, 2018**

MDU RESOURCES GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-03480
(Commission
File Number)

30-1133956
(IRS Employer
Identification No.)

1200 West Century Avenue
P.O. Box 5650
Bismarck, North Dakota 58506-5650
(Address of principal executive offices)
(Zip Code)

Registrant's telephone number, including area code: **(701) 530-1000**

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:

- 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (CFR §230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (CFR §240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Explanatory Note

On November 21, 2017, MDU Resources Group, Inc., a Delaware corporation (“Old MDU”), announced that its board of directors had authorized management to evaluate and pursue a holding company reorganization. On January 1, 2019, Old MDU created a new public holding company, MDU Resources Group, Inc., a Delaware corporation (formerly known as MDUR Newco, Inc., “New MDU”), by implementing a holding company reorganization (the “Merger”). Following the Merger, New MDU became the successor issuer to Old MDU pursuant to Rule 12g-3(a) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). This Current Report on Form 8-K (the “Form 8-K”) is being filed for the purpose of establishing New MDU as the successor issuer pursuant to Rule 12g-3(a) under the Exchange Act and to disclose certain related matters. Pursuant to Rule 12g-3(a) under the Exchange Act, shares of New MDU common stock, par value \$1.00 per share (the “New MDU Common Stock”), as the common stock of the successor issuer, are deemed registered under Section 12(b) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

On January 1, 2019, Old MDU implemented the Merger pursuant to the Agreement and Plan of Merger (the “Merger Agreement”), dated as of December 31, 2018, by and among Old MDU, New MDU and MDU Newco Sub, Inc., a Delaware corporation (“Merger Sub”), which resulted in New MDU owning all of the outstanding capital stock of Old MDU. Pursuant to the Merger, Merger Sub, a direct, wholly-owned subsidiary of New MDU and an indirect, wholly-owned subsidiary of Old MDU, merged with and into Old MDU, with Old MDU surviving as a direct, wholly-owned subsidiary of New MDU. Each share of each class of Old MDU stock issued and outstanding immediately prior to the Merger automatically converted into an equivalent corresponding share of New MDU stock, having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the corresponding share of Old MDU stock being converted. Accordingly, upon consummation of the Merger, Old MDU’s stockholders immediately prior to the consummation of the Merger became stockholders of New MDU. The stockholders of Old MDU will not recognize gain or loss for U.S. federal income tax purposes upon the conversion of their shares in the Merger.

The Merger was conducted pursuant to Section 251(g) of the General Corporation Law of the State of Delaware (the “DGCL”), which provides for the formation of a holding company without a vote of the stockholders of the constituent corporation. The conversion of stock occurred automatically without an exchange of stock certificates. After the Merger, stock certificates that previously represented shares of a class of Old MDU stock now represent the same number of shares of the corresponding class of New MDU stock. Following the consummation of the Merger, shares of New MDU Common Stock continue to trade on the New York Stock Exchange (the “NYSE”) on an uninterrupted basis under the symbol “MDU” with the same CUSIP number (552690109). Immediately after consummation of the Merger, New MDU has, on a consolidated basis, the same assets, businesses and operations as Old MDU had immediately prior to the consummation of the Merger.

As a result of the Merger, New MDU became the successor issuer to Old MDU pursuant to 12g-3(a) of the Exchange Act and as a result the New MDU Common Stock is deemed registered under Section 12(b) of the Exchange Act.

The foregoing descriptions of the Merger and Merger Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Merger Agreement, which is filed as Exhibit 2(a) and which is incorporated by reference herein.

Item 3.03 Material Modification of Rights of Securityholders.

Upon consummation of the Merger, each share of each class of Old MDU stock issued and outstanding immediately prior to the Merger automatically converted into an equivalent corresponding share of New MDU stock, having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the corresponding share of Old MDU stock that was converted.

The information set forth in Item 1.01 and Item 5.03 of this Form 8-K is hereby incorporated by reference in this Item 3.03 of this Form 8-K.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The directors of New MDU are the same as the directors of Old MDU upon consummation of the Merger, as of January 1, 2019.

Directors

Name	Age	AC	CC	NGC
Thomas Everist	69		C	
Karen B. Fagg	65		X	C
David L. Goodin	57			
Mark A. Hellerstein	66	X		
Dennis W. Johnson	69	C		X
William E. McCracken	76		X	X
Patricia L. Moss	65		X	X
Harry J. Pearce	76			
Edward A. Ryan	65	X		X
David M. Sparby	64	X		
John K. Wilson	64	X		

AC Audit Committee

CC Compensation Committee

NGC Nominating and Governance Committee

C Committee Chairperson

Biographical information about New MDU’s directors, other than for Messrs. Ryan and Sparby, for whom biographical information is set forth below, is included in Old MDU’s Schedule 14A for the 2018 Annual Meeting of Stockholders under “Board of Directors—Item 1. Election of Directors—Director Nominees” and is incorporated by reference herein.

Edward A. Ryan has served on the board of directors of Old MDU since 2018. From December 2017 until December 31, 2018, Mr. Ryan served as an advisor to the chief executive officer and president of Marriott International, Inc. (“Marriott”). Previously, Mr. Ryan served as executive vice president and general counsel of Marriott from December 2006 to December 2017, senior vice president and associate general counsel from 1999 to November 2006, assumed responsibility for all corporate transactions and corporate governance in 2005, and joined Marriott as assistant general counsel in May 1996. Prior to his time with Marriott, Mr. Ryan was in private law practice from 1979 to 1996. Mr. Ryan has served as a director of Goodwill of Greater Washington, D.C., a non-profit organization, since January 2015, including vice chair and treasurer positions. Mr. Ryan received a juris doctor degree from the University of Pennsylvania Law School and a bachelor’s degree in economics and international relations from the University of Pennsylvania. Mr. Ryan, through his position as executive vice president and general counsel at Marriott, brings extensive experience to the board in acquisitions, contracts, compliance, Securities and Exchange Commission reporting, and labor relations, and his experience also significantly contributes to the board’s oversight of compliance and corporate governance.

David M. Sparby has served on the board of directors of Old MDU since 2018. Previously, Mr. Sparby served as senior vice president and group president, revenue, of Xcel Energy, Inc. (“Xcel”) and president and chief executive officer of its subsidiary, Northern States Power-Minnesota (“NSP-Minnesota”), from May 2013 until his retirement in December 2014, senior vice president and group president, from September 2011 to May 2013, chief financial

officer from March 2009 to September 2011, and president and chief executive officer of NSP-Minnesota from 2008 to March 2009. He joined Xcel, or its predecessor Northern States Power Company, as an attorney in 1982 and held positions of increasing responsibility. Prior to that time, he served as an attorney with the State of Minnesota, Office of Attorney General, from 1980 to 1982, during which his responsibilities included representation of the Department of Public Service and the Minnesota Public Utilities Commission. Mr. Sparby has served on the board of trustees of Mitchell Hamline School of Law since July 2011, including executive committee and committee chair positions, and the board of trustees of the College of St. Scholastica since July 2012, including vice chair and executive committee positions. Mr. Sparby received a juris doctor degree from William Mitchell College of Law, a master's degree in business administration from University of St. Thomas and a bachelor's degree in history from College of St. Scholastica. Mr. Sparby's public utility and renewable energy expertise contributes to the board's knowledge of the public utility and natural gas pipeline industries.

The board of directors of New MDU has determined that each of Thomas Everist, Karen B. Fagg, Mark A. Hellerstein, Dennis W. Johnson, William E. McCracken, Patricia L. Moss, Harry J. Pearce, Edward A. Ryan, David M. Sparby and John K. Wilson is "independent" within the meaning of the listing rules of the NYSE.

The executive officers of New MDU are the same as the executive officers of Old MDU upon consummation of the Merger, as of January 1, 2019.

Executive Officers

Name	Age	Position with New MDU
David L. Goodin	57	President and Chief Executive Officer
David C. Barney	63	President and Chief Executive Officer, Knife River Corporation
Stephanie A. Barth	46	Vice president, Chief Accounting Officer and Controller
Trevor J. Hastings	45	President and Chief Executive Officer of WBI Holdings, Inc.
Anne M. Jones	55	Vice President, Human Resources
Nicole A. Kivisto	45	President and Chief Executive Officer, Montana-Dakota Utilities Co., Great Plains Natural Gas Co., Cascade Natural Gas Corporation, and Intermountain Gas Company
Daniel S. Kuntz	65	Vice President, General Counsel and Secretary
Margaret (Peggy) A. Link	52	Vice President and Chief Information Officer
Jeffrey S. Thiede	56	President and Chief Executive Officer, MDU Construction Services Group, Inc.
Jason L. Vollmer	41	Vice President, Chief Financial Officer and Treasurer

Biographical information about New MDU's executive officers is included in Old MDU's Schedule 14A for the 2018 Annual Meeting of Stockholders under "Executive Compensation—Item 2. Advisory Vote to Approve the Compensation Paid to the Company's Named Executive Officers—Information Concerning Executive Officers" and is incorporated by reference herein.

In connection with the Merger, to the fullest extent permitted by applicable law, New MDU adopted and assumed sponsorship of the Old MDU Equity Plans (as defined herein), along with all of Old MDU's rights and obligations under the Old MDU Equity Plans, and Old MDU shall have no further rights or obligations with respect to each equity award (the "Awards") issued under the Old MDU Equity Plans or granted by Old MDU outside of the Old MDU Equity Plans pursuant to NYSE Rule 308A.08 that was outstanding and unexercised, unvested and not yet paid or payable immediately prior to the Merger, which Awards were converted into a right to acquire or vest in a

share of New MDU capital stock of the same class and with the same rights and privileges relative to New MDU that such share underlying such Award had relative to Old MDU immediately prior to the Merger on otherwise the same terms and conditions as were applicable immediately prior to the Merger. "Old MDU Equity Plans" means, collectively, the MDU Resources Group, Inc. Non-Employee Director Long-Term Incentive Compensation Plan, as amended to date, the MDU Resources Group, Inc. Long-Term Performance-Based Incentive Plan, as amended to date, the MDU Resources Group, Inc. 401(k) Retirement Plan, as amended to date, and any and all subplans, appendices or addendums thereto, and any and all agreements evidencing Awards.

The information set forth in Item 1.01 of this Form 8-K is hereby incorporated by reference in this Item 5.02 of this Form 8-K.

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

In connection with the consummation of the Merger, New MDU's Board of Directors approved the Amended and Restated Certificate of Incorporation of New MDU (the "New MDU Certificate of Incorporation") and adopted the Amended and Restated Bylaws of New MDU (the "New MDU Bylaws") that are each identical to those of Old MDU immediately prior to the consummation of the Merger, except for certain amendments that are permissible and/or required under Section 251(g) of the DGCL. Prior to the consummation of the Merger, Old MDU, the sole stockholder of New MDU, approved the adoption of the New MDU Certificate of Incorporation. The New MDU Certificate of Incorporation was filed with the Delaware Secretary of State effective January 1, 2019.

The foregoing descriptions of the New MDU Certificate of Incorporation and the New MDU Bylaws do not purport to be complete and are qualified in their entirety by reference to the full text of the New MDU Certificate of Incorporation and the New MDU Bylaws, which are filed as Exhibits 3(a) and 3(b) hereto, respectively, and each of which is incorporated by reference herein.

Item 8.01. Other Items.

Press Release

On January 2, 2019, New MDU issued a press release relating to the completion of the Merger. A copy of the press release is attached hereto as Exhibit 99(a) and incorporated herein by reference.

Successor Issuer

In connection with the Merger and by operation of Rule 12g-3(a) promulgated under the Exchange Act, New MDU is the successor issuer to Old MDU and has succeeded to the attributes of Old MDU as the registrant. New MDU Common Stock is deemed to be registered under Section 12(b) of the Exchange Act, and New MDU is subject to the informational requirements of the Exchange Act, and the rules and regulations promulgated thereunder. New MDU hereby reports this succession in accordance with Rule 12g-3(f) promulgated under the Exchange Act.

Description of New MDU Capital Stock

The description of New MDU's capital stock provided in Exhibit 99(b), which is incorporated by reference herein, modifies and supersedes any prior description of New MDU's capital stock in any registration statement or report filed with Securities and Exchange Commission (the "Commission") and will be available for incorporation by reference into certain of New MDU's filings with the Commission pursuant to the Securities Act of 1933, as amended, the Exchange Act, and the rules and forms promulgated thereunder.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
2(a)	<u>Agreement and Plan of Merger, dated December 31, 2018, by and among MDU Resources Group, Inc., MDUR Newco, Inc. MDU Newco Sub, Inc.</u>

- 3(a) [Amended and Restated Certificate of Incorporation of MDU Resources Group, Inc.](#)
- 3(b) [Amended and Restated Bylaws of MDU Resources Group, Inc.](#)
- 99(a) [Press Release Issued January 2, 2019.](#)
- 99(b) [Description of Capital Stock.](#)

SIGNATURE

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: January 2, 2019

MDU RESOURCES GROUP, INC.

By: /s/ Daniel S. Kuntz
Daniel S. Kuntz
Vice President, General Counsel and Secretary

7

[\(Back To Top\)](#)

Section 2: EX-2.(A) (EX-2.(A))

Exhibit 2(a)

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (the “Agreement”), entered into as of December 31, 2018, by and among MDU Resources Group, Inc., a Delaware corporation (the “Company”), MDUR Newco, Inc., a Delaware corporation and direct, wholly-owned subsidiary of the Company (“Holdco”), and MDU Newco Sub, Inc., a Delaware corporation and direct, wholly-owned subsidiary of Holdco (“Merger Sub”).

RECITALS

WHEREAS, on the date hereof, the Company has the authority to issue 502,000,000 shares, consisting of: (i) 500,000,000 shares of Common Stock, par value \$1.00 per share (the “Company Common Stock”), of which 196,025,986 shares are issued and outstanding; (ii) 500,000 shares of Preferred Stock, par value \$100.00 per share (the “Company Preferred Stock”), of which no shares are issued and outstanding; (iii) 1,000,000 shares of Preferred Stock A, no par value per share (the “Company Preferred Stock A”), of which no shares are issued and outstanding; and (iv) 500,000 shares of Preference Stock, no par value per share (the “Company Preference Stock”), of which no shares are issued and outstanding.

WHEREAS, as of the Effective Time (as defined below), Holdco will have the authority to issue 502,000,000 shares, consisting of: (i) 500,000,000 shares of Common Stock, par value \$1.00 per share (the “Holdco Common Stock”); (ii) 500,000 shares of Preferred Stock, par value \$100.00 per share (the “Holdco Preferred Stock”); (iii) 1,000,000 shares of Preferred Stock A, no par value per share (the “Holdco Preferred Stock A”); and (iv) 500,000 shares of Preference Stock, no par value per share (the “Holdco Preference Stock”).

WHEREAS, as of the date hereof, Merger Sub has the authority to issue 1,000 shares of common stock, par value \$0.001 per share (the “Merger Sub Common Stock”), of which 1,000 shares are issued and outstanding on the date hereof and owned by Holdco.

WHEREAS, as of the Effective Time, the designations, rights, powers and preferences, and the qualifications, limitations and restrictions of the Holdco Common Stock, the Holdco Preferred Stock, the Holdco Preferred Stock A and the Holdco Preference Stock will be the same as those of the Company Common Stock, the Company Preferred Stock, the Company Preferred Stock A and the Company Preference Stock, respectively.

WHEREAS, the Amended and Restated Certificate of Incorporation of Holdco (the “Holdco Charter”) and the Amended and Restated Bylaws of Holdco (the “Holdco Bylaws”), which will be in effect immediately following the Effective Time, will contain provisions identical to the Restated Certificate of Incorporation of the Company (the “Company Charter”) and the Bylaws of the Company (the “Company Bylaws”), in effect as of the date hereof and that will be in effect immediately prior to the Effective Time, respectively (other than as permitted by Section 251(g) of the General Corporation Law of the State of Delaware (the “DGCL”).

WHEREAS, Holdco and Merger Sub are newly formed corporations organized for the sole purpose of participating in the transactions herein contemplated and actions related thereto, own no assets (other than Holdco’s ownership of Merger Sub and nominal capital) and have taken no actions other than those necessary or advisable to organize the corporations and to effect the transactions herein contemplated and actions related thereto.

WHEREAS, the Company desires to reorganize into a holding company structure pursuant to Section 251(g) of the DGCL, under which Holdco would become a holding company, by the merger of Merger Sub with and into the Company, and with each share of Company Common Stock, Company Preferred Stock, Company Preferred Stock A and Company Preference Stock being converted in the Merger (as defined below) into a share of Holdco Common Stock, Holdco Preferred Stock, Holdco Preferred Stock A and Holdco Preference Stock, respectively.

WHEREAS, at the Effective Time, to the fullest extent permitted by applicable law, Holdco will adopt and assume sponsorship of the Company Equity Plans (as defined below) and all of the Company’s rights and obligations thereunder.



WHEREAS, the respective boards of directors of Holdco and the Company have approved and declared advisable this Agreement and the transactions contemplated hereby, including, without limitation, the Merger.

WHEREAS, the board of directors of Merger Sub has (i) approved and declared advisable this Agreement and the transactions contemplated hereby, including, without limitation, the Merger, (ii) resolved to submit the approval of the adoption of this Agreement and the transactions contemplated hereby, including, without limitation, the Merger, to its sole stockholder, and (iii) resolved to recommend to its sole stockholder that it approve the adoption of this Agreement and the transactions contemplated hereby, including, without limitation, the Merger.

WHEREAS, the parties intend, for United States federal income tax purposes, the Merger shall qualify as an exchange described in Section 351 of the Internal Revenue Code.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained in this Agreement, and intending to be legally bound hereby, the Company, Holdco and Merger Sub hereby agree as follows:

1. THE MERGER. In accordance with Section 251(g) of the DGCL and subject to, and upon the terms and conditions of, this Agreement, Merger Sub shall be merged with and into the Company (the "Merger"), the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation of the Merger (the "Surviving Corporation"). At the Effective Time, the effects of the Merger shall be as provided in this Agreement and in Section 259 of the DGCL.

2. EFFECTIVE TIME. As soon as practicable on or after the date hereof, the Company shall file a certificate of merger executed in accordance with the relevant provisions of the DGCL, with the Secretary of State of the State of Delaware (the "Secretary of State") and shall make all other filings or recordings required under the DGCL to effectuate the Merger. The Merger shall become effective at such time as the certificate of merger is duly filed with the Secretary of State or at such later date and time as the parties shall agree and specify in the certificate of merger (the date and time the Merger becomes effective being referred to herein as the "Effective Time").

3. CERTIFICATE OF INCORPORATION. At the Effective Time, the Company Charter shall be amended in the Merger as set forth below and in the certificate of merger that is duly filed with the Secretary of State, and as so amended, shall be the certificate of incorporation of the Surviving Corporation (the "Surviving Corporation Charter") until thereafter amended as provided therein or by the DGCL.

(a) ARTICLE FIRST of the Company Charter shall be amended in its entirety as follows:

"FIRST: The name of this Corporation is MONTANA-DAKOTA UTILITIES CO. (the "Corporation")."

(b) ARTICLE FIFTEENTH of the Company Charter shall be amended in its entirety as follows:

"FIFTEENTH. Any act or transaction by or involving the Corporation, other than the election or removal of directors of the Corporation, that requires for its adoption under the General Corporation Law of Delaware or this Restated Certificate of Incorporation the approval of the stockholders of the Corporation shall, in accordance with Section 251(g) of the General Corporation Law of Delaware, require, in addition, the approval of the stockholders of MDU Resources Group, Inc. (or any successor thereto by merger), by the same vote as is required by the General Corporation Law of Delaware and/or this Restated Certificate of Incorporation."

4. BYLAWS. From and after the Effective Time, the Company Bylaws shall be amended and restated in the Merger as set forth in Exhibit A hereto, and as so amended and restated, shall constitute the bylaws of the Surviving Corporation (the "Surviving Corporation Bylaws") until thereafter amended as provided therein or by applicable law.

5. DIRECTORS. The directors of the Company in office immediately prior to the Effective Time shall be the directors of the Surviving Corporation and will continue to hold office from the Effective Time until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and Surviving Corporation Bylaws, or as otherwise provided by law.

6. OFFICERS. The officers of the Company in office immediately prior to the Effective Time shall be the officers of the Surviving Corporation and will continue to hold office from the Effective Time until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and Surviving Corporation Bylaws, as determined by the board of directors of the Company, or as otherwise provided by law.

7. ADDITIONAL ACTIONS. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either Merger Sub or the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of each of Merger Sub and the Company, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of Merger Sub and the Company or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

8. CONVERSION OF SECURITIES. At the Effective Time, by virtue of the Merger and without any action on the part of Holdco, Merger Sub, the Company or any holder of any securities thereof:

(a) Conversion of Company Common Stock, Company Preferred Stock, Company Preferred Stock A and Company Preference Stock. Each share of Company Common Stock, Company Preferred Stock, Company Preferred Stock A and Company Preference Stock issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of Holdco Common Stock, Holdco Preferred Stock, Holdco Preferred Stock A and Holdco Preference Stock, respectively.

(b) Conversion of Company Stock Held as Treasury Stock. Each share of Company Common Stock, Company Preferred Stock, Company Preferred Stock A and Company Preference Stock held in the Company's treasury shall be converted into one validly issued, fully paid and nonassessable share of Holdco Common Stock, Holdco Preferred Stock, Holdco Preferred Stock A and Holdco Preference Stock, respectively, to be held immediately after completion of the Merger in the treasury of Holdco.

(c) Conversion of Capital Stock of Merger Sub. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of Common Stock, par value \$1.00 per share, of the Surviving Corporation.

(d) Rights of Certificate Holders. Upon conversion thereof in accordance with this Section 8, all shares of Company Common Stock, Company Preferred Stock, Company Preferred Stock A and Company Preference Stock shall no longer be outstanding and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock, Company Preferred Stock, Company Preferred Stock A or Company Preference Stock shall cease to have any rights with respect to such shares of Company Common Stock, Company Preferred Stock, Company Preferred Stock A or Company Preference Stock, respectively, except, in all cases, as set forth in Section 9 herein. In addition, each outstanding book-entry that, immediately prior to the Effective Time, evidenced shares of Company Common Stock, Company Preferred Stock, Company Preferred Stock A or Company Preference Stock shall, from and after the Effective Time, be deemed and treated for all corporate purposes to evidence the ownership of the same number of shares of Holdco Common Stock, Holdco Preferred Stock, Holdco Preferred Stock A or Holdco Preference Stock, respectively.

9. CERTIFICATES. At and after the Effective Time until thereafter surrendered for transfer or exchange in the ordinary course, each outstanding certificate which immediately prior thereto represented shares of Company Common Stock, Company Preferred Stock, Company Preferred Stock A or Company Preference Stock shall

be deemed for all purposes to evidence ownership of and to represent the shares of Holdco Common Stock, Holdco Preferred Stock, Holdco Preferred Stock A or Holdco Preference Stock, as applicable, into which the shares of Company Common Stock, Company Preferred Stock, Company Preferred Stock A or Company Preference Stock represented by such certificate have been converted as herein provided and shall be so registered on the books and records of Holdco and its transfer agent. At and after the Effective Time, the shares of capital stock of Holdco shall be uncertificated; provided, that, any shares of capital stock of Holdco that are represented by outstanding certificates of the Company pursuant to the immediately preceding sentence shall continue to be represented by certificates as provided therein and shall not be uncertificated unless and until a valid certificate representing such shares pursuant to the immediately preceding sentence is delivered to Holdco at its registered office in the State of Delaware, its principal place of business, or an officer or agent of Holdco having custody of books and records of Holdco, at which time such certificate shall be canceled and in lieu of the delivery of a certificate representing the applicable shares of capital stock of Holdco, Holdco shall (i) issue to such holder the applicable uncertificated shares of capital stock of Holdco by registering such shares in Holdco's books and records as book-entry shares, upon which such shares shall thereafter be uncertificated and (ii) take all action necessary to provide such holder with evidence of the uncertificated book-entry shares, including any action necessary under applicable law in accordance therewith, including in accordance with Sections 151(f) and 202 of the DGCL. If any certificate that prior to the Effective Time represented shares of Company Common Stock, Company Preferred Stock, Company Preferred Stock A or Company Preference Stock shall have been lost, stolen or destroyed, then, upon the making of an affidavit of such fact by the person or entity claiming such certificate to be lost, stolen or destroyed and the providing of an indemnity by such person or entity to Holdco, in form and substance reasonably satisfactory to Holdco, against any claim that may be made against it with respect to such certificate, Holdco shall issue to such person or entity, in exchange for such lost, stolen or destroyed certificate, uncertificated shares representing the applicable shares of Holdco Common Stock, Holdco Preferred Stock, Holdco Preferred Stock A or Holdco Preference Stock in accordance with the procedures set forth in the preceding sentence.

10. ASSUMPTION OF COMPANY EQUITY PLANS AND AWARDS. At the Effective Time, to the fullest extent permitted by applicable law, Holdco will adopt and assume sponsorship of the Company Equity Plans, along with all of the Company's rights and obligations under the Company Equity Plans, and the Company shall have no further rights or obligations with respect to each equity award (the "Awards") issued under the Company Equity Plans or granted by the Company outside of the Company Equity Plans pursuant to New York Stock Exchange Rule 308A.08 that is outstanding and unexercised, unvested and not yet paid or payable immediately prior to the Effective Time, which Awards shall be converted into a right to acquire or vest in a share of Holdco capital stock of the same class and with the same rights and privileges relative to Holdco that such share underlying such Award had relative to the Company immediately prior to the Effective Time on otherwise the same terms and conditions as were applicable immediately prior to the Effective Time. For purposes of this Agreement, "Company Equity Plans" shall mean, collectively, the MDU Resources Group, Inc. Non-Employee Director Long-Term Incentive Compensation Plan, as amended to date, the MDU Resources Group, Inc. Long-Term Performance-Based Incentive Plan, as amended to date, the MDU Resources Group, Inc. 401(k) Retirement Plan, as amended to date, and any and all subplans, appendices or addendums thereto, and any and all agreements evidencing Awards. Holdco and the Company agree to take all corporate and other action as shall be necessary to effectuate the foregoing, and without limitation, Holdco shall take all corporate and other action necessary to reserve and make available for issuance shares of Holdco Common Stock upon the vesting and settlement of the applicable Awards. Immediately prior to the Effective Time, the Company, in its capacity as sole stockholder of Holdco, shall approve Holdco's adoption and assumption of the Company Equity Plans.

11. HOLDCO SHARES. Prior to the Effective Time, the Company and Holdco shall take any and all actions as are necessary to ensure that each share of capital stock of Holdco that is owned by the Company immediately prior to the Effective Time shall be cancelled and cease to be outstanding at the Effective Time, and no payment shall be made therefor, and the Company, by execution of this Agreement, agrees to forfeit such shares and relinquish any rights to such shares.

12. NO APPRAISAL RIGHTS. In accordance with the DGCL, no appraisal rights shall be available to any holder of shares of Company Common Stock, Company Preferred Stock, Company Preferred Stock A or Company Preference Stock in connection with the Merger.

13. TERMINATION. This Agreement may be terminated, and the Merger and the other transactions provided for herein may be abandoned, whether before or after the adoption of this Agreement by the sole stockholder of Merger Sub, at any time prior to the Effective Time, by action of the board of directors of the Company. In the event of termination of this Agreement, this Agreement shall forthwith become void and have no effect, and neither the Company, Holdco, Merger Sub nor their respective stockholders, directors or officers shall have any liability with respect to such termination or abandonment.

14. AMENDMENTS. At any time prior to the Effective Time, this Agreement may be supplemented, amended or modified, whether before or after the adoption of this Agreement by the sole stockholder of Merger Sub, by the mutual consent of the parties to this Agreement by action by their respective boards of directors; provided, however, that, no amendment shall be effected subsequent to the adoption of this Agreement by the sole stockholder of Merger Sub that by law requires further approval or authorization by the sole stockholder of Merger Sub or the stockholders of the Company without such further approval or authorization. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties hereto.

15. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws.

16. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which shall constitute one and the same agreement.

17. ENTIRE AGREEMENT. This Agreement, including the documents and instruments referred to herein, constitutes the entire agreement and supersedes all other prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

18. SEVERABILITY. The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company, Holdco and Merger Sub have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

MDU RESOURCES GROUP, INC.

By: /s/ David L. Goodin

Name: David L. Goodin

Title: President and Chief Executive Officer

MDUR NEWCO, INC.

By: /s/ Daniel S. Kuntz

Name: Daniel S. Kuntz

Title: Vice President, General Counsel and Secretary

MDU NEWCO SUB, INC.

By: /s/ Nicole A. Kivisto

Name: Nicole A. Kivisto

Title: President and Chief Executive Officer

Exhibit A

[Attached]

Amended and Restated Bylaws of



TABLE OF CONTENTS
TO AMENDED AND RESTATED BYLAWS

	<u>Page No.</u>
OFFICES	1
1.01 Registered Office	1
1.02 Other Offices	1
MEETINGS OF STOCKHOLDERS	1
2.01 Place of Meetings	1
2.02 Annual Meetings	1
2.03 Notice of Annual Meeting	2
2.04 Stockholders List	2
2.05 Notice of Special Meeting	2
2.06 Quorum; Adjournment; and Organization	3
2.07 Voting Rights	4
2.08 Nominations for Director	4
2.09 Business at Meetings of Stockholders	8
DIRECTORS	10
3.01 Authority of Directors	10
3.02 Qualifications	11
3.03 Place of Meetings	11
3.04 Annual Meetings	11
3.05 Regular Meetings	11
3.06 Special Meetings	11
3.07 Quorum	11
3.08 Participation of Directors by Conference Telephone	12
3.09 Written Action of Directors	12
3.10 Committees	12
3.11 Reports of Committees	12
3.12 Compensation of Directors	13
3.13 Chairman of the Board	13
NOTICES	13
4.01 Notices	13
4.02 Waiver	13

OFFICERS	13
5.01 Election, Qualifications	13
5.02 Additional Officers	14
5.03 Salaries	14
5.04 Term	14
5.05 Chief Executive Officer	14
5.06 The President	14
5.07 The Vice Presidents	14
5.08 The Secretary and Assistant Secretaries	14
5.09 Treasurer and Assistant Treasurers	15
5.10 General Counsel	15
5.11 Authority and Duties	16
5.12 Execution of Instruments	16
5.13 Execution of Proxies	16
CERTIFICATES OF STOCK	16
6.01 Certificates	16
6.02 Signatures	17
6.03 Special Designation on Certificates	17
6.04 Lost Certificates	17
6.05 Transfers of Stock	17
6.06 Record Date	17
6.07 Registered Stockholders	18
GENERAL PROVISIONS	18
7.01 Dividends	18
7.02 Checks	18
7.03 Fiscal Year	18
7.04 Seal	18
7.05 Inspection of Books and Records	18
7.06 Amendments	19
7.07 Indemnification of Officers, Directors, Employees and Agents	19
7.08 Severability	20
7.09 Forum Selection	21

**AMENDED AND RESTATED BYLAWS OF
MDU RESOURCES GROUP, INC.**

(Adopted as of January 1, 2019)

OFFICES

1.01 **Registered Office.** The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

1.02 **Other Offices.** The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

MEETINGS OF STOCKHOLDERS

2.01 **Place of Meetings.** All meetings of the stockholders for the election of Directors shall be held in the City of Bismarck, State of North Dakota, at such place as may be fixed from time to time by the Board of Directors, or at such other place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors, or, in the sole discretion of the Board of Directors, by means of remote communication as authorized by the laws of Delaware, as shall be stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, or, in the sole discretion of the Board of Directors, by means of remote communication as authorized by the laws of Delaware as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

2.02 **Annual Meetings.** Annual meetings of stockholders shall be held on the fourth Tuesday of April in each year, if not a legal holiday, and if a legal holiday, then on the next secular day following, at 11:00 A.M., or at such other date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which they shall elect a Board of Directors and transact such other business as may properly be brought before the meeting. The election of directors shall be by written ballot including, if authorized by the Board of Directors, by ballot submitted by electronic transmission in compliance with the laws of Delaware.

Except as otherwise provided in the amended and restated certificate of incorporation of the Corporation, as the same may be amended and/or restated from time to time (as so amended and/or restated, the "Certificate of Incorporation") or these amended and restated bylaws, as the same may be amended and/or restated from time to time (as so amended and/or restated, the "Bylaws"), each director shall be elected by the vote of the majority of the votes cast with respect to the director at any meeting for the election of directors at which a quorum is present, provided that if, as of the day next preceding the date the Corporation first gives its notice of meeting for such meeting of stockholders, the number of nominees (including any nominees stockholders have proposed to nominate by giving

notice pursuant to Section 2.08 hereof) exceeds the number of directors to be elected, the directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at any such meeting and entitled to vote on the election of directors. For purposes of this Section, a majority of the votes cast means that the number of votes cast “for” a director’s election must exceed the number of votes cast “against” that director’s election (with “abstentions” and “broker nonvotes” not counted as a vote cast either “for” or “against” that director’s election). If directors are to be elected by a plurality of the votes of the shares present in person or represented by proxy at any such meeting and entitled to vote on the election of directors, stockholders shall not be permitted to vote “against” a nominee.

2.03 Notice of Annual Meeting. Notice, in writing or by a form of electronic transmission in compliance with the laws of Delaware, of the annual meeting, stating the place, if any, date and hour of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

2.04 Stockholders List. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the meeting on a reasonably accessible electronic network, and the information required to access the electronic list shall be provided with the notice of the meeting.

2.05 Notice of Special Meeting. Notice of a special meeting, in writing or by a form of electronic transmission as determined solely by the Board of Directors in compliance with the laws of Delaware, stating the place, date and hour of the meeting, the means of remote communications, if any, by which the stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting. Business transacted at a special meeting of stockholders shall be confined to the purpose or purposes of the meeting specified in the notice of meeting (or supplement thereto) given

by or at the direction of the Board of Directors. Stockholders may not make nominations for directors or bring any business before a special meeting of stockholders.

2.06 **Quorum; Adjournment; and Organization.**

(a) **Quorum.** The holders of a majority of the stock issued and outstanding and entitled to vote in person or by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as provided herein and except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the meeting may be adjourned from time to time in accordance with paragraph (b) of this Section 2.06 until a quorum shall be so present or represented. For purposes of the foregoing, where a separate vote by a class or classes is required for any matter, the holders of a majority of the outstanding shares of such class or classes entitled to vote, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter, except as provided herein and except as otherwise provided by statute or by the Certificate of Incorporation. Two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting.

(b) **Adjournment.** Any meeting of stockholders, annual or special, whether or not a quorum is present, may be adjourned for any reason from time to time by either (i) the chairman of the meeting or (ii) the stockholders by the vote of the holders of a majority of the stock entitled to vote, present in person or represented by proxy, without notice of the adjourned meeting, if the time and place thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At such adjourned meeting, any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty 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 stockholder of record entitled to vote at the meeting.

(c) **Organization.** Meetings of stockholders shall be presided over by the Chairman of the Board, or in the absence of the Chairman of the Board by the Chief Executive Officer, or in the absence of the Chief Executive Officer by a person designated by the Board of Directors, or in the absence of such designation by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as, in the judgment of the chairman of the meeting, are necessary or desirable for the proper conduct of the meeting and are not inconsistent with any rules or regulations adopted by the Board of Directors, including the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after

the time prescribed for the commencement thereof and the opening and closing of the voting polls for each item upon which a vote is to be taken. Rules, regulations or procedures established by the chairman of the meeting need not be in writing.

2.07 Voting Rights. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power, present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the statutes, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Unless otherwise provided in the Certificate of Incorporation, each stockholder shall, at every meeting of the stockholders, be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three years from its date, unless the proxy provides for a longer period.

2.08 Nominations for Director. Nominations of persons for election to the Board of Directors of the Corporation may be made only (a) at any meeting of stockholders, by or at the direction of the Board of Directors or (b) at an annual meeting of stockholders, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.08 is given to the Secretary of the Corporation and continues to be a stockholder of record at the time of the meeting, who is entitled to vote at the meeting upon the election of directors and who has complied with the procedures established by this Section 2.08; clause (b) shall be the exclusive means for a stockholder to make nominations at an annual meeting of stockholders. For a nomination to be properly brought before an annual meeting by a stockholder, the stockholder intending to make the nomination (the "Section 2.08 Proponent") must have given timely and proper notice thereof in writing to the Secretary of the Corporation, in accordance with, and containing all information required by, this Section 2.08.

To be timely, a Section 2.08 Proponent's notice must be delivered or mailed to the Secretary of the Corporation and received at the principal executive offices of the Corporation not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting of stockholders; provided, however, in the event the annual meeting is scheduled to be held more than 30 days prior to such anniversary date or more than 30 days after such anniversary date, then to be timely such notice must be received by the Corporation not later than the close of business on the 90th day prior to the scheduled date of the annual meeting or, if later, the 10th day following the date of Public Disclosure (as defined below) of the scheduled date of the annual meeting. In no event shall any adjournment or postponement of an annual meeting of stockholders or announcement thereof commence a new time period or extend any time period for the giving of a Section 2.08 Proponent's notice as required by this Section 2.08.

A Section 2.08 Proponent's notice (including all information required to be included by this Section 2.08, the "Section 2.08 Notice") to the Secretary shall set forth: (a) as to each person the

Section 2.08 Proponent proposes to nominate for election as a director at the annual meeting, (i) the name, age, business address, residence address and telephone number of such proposed nominee and the name, business address and residence address of any Nominee Associated Persons (as defined below), (ii) the principal occupation or employment of such proposed nominee, (iii) the class and number of shares of stock of the Corporation that are owned (beneficially and of record) by or on behalf of such proposed nominee and by or on behalf of any Nominee Associated Person, as of the date of the Section 2.08 Notice, (iv) a description of such proposed nominee's qualifications to be a director, (v) a statement as to whether such proposed nominee would be an independent director, and the basis therefor, under the listing standards of the New York Stock Exchange and the Corporation's Corporate Governance Guidelines and (vi) in an attachment, the proposed nominee's completed and signed Questionnaire (as defined below); (b) as to the Section 2.08 Proponent and any Stockholder Associated Person (as defined below) on whose behalf the nomination is being made, (i) the name and address of the Section 2.08 Proponent, and, if applicable, any holder of record of any of the Section 2.08 Proponent's shares of stock, as they appear on the Corporation's books, and of any Stockholder Associated Person, (ii) the class and number of shares of stock of the Corporation that are owned (beneficially and of record) by or on behalf of the Section 2.08 Proponent and by or on behalf of any Stockholder Associated Person, as of the date of the Section 2.08 Notice, the date such shares were acquired and the investment intent with respect thereto and (iii) a description of all purchases and sales of, or other transactions involving in any way, shares of stock of the Corporation by or on behalf of the Section 2.08 Proponent and by or on behalf of any Stockholder Associated Person during the twenty-four month period prior to the date of the Section 2.08 Notice, including the dates of the transactions, the class and number of shares and the consideration (without regard to whether such shares were or were not owned by the Section 2.08 Proponent or any such person); (c) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative instrument, option, warrant, convertible security, stock appreciation right, swap, long or short position, profit interest, hedging transaction, separated or separable dividend rights and borrowed or loaned shares) that has been entered into or is in effect as of the date of the Section 2.08 Notice, by or on behalf of the Section 2.08 Proponent, any Stockholder Associated Person, any proposed nominee or any Nominee Associated Person, the effect or intent of which is, directly or indirectly, to mitigate loss to, manage risk or benefit of stock price changes for, or maintain, increase or decrease the voting power of, the Section 2.08 Proponent, any Stockholder Associated Person, any proposed nominee or any Nominee Associated Person with respect to the Corporation's securities; (d) a description of any other agreement, arrangement or understanding, including but not limited to those providing for any compensation, payment or other benefit, whether direct or indirect, that has been entered into within the twenty-four month period prior to the date of the Section 2.08 Notice or is in effect as of the date of the Section 2.08 Notice, between or among the Section 2.08 Proponent, any Stockholder Associated Person, any proposed nominee, any Nominee Associated Person or any other person, and that relates to such nomination or such proposed nominee's service as a director of the Corporation; (e) any compensation, payment or other benefit received, directly or indirectly, by any proposed nominee or any Nominee Associated Person that relates to such nomination or such proposed nominee's service as a director of the Corporation; (f) a representation that the Section 2.08 Proponent is the holder of record of shares of stock of the Corporation entitled to vote upon the

election of directors at the annual meeting and intends to appear in person or by proxy through a Qualified Representative (as defined below) at the meeting to nominate any such proposed nominee; and (g) a representation as to whether or not the Section 2.08 Proponent or any Stockholder Associated Person intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to stockholders and/or otherwise to solicit proxies from stockholders in support of such nomination.

A Section 2.08 Proponent shall update and supplement such Section 2.08 Notice so that all information provided or required to be provided therein shall be true and correct as of the record date for the annual meeting and as of the date that is ten business days prior to the date of the meeting or any adjournment or postponement thereof, and any such update and supplement shall be delivered or mailed to the Secretary of the Corporation and received at the principal executive offices of the Corporation not later than five business days after the later of the record date or the date of Public Disclosure of the record date for such meeting (in the case of the update and supplement required to be made as of the record date) and not later than eight business days prior to the date of the meeting or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the date of the meeting or any adjournment or postponement thereof).

A proposed nominee's questionnaire (including all information required to be included by this Section 2.08, the "Questionnaire"), in the form provided by the Secretary of the Corporation upon written request by the Section 2.08 Proponent, shall be completed (and updated and supplemented as necessary to comply with the preceding paragraph) and signed by the proposed nominee and shall set forth (a) information of the type required by the Corporation's Questionnaires for Directors and Officers of the Corporation in connection with the Annual Meeting of Stockholders and Various Reports to the Securities and Exchange Commission and (b) a written representation and agreement that such proposed nominee (i) would qualify, if elected, for service as a director under Section 3.02 of these Bylaws, (ii) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, 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 in the Questionnaire (or any update or supplement thereto), or to the extent not required to be disclosed in the Questionnaire (or any update or supplement thereto), within three business days thereafter, in writing to the Corporation or (B) any Voting Commitment that could limit or interfere with the proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (iii) is not and will not become a party to or beneficiary of any agreement, arrangement or understanding, whether direct or indirect, with any person or entity other than the Corporation providing for, directly or indirectly, any compensation, payment or other benefit from any person or entity other than the Corporation, in each case that relates to such nomination or the proposed nominee's service as a director of the Corporation, that has not been disclosed in the Questionnaire (or any update or supplement thereto), or to the extent not required to be disclosed in

the Questionnaire (or any update or supplement thereto), within three business days thereafter in writing to the Corporation, (iv) has not received and will not receive, directly or indirectly, any compensation, payment or other benefit from any person or entity other than the Corporation, in each case that relates to such nomination or the proposed nominee's service as a director of the Corporation, that has not been disclosed in the Questionnaire (or any update or supplement thereto), or to the extent not required to be disclosed in the Questionnaire (or any update or supplement thereto), within three business days thereafter in writing to the Corporation and (v) would be in compliance, if elected as a director of the Corporation, and will comply, with all applicable laws and regulatory requirements and the Corporation's Corporate Governance Guidelines, Leading With Integrity Guide and Director Compensation Policy and all other publicly-disclosed policies and guidelines to which the Corporation's directors may be subject in connection with service as a director of the Corporation.

No person proposed to be nominated by a stockholder shall be eligible for election as a director of the Corporation unless such person is nominated in accordance with the procedures set forth in this Section 2.08. If the Section 2.08 Proponent intending to nominate a person for election as a director of the Corporation at an annual meeting pursuant to this Section 2.08 does not give timely and proper notice thereof in writing to the Secretary of the Corporation, in accordance with, and containing all information (including any update and supplement) required by, this Section 2.08, or if the Section 2.08 Proponent does not appear in person or by proxy through a Qualified Representative at the meeting to nominate such person for election as a director of the Corporation, then, in any such case, such proposed nomination shall not be made, notwithstanding the fact that proxies in respect of such nomination may have been solicited or obtained. To be considered a Qualified Representative of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by the stockholder to act for the stockholder as proxy at the annual meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the annual meeting of stockholders. The chairman of the meeting shall, if the facts warrant, determine that the nomination was not properly made in accordance with the provisions of this Section 2.08, and, if the chairman should so determine, he or she shall declare to the meeting that such nomination was not properly made and shall be disregarded.

The requirements of this Section 2.08 shall apply to the nomination by a stockholder of a person for election as a director without regard to whether such nomination is presented to stockholders by means of a proxy solicitation by any person other than by or on behalf of the Board of Directors, and stockholders who wish to nominate a person for election at the annual meeting or to solicit proxies in connection with such nomination must also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

For purposes of the Bylaws:

“*Nominee Associated Person*” of any proposed nominee for election as a director means (i) any affiliate or associate (as such terms are defined for purposes of the Exchange Act) of the proposed nominee and any other person acting in concert with any of the foregoing, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such proposed nominee and (iii) any person controlling, controlled by or under common control with such Nominee Associated Person.

“*Public Disclosure*” means disclosure made in a press release reported by Dow Jones News Service, Associated Press or a comparable national news service or in a document filed by the Corporation pursuant to Section 13, 14 or 15(d) of the Exchange Act.

“*Stockholder Associated Person*” of any stockholder means (i) any affiliate or associate (as such terms are defined for purposes of the Exchange Act) of the stockholder and any other person acting in concert with any of the foregoing, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder and (iii) any person controlling, controlled by or under common control with such Stockholder Associated Person.

2.09 Business at Meetings of Stockholders. At any meeting of stockholders, only such business shall be transacted as shall have been properly brought before the meeting. Business (other than nominations of persons for election to the Board of Directors, which is governed by Section 2.08 of these Bylaws) may be properly brought before a meeting of stockholders only (a) at any meeting of stockholders by or at the direction of the Board of Directors or (b) at an annual meeting of stockholders, by a stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.09 is given to the Secretary of the Corporation and continues to be a stockholder of record at the time of the meeting, who is entitled to vote at the meeting upon the election of directors and upon the proposal and who has complied with the procedures established by this Section 2.09; clause (b) shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders, other than the nomination of a person for election as a director, which is governed by Section 2.08 of these Bylaws. For business to be properly brought before an annual meeting by a stockholder, the stockholder intending to bring the business before the meeting (the “Section 2.09 Proponent”) must have given timely and proper notice thereof in writing to the Secretary of the Corporation, in accordance with, and containing all information required by, this Section 2.09, and such business must be a proper matter for stockholder action under the General Corporation Law of Delaware.

To be timely, a Section 2.09 Proponent’s notice must be delivered or mailed to the Secretary of the Corporation and received at the principal executive offices of the Corporation not later than the close of business on the 90th day prior to the first anniversary of the preceding year’s annual meeting of stockholders; provided, however, in the event the annual meeting is scheduled to be held more than 30 days prior to such anniversary date or more than 30 days after such anniversary date, then to be timely such notice must be received by the Corporation not later than the close of business on the 90th day prior to the scheduled date of the annual meeting or, if later, the 10th day following the date of

Public Disclosure (as defined in Section 2.08) of the scheduled date of the annual meeting. In no event shall any adjournment or postponement of an annual meeting of stockholders or announcement thereof commence a new time period or extend any time period for the giving of a Section 2.09 Proponent's notice as required by this Section 2.09.

A Section 2.09 Proponent's notice (including all information required to be included by this Section 2.09, the "Section 2.09 Notice") to the Secretary shall set forth: (a) as to each matter the Section 2.09 Proponent proposes to bring before the annual meeting, a description of the business desired to be brought before the annual meeting, the reasons for transacting such business at the meeting and the text of any resolutions to be proposed, and whether the Section 2.09 Proponent has communicated with any other stockholder or beneficial owner of shares of stock of the Corporation regarding such business and (b) as to the Section 2.09 Proponent and any Stockholder Associated Person (as defined in Section 2.08) on whose behalf the proposal is being made, (i) the name and address of the Section 2.09 Proponent, and, if applicable, any holder of record of any of the Section 2.09 Proponent's shares of stock, as they appear on the Corporation's books, and of any Stockholder Associated Person, (ii) the class and number of shares of stock of the Corporation that are owned (beneficially and of record) by or on behalf of the Section 2.09 Proponent and by or on behalf of any Stockholder Associated Person, as of the date of the Section 2.09 Notice, the date such shares were acquired and the investment intent with respect thereto, (iii) a description of all purchases and sales of, or other transactions involving in any way, shares of stock of the Corporation by or on behalf of the Section 2.09 Proponent and by or on behalf of any Stockholder Associated Person during the twenty-four month period prior to the date of the Section 2.09 Notice, including the dates of the transactions, the class and number of shares and the consideration (without regard to whether such shares were or were not owned by the Section 2.09 Proponent or any such person), (iv) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative instrument, option, warrant, convertible security, stock appreciation right, swap, long or short position, profit interest, hedging transaction, separated or separable dividend rights and borrowed or loaned shares) that has been entered into or is in effect as of the date of the Section 2.09 Notice, by or on behalf of the Section 2.09 Proponent or any Stockholder Associated Person, the effect or intent of which is, directly or indirectly, to mitigate loss to, manage risk or benefit of stock price changes for, or maintain, increase or decrease the voting power of, the Section 2.09 Proponent or any Stockholder Associated Person with respect to the Corporation's securities, (v) any material interest of the Section 2.09 Proponent or any Stockholder Associated Person in such business, (vi) a description of any other agreement, arrangement or understanding that has been entered into or is in effect as of the date of the Section 2.09 Notice, between or among the Section 2.09 Proponent, any Stockholder Associated Person or any other person, and that relates to such business, (vii) a representation that the Section 2.09 Proponent is the holder of record of shares of stock of the Corporation entitled to vote upon the election of directors and upon the proposal at the annual meeting and intends to appear in person or by proxy through a Qualified Representative (as defined in Section 2.08) at the meeting to propose such business and (viii) a representation as to whether or not the Section 2.09 Proponent or any Stockholder Associated Person intends or is part of a group that intends to deliver a proxy statement and/or form of

proxy to stockholders and/or otherwise to solicit proxies from stockholders in support of such proposal.

A Section 2.09 Proponent shall update and supplement such Section 2.09 Notice so that all information provided or required to be provided therein shall be true and correct as of the record date for the annual meeting and as of the date that is ten business days prior to the date of the meeting or any adjournment or postponement thereof, and any such update and supplement shall be delivered or mailed to the Secretary of the Corporation and received at the principal executive offices of the Corporation not later than five business days after the later of the record date or the date of Public Disclosure of the record date for such meeting (in the case of the update and supplement required to be made as of the record date) and not later than eight business days prior to the date of the meeting or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the date of the meeting or any adjournment or postponement thereof).

No business proposed by a stockholder shall be transacted at an annual meeting of stockholders except in accordance with the procedures set forth in this Section 2.09. If the Section 2.09 Proponent intending to propose business at an annual meeting pursuant to this Section 2.09 does not give timely and proper notice thereof in writing to the Secretary of the Corporation, in accordance with, and containing all information (including any update and supplement) required by, this Section 2.09, or if the Section 2.09 Proponent does not appear in person or by proxy through a Qualified Representative at the meeting to present the proposed business, then, in any such case, such proposed business shall not be transacted, notwithstanding the fact that proxies in respect of such business may have been solicited or obtained. The chairman of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with the provisions of this Section 2.09, and, if the chairman should so determine, he or she shall declare to the meeting that such business was not properly brought before the meeting and shall not be transacted.

The requirements of this Section 2.09 shall apply to any business to be brought before an annual meeting of stockholders by a stockholder (other than the nomination by a stockholder of a person for election as a director, which is governed by Section 2.08 of these Bylaws) without regard to whether such business also is intended to be included in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or whether such business is presented to stockholders by means of a proxy solicitation by any person other than by or on behalf of the Board of Directors, and stockholders who wish for such business to be included in the Corporation's proxy statement or to solicit proxies in connection with such business must also comply with all applicable requirements of the Exchange Act.

DIRECTORS

3.01 Authority of Directors. The business of the Corporation shall be managed by its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and

things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

3.02 **Qualifications.** No person shall qualify for service as a Director of the Corporation (i) unless such person is in compliance with all applicable laws and regulatory requirements to which the Corporation's Directors may be subject in connection with such person's service as a Director, (ii) if such person is a named subject of a criminal proceeding (excluding traffic violations and other minor offenses) or if such person has been convicted in, or entered a plea of nolo contendere with respect to, a criminal proceeding (excluding traffic violations and other minor offenses) during the ten years preceding the date of election, (iii) if such person serves on the board of directors of more than two other public companies, (iv) if such person has attained the age of seventy-six (76) or (v) if such person is a former officer or former employee of the Corporation.

3.03 **Place of Meetings.** The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

3.04 **Annual Meetings.** The first meeting of each newly elected Board of Directors shall be held at such time and place as shall be specified in a notice given as herein provided for regular meetings of the Board of Directors, or as shall be specified in a duly executed waiver of notice thereof.

3.05 **Regular Meetings.** Regular meetings of the Board of Directors may be held at the office of the Corporation in Bismarck, North Dakota, on the second Thursday following the first Monday of February, May, August and November of each year; provided, however, that if a legal holiday, then on the next preceding day that is not a legal holiday. Regular meetings of the Board of Directors may be held at other times and other places within or without the State of North Dakota on at least five days' notice to each Director, either personally or by mail, telephone or another form of electronic transmission in compliance with the laws of Delaware.

3.06 **Special Meetings.** Special meetings of the Board may be called by the Chairman of the Board, Chief Executive Officer or President on three days' notice to each Director, either personally or by mail, telephone or another form of electronic transmission in compliance with the laws of Delaware; special meetings shall be called by the Chairman, Chief Executive Officer, President or Secretary in like manner and on like notice on the written request of a majority of the Board of Directors.

3.07 **Quorum.** At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and the act of a majority of the Directors present at any such meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or by these Bylaws. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present may adjourn the

meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

3.08 Participation of Directors by Conference Telephone. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any member of the Board, or of any committee designated by the Board, may participate in any meeting of such Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in any meeting by means of conference telephone or other communications equipment shall constitute presence in person at such meeting.

3.09 Written Action of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee.

3.10 Committees. The Board of Directors may by resolution passed by a majority of the whole Board designate one or more committees, each committee to consist of two or more Directors of the Corporation. The Board may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. The Chairman of the Board shall appoint another member of the Board of Directors to fill any committee vacancy which may occur. At all meetings of any such committee, fifty percent of the total number of committee members shall constitute a quorum for the transaction of business and the act of a majority of the committee members present at any such meeting at which there is a quorum shall be the act of any such committee, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or by these Bylaws. Any such committee shall have, and may exercise, the power and authority specifically granted by the Board to the committee, but no such committee shall have the power or authority to amend the Certificate of Incorporation, adopt an agreement of merger or consolidation, recommend to the stockholders the sale, lease or exchange of the Corporation's property and assets, recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amend the Bylaws of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

3.11 Reports of Committees. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

3.12 **Compensation of Directors.** Unless otherwise restricted by the Certificate of Incorporation, the Board of Directors shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as Director. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for attending committee meetings.

3.13 **Chairman of the Board.** The Chairman of the Board of Directors shall be chosen by the Board of Directors at its first meeting after the annual meeting of the stockholders of the Corporation. No director shall serve as Chairman of the Board who has not been determined to be independent by the Board of Directors in accordance with the director independence standards contained in the Corporate Governance Guidelines, as these provisions currently exist or may be amended. If the Board of Directors determines that a Chairman who was independent at the time of election is no longer independent, the Board shall select a new Chairman who satisfies these requirements within 60 days of such determination. The Chairman shall preside at all meetings of the Board of Directors and stockholders of the Corporation, and shall, subject to the direction and control of the Board, be its representative and medium of communication, and shall perform such duties as may from time to time be assigned to the Chairman of the Board.

NOTICES

4.01 **Notices.** Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any Director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such Director or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to Directors may also be given by telephone or another form of electronic transmission in compliance with the laws of Delaware. Notice to the stockholders may also be given by a form of electronic transmission consented to by the stockholder to whom the notice is given, as provided by the laws of Delaware.

4.02 **Waiver.** Whenever notice is required to be given under any provision of the statutes or the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

OFFICERS

5.01 **Election, Qualifications.** The officers of the Corporation shall be chosen by the Board of Directors at its first meeting after each annual meeting of the stockholders and shall include a

President, a Chief Executive Officer, a Vice President, a Secretary, a Treasurer and a General Counsel. The Board of Directors may also choose a Vice Chairman of the Corporation, who shall report to the Chief Executive Officer, additional Vice Presidents, and one or more Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

5.02 **Additional Officers.** The Board of Directors may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

5.03 **Salaries.** The salaries of all principal officers of the Corporation shall be fixed by the Board of Directors.

5.04 **Term.** The officers of the Corporation shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

5.05 **Chief Executive Officer.** The Chief Executive Officer shall, subject to the authority of the Board of Directors, determine the general policies of the Corporation. The Chief Executive Officer shall submit a report of the operations of the Company for the fiscal year to the stockholders at their annual meeting and from time to time shall report to the Board of Directors all matters within his knowledge which the interests of the Corporation may require be brought to the Board's notice.

5.06 **The President.** The President shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect.

5.07 **The Vice Presidents.** In the absence of the President or in the event of his inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated, or in the absence of any designation, then in the order of their election) 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. The Vice Presidents shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

5.08 **The Secretary and Assistant Secretaries.** The Secretary shall record all the proceedings of the meetings of the stockholders and Directors in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or Chief Executive Officer, under whose supervision he shall be. He shall have custody of the corporate seal of the Corporation and he, or an assistant secretary, shall have authority to affix the same to any

instrument requiring it. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation.

The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

5.09 Treasurer and Assistant Treasurers. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors.

He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation.

If required by the Board of Directors, he shall give the Corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

5.10 General Counsel. The General Counsel shall be the legal advisor to the Corporation, the Chairman of the Board, the Chief Executive Officer, the Board of Directors and committees of the Board of Directors and provide legal counsel to all business segments of the Corporation. The General Counsel shall be responsible for the management of all legal matters involving the Corporation.

The General Counsel shall be responsible for the review of the adequacy of the Corporation's corporate governance procedures and for reporting to senior management, the Board of Directors and committees of the Board of Directors on recommended changes, except in those instances in which such duties have been delegated by the Board of Directors to another officer or agent of the

Corporation. The General Counsel shall have responsibility for monitoring and assessing developments in corporate governance including, but not limited to, stock exchange listing standards, legislative enactments, administrative agency regulations and judicial decisions. The General Counsel shall report to senior management, the Board of Directors and committees of the Board of Directors regarding matters of significant importance and make recommendations regarding corporate governance guidelines, policies and procedures.

5.11 **Authority and Duties.** In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board of Directors.

5.12 **Execution of Instruments.** All deeds, bonds, mortgages, notes, contracts and other instruments shall be executed on behalf of the Corporation by the Chief Executive Officer, the President, any Vice President or Assistant Vice President, the General Counsel or such other officer or agent of the Corporation as shall be duly authorized by the Board of Directors. Any officer or agent executing any such documents on behalf of the Corporation may do so (except as otherwise required by applicable law) either under or without the seal of the Corporation and either individually or with an attestation, according to the requirements of the form of the instrument. If an attestation is required, the document shall be attested by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer or any other officer or agent authorized by the Board of Directors. When authorized by the Board of Directors, the signature of any officer or agent of the Corporation may be a facsimile.

5.13 **Execution of Proxies.** All capital stocks in other corporations owned by the Corporation shall be voted at the meetings, regular and/or special, of stockholders of said other corporations by the Chief Executive Officer or President of the Corporation, or, in the absence of any of them, by a Vice President, and in the event of the presence of more than one Vice President of the Corporation, then by a majority of said Vice Presidents present at such stockholder meetings, and the Chief Executive Officer or President and Secretary of the Corporation are hereby authorized to execute in the name and under the seal of the Corporation proxies in such form as may be required by the corporations whose stock may be owned by the Corporation, naming as the attorney authorized to act in said proxy such individual or individuals as said Chief Executive Officer or President and Secretary shall deem advisable, and the attorney or attorneys so named in said proxy shall, until the revocation or expiration thereof, vote said stock at such stockholder meetings only in the event that none of the officers of the Corporation authorized to execute said proxy shall be present thereat.

CERTIFICATES OF STOCK

6.01 **Certificates.** Shares of the Corporation's stock may be certificated or uncertificated, as provided under Delaware law. All certificates of stock of the Corporation shall be numbered and shall be entered in the books of the Corporation as they are issued. They shall exhibit the holder's

name and number of shares and shall be signed by the Chairman of the Board of Directors, or the Chief Executive Officer, the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary.

6.02 **Signatures.** Any of or all the signatures on the certificates may be facsimile. In case 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 he were such officer, transfer agent or registrar at the date of issue.

6.03 **Special Designation on Certificates.** If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations, or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish, without charge to each stockholder who so requests, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

6.04 **Lost Certificates.** The Board of Directors may direct a new certificate or certificates to 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. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum 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.

6.05 **Transfers of Stock.** Transfers of stock shall be made on the books of the Corporation only by the record holder of such stock, or by attorney lawfully constituted in writing, and, in the case of stock represented by a certificate, upon surrender of the certificate.

6.06 **Record Date.** In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful

action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

6.07 **Registered Stockholders.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

GENERAL PROVISIONS

7.01 **Dividends.** Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

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

7.02 **Checks.** All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate or as designated by an officer of the company if so authorized by the Board of Directors.

7.03 **Fiscal Year.** The fiscal year of the Corporation shall be the calendar year.

7.04 **Seal.** The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or imprinted, or otherwise.

7.05 **Inspection of Books and Records.** Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right, during the usual hours of business, to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper

purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in the State of Delaware or at its principal place of business in Bismarck, North Dakota.

7.06 Amendments. These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the stockholders or by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such special meeting.

7.07 Indemnification of Officers, Directors, Employees and Agents.

(a) **Indemnification Granted.** The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any director or former director or officer or former officer of the Corporation (a "Director or Officer") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, non-profit entity or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines, penalties, excise taxes and penalties assessed with respect to employee benefit plans, and amounts paid in settlement actually and reasonably incurred by such Director or Officer. The Corporation shall be required to indemnify a Director or Officer in connection with a Proceeding (or part thereof) initiated by such Director or Officer only if the Proceeding (or part thereof) was authorized by the Board of Directors.

(b) **Consent to Settlement or Nonadjudicated Disposition.** No indemnification pursuant to this Section 7.07 shall be required with respect to any settlement or other nonadjudicated disposition of any threatened or pending Proceeding unless the Corporation has given its prior consent to such settlement or disposition.

(c) **Advancement of Expenses.** The Corporation shall pay the expenses incurred by a Director or Officer in defending any Proceeding in advance of its final disposition, provided, however, that the payment of such expenses shall be made only upon receipt of an undertaking by the Director or Officer to repay all amounts advanced if it shall ultimately be determined that the Director or Officer is not entitled to be indemnified.

(d) **Claims.** If a claim for indemnification (following a final full or partial disposition of a Proceeding with respect to which indemnification is sought) or advancement of expenses (including attorneys' fees) under this Section 7.07 is not paid in full within sixty (60) days after a written claim therefor has been received by the Corporation, the Director or Officer may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim, to the fullest extent permitted by applicable law. In any such action, the Corporation shall have the burden of proving that the Director or Officer was not entitled to the requested indemnification or advancement of expenses under this Section 7.07 or applicable law.

(e) **Other Indemnification and Advancement of Expenses.** The Corporation may provide indemnification and advancement of expenses (including attorneys' fees) to employees and agents to the extent permitted by applicable law.

(f) **Non-exclusivity of Rights.** The rights conferred on any Director or Officer by this Section 7.07 shall not be exclusive of other rights to which such Director or Officer may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise. Nothing in this Section 7.07 shall limit the power of the Corporation or the Board of Directors to grant indemnification and advancement of expenses, including attorneys' fees, to directors, officers, employees and agents otherwise than pursuant to this Section 7.07.

(g) **Other Source Indemnification.** The Corporation's obligation to indemnify any Director or Officer who was or is serving at its request as a director, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, non-profit entity or other enterprise shall be reduced by any amount such Director or Officer may collect as indemnification from such other corporation, partnership, limited liability company, joint venture, trust, non-profit entity or other enterprise.

(h) **Repeal or Modification; Legal Representatives.** Any repeal or modification of the foregoing provisions of this Section 7.07 shall not adversely affect any right or protection hereunder of any Director or Officer in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided to any Director or Officer by this Section 7.07 shall inure to the benefit of such Director's or Officer's legal representative.

7.08 **Severability.** If any provision of these Bylaws (or any portion, including words or phrases, thereof) or the application of any provision (or any portion, including words or phrases, thereof) to any person or circumstance shall be held invalid, illegal or unenforceable in any respect under applicable law by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions hereof (or the remaining portion thereof) or the application of such

provision to any other persons or circumstances, which unaffected provisions (or portions thereof) shall remain valid, legal and enforceable to the fullest extent permitted by law.

7.09 Forum Selection.

(a) **Forum Selection.** Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, all Internal Corporate Claims shall be brought solely and exclusively in the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, another state court located within the State of Delaware or, if no state court located within the State of Delaware has jurisdiction, the United States District Court for the District of Delaware). “Internal Corporate Claims” means claims, including claims in the right of the Corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity or (ii) as to which the General Corporation Law of the State of Delaware confers jurisdiction upon the Court of Chancery of the State of Delaware.

(b) **Personal Jurisdiction.** If any action the subject matter of which is within the scope of Section 7.09(a) is filed in a court other than a court located within the State of Delaware (a “Foreign Action”) by or in the name of any stockholder (including in the right of the Corporation), such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 7.09(a) and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder.

21

[\(Back To Top\)](#)

Section 3: EX-3.(A) (EX-3.(A))

Exhibit 3(a)

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF MDUR NEWCO, INC.

MDUR NEWCO, INC., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The original certificate of incorporation of MDUR Newco, Inc. was filed with the Office of the Secretary of State of the State of Delaware on September 21, 2018 (the “Original Certificate of Incorporation”).

2. MDUR Newco, Inc. is filing this amended and restated certificate of incorporation (the “Certificate of Incorporation”), which restates, integrates and further amends the provisions of the Original Certificate of Incorporation, and which was duly adopted in accordance with Sections 242, 245 and 228 (by written consent of the sole stockholder of MDUR Newco, Inc.) of the General Corporation Law of Delaware.

3. The text of the Original Certificate of Incorporation is hereby amended and restated in its entirety by this Certificate of Incorporation, effective as of 12:02 a.m. Eastern Standard Time on January 1, 2019, as to read in full as follows:

FIRST. The name of this Corporation is MDU RESOURCES GROUP, INC. (the “Corporation”).

SECOND. The registered office of the Corporation in the State of Delaware is located at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware. Included within this purpose, without limiting the generality of the foregoing sentence is (1) to own and operate electric and gas public utility systems and (2) to transact business as a multidimensional natural resource company.

The Corporation shall have and exercise all the powers conferred upon corporations by the General Corporation Law of Delaware.

FOURTH. The total number of shares of stock which the Corporation shall have authority to issue is Five Hundred Two Million (502,000,000) divided into four classes, namely, Preferred Stock, Preferred Stock A, Preference Stock, and Common Stock. The total number of shares of such Preferred Stock authorized is Five Hundred Thousand (500,000) shares of the par value of One Hundred Dollars (\$100) per share (hereinafter called the “Preferred Stock”) amounting in the aggregate to Fifty Million Dollars (\$50,000,000). The total number of shares of such Preferred Stock A authorized is One Million (1,000,000) shares without par value (hereinafter called the “Preferred Stock A”). The total number of shares of such Preference Stock authorized is Five

Hundred Thousand (500,000) shares without par value (hereinafter called the "Preference Stock"). The total number of shares of such Common Stock authorized is Five Hundred Million (500,000,000) of the par value of One and no/100 Dollars (\$1.00) per share (hereinafter called the "Common Stock"), amounting in the aggregate to Five Hundred Million Dollars (\$500,000,000).

The Preferred Stock and the Preferred Stock A shall rank equally with no preference or priority of the Preferred Stock over the Preferred Stock A or of the Preferred Stock A over the Preferred Stock with respect to earnings, and assets upon liquidation, dissolution or winding up of the Corporation, and the Preferred Stock and the Preferred Stock A shall be senior to the Preference Stock with respect to earnings, and assets upon liquidation, dissolution or winding up of the Corporation, and the Preference Stock in turn shall be senior to the Common Stock with respect thereto.

The description of such classes of stock, and the designations and the powers, preferences and rights and the qualifications, limitations or restrictions thereof are as follows:

1. The Preferred Stock may be issued from time to time either (a) as Preferred Stock of a series to be designated 4.50% Series Preferred Stock, or (b) if so determined from time to time by resolution or resolutions adopted by the Board of Directors either in whole or in part as one or more other series, each series to be appropriately designated by distinguishing number, letter or title prior to the issue of any shares thereof. One Hundred Thousand (100,000) shares of the Preferred Stock are hereby designated as 4.50% Series Preferred Stock. The number of shares of the Preferred Stock so designated as 4.50% Series Preferred Stock may be increased (but not above the number of shares then authorized) or decreased (but not below the number of shares thereof then outstanding) by a resolution or resolutions adopted by the Board of Directors in the same manner as the Board may by resolution create other series of the Preferred Stock.
2. The Preferred Stock of all series shall be of the same class and of equal rank and shall be identical in all respects except that
 - (a) the maximum dividend rate of the 4.50% Series Preferred Stock shall be four and fifty hundredths per cent (4.50%) per annum, and the maximum dividend rate of the Preferred Stock of each other series shall be such rate as shall have been fixed and determined by the Board of Directors to accrue in respect of the shares of stock of each such other series from a date to be determined as hereinafter provided;
 - (b) the amount per share which the Preferred Stock shall be entitled to receive as a premium in case of the redemption thereof shall be Five Dollars (\$5.00) per share in the case of the 4.50% Series Preferred Stock, and in the case of each other series of the Preferred Stock shall be such amount, if any, as shall have been fixed and determined by the Board of Directors;
 - (c) a sinking fund or other retirement obligation may be provided for each series of the Preferred Stock, other than the 4.50% Series Preferred Stock, at such rate and on such terms as shall have been fixed and determined by the Board

of Directors in respect of the shares of stock of each such series;

- (d) the shares of each series of the Preferred Stock, other than the 4.50% Series Preferred Stock, may be made convertible into, or exchangeable for, shares of any other class or classes, or of any other series of the same or of any other class or classes, of stock of the Corporation, at such price or prices, or at such rates of exchange and with such adjustments as shall have been fixed and determined by the Board of Directors in respect of the shares of stock of each such series; and
- (e) the shares of each series of the Preferred Stock, other than the 4.50% Series Preferred Stock, shall possess such voting power, in addition to that provided for in paragraph 13, as shall have been fixed and determined by the Board of Directors in respect of the shares of stock of each such series.

The description and terms of the Preferred Stock of each series in the foregoing particulars (except as in this section fixed and determined in respect of the 4.50% Series Preferred Stock) shall be fixed and determined by the Board of Directors at the time of the authorization of the issue of the original shares of each such other series. All shares of each series shall be alike in every particular.

3. The Preferred Stock A may be issued from time to time by resolution or resolutions adopted by the Board of Directors, either in whole or in part as one or more series, each series to be appropriately designated by distinguishing number, letter or title prior to the issue of any shares thereof.

4. The Preferred Stock A of all series shall be of the same class and of equal rank and shall be identical in all respects except that

- (a) the maximum dividend rate of the Preferred Stock A of each series shall be such rate as shall have been fixed and determined by the Board of Directors to accrue in respect of the shares of stock of each such series from a date to be determined as hereinafter provided;
- (b) the terms and conditions on which the shares of each series may be redeemed and in the amount or amounts per share which the Preferred Stock A of each series shall be entitled to receive in case of the redemption thereof shall be such as shall have been fixed and determined by the Board of Directors for each such series;
- (c) the amount per share which the Preferred Stock A of each series shall be entitled to receive in the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, shall be such amount as shall have been fixed and determined by the Board of Directors for such purpose for each such series;

- (d) a sinking fund or other retirement obligation may be provided for any or all series of the Preferred Stock A, at such rate and on such terms as shall have been fixed and determined by the Board of Directors in respect of the shares of stock of each such series;
- (e) the shares of any or all series of the Preferred Stock A may be made convertible into, or exchangeable for, shares of any other class or classes, or of any other series of the same or of any other class or classes, of stock of the Corporation, at such price or prices, or at such rates of exchange and with such adjustments as shall have been fixed and determined by the Board of Directors in respect of the shares of stock of each such series; and
- (f) the shares of each series of the Preferred Stock A shall possess such voting power, in addition to that provided for in paragraph 13, as shall have been fixed and determined by the Board of Directors in respect of the shares of stock of each such series.

The description and terms of the Preferred Stock A of each series in the foregoing particulars and the number of shares constituting each series shall be fixed and determined by the Board of Directors at the time of the authorization of the issue of the original shares of each such series. All shares of each series shall be alike in every particular.

5. The Preference Stock may be issued from time to time by resolution or resolutions adopted by the Board of Directors, either in whole or in part as one or more series, each series to be appropriately designated by distinguishing number, letter or title prior to the issue of any shares thereof.

6. The Preference Stock of all series shall be of the same class and of equal rank and shall be identical in all respects except that

- (a) the maximum dividend rate of the Preference Stock of each series shall be such rate as shall have been fixed and determined by the Board of Directors to accrue in respect of the shares of stock of each such series from a date to be determined as hereinafter provided;
- (b) the terms and conditions on which the shares of each series may be redeemed and the amount or amounts per share which the Preference Stock of each series shall be entitled to receive in case of the redemption thereof shall be such as shall have been fixed and determined by the Board of Directors for each such series;
- (c) the amount per share which the Preference Stock of each series shall be entitled to receive in the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, shall be such amount as shall have been fixed and determined by the Board of Directors for such purpose for each such series;

- (d) a sinking fund or other retirement obligation may be provided for any or all series of the Preference Stock, at such rate and on such terms as shall have been fixed and determined by the Board of Directors in respect of the shares of stock of each such series; and
- (e) the shares of any or all series of the Preference Stock may be made convertible into, or exchangeable for, shares of the Common Stock, at such price or prices, or at such rates of exchange and with such adjustments as shall have been fixed and determined by the Board of Directors in respect of the shares of stock of each such series.

The description and terms of the Preference Stock of each series in the foregoing particulars and the number of shares constituting each series shall be fixed and determined by the Board of Directors at the time of the authorization of the issue of the original shares of each such series. All shares of each series shall be alike in every particular.

7. In preference to the Preference Stock and the Common Stock, out of the surplus or net profits of this Corporation, as and when declared by the Board of Directors, the holders of the 4.50% Series Preferred Stock shall be entitled to receive dividends at but not exceeding the maximum dividend rate herein fixed and determined, and the holders of the other series of Preferred Stock and all series of the Preferred Stock A shall be entitled to receive dividends, in preference to the Preference Stock and the Common Stock, out of the surplus or net profits of this Corporation, as and when declared by the Board of Directors, at but not exceeding the maximum dividend rates fixed and determined by the Board of Directors and expressed in the certificates therefor, payable quarterly on January 1st, April 1st, July 1st, and October 1st in each year, before any dividends shall be declared or paid upon or set apart for the Preference Stock or the Common Stock and before any sum shall be paid or set apart for the purchase or redemption of any series of the Preferred Stock, the Preferred Stock A or the Preference Stock, or the Common Stock. Such dividends on the Preferred Stock shall be cumulative from such date or dates as the Board of Directors shall fix at the time of issue thereof, or if no such date or dates shall be fixed, then from the respective dates of issue thereof, so that if in any dividend period or periods full cumulative dividends, at the maximum rates fixed and determined therefor, accrued on all outstanding shares of Preferred Stock and Preferred Stock A for all past dividend periods and for the then current dividend period, shall not have been paid, the deficiency shall be declared and paid or set apart for payment before any dividends shall be declared or paid upon or set apart for the Preference Stock or for the Common Stock and before any sum shall be paid or set apart for the purchase or redemption of any series of the Preferred Stock, the Preferred Stock A or the Preference Stock, or the Common Stock.

If at any time Preferred Stock or Preferred Stock A of more than one series shall be outstanding, any dividends paid upon the Preferred Stock or the Preferred Stock A in an amount less than full cumulative dividends accrued or in arrears upon all the Preferred Stock and the Preferred Stock A outstanding shall be divided among the outstanding series of the Preferred Stock and the Preferred Stock A in proportion to the aggregate amounts which

would be distributable to each series of the Preferred Stock and the Preferred Stock A if full cumulative dividends were at said time to be declared and paid thereon.

8. Subject to the prior rights and preferences of the Preferred Stock and the Preferred Stock A hereinbefore set forth, out of the surplus or net profits of this Corporation remaining after full cumulative dividends as aforesaid upon all series of the Preferred Stock and the Preferred Stock A then outstanding have been paid for all past dividend periods and after full cumulative dividends upon all series of the Preferred Stock and the Preferred Stock A for the current dividend period have been declared and paid or set apart for payment, then, as and when declared by the Board of Directors, the holders of the Preference Stock of all series shall be entitled to receive dividends at but not exceeding the maximum dividend rates fixed and determined by the Board of Directors and expressed in the resolution or resolutions authorizing the creation and issuance of each such series, payable quarterly on January 1st, April 1st, July 1st, and October 1st in each year, before any dividends shall be declared or paid upon or set apart for the Common Stock and before any sum shall be paid or set apart for the purchase or redemption of the Preference Stock of any series or the Common Stock. Such dividends on the Preference Stock shall be cumulative from such date or dates as the Board of Directors shall fix at the time of issue thereof, or if no such date or dates shall be fixed, then from the respective dates of issue thereof, so that if in any dividend period or periods full cumulative dividends, at the maximum rates fixed and determined therefor, accrued on all outstanding shares of Preference Stock for all past dividend periods and for the then current dividend period, shall not have been paid, the deficiency shall be declared and paid or set apart for payment before any dividends shall be declared or paid upon or set apart for the Common Stock and before any sum shall be paid or set apart for the purchase or redemption of the Preference Stock of any series or the Common Stock.

If at any time the Preference Stock of more than one series shall be outstanding, any dividends paid upon the Preference Stock in an amount less than full cumulative dividends accrued or in arrears upon all the Preference Stock outstanding shall be divided among the outstanding series of Preference Stock in proportion to the aggregate amounts which would be distributable to the Preference Stock of each series if full cumulative dividends were at said time to be declared and paid thereon.

9. Subject to the prior rights and preferences of the Preferred Stock, the Preferred Stock A and the Preference Stock hereinbefore set forth, out of any surplus or net profits of this Corporation remaining after full cumulative dividends as aforesaid upon all series of the Preferred Stock, the Preferred Stock A and the Preference Stock then outstanding have been paid for all past dividend periods and after full cumulative dividends upon all series of the Preferred Stock, the Preferred Stock A and the Preference Stock for the current dividend period have been declared and paid or set apart for payment and after making such provision, if any, as the Board of Directors may deem necessary for working capital, then and not otherwise, dividends may be declared and paid upon the Common Stock, to the exclusion of the holders of the Preferred Stock, the Preferred Stock A and the Preference Stock, and no holder of any series of the Preferred Stock, the Preferred Stock A or the Preference Stock shall be entitled to receive or shall receive dividends in excess of the maximum dividend rates herein set forth or fixed in the certificates therefor or in the resolution or resolutions

authorizing the creation and issuance of each such series.

The right to receive any dividends which may be declared payable in stock of any class is vested in the holders of the Common Stock exclusively, but no such dividends shall be declared in any dividend period unless full cumulative dividends upon all series of the Preferred Stock, the Preferred Stock A and the Preference Stock then outstanding shall have been paid for all past dividend periods and shall have been declared and paid or set apart for payment for the current dividend period.

10. All series of the Preferred Stock and the Preferred Stock A shall be preferred as to both earnings, and assets, and in the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, before any assets of the Corporation shall be distributed among or paid over to the holders of the Preference Stock or the Common Stock, the holders of the Preferred Stock of each series shall be entitled to be paid One Hundred Dollars (\$100.00) per share, and the holders of the Preferred Stock A of each series shall be entitled to be paid that amount which shall have been fixed and determined for such purpose by the Board of Directors in the resolution or resolutions authorizing the creation and issuance of each such series, in each case together with a sum of money equivalent in the case of each share of stock to all cumulative dividends on the Preferred Stock or the Preferred Stock A, as the case may be, accrued and in arrears thereon, before any distribution of the assets shall be made to the holders of the Preference Stock or the Common Stock, but the holders of the Preferred Stock and the Preferred Stock A shall not be entitled to any further participation in such distribution, and the holders of the Common Stock, subject to the prior rights and preferences of the Preference Stock, shall be entitled, to the exclusion of the holders of the Preferred Stock, the Preferred Stock A and the Preference Stock, to share ratably in all the assets of this Corporation remaining after payment to the holders of the Preferred Stock, and the Preferred Stock A and the Preference Stock of their full preferential amounts. If upon any such liquidation, dissolution or winding up of this Corporation, the assets distributable among the holders of the Preferred Stock and the Preferred Stock A shall be insufficient to permit the payment in full to such holders of the preferential amounts aforesaid, then the entire assets of this Corporation to be distributed shall be distributed among the holders of the Preferred Stock and the Preferred Stock A then outstanding ratably in proportion to the full preferential amounts to which they are respectively entitled.

11. As hereinbefore set forth, the Preference Stock of all series shall rank junior to all series of the Preferred Stock and the Preferred Stock A with respect to both earnings, and assets, and in the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, after payment to the holders of the Preferred Stock and the Preferred Stock A of all amounts payable to them in such event and before any assets of the Corporation shall be distributed among or paid over to the holders of the Common Stock, the holders of the Preference Stock of each series shall be entitled to be paid that amount which shall have been fixed and determined for such purpose by the Board of Directors in the resolution or resolutions authorizing the creation and issuance of each such series, in each case together with a sum of money equivalent in the case of each share of stock to all cumulative dividends on the Preference Stock, accrued and in arrears thereon, before any distribution of the assets shall be made to the holders of the Common Stock, but the holders

of the Preference Stock shall not be entitled to any further participation in such distribution, and the holders of the Common Stock shall be entitled, to the exclusion of the holders of the Preferred Stock, the Preferred Stock A and the Preference Stock, to share ratably in all the assets of this Corporation remaining after payment to the holders of the Preferred Stock, the Preferred Stock A and the Preference Stock of their full preferential amounts aforesaid. If upon any such liquidation, dissolution or winding up of this Corporation, the assets distributable among the holders of the Preference Stock shall be insufficient to permit the payment in full to such holders of the preferential amounts aforesaid, then the entire assets of this Corporation to be distributed, after payment to the holders of the Preferred Stock and the Preferred Stock A of all amounts payable to them in such event, shall be distributed among the holders of the Preference Stock then outstanding ratably in proportion to the full preferential amounts to which they are entitled.

Nothing in paragraph 10 or this paragraph 11 shall be deemed to prevent the purchase or redemption of any series of the Preferred Stock, the Preferred Stock A or the Preference Stock, in any manner permitted by paragraph 12. A consolidation or merger of this Corporation with any other corporation or corporations shall not be regarded as a liquidation, dissolution or winding up of this Corporation within the meaning of paragraph 10 or this paragraph 11, but no such consolidation or merger shall in any manner impair the rights or preferences of any of the Preferred Stock, the Preferred Stock A or the Preference Stock.

12. This Corporation may at the option of the Board of Directors from time to time on any dividend payment date redeem the whole or any part of any series of the Preferred Stock, the Preferred Stock A or the Preference Stock; with respect to the Preferred Stock, by paying One Hundred Dollars (\$100.00) per share for each share thereof so redeemed, plus a premium of such additional amount per share as herein fixed and determined for the 4.50% Series Preferred Stock, and in the case of any other series of the Preferred Stock, such premium, if any, as shall have been fixed and determined by the Board of Directors, together in each case with the amount of any dividends accrued and in arrears thereon; with respect to the Preferred Stock A and the Preference Stock, by paying the appropriate amount per share which shall have been fixed and determined by the Board of Directors in the resolution or resolutions authorizing the creation and issuance of each such series of the Preferred Stock A or the Preference Stock, together in each case with the amount of any dividends accrued and in arrears thereon. Notice of such election to redeem shall, not less than thirty days prior to the dividend date upon which the stock is to be redeemed, be mailed to each holder of stock so to be redeemed at his address as it appears on the books of the Corporation. In case less than all of the outstanding Preferred Stock, the Preferred Stock A or the Preference Stock of any series is to be redeemed, the amount to be redeemed may be determined by the Board of Directors; the method of effecting such redemption, whether by lot or pro rata or otherwise, is to be determined by the Board of Directors at the time of issuance. If, on or before the redemption date named in such notice, the funds necessary for such redemption shall have been set aside by the Corporation so as to be available for payment on demand to the holders of the stock so called for redemption, then, notwithstanding that any certificate of stock so called for redemption shall not have been surrendered for cancellation, the dividends thereon shall cease to accrue from and after the date of redemption so designated, and all rights with respect to such stock so called for redemption, including any right to vote or otherwise

participate in the determination of any proposed corporate action, shall forthwith after such redemption date cease and determine, except only the right of the holder to receive the redemption price therefor but without interest.

13. Except as otherwise required by the laws of Delaware and except as may be otherwise provided herein and by the Board of Directors in accordance with paragraphs 2(e) and 4(f), the holders of the Common Stock shall exclusively possess all voting power for the election of directors and for all other purposes, and the holders of the Preferred Stock, the Preferred Stock A and the Preference Stock shall have no voting power, and no owner or holder thereof shall vote thereon or be entitled to receive notice of any meeting of the stockholders; provided that if at any time and whenever cumulative dividends on the Preferred Stock or on the Preferred Stock A shall be in default and unpaid, in whole or in part, for a period of one year, the holders of the Preferred Stock and the Preferred Stock A shall have the same voting powers as the holders of the Common Stock, to-wit: one vote for each share of stock; and further provided that if at any time and whenever cumulative dividends on the Preference Stock shall be in default and unpaid, in whole or in part, for a period of one year, the holders of the Preference Stock shall have the same voting powers as the holders of the Common Stock, to-wit: one vote for each share of stock, and the holders of the Preferred Stock and the Preferred Stock A or the Preference Stock, as the case may be, shall be entitled to receive notices of meetings of stockholders, and such voting power shall so continue to vest in the holders of the Preferred Stock and the Preferred Stock A or the Preference Stock, as the case may be, until all arrears in the payment of cumulative dividends on the Preferred Stock and the Preferred Stock A or on the Preference Stock, as the case may be, shall have been paid and the dividends thereon for the current dividend period shall have been declared and the funds for the payment thereof set aside, on the condition, however, that as often as thereafter defaulted dividends shall have been paid in full and provision made for the current dividend as herein provided (and such payment shall be made as promptly as shall be consistent with the best interests of the Corporation), the holders of the Preferred Stock and the Preferred Stock A or of the Preference Stock, as the case may be, shall be divested of such voting power and the voting power shall revert exclusively in the holders of the Common Stock, subject always to the same provisions for the vesting of voting power in the holders of the Preferred Stock and the Preferred Stock A or of the Preference Stock, as the case may be, in case of any similar default or defaults in the payment of cumulative dividends either on the Preferred Stock or the Preferred Stock A or on the Preference Stock, as the case may be, for one year and the re-vesting of such entire voting power in the holders of the Common Stock, in the event that such default or defaults shall be cured as above provided.

14. The vote or consent of the holders of a majority of the Preference Stock at the time outstanding, voting as a class, shall be required for any amendment of the Certificate of Incorporation altering materially any existing provision of the Preference Stock, for the creation, or an increase in the authorized amount, of any class of stock ranking, as to earnings, and assets, prior to, or on a parity with, the Preference Stock, or for an increase in the authorized amount of the Preference Stock; provided, however, that if any amendment of the Certificate of Incorporation shall affect adversely the rights or preferences of one or more, but not all, of the series of the Preference Stock at the time outstanding or shall unequally adversely affect the rights or preferences of different series of the Preference Stock at the time

outstanding, the vote or consent of the holders of a majority of such shares of each such series so adversely or unequally adversely affected shall be required in lieu of or (if such vote or consent is required by law) in addition to the vote or consent of the holders of a majority of the outstanding shares of the Preference Stock, voting as a class.

15. No holder of stock of this Corporation of any class shall have any pre-emptive or preferential rights of subscription to any shares of any class of stock of this Corporation, whether now or hereafter authorized, or to any obligations convertible into stock of the Corporation, issued or sold, nor any right of subscription to any thereof other than such, if any, as the Board of Directors in its discretion may from time to time determine, and at such price as the Board of Directors may from time to time fix and determine pursuant to the authority conferred by this Certificate; and any shares of stock or convertible obligations which the Board of Directors may determine to offer for subscription to the holders of stock may, as said Board shall determine, be offered exclusively to holders of the Preferred Stock, to holders of the Preferred Stock A, to holders of the Preference Stock or to holders of the Common Stock, or partly to the holders of the Preferred Stock, partly to the holders of the Preferred Stock A, partly to the holders of the Preference Stock and partly to the holders of the Common Stock, and in such case in such proportions as among said classes of stock as the Board of Directors in its discretion may determine.

16. 4.70% Series Preferred Stock

1. The designation of the Series shall be “4.70% Series Preferred Stock” (Cumulative) (hereinafter called the “4.70% Series”) and the number of shares which shall constitute said Series shall be 50,000; and such number shall not be increased.

2. The annual dividend rate of the 4.70% Series shall be four and seventy hundredths per cent. (4.70%) of the par value of said shares, and no more, and the date from which dividends shall accrue in respect of all shares of the 4.70% Series shall be the date of issue thereof.

3. The price at which the shares of the 4.70% Series may be redeemed shall be as specified in Paragraph 6 of Article FOURTH of the Certificate of Incorporation, as amended,

plus a premium of \$2 per share, together with the amount of any dividends accrued and in arrears thereon.

4. So long as any of the shares of the 4.70% Series are outstanding, in addition to any other vote or consent of stockholders required in the Certificate of Incorporation, as amended, or by law, the vote or consent of the holders of at least sixty-six and two-thirds per cent. (66-2/3%) of the shares of the 4.70% Series at the time outstanding, given in person or by proxy, either in writing without a meeting (if permitted by law) or at any meeting called for the purpose, shall be necessary to effect or validate:

- (a) any amendment, alteration or repeal of any of the provisions of the Certificate of Incorporation, as amended, or By-Laws of the Corporation, which affects adversely the voting powers, rights or preferences of the holders of the 4.70% Series;
- (b) the authorization or creation of, or the increase in the authorized amount of, any stock of any class or any security convertible into stock of any class ranking prior to the Preferred Stock;
- (c) the voluntary dissolution, liquidation or winding up of the affairs of the Corporation, or the sale, lease or conveyance by the Corporation of all or substantially all its property or assets;
- (d) the merger or consolidation of the Corporation with or into any other corporation, unless the Corporation resulting from such merger or consolidation will have after such merger or consolidation no class of stock and no other securities convertible into stock of any class either authorized or outstanding which stock shall rank prior to the Preferred Stock, except the same number of shares of such stock and the same amount of such other securities with the same rights and preferences as such stock and securities of the Corporation respectively authorized and outstanding immediately preceding such merger or consolidation, and each holder of Preferred Stock immediately preceding such merger or consolidation shall receive the same number of shares, with the same rights and preferences, of the resulting corporation; or
- (e) the purchase or redemption (for sinking fund purposes or otherwise) of less than all of the Preferred Stock at the time outstanding unless the full dividend on all shares of Preferred Stock of all series then outstanding shall have been paid or declared and a sum sufficient for payment thereof set apart; provided, however, that the amendment of the provisions of the Certificate of Incorporation, as amended, so as to authorize or create or to increase the authorized amount (a) of the Common Stock and any other class of stock of the Corporation hereafter authorized over which the Preferred Stock has

preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation or (b) of stock of any class ranking on a parity with the Preferred Stock, shall not be deemed to affect adversely the voting powers, rights or preferences of the holders of the 4.70% Series; and provided further, that no such consent of the holders of the 4.70% Series shall be required, if at or prior to the time when such amendment, alteration or repeal is to take effect or when the authorization, creation or increase of any such prior stock or convertible security is to be made, or when such consolidation or merger, voluntary liquidation, dissolution or winding up, sale, lease, conveyance, purchase or redemption is to take effect, as the case may be, either (I) the consent of the holders of at least sixty-six and two-thirds per cent. (66-2/3%) of the shares of the Preferred Stock at the time outstanding shall have been so given to any such action except an amendment, alteration or repeal affecting the shares of the 4.70% Series differently from other series of Preferred Stock, or (II) provision is to be made for the redemption of all shares of the 4.70% Series at the time outstanding.

5. So long as any shares of the 4.70% Series are outstanding, in addition to any other vote or consent of stockholders required in the Certificate of Incorporation, as amended, or by law, the vote or consent of the holders of a majority of the shares of the 4.70% Series at the time outstanding, given in person or by proxy, either in writing without a meeting (if permitted by law) or at any meeting called for the purpose, shall be necessary to effect or validate any increase in the authorized amount of the Preferred Stock, or the authorization or creation of, or the increase in the authorized amount of, any stock of any class or any security convertible into stock of any class ranking on a parity with the Preferred Stock including any such action taken in connection with the merger or consolidation of the Corporation with or into any other corporation by either party thereto; provided, however, that no such consent of the holders of the 4.70% Series shall be required if, at or prior to the time the authorization or increase of any such parity stock or convertible security or any such additional shares of Preferred Stock is to be made, as the case may be, either (I) the consent of the holders of a majority of the shares of the Preferred Stock at the time outstanding shall have been so given to any such action, or (II) provision is to be made for the redemption of all shares of the 4.70% Series at the time outstanding.

6. No sinking fund or other retirement obligation shall be provided for the shares of the 4.70% Series.

17. 5.10% Series Preferred Stock

1. The designation of the Series shall be “5.10% Series Preferred Stock” (Cumulative) (hereinafter called the “5.10% Series”) and the number of shares which shall constitute said Series shall be 50,000; such number shall not be increased and shall be decreased by the number of shares of said Series at any time retired by the Company.

2. The annual dividend rate of the 5.10% Series shall be five and ten hundredths per cent (5.10%) of the par value of said shares, and no more, and the date from which dividends shall accrue in respect of all shares of the 5.10% Series shall be the date of issue thereof.

3. The price at which the shares of the 5.10% Series may be redeemed shall be as specified in paragraph 6 of Article FOURTH of the Certificate of Incorporation, as amended, plus a premium of \$2.00 per share, together with the amount of any dividends accrued and in arrears thereon.

4. So long as any of the shares of the 5.10% Series are outstanding, in addition to any other vote or consent of stockholders required in the Certificate of Incorporation, as amended, or by law, the vote or consent of the holders of at least sixty-six and two-thirds per cent. (66 2/3%) of the shares of the 5.10% Series at the time outstanding, given in person or by proxy, either in writing without a meeting (if permitted by law) or at any meeting called for the purpose, shall be necessary to effect or validate:

- (a) any amendment, alteration or repeal of any of the provisions of the Certificate of Incorporation, as amended, or By-Laws of the Corporation, which affects adversely the voting powers, rights or preferences of the holders of the 5.10% Series;
- (b) the authorization or creation of, or the increase in the authorized amount of, any stock of any class or any security convertible into stock of any class ranking prior to the Preferred Stock;
- (c) the voluntary dissolution, liquidation or winding up of the affairs of the Corporation, or the sale, lease or conveyance by the Corporation of all or substantially all its property or assets;
- (d) the merger or consolidation of the Corporation with or into any other corporation, unless the corporation resulting from such merger or consolidation will have after such merger or consolidation no class of stock and no other securities convertible into stock of any class either authorized or outstanding which stock shall rank prior to the Preferred Stock, except the same number of shares of such stock and the same amount of such other securities with the same rights and preferences as such stock and securities of the Corporation respectively authorized and outstanding immediately preceding such merger or consolidation, and each holder of Preferred Stock immediately preceding such merger or consolidation shall receive the same number of shares, with the same rights and preferences, of the resulting corporation; or
- (e) the purchase or redemption (for sinking fund purposes or otherwise) of less than all of the Preferred Stock at the time outstanding unless the full dividend on all shares of Preferred Stock of all series then outstanding shall have been paid or declared and a sum sufficient for payment thereof set apart;

provided, however, that the amendment of the provisions of the Certificate of Incorporation, as amended, so as to authorize or create or to increase the authorized amount (a) of the Common Stock and any other class of stock of the Corporation hereafter authorized over which the Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation or (b) of any class ranking on a parity with the Preferred Stock, shall not be deemed to affect adversely the voting powers, rights or preferences of the holders of the 5.10% Series; and provided further, that no such consent of the holders of the 5.10% Series shall be required, if at or prior to the time when such amendment, alteration or repeal is to take effect or when the authorization, creation or increase of any such prior stock or convertible security is to be made, or when such consolidation or merger, voluntary liquidation, dissolution or winding up, sale, lease, conveyance, purchase or redemption is to take effect, as the case may be, either (i) the consent of the holders of at least sixty-six and two-thirds per cent. (66 2/3%) of the shares of the Preferred Stock at the time outstanding shall have been so given to any such action except an amendment, alteration or repeal affecting the shares of the 5.10% Series differently from

other series of Preferred Stock, or (ii) provision is to be made for the redemption of all shares of the 5.10% Series at the time outstanding.

5. So long as any shares of the 5.10% Series are outstanding, in addition to any other vote or consent of stockholders required in the Certificate of Incorporation, as amended, or by law, the vote or consent of the holders of a majority of the shares of the 5.10% Series at the time outstanding, given in person or by proxy, either in writing without a meeting (if permitted by law) or at any meeting called for the purpose, shall be necessary to effect or validate any increase in the authorized amount of the Preferred Stock, or the authorization or creation of, or the increase in the authorized amount of, any stock of any class or any security convertible into stock of any class ranking on a parity with the preferred Stock including any such action taken in connection with the merger or consolidation of the Corporation with or into any other corporation by either party thereto; provided, however, that no such consent of the holders of the 5.10% Series shall be required if, at or prior to the time the authorization or increase of any such parity stock or convertible security or any such additional shares of Preferred Stock so to be made, as the case may be, either (i) the consent of the holders of a majority of the shares of the Preferred Stock at the time outstanding shall have been so given to any such action, or (ii) provision is to be made for the redemption of all shares of the 5.10% Series at the time outstanding.

6. As a sinking fund for the retirement of the shares of the 5.10% Series, the Company agrees to purchase (out of any funds of the Company legally available therefor after full dividends on the Preferred Stock of all Series then outstanding for all past dividend periods and for the current period have been paid or declared and a sum sufficient for the payment thereof set apart) 1,000 shares of the 5.10% Series in each year, at the price of \$100 per share together with the amount of any dividends accrued and unpaid thereon; provided that no shares of the 5.10% Series shall be purchased pursuant to this paragraph unless tendered by the holders thereof as hereinafter provided; and provided further that the purchase obligation of the Company under this paragraph shall not be cumulative from year to year even though less than 1,000 shares of said Series may be purchased in any year if in such year the Company shall have duly called for tenders and purchased shares duly tendered as hereinafter provided. Shares of the 5.10% Series purchased pursuant to this paragraph shall be cancelled and retired. The Company will, at least 40 and not more than 50 days before each January 1, mail a letter to all holders of record of shares of the 5.10% Series, stating that it is calling for tenders of 1,000 shares of said Series for purchase and retirement under the sinking fund on the following January 1, at \$100 per share and accrued and unpaid dividends; the letter shall ask each holder of shares of the 5.10% Series to indicate, by return letter to be received by the Company at a date fixed at least 20 and not more than 25 days before such January 1, the number of shares, if any, which such holder tenders for sale; if more than 1,000 shares are duly tendered by all holders of record, the Company shall first purchase from each holder tendering shares the number of shares tendered up to a number of shares (rounding to the nearest 10 shares) equal as nearly as practicable to 2% of the sum of (i) the number of shares of the 5.10% Series then of record in the name of such holder, and (ii) the number of shares of said Series previously retired that were of record in the name of such holder at the time of their redemption or purchase for retirement, and thereafter purchases shall be made pro rata (as nearly as practicable and rounding to the nearest 10 shares) on the

basis of the shares of said Series duly tendered for sale or, in the case of holders duly tendering 1,000 shares, held of record; within three days after the date on which tenders are to be received, the Company shall by letter notify all holders of record of shares of the 5.10% Series of the number of shares tendered and the number of shares held by each holder to be retired; and the Company shall make payment for shares purchased pursuant to this paragraph upon surrender of stock certificates to the Transfer Agent on or after the January 1 retirement date.

18. Series B Preference Stock

Section 1. Designation and Amount. The shares of such series shall be designated as “Series B Preference Stock” (the “Series B Preference Stock”) and the number of shares constituting the Series B Preference Stock shall be 125,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series B Preference Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series B Preference Stock.

Section 2. Dividends and Distributions.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock or Preferred Stock A (or any similar stock) ranking prior and superior to the Series B Preference Stock with respect to dividends, the holders of shares of Series B Preference Stock, equally with holders of all other series of Preference Stock and in preference to the holders of Common Stock, par value \$1.00 per share (the "Common Stock"), of the Corporation, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of January, April, July, and October in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series B Preference Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series B Preference Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series B Preference Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series B Preference Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series B Preference Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series B Preference Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series B Preference Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series B

Preference Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series B Preference Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series B Preference Stock shall have no voting rights except as otherwise provided by law or as set forth in the Corporation's Certificate of Incorporation.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series B Preference Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series B Preference Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution, or winding up) to the Series B Preference Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution, or winding up) with the Series B Preference Stock, except dividends paid ratably on the Series B Preference Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution, or winding up) to the Series B Preference Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series B Preference Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series B Preference Stock, or any shares of stock ranking on a parity with the Series B Preference Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to

purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series B Preference Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preference Stock and may be reissued as part of a new series of Preference Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other Certificate of Designations creating a series of Preference Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution, or Winding Up. Upon any liquidation, dissolution, or winding up of the Corporation, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution, or winding up) to the Series B Preference Stock unless, prior thereto, the holders of shares of Series B Preference Stock shall have received \$1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Series B Preference Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution, or winding up) with the Series B Preference Stock, except distributions made ratably on the Series B Preference Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution, or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series B Preference Stock were entitled immediately prior to such event under the proviso in clause (1) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination, or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series B Preference Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock,

then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series B Preference Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series B Preference Stock shall not be redeemable.

Section 9. Rank. The Series B Preference Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any class of the Corporation's Preferred Stock and Preferred Stock A, shall rank equally with all other series of the Corporation's Preference Stock, and shall rank superior to the Common Stock and any other class or series of junior stock.

Section 10. Amendment. The Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences, or special rights of the Series B Preference Stock so as to affect them adversely without the affirmative vote of the holders of at least a majority of the outstanding shares of Series B Preference Stock, voting together as a single class.

FIFTH. [RESERVED]

SIXTH. [RESERVED]

SEVENTH. The Corporation is to have perpetual existence.

EIGHTH. The private property of the stockholders of the Corporation shall not be subject to the payment of corporate debts to any extent whatever.

NINTH. In furtherance, and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

Except as otherwise set forth therein, to make, alter or repeal the By-Laws of the Corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation.

To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose or to abolish any such reserve in the manner in which it was created.

By resolution or resolutions, passed by a majority of the whole Board to designate one or more committees, each committee to consist of two or more of the directors of the Corporation, which, to the extent provided in said resolution or resolutions or in the By-Laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the By-Laws of the Corporation or as may be determined from time to time by resolution adopted by the Board of Directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease or exchange all of the property and assets of the Corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its Board of Directors shall deem expedient and for the best interests of the Corporation.

The Corporation may in its By-Laws confer powers upon its Board of Directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by statute.

Both stockholders and directors shall have power, if the By-Laws so provide, to hold their meetings, and to have one or more offices within or without the State of Delaware, and to keep the books of the surviving Corporation (subject to the provisions of the statutes), outside of the State of Delaware at such places as may be from time to time designated by the Board of Directors.

TENTH. This Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ELEVENTH. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 3883 of the Revised Code of 1915 of said State, or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 43 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class of creditors, and/or of stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

TWELFTH. [RESERVED]

THIRTEENTH.

(a) The business and affairs of the Corporation shall be managed by the Board of Directors consisting of not less than six nor more than fifteen persons. The exact number of directors within the limitations specified in the preceding sentence shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by two-thirds of the Continuing Directors. The directors need not be elected by ballot unless required by the By-Laws of the Corporation.

At each annual meeting of stockholders, the directors shall be elected for terms expiring at the next annual meeting of stockholders. Each director shall hold office for the term for which he is elected or appointed and until his successor shall be elected and qualified or until his earlier resignation, removal from office or death.

In the event of any increase or decrease in the authorized number of directors, each director then serving as such shall nevertheless continue as director until the expiration of his current term, or until his earlier resignation, removal from office or death.

(b) Newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by a two-thirds vote of the Continuing Directors then in office, or a sole remaining director, although less than a quorum, and directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders. If one or more directors shall resign from the Board effective as of a future date, such vacancy or vacancies shall be filled pursuant to the provisions hereof, and such new directorship (s) shall become effective when such resignation

or resignations shall become effective, and each director so chosen shall hold office for a term expiring at the next annual meeting of stockholders.

(c) **[RESERVED]**

(d) Any directors elected pursuant to special voting rights of one or more series of Preferred Stock, voting as a class, shall be excluded from, and for no purpose be counted in, the scope and operation of the foregoing provisions, unless expressly stated.

(e) For purposes of this Article THIRTEENTH, the following terms shall have the meanings hereinafter set forth:

(i) "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in the General Rules and Regulations under the Securities Exchange Act of 1934 as in effect on January 1, 1985.

(ii) A person shall be a "Beneficial Owner" of any Voting Stock:

(A) which such person or any of its Affiliates or Associates beneficially owns, directly or indirectly; or

(B) which such person or any of its Affiliates or Associates has (1) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (2) the right to vote pursuant to any agreement, arrangement or understanding; or

(C) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

(iii) "Continuing Director" shall mean any member of the Board of Directors of the Corporation who is unaffiliated with, and not a nominee of, any Interested Stockholder and was a member of the Board of Directors prior to the time that any Interested Stockholder became an Interested Stockholder and any successor of a Continuing Director who is unaffiliated with, and not a nominee of, any Interested Stockholder and is designated to succeed a Continuing Director by two-thirds of the Continuing Directors then on the Board of Directors.

(iv) "Interested Stockholder" shall mean any person (other than the Corporation or any Subsidiary) who or which:

(A) is the Beneficial Owner, directly or indirectly, of more than 10 percent of the voting power of the then outstanding Voting Stock; or

(B) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question, became the Beneficial Owner, directly or indirectly, of more than 10 percent of the voting power of the then outstanding Voting Stock; or

(C) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

For the purpose of determining whether a person is an Interested Stockholder pursuant to this Article THIRTEENTH, Section (e)(iv), the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of Section (e)(ii) of this Article THIRTEENTH but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(v) A “person” shall mean any individual, firm, partnership, trust, corporation or other entity.

(vi) “Subsidiary” means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in Section (e)(iv) of this Article THIRTEENTH, the term “Subsidiary” shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(vii) “Voting Stock” shall mean each share of stock of the Corporation generally entitled to vote in elections of directors.

The Continuing Directors of the Corporation shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine the applicability of the various provisions of this Article THIRTEENTH, including (A) whether a person is an Interested Stockholder, (B) the number of shares of Voting Stock beneficially owned by any person, and (C) whether a person is an Affiliate or Associate of another. Any such determination made in good faith shall be binding and conclusive on all parties.

(f) Capitalized terms used and not defined in Article FOURTEENTH or in Article SIXTEENTH of the Certificate of Incorporation which are defined in Section (e) of this Article THIRTEENTH shall have the meanings, for purposes of Article FOURTEENTH and Article SIXTEENTH of the Certificate of Incorporation, ascribed to such terms in Section (e) of this Article THIRTEENTH.

FOURTEENTH. The Board of Directors, in evaluating any proposal by another party to (a) make a tender or exchange offer for any securities of the Corporation, (b) effect a merger, consolidation or other business combination of the Corporation or (c) effect any other transaction having an effect upon the properties, operations or control of the Corporation similar to a tender or exchange offer for any securities of the Corporation or a merger, consolidation or other business combination of the Corporation, as the case may be, whether by an Interested Stockholder or otherwise, may, in connection with the exercise of its judgment as to what is in the best interests of the Corporation and its stockholders, give due consideration to the following:

(i) the consideration to be received by the Corporation or its stockholders in connection with such transaction in relation not only to the then current market price for the outstanding capital stock of the Corporation, but also to the market price for the capital stock of the Corporation over a period of years, the estimated price that might be achieved in a negotiated sale of the Corporation as a whole or in part through orderly liquidation, the premiums over market price for the securities of other corporations in similar transactions, current political, economic and other factors bearing on securities prices and the Corporation's financial condition, future prospects and future value as an independent Corporation;

(ii) the character, integrity and business philosophy of the other party or parties to the transaction and the management of such party or parties;

(iii) the business and financial conditions and earnings prospects of the other party or parties to the transaction, including, but not limited to, debt service and other existing or likely financial obligations of such party or parties, the intention of the other party or parties to the transaction regarding the use of the assets of the Corporation to finance the acquisition, and the possible effect of such conditions upon the Corporation and its Subsidiaries and the other elements of the communities in which the Corporation and its Subsidiaries operate or are located;

(iv) the projected social, legal and economic effects of the proposed action or transaction upon the Corporation or its Subsidiaries, its employees, suppliers, customers and others having similar relationships with the Corporation, and the communities in which the Corporation and its Subsidiaries do business;

(v) the general desirability of the continuance of the Corporation as an independent entity; and

(vi) such other factors as the Continuing Directors may deem relevant.

FIFTEENTH. [RESERVED]

SIXTEENTH. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. Special meetings of stockholders of the Corporation may be called only by the Chairman or President and

shall be called by the Chairman, President or the Secretary upon the written request of two-thirds of the Continuing Directors. Stockholders of the Corporation shall not be entitled to request a special meeting of stockholders.

SEVENTEENTH. No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware General Corporation Law, or (d) for any transaction from which the director derived an improper personal benefit.

IN WITNESS WHEREOF, MDUR Newco, Inc. has caused its corporate seal to be hereunto affixed, and this Amended and Restated Certificate of Incorporation to be signed by David L. Goodin, its President and Chief Executive Officer, and Daniel S. Kuntz, its Secretary, on December 31, 2018.

MDUR NEWCO, INC.

ATTEST:

/s/ Daniel S. Kuntz
Daniel S. Kuntz
Secretary

By: /s/ David L. Goodin
David L. Goodin
President and Chief Executive Officer

[\(Back To Top\)](#)

Section 4: EX-3.(B) (EX-3.(B))

Exhibit 3(b)

Amended and Restated Bylaws of



TABLE OF CONTENTS
TO AMENDED AND RESTATED BYLAWS

	<u>Page No.</u>
OFFICES	1
1.01 Registered Office	1
1.02 Other Offices	1
MEETINGS OF STOCKHOLDERS	1
2.01 Place of Meetings	1
2.02 Annual Meetings	1
2.03 Notice of Annual Meeting	2
2.04 Stockholders List	2
2.05 Notice of Special Meeting	2
2.06 Quorum; Adjournment; and Organization	3
2.07 Voting Rights	4
2.08 Nominations for Director	4
2.09 Business at Meetings of Stockholders	8
DIRECTORS	10
3.01 Authority of Directors	10
3.02 Qualifications	11
3.03 Place of Meetings	11
3.04 Annual Meetings	11
3.05 Regular Meetings	11
3.06 Special Meetings	11
3.07 Quorum	11
3.08 Participation of Directors by Conference Telephone	12
3.09 Written Action of Directors	12
3.10 Committees	12
3.11 Reports of Committees	12
3.12 Compensation of Directors	13
3.13 Chairman of the Board	13
NOTICES	13
4.01 Notices	13
4.02 Waiver	13

OFFICERS	13
5.01 Election, Qualifications	13
5.02 Additional Officers	14
5.03 Salaries	14
5.04 Term	14
5.05 Chief Executive Officer	14
5.06 The President	14
5.07 The Vice Presidents	14
5.08 The Secretary and Assistant Secretaries	14
5.09 Treasurer and Assistant Treasurers	15
5.10 General Counsel	15
5.11 Authority and Duties	16
5.12 Execution of Instruments	16
5.13 Execution of Proxies	16
CERTIFICATES OF STOCK	16
6.01 Certificates	16
6.02 Signatures	17
6.03 Special Designation on Certificates	17
6.04 Lost Certificates	17
6.05 Transfers of Stock	17
6.06 Record Date	17
6.07 Registered Stockholders	18
GENERAL PROVISIONS	18
7.01 Dividends	18
7.02 Checks	18
7.03 Fiscal Year	18
7.04 Seal	18
7.05 Inspection of Books and Records	18
7.06 Amendments	19
7.07 Indemnification of Officers, Directors, Employees and Agents	19
7.08 Severability	20
7.09 Forum Selection	21

**AMENDED AND RESTATED BYLAWS OF
MDU RESOURCES GROUP, INC.**

(Adopted as of January 1, 2019)

OFFICES

1.01 **Registered Office.** The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

1.02 **Other Offices.** The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

MEETINGS OF STOCKHOLDERS

2.01 **Place of Meetings.** All meetings of the stockholders for the election of Directors shall be held in the City of Bismarck, State of North Dakota, at such place as may be fixed from time to time by the Board of Directors, or at such other place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors, or, in the sole discretion of the Board of Directors, by means of remote communication as authorized by the laws of Delaware, as shall be stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, or, in the sole discretion of the Board of Directors, by means of remote communication as authorized by the laws of Delaware as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

2.02 **Annual Meetings.** Annual meetings of stockholders shall be held on the fourth Tuesday of April in each year, if not a legal holiday, and if a legal holiday, then on the next secular day following, at 11:00 A.M., or at such other date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which they shall elect a Board of Directors and transact such other business as may properly be brought before the meeting. The election of directors shall be by written ballot including, if authorized by the Board of Directors, by ballot submitted by electronic transmission in compliance with the laws of Delaware.

Except as otherwise provided in the amended and restated certificate of incorporation of the Corporation, as the same may be amended and/or restated from time to time (as so amended and/or restated, the "Certificate of Incorporation") or these amended and restated bylaws, as the same may be amended and/or restated from time to time (as so amended and/or restated, the "Bylaws"), each director shall be elected by the vote of the majority of the votes cast with respect to the director at any meeting for the election of directors at which a quorum is present, provided that if, as of the day next preceding the date the Corporation first gives its notice of meeting for such meeting of stockholders, the number of nominees (including any nominees stockholders have proposed to nominate by giving

notice pursuant to Section 2.08 hereof) exceeds the number of directors to be elected, the directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at any such meeting and entitled to vote on the election of directors. For purposes of this Section, a majority of the votes cast means that the number of votes cast “for” a director’s election must exceed the number of votes cast “against” that director’s election (with “abstentions” and “broker nonvotes” not counted as a vote cast either “for” or “against” that director’s election). If directors are to be elected by a plurality of the votes of the shares present in person or represented by proxy at any such meeting and entitled to vote on the election of directors, stockholders shall not be permitted to vote “against” a nominee.

2.03 Notice of Annual Meeting. Notice, in writing or by a form of electronic transmission in compliance with the laws of Delaware, of the annual meeting, stating the place, if any, date and hour of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

2.04 Stockholders List. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the meeting on a reasonably accessible electronic network, and the information required to access the electronic list shall be provided with the notice of the meeting.

2.05 Notice of Special Meeting. Notice of a special meeting, in writing or by a form of electronic transmission as determined solely by the Board of Directors in compliance with the laws of Delaware, stating the place, date and hour of the meeting, the means of remote communications, if any, by which the stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting. Business transacted at a special meeting of stockholders shall be confined to the purpose or purposes of the meeting specified in the notice of meeting (or supplement thereto) given

by or at the direction of the Board of Directors. Stockholders may not make nominations for directors or bring any business before a special meeting of stockholders.

2.06 **Quorum; Adjournment; and Organization.**

(a) **Quorum.** The holders of a majority of the stock issued and outstanding and entitled to vote in person or by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as provided herein and except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the meeting may be adjourned from time to time in accordance with paragraph (b) of this Section 2.06 until a quorum shall be so present or represented. For purposes of the foregoing, where a separate vote by a class or classes is required for any matter, the holders of a majority of the outstanding shares of such class or classes entitled to vote, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter, except as provided herein and except as otherwise provided by statute or by the Certificate of Incorporation. Two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting.

(b) **Adjournment.** Any meeting of stockholders, annual or special, whether or not a quorum is present, may be adjourned for any reason from time to time by either (i) the chairman of the meeting or (ii) the stockholders by the vote of the holders of a majority of the stock entitled to vote, present in person or represented by proxy, without notice of the adjourned meeting, if the time and place thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At such adjourned meeting, any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty 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 stockholder of record entitled to vote at the meeting.

(c) **Organization.** Meetings of stockholders shall be presided over by the Chairman of the Board, or in the absence of the Chairman of the Board by the Chief Executive Officer, or in the absence of the Chief Executive Officer by a person designated by the Board of Directors, or in the absence of such designation by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as, in the judgment of the chairman of the meeting, are necessary or desirable for the proper conduct of the meeting and are not inconsistent with any rules or regulations adopted by the Board of Directors, including the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after

the time prescribed for the commencement thereof and the opening and closing of the voting polls for each item upon which a vote is to be taken. Rules, regulations or procedures established by the chairman of the meeting need not be in writing.

2.07 Voting Rights. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power, present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the statutes, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Unless otherwise provided in the Certificate of Incorporation, each stockholder shall, at every meeting of the stockholders, be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three years from its date, unless the proxy provides for a longer period.

2.08 Nominations for Director. Nominations of persons for election to the Board of Directors of the Corporation may be made only (a) at any meeting of stockholders, by or at the direction of the Board of Directors or (b) at an annual meeting of stockholders, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.08 is given to the Secretary of the Corporation and continues to be a stockholder of record at the time of the meeting, who is entitled to vote at the meeting upon the election of directors and who has complied with the procedures established by this Section 2.08; clause (b) shall be the exclusive means for a stockholder to make nominations at an annual meeting of stockholders. For a nomination to be properly brought before an annual meeting by a stockholder, the stockholder intending to make the nomination (the "Section 2.08 Proponent") must have given timely and proper notice thereof in writing to the Secretary of the Corporation, in accordance with, and containing all information required by, this Section 2.08.

To be timely, a Section 2.08 Proponent's notice must be delivered or mailed to the Secretary of the Corporation and received at the principal executive offices of the Corporation not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting of stockholders; provided, however, in the event the annual meeting is scheduled to be held more than 30 days prior to such anniversary date or more than 30 days after such anniversary date, then to be timely such notice must be received by the Corporation not later than the close of business on the 90th day prior to the scheduled date of the annual meeting or, if later, the 10th day following the date of Public Disclosure (as defined below) of the scheduled date of the annual meeting. In no event shall any adjournment or postponement of an annual meeting of stockholders or announcement thereof commence a new time period or extend any time period for the giving of a Section 2.08 Proponent's notice as required by this Section 2.08.

A Section 2.08 Proponent's notice (including all information required to be included by this Section 2.08, the "Section 2.08 Notice") to the Secretary shall set forth: (a) as to each person the

Section 2.08 Proponent proposes to nominate for election as a director at the annual meeting, (i) the name, age, business address, residence address and telephone number of such proposed nominee and the name, business address and residence address of any Nominee Associated Persons (as defined below), (ii) the principal occupation or employment of such proposed nominee, (iii) the class and number of shares of stock of the Corporation that are owned (beneficially and of record) by or on behalf of such proposed nominee and by or on behalf of any Nominee Associated Person, as of the date of the Section 2.08 Notice, (iv) a description of such proposed nominee's qualifications to be a director, (v) a statement as to whether such proposed nominee would be an independent director, and the basis therefor, under the listing standards of the New York Stock Exchange and the Corporation's Corporate Governance Guidelines and (vi) in an attachment, the proposed nominee's completed and signed Questionnaire (as defined below); (b) as to the Section 2.08 Proponent and any Stockholder Associated Person (as defined below) on whose behalf the nomination is being made, (i) the name and address of the Section 2.08 Proponent, and, if applicable, any holder of record of any of the Section 2.08 Proponent's shares of stock, as they appear on the Corporation's books, and of any Stockholder Associated Person, (ii) the class and number of shares of stock of the Corporation that are owned (beneficially and of record) by or on behalf of the Section 2.08 Proponent and by or on behalf of any Stockholder Associated Person, as of the date of the Section 2.08 Notice, the date such shares were acquired and the investment intent with respect thereto and (iii) a description of all purchases and sales of, or other transactions involving in any way, shares of stock of the Corporation by or on behalf of the Section 2.08 Proponent and by or on behalf of any Stockholder Associated Person during the twenty-four month period prior to the date of the Section 2.08 Notice, including the dates of the transactions, the class and number of shares and the consideration (without regard to whether such shares were or were not owned by the Section 2.08 Proponent or any such person); (c) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative instrument, option, warrant, convertible security, stock appreciation right, swap, long or short position, profit interest, hedging transaction, separated or separable dividend rights and borrowed or loaned shares) that has been entered into or is in effect as of the date of the Section 2.08 Notice, by or on behalf of the Section 2.08 Proponent, any Stockholder Associated Person, any proposed nominee or any Nominee Associated Person, the effect or intent of which is, directly or indirectly, to mitigate loss to, manage risk or benefit of stock price changes for, or maintain, increase or decrease the voting power of, the Section 2.08 Proponent, any Stockholder Associated Person, any proposed nominee or any Nominee Associated Person with respect to the Corporation's securities; (d) a description of any other agreement, arrangement or understanding, including but not limited to those providing for any compensation, payment or other benefit, whether direct or indirect, that has been entered into within the twenty-four month period prior to the date of the Section 2.08 Notice or is in effect as of the date of the Section 2.08 Notice, between or among the Section 2.08 Proponent, any Stockholder Associated Person, any proposed nominee, any Nominee Associated Person or any other person, and that relates to such nomination or such proposed nominee's service as a director of the Corporation; (e) any compensation, payment or other benefit received, directly or indirectly, by any proposed nominee or any Nominee Associated Person that relates to such nomination or such proposed nominee's service as a director of the Corporation; (f) a representation that the Section 2.08 Proponent is the holder of record of shares of stock of the Corporation entitled to vote upon the

election of directors at the annual meeting and intends to appear in person or by proxy through a Qualified Representative (as defined below) at the meeting to nominate any such proposed nominee; and (g) a representation as to whether or not the Section 2.08 Proponent or any Stockholder Associated Person intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to stockholders and/or otherwise to solicit proxies from stockholders in support of such nomination.

A Section 2.08 Proponent shall update and supplement such Section 2.08 Notice so that all information provided or required to be provided therein shall be true and correct as of the record date for the annual meeting and as of the date that is ten business days prior to the date of the meeting or any adjournment or postponement thereof, and any such update and supplement shall be delivered or mailed to the Secretary of the Corporation and received at the principal executive offices of the Corporation not later than five business days after the later of the record date or the date of Public Disclosure of the record date for such meeting (in the case of the update and supplement required to be made as of the record date) and not later than eight business days prior to the date of the meeting or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the date of the meeting or any adjournment or postponement thereof).

A proposed nominee's questionnaire (including all information required to be included by this Section 2.08, the "Questionnaire"), in the form provided by the Secretary of the Corporation upon written request by the Section 2.08 Proponent, shall be completed (and updated and supplemented as necessary to comply with the preceding paragraph) and signed by the proposed nominee and shall set forth (a) information of the type required by the Corporation's Questionnaires for Directors and Officers of the Corporation in connection with the Annual Meeting of Stockholders and Various Reports to the Securities and Exchange Commission and (b) a written representation and agreement that such proposed nominee (i) would qualify, if elected, for service as a director under Section 3.02 of these Bylaws, (ii) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, 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 in the Questionnaire (or any update or supplement thereto), or to the extent not required to be disclosed in the Questionnaire (or any update or supplement thereto), within three business days thereafter, in writing to the Corporation or (B) any Voting Commitment that could limit or interfere with the proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (iii) is not and will not become a party to or beneficiary of any agreement, arrangement or understanding, whether direct or indirect, with any person or entity other than the Corporation providing for, directly or indirectly, any compensation, payment or other benefit from any person or entity other than the Corporation, in each case that relates to such nomination or the proposed nominee's service as a director of the Corporation, that has not been disclosed in the Questionnaire (or any update or supplement thereto), or to the extent not required to be disclosed in

the Questionnaire (or any update or supplement thereto), within three business days thereafter in writing to the Corporation, (iv) has not received and will not receive, directly or indirectly, any compensation, payment or other benefit from any person or entity other than the Corporation, in each case that relates to such nomination or the proposed nominee's service as a director of the Corporation, that has not been disclosed in the Questionnaire (or any update or supplement thereto), or to the extent not required to be disclosed in the Questionnaire (or any update or supplement thereto), within three business days thereafter in writing to the Corporation and (v) would be in compliance, if elected as a director of the Corporation, and will comply, with all applicable laws and regulatory requirements and the Corporation's Corporate Governance Guidelines, Leading With Integrity Guide and Director Compensation Policy and all other publicly-disclosed policies and guidelines to which the Corporation's directors may be subject in connection with service as a director of the Corporation.

No person proposed to be nominated by a stockholder shall be eligible for election as a director of the Corporation unless such person is nominated in accordance with the procedures set forth in this Section 2.08. If the Section 2.08 Proponent intending to nominate a person for election as a director of the Corporation at an annual meeting pursuant to this Section 2.08 does not give timely and proper notice thereof in writing to the Secretary of the Corporation, in accordance with, and containing all information (including any update and supplement) required by, this Section 2.08, or if the Section 2.08 Proponent does not appear in person or by proxy through a Qualified Representative at the meeting to nominate such person for election as a director of the Corporation, then, in any such case, such proposed nomination shall not be made, notwithstanding the fact that proxies in respect of such nomination may have been solicited or obtained. To be considered a Qualified Representative of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by the stockholder to act for the stockholder as proxy at the annual meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the annual meeting of stockholders. The chairman of the meeting shall, if the facts warrant, determine that the nomination was not properly made in accordance with the provisions of this Section 2.08, and, if the chairman should so determine, he or she shall declare to the meeting that such nomination was not properly made and shall be disregarded.

The requirements of this Section 2.08 shall apply to the nomination by a stockholder of a person for election as a director without regard to whether such nomination is presented to stockholders by means of a proxy solicitation by any person other than by or on behalf of the Board of Directors, and stockholders who wish to nominate a person for election at the annual meeting or to solicit proxies in connection with such nomination must also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

For purposes of the Bylaws:

“*Nominee Associated Person*” of any proposed nominee for election as a director means (i) any affiliate or associate (as such terms are defined for purposes of the Exchange Act) of the proposed nominee and any other person acting in concert with any of the foregoing, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such proposed nominee and (iii) any person controlling, controlled by or under common control with such Nominee Associated Person.

“*Public Disclosure*” means disclosure made in a press release reported by Dow Jones News Service, Associated Press or a comparable national news service or in a document filed by the Corporation pursuant to Section 13, 14 or 15(d) of the Exchange Act.

“*Stockholder Associated Person*” of any stockholder means (i) any affiliate or associate (as such terms are defined for purposes of the Exchange Act) of the stockholder and any other person acting in concert with any of the foregoing, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder and (iii) any person controlling, controlled by or under common control with such Stockholder Associated Person.

2.09 Business at Meetings of Stockholders. At any meeting of stockholders, only such business shall be transacted as shall have been properly brought before the meeting. Business (other than nominations of persons for election to the Board of Directors, which is governed by Section 2.08 of these Bylaws) may be properly brought before a meeting of stockholders only (a) at any meeting of stockholders by or at the direction of the Board of Directors or (b) at an annual meeting of stockholders, by a stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.09 is given to the Secretary of the Corporation and continues to be a stockholder of record at the time of the meeting, who is entitled to vote at the meeting upon the election of directors and upon the proposal and who has complied with the procedures established by this Section 2.09; clause (b) shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders, other than the nomination of a person for election as a director, which is governed by Section 2.08 of these Bylaws. For business to be properly brought before an annual meeting by a stockholder, the stockholder intending to bring the business before the meeting (the “Section 2.09 Proponent”) must have given timely and proper notice thereof in writing to the Secretary of the Corporation, in accordance with, and containing all information required by, this Section 2.09, and such business must be a proper matter for stockholder action under the General Corporation Law of Delaware.

To be timely, a Section 2.09 Proponent’s notice must be delivered or mailed to the Secretary of the Corporation and received at the principal executive offices of the Corporation not later than the close of business on the 90th day prior to the first anniversary of the preceding year’s annual meeting of stockholders; provided, however, in the event the annual meeting is scheduled to be held more than 30 days prior to such anniversary date or more than 30 days after such anniversary date, then to be timely such notice must be received by the Corporation not later than the close of business on the 90th day prior to the scheduled date of the annual meeting or, if later, the 10th day following the date of

Public Disclosure (as defined in Section 2.08) of the scheduled date of the annual meeting. In no event shall any adjournment or postponement of an annual meeting of stockholders or announcement thereof commence a new time period or extend any time period for the giving of a Section 2.09 Proponent's notice as required by this Section 2.09.

A Section 2.09 Proponent's notice (including all information required to be included by this Section 2.09, the "Section 2.09 Notice") to the Secretary shall set forth: (a) as to each matter the Section 2.09 Proponent proposes to bring before the annual meeting, a description of the business desired to be brought before the annual meeting, the reasons for transacting such business at the meeting and the text of any resolutions to be proposed, and whether the Section 2.09 Proponent has communicated with any other stockholder or beneficial owner of shares of stock of the Corporation regarding such business and (b) as to the Section 2.09 Proponent and any Stockholder Associated Person (as defined in Section 2.08) on whose behalf the proposal is being made, (i) the name and address of the Section 2.09 Proponent, and, if applicable, any holder of record of any of the Section 2.09 Proponent's shares of stock, as they appear on the Corporation's books, and of any Stockholder Associated Person, (ii) the class and number of shares of stock of the Corporation that are owned (beneficially and of record) by or on behalf of the Section 2.09 Proponent and by or on behalf of any Stockholder Associated Person, as of the date of the Section 2.09 Notice, the date such shares were acquired and the investment intent with respect thereto, (iii) a description of all purchases and sales of, or other transactions involving in any way, shares of stock of the Corporation by or on behalf of the Section 2.09 Proponent and by or on behalf of any Stockholder Associated Person during the twenty-four month period prior to the date of the Section 2.09 Notice, including the dates of the transactions, the class and number of shares and the consideration (without regard to whether such shares were or were not owned by the Section 2.09 Proponent or any such person), (iv) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative instrument, option, warrant, convertible security, stock appreciation right, swap, long or short position, profit interest, hedging transaction, separated or separable dividend rights and borrowed or loaned shares) that has been entered into or is in effect as of the date of the Section 2.09 Notice, by or on behalf of the Section 2.09 Proponent or any Stockholder Associated Person, the effect or intent of which is, directly or indirectly, to mitigate loss to, manage risk or benefit of stock price changes for, or maintain, increase or decrease the voting power of, the Section 2.09 Proponent or any Stockholder Associated Person with respect to the Corporation's securities, (v) any material interest of the Section 2.09 Proponent or any Stockholder Associated Person in such business, (vi) a description of any other agreement, arrangement or understanding that has been entered into or is in effect as of the date of the Section 2.09 Notice, between or among the Section 2.09 Proponent, any Stockholder Associated Person or any other person, and that relates to such business, (vii) a representation that the Section 2.09 Proponent is the holder of record of shares of stock of the Corporation entitled to vote upon the election of directors and upon the proposal at the annual meeting and intends to appear in person or by proxy through a Qualified Representative (as defined in Section 2.08) at the meeting to propose such business and (viii) a representation as to whether or not the Section 2.09 Proponent or any Stockholder Associated Person intends or is part of a group that intends to deliver a proxy statement and/or form of

proxy to stockholders and/or otherwise to solicit proxies from stockholders in support of such proposal.

A Section 2.09 Proponent shall update and supplement such Section 2.09 Notice so that all information provided or required to be provided therein shall be true and correct as of the record date for the annual meeting and as of the date that is ten business days prior to the date of the meeting or any adjournment or postponement thereof, and any such update and supplement shall be delivered or mailed to the Secretary of the Corporation and received at the principal executive offices of the Corporation not later than five business days after the later of the record date or the date of Public Disclosure of the record date for such meeting (in the case of the update and supplement required to be made as of the record date) and not later than eight business days prior to the date of the meeting or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the date of the meeting or any adjournment or postponement thereof).

No business proposed by a stockholder shall be transacted at an annual meeting of stockholders except in accordance with the procedures set forth in this Section 2.09. If the Section 2.09 Proponent intending to propose business at an annual meeting pursuant to this Section 2.09 does not give timely and proper notice thereof in writing to the Secretary of the Corporation, in accordance with, and containing all information (including any update and supplement) required by, this Section 2.09, or if the Section 2.09 Proponent does not appear in person or by proxy through a Qualified Representative at the meeting to present the proposed business, then, in any such case, such proposed business shall not be transacted, notwithstanding the fact that proxies in respect of such business may have been solicited or obtained. The chairman of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with the provisions of this Section 2.09, and, if the chairman should so determine, he or she shall declare to the meeting that such business was not properly brought before the meeting and shall not be transacted.

The requirements of this Section 2.09 shall apply to any business to be brought before an annual meeting of stockholders by a stockholder (other than the nomination by a stockholder of a person for election as a director, which is governed by Section 2.08 of these Bylaws) without regard to whether such business also is intended to be included in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or whether such business is presented to stockholders by means of a proxy solicitation by any person other than by or on behalf of the Board of Directors, and stockholders who wish for such business to be included in the Corporation's proxy statement or to solicit proxies in connection with such business must also comply with all applicable requirements of the Exchange Act.

DIRECTORS

3.01 Authority of Directors. The business of the Corporation shall be managed by its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and

things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

3.02 **Qualifications.** No person shall qualify for service as a Director of the Corporation (i) unless such person is in compliance with all applicable laws and regulatory requirements to which the Corporation's Directors may be subject in connection with such person's service as a Director, (ii) if such person is a named subject of a criminal proceeding (excluding traffic violations and other minor offenses) or if such person has been convicted in, or entered a plea of nolo contendere with respect to, a criminal proceeding (excluding traffic violations and other minor offenses) during the ten years preceding the date of election, (iii) if such person serves on the board of directors of more than two other public companies, (iv) if such person has attained the age of seventy-six (76) or (v) if such person is a former officer or former employee of the Corporation.

3.03 **Place of Meetings.** The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

3.04 **Annual Meetings.** The first meeting of each newly elected Board of Directors shall be held at such time and place as shall be specified in a notice given as herein provided for regular meetings of the Board of Directors, or as shall be specified in a duly executed waiver of notice thereof.

3.05 **Regular Meetings.** Regular meetings of the Board of Directors may be held at the office of the Corporation in Bismarck, North Dakota, on the second Thursday following the first Monday of February, May, August and November of each year; provided, however, that if a legal holiday, then on the next preceding day that is not a legal holiday. Regular meetings of the Board of Directors may be held at other times and other places within or without the State of North Dakota on at least five days' notice to each Director, either personally or by mail, telephone or another form of electronic transmission in compliance with the laws of Delaware.

3.06 **Special Meetings.** Special meetings of the Board may be called by the Chairman of the Board, Chief Executive Officer or President on three days' notice to each Director, either personally or by mail, telephone or another form of electronic transmission in compliance with the laws of Delaware; special meetings shall be called by the Chairman, Chief Executive Officer, President or Secretary in like manner and on like notice on the written request of a majority of the Board of Directors.

3.07 **Quorum.** At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and the act of a majority of the Directors present at any such meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or by these Bylaws. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present may adjourn the

meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

3.08 Participation of Directors by Conference Telephone. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any member of the Board, or of any committee designated by the Board, may participate in any meeting of such Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in any meeting by means of conference telephone or other communications equipment shall constitute presence in person at such meeting.

3.09 Written Action of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee.

3.10 Committees. The Board of Directors may by resolution passed by a majority of the whole Board designate one or more committees, each committee to consist of two or more Directors of the Corporation. The Board may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. The Chairman of the Board shall appoint another member of the Board of Directors to fill any committee vacancy which may occur. At all meetings of any such committee, fifty percent of the total number of committee members shall constitute a quorum for the transaction of business and the act of a majority of the committee members present at any such meeting at which there is a quorum shall be the act of any such committee, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or by these Bylaws. Any such committee shall have, and may exercise, the power and authority specifically granted by the Board to the committee, but no such committee shall have the power or authority to amend the Certificate of Incorporation, adopt an agreement of merger or consolidation, recommend to the stockholders the sale, lease or exchange of the Corporation's property and assets, recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amend the Bylaws of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

3.11 Reports of Committees. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

3.12 **Compensation of Directors.** Unless otherwise restricted by the Certificate of Incorporation, the Board of Directors shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as Director. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for attending committee meetings.

3.13 **Chairman of the Board.** The Chairman of the Board of Directors shall be chosen by the Board of Directors at its first meeting after the annual meeting of the stockholders of the Corporation. No director shall serve as Chairman of the Board who has not been determined to be independent by the Board of Directors in accordance with the director independence standards contained in the Corporate Governance Guidelines, as these provisions currently exist or may be amended. If the Board of Directors determines that a Chairman who was independent at the time of election is no longer independent, the Board shall select a new Chairman who satisfies these requirements within 60 days of such determination. The Chairman shall preside at all meetings of the Board of Directors and stockholders of the Corporation, and shall, subject to the direction and control of the Board, be its representative and medium of communication, and shall perform such duties as may from time to time be assigned to the Chairman of the Board.

NOTICES

4.01 **Notices.** Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any Director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such Director or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to Directors may also be given by telephone or another form of electronic transmission in compliance with the laws of Delaware. Notice to the stockholders may also be given by a form of electronic transmission consented to by the stockholder to whom the notice is given, as provided by the laws of Delaware.

4.02 **Waiver.** Whenever notice is required to be given under any provision of the statutes or the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

OFFICERS

5.01 **Election, Qualifications.** The officers of the Corporation shall be chosen by the Board of Directors at its first meeting after each annual meeting of the stockholders and shall include a

President, a Chief Executive Officer, a Vice President, a Secretary, a Treasurer and a General Counsel. The Board of Directors may also choose a Vice Chairman of the Corporation, who shall report to the Chief Executive Officer, additional Vice Presidents, and one or more Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

5.02 **Additional Officers.** The Board of Directors may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

5.03 **Salaries.** The salaries of all principal officers of the Corporation shall be fixed by the Board of Directors.

5.04 **Term.** The officers of the Corporation shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

5.05 **Chief Executive Officer.** The Chief Executive Officer shall, subject to the authority of the Board of Directors, determine the general policies of the Corporation. The Chief Executive Officer shall submit a report of the operations of the Company for the fiscal year to the stockholders at their annual meeting and from time to time shall report to the Board of Directors all matters within his knowledge which the interests of the Corporation may require be brought to the Board's notice.

5.06 **The President.** The President shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect.

5.07 **The Vice Presidents.** In the absence of the President or in the event of his inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated, or in the absence of any designation, then in the order of their election) 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. The Vice Presidents shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

5.08 **The Secretary and Assistant Secretaries.** The Secretary shall record all the proceedings of the meetings of the stockholders and Directors in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or Chief Executive Officer, under whose supervision he shall be. He shall have custody of the corporate seal of the Corporation and he, or an assistant secretary, shall have authority to affix the same to any

instrument requiring it. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation.

The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

5.09 Treasurer and Assistant Treasurers. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors.

He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation.

If required by the Board of Directors, he shall give the Corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

5.10 General Counsel. The General Counsel shall be the legal advisor to the Corporation, the Chairman of the Board, the Chief Executive Officer, the Board of Directors and committees of the Board of Directors and provide legal counsel to all business segments of the Corporation. The General Counsel shall be responsible for the management of all legal matters involving the Corporation.

The General Counsel shall be responsible for the review of the adequacy of the Corporation's corporate governance procedures and for reporting to senior management, the Board of Directors and committees of the Board of Directors on recommended changes, except in those instances in which such duties have been delegated by the Board of Directors to another officer or agent of the

Corporation. The General Counsel shall have responsibility for monitoring and assessing developments in corporate governance including, but not limited to, stock exchange listing standards, legislative enactments, administrative agency regulations and judicial decisions. The General Counsel shall report to senior management, the Board of Directors and committees of the Board of Directors regarding matters of significant importance and make recommendations regarding corporate governance guidelines, policies and procedures.

5.11 **Authority and Duties.** In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board of Directors.

5.12 **Execution of Instruments.** All deeds, bonds, mortgages, notes, contracts and other instruments shall be executed on behalf of the Corporation by the Chief Executive Officer, the President, any Vice President or Assistant Vice President, the General Counsel or such other officer or agent of the Corporation as shall be duly authorized by the Board of Directors. Any officer or agent executing any such documents on behalf of the Corporation may do so (except as otherwise required by applicable law) either under or without the seal of the Corporation and either individually or with an attestation, according to the requirements of the form of the instrument. If an attestation is required, the document shall be attested by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer or any other officer or agent authorized by the Board of Directors. When authorized by the Board of Directors, the signature of any officer or agent of the Corporation may be a facsimile.

5.13 **Execution of Proxies.** All capital stocks in other corporations owned by the Corporation shall be voted at the meetings, regular and/or special, of stockholders of said other corporations by the Chief Executive Officer or President of the Corporation, or, in the absence of any of them, by a Vice President, and in the event of the presence of more than one Vice President of the Corporation, then by a majority of said Vice Presidents present at such stockholder meetings, and the Chief Executive Officer or President and Secretary of the Corporation are hereby authorized to execute in the name and under the seal of the Corporation proxies in such form as may be required by the corporations whose stock may be owned by the Corporation, naming as the attorney authorized to act in said proxy such individual or individuals as said Chief Executive Officer or President and Secretary shall deem advisable, and the attorney or attorneys so named in said proxy shall, until the revocation or expiration thereof, vote said stock at such stockholder meetings only in the event that none of the officers of the Corporation authorized to execute said proxy shall be present thereat.

CERTIFICATES OF STOCK

6.01 **Certificates.** Shares of the Corporation's stock may be certificated or uncertificated, as provided under Delaware law. All certificates of stock of the Corporation shall be numbered and shall be entered in the books of the Corporation as they are issued. They shall exhibit the holder's

name and number of shares and shall be signed by the Chairman of the Board of Directors, or the Chief Executive Officer, the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary.

6.02 **Signatures.** Any of or all the signatures on the certificates may be facsimile. In case 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 he were such officer, transfer agent or registrar at the date of issue.

6.03 **Special Designation on Certificates.** If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations, or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish, without charge to each stockholder who so requests, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

6.04 **Lost Certificates.** The Board of Directors may direct a new certificate or certificates to 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. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum 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.

6.05 **Transfers of Stock.** Transfers of stock shall be made on the books of the Corporation only by the record holder of such stock, or by attorney lawfully constituted in writing, and, in the case of stock represented by a certificate, upon surrender of the certificate.

6.06 **Record Date.** In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful

action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

6.07 **Registered Stockholders.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

GENERAL PROVISIONS

7.01 **Dividends.** Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

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

7.02 **Checks.** All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate or as designated by an officer of the company if so authorized by the Board of Directors.

7.03 **Fiscal Year.** The fiscal year of the Corporation shall be the calendar year.

7.04 **Seal.** The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or imprinted, or otherwise.

7.05 **Inspection of Books and Records.** Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right, during the usual hours of business, to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper

purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in the State of Delaware or at its principal place of business in Bismarck, North Dakota.

7.06 Amendments. These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the stockholders or by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such special meeting.

7.07 Indemnification of Officers, Directors, Employees and Agents.

(a) **Indemnification Granted.** The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any director or former director or officer or former officer of the Corporation (a "Director or Officer") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, non-profit entity or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines, penalties, excise taxes and penalties assessed with respect to employee benefit plans, and amounts paid in settlement actually and reasonably incurred by such Director or Officer. The Corporation shall be required to indemnify a Director or Officer in connection with a Proceeding (or part thereof) initiated by such Director or Officer only if the Proceeding (or part thereof) was authorized by the Board of Directors.

(b) **Consent to Settlement or Nonadjudicated Disposition.** No indemnification pursuant to this Section 7.07 shall be required with respect to any settlement or other nonadjudicated disposition of any threatened or pending Proceeding unless the Corporation has given its prior consent to such settlement or disposition.

(c) **Advancement of Expenses.** The Corporation shall pay the expenses incurred by a Director or Officer in defending any Proceeding in advance of its final disposition, provided, however, that the payment of such expenses shall be made only upon receipt of an undertaking by the Director or Officer to repay all amounts advanced if it shall ultimately be determined that the Director or Officer is not entitled to be indemnified.

(d) **Claims.** If a claim for indemnification (following a final full or partial disposition of a Proceeding with respect to which indemnification is sought) or advancement of expenses (including attorneys' fees) under this Section 7.07 is not paid in full within sixty (60) days after a written claim therefor has been received by the Corporation, the Director or Officer may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim, to the fullest extent permitted by applicable law. In any such action, the Corporation shall have the burden of proving that the Director or Officer was not entitled to the requested indemnification or advancement of expenses under this Section 7.07 or applicable law.

(e) **Other Indemnification and Advancement of Expenses.** The Corporation may provide indemnification and advancement of expenses (including attorneys' fees) to employees and agents to the extent permitted by applicable law.

(f) **Non-exclusivity of Rights.** The rights conferred on any Director or Officer by this Section 7.07 shall not be exclusive of other rights to which such Director or Officer may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise. Nothing in this Section 7.07 shall limit the power of the Corporation or the Board of Directors to grant indemnification and advancement of expenses, including attorneys' fees, to directors, officers, employees and agents otherwise than pursuant to this Section 7.07.

(g) **Other Source Indemnification.** The Corporation's obligation to indemnify any Director or Officer who was or is serving at its request as a director, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, non-profit entity or other enterprise shall be reduced by any amount such Director or Officer may collect as indemnification from such other corporation, partnership, limited liability company, joint venture, trust, non-profit entity or other enterprise.

(h) **Repeal or Modification; Legal Representatives.** Any repeal or modification of the foregoing provisions of this Section 7.07 shall not adversely affect any right or protection hereunder of any Director or Officer in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided to any Director or Officer by this Section 7.07 shall inure to the benefit of such Director's or Officer's legal representative.

7.08 **Severability.** If any provision of these Bylaws (or any portion, including words or phrases, thereof) or the application of any provision (or any portion, including words or phrases, thereof) to any person or circumstance shall be held invalid, illegal or unenforceable in any respect under applicable law by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions hereof (or the remaining portion thereof) or the application of such

provision to any other persons or circumstances, which unaffected provisions (or portions thereof) shall remain valid, legal and enforceable to the fullest extent permitted by law.

7.09 Forum Selection.

(a) **Forum Selection.** Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, all Internal Corporate Claims shall be brought solely and exclusively in the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, another state court located within the State of Delaware or, if no state court located within the State of Delaware has jurisdiction, the United States District Court for the District of Delaware). “Internal Corporate Claims” means claims, including claims in the right of the Corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity or (ii) as to which the General Corporation Law of the State of Delaware confers jurisdiction upon the Court of Chancery of the State of Delaware.

(b) **Personal Jurisdiction.** If any action the subject matter of which is within the scope of Section 7.09(a) is filed in a court other than a court located within the State of Delaware (a “Foreign Action”) by or in the name of any stockholder (including in the right of the Corporation), such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 7.09(a) and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder.

[\(Back To Top\)](#)

Section 5: EX-99.(A) (EX-99.(A))

Exhibit 99(a)

NEWS RELEASE



MDU Resources Completes Holding Company Reorganization

BISMARCK, N.D. — Jan. 2, 2019 — MDU Resources Group, Inc. (NYSE: MDU) today said it has completed its previously announced holding company reorganization. MDU Resources Group, Inc. is now the parent holding company of Montana-Dakota Utilities Co., formerly known as MDU Resources Group, Inc., as the reorganized entity has assumed the name MDU Resources Group, Inc.

This holding company reorganization is intended to simplify the organizational structure and provide additional financing flexibility. The reorganization was not implemented in connection with any particular corporate transaction, and no material operational or financial impact is expected.

In the holding company reorganization, stockholders automatically became stockholders of the new MDU Resources, on a one-for-one basis, with the same number of shares and same ownership percentage of common stock that they held immediately prior to the reorganization. The ticker symbol of MDU Resources common stock remains “MDU” and the CUSIP number remains the same.

The holding company reorganization is intended to be a tax-free transaction for U.S. federal income tax purposes for stockholders.

About MDU Resources

MDU Resources Group, Inc., a member of the S&P MidCap 400 index and the S&P High-Yield Dividend Aristocrats index, is Building a Strong America® by providing essential products and services through its regulated energy delivery and construction materials and services businesses. For more information about MDU Resources, see the company’s website at www.mdu.com or contact the Investor Relations Department at investor@mduresources.com.

Forward-Looking Statements

The information in this release includes certain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. The forward-looking statements contained in this release, including the impact of future regulatory requirements related to the holding company reorganization and the holding company structure, stock market and stock analyst reaction to the holding company reorganization, and the impact of the holding company reorganization on the company’s credit rating, if any, are expressed in good faith and are

believed by the company to have a reasonable basis. Nonetheless, actual results may differ materially from the projected results expressed in the forward-looking statements. For a discussion of important factors that could cause actual results to differ

materially from those expressed in the forward-looking statements, refer to Item 1A-Risk Factors in MDU Resources' most recent Form 10-Q and 10-K.

Media Contact: Laura Lueder, manager of communications and public relations, 701-530-1095

Financial Contact: Jason Vollmer, vice president, chief financial officer and treasurer, 701-530-1755

[\(Back To Top\)](#)

Section 6: EX-99.(B) (EX-99.(B))

Exhibit 99(b)

DESCRIPTION OF CAPITAL STOCK

The following is a summary of the material terms of the capital stock of MDU Resources Group, Inc., a Delaware corporation (the "Company," "MDU Resources," "we," "our" or "us"). Because it is only a summary, it may not contain all of the information that may be important to you and is qualified in its entirety by reference to the amended and restated certificate of incorporation of the Company (the "certificate of incorporation") and the amended and restated bylaws of the Company (the "bylaws"), copies of which are incorporated herein by reference. Accordingly, you should read the more detailed provisions of the certificate of incorporation and the bylaws.

Common Stock - General

The following is a description of our common stock. This description is not complete, and we qualify it by referring to our certificate of incorporation, as amended, and bylaws, as amended, both of which we incorporate into this document by reference, and the laws of the state of Delaware.

Our certificate of incorporation authorizes us to issue 502,000,000 shares of stock, divided into four classes:

- 500,000 shares of preferred stock, \$100 par value;
- 1,000,000 shares of preferred stock A, without par value;
- 500,000 shares of preference stock, without par value; and
- 500,000,000 shares of common stock, \$1.00 par value.

As of October 26, 2018, we had 196,018,324 shares of common stock, no shares of preferred stock, preferred stock A or preference stock issued and outstanding.

Dividend Rights

Under our certificate of incorporation, we may declare and pay dividends on our common stock, out of surplus or net profits, only if we have paid or provided for full cumulative dividends on all outstanding shares of preferred stock, preferred stock A and preference stock.

Voting Rights

Our common stock has one vote per share. The holders of our common stock are entitled to vote on all matters to be voted on by stockholders. The holders of our common stock do not have cumulative voting rights.

Our bylaws provide for a majority voting standard for the election of directors in an uncontested election and a plurality voting standard in the event the number of nominees exceeds the number of directors to be elected.

The holders of our preferred stock, preferred stock A and preference stock will not have the right to vote, except as our board of directors establishes or as provided in our certificate of incorporation or as determined by state law.

Our certificate of incorporation gives any holders of our preferred stock, preferred stock A and preference stock the right to vote if dividends are unpaid, in whole or in part, on their shares for one year. The holders have one vote per share until we pay the dividend arrearage, declare dividends for the current dividend period and set aside the funds to pay the current dividends. In addition, the holders of some series of our preferred stock and preferred stock A, and/or the holders of our preference stock, must approve amendments to the certificate of incorporation in some instances.

Liquidation Rights

If we were to liquidate, any holders of our preferred stock, preferred stock A and the preference stock will have the right to receive specified amounts, as set forth in our certificate of incorporation, before we can make any payments to the holders of our common stock. After any preferred stock, preferred stock A and preference stock payments are made, the holders of our common stock are entitled to share in all of our remaining assets available for distribution to stockholders.

Other Rights

Our common stock is not liable to further calls or assessment. The holders of our common stock have no preemptive rights. Our common stock cannot be redeemed, and it does not have any conversion rights or sinking fund provisions.

Preferred Stock

Our certificate of incorporation authorizes our board of directors to issue up to 500,000 shares of preferred stock, from time to time in one or more series, generally without any vote or action by the holders of our common stock. Our board of directors will be authorized to determine the number of shares and designation of any series of preferred stock and the dividend rate, dividend rights, conversion rights and terms, voting rights, redemption rights and terms and sinking fund terms of any series of preferred stock. The preferred stock will rank equally with any preferred stock A with no preference or priority with respect to earnings, and assets upon liquidation, dissolution or winding up of the Company, the preferred stock and the preferred stock A will be senior to any preference stock and common stock with respect thereto. Subject to certain conditions as specified in our certificate of incorporation, our board of directors, without stockholder approval, can issue preferred stock with voting, conversion or other rights that could adversely affect the voting power and other rights of the holders of common stock. The issuance of preferred stock may decrease the market price of our common stock.

Preferred Stock A

Our certificate of incorporation authorizes our board of directors to issue up to 1,000,000 shares of preferred stock A, from time to time, generally without any vote or action by the holders of our common stock. Our board of directors will be authorized to determine the number of shares and designation of any series of preferred stock A and the dividend rate, dividend rights, liquidation preferences, conversion rights and terms, voting rights, redemption rights and terms and sinking fund terms of any series of preferred stock A. The preferred stock and the preferred stock A will rank equally with no preference or priority with respect to earnings, and assets upon liquidation, dissolution or winding up of the Company, the preferred stock and the preferred stock A will be senior to any preference stock and common stock with respect thereto. Subject to certain conditions as specified in our certificate of incorporation, our board of directors, without stockholder approval, can issue preferred stock A with voting, conversion or other rights that could adversely affect the voting power and other rights of the holders of common stock. The issuance of preferred stock A may decrease the market price of our common stock.

Preference Stock

Our certificate of incorporation authorizes our board of directors to issue up to 500,000 shares of preference stock, from time to time in one or more series, generally without any vote or action by the holders of our common stock. Our board of directors will be authorized to determine the number of shares and designation of any series of preference stock and the dividend rate, dividend rights, liquidation preferences, conversion rights and terms, redemption rights and terms and sinking fund terms of any series of preference stock. The preference stock will rank junior to any preferred stock and preferred stock A with respect to earnings, and assets upon liquidation, dissolution

or winding up of the Company and will be senior to common stock with respect thereto. Subject to certain conditions as specified in our certificate of incorporation, our board of directors, without stockholder approval, can issue preference stock with conversion or other rights that could adversely affect the rights of the holders of common stock. The issuance of preference stock may decrease the market price of our common stock.

Effects on Our Common Stock if We Issue Preferred or Preference Stock

Our board of directors has the authority, without further action by the stockholders, to issue up to 500,000 shares of preferred stock, 1,000,000 shares of preferred stock A and 500,000 shares of preference stock, each in one or more series.

Our board of directors has the authority to determine the terms of each series of any preferred stock, preferred stock A or preference stock, within the limits of our certificate of incorporation and the laws of the state of Delaware. These terms include the number of shares in a series, dividend rights, liquidation preferences, terms of redemption, conversion rights and voting rights.

If we issue any preferred stock, preferred stock A or preference stock, we may negatively affect the holders of our common stock. These possible negative effects include diluting the voting power of shares of our common stock and affecting the market price of our common stock. In addition, the ability of our board of directors to issue preferred stock, preferred stock A or preference stock may delay or prevent a change in control of the Company.

Provisions of our Certificate of Incorporation and our Bylaws That Could Delay or Prevent a Change in Control

Our certificate of incorporation and bylaws contain provisions which will make it difficult to obtain control of MDU Resources if our board of directors does not approve the transaction. The provisions include the following:

Number of Directors, Vacancies, Removal of Directors

Our certificate of incorporation provides that our board of directors will have at least six and at most 15 directors. Two-thirds of the continuing directors decide the exact number of directors at a given time. Two-thirds of the continuing directors fill any new directorships created by the board and any vacancies.

Under the laws of the state of Delaware, our directors may be removed by a majority of the shares then entitled to vote in an election of directors. However, our certificate of incorporation provides that any action required or permitted to be taken by our stockholders, which includes the removal of directors, must be effected at a duly called annual or special meeting of stockholders and may not be effected by any consent in writing by such stockholders. Our certificate of incorporation prevents stockholders from calling a special meeting.

No Cumulative Voting

Our certificate of incorporation does not provide for cumulative voting.

Advance Notice Provisions

Our bylaws require that for a stockholder to nominate a director or bring other business before an annual meeting, the stockholder must give notice not later than the close of business on the 90th day prior to the first anniversary of the prior year's annual meeting.

Provisions Relating to the Authorization of Business Combinations

There is a provision in our certificate of incorporation permitting our board of directors to consider the following factors in determining whether or not to approve some types of business combinations:

- The consideration to be received by us or our stockholders in connection with the business combination in relation not only to the then current market price for our outstanding capital stock, but also to the market price for our capital stock over a period of years, the estimated price that might be achieved in a negotiated sale of us as a whole or in part through orderly liquidation, the premiums over market price for the securities of other corporations in similar transactions, current political, economic and other factors bearing on securities prices and our financial condition, future prospects and future value as an independent corporation;
- The character, integrity and business philosophy of the other party or parties to the business combination and the management of that party or those parties;
- The business and financial conditions and earnings prospects of the other party or parties to the business combination, including, but not limited to, debt service and other existing or likely financial obligations of that party or those parties, the intention of the other party or parties to the business combination regarding the use of our assets to finance the acquisition, and the possible effect of the conditions upon us and our subsidiaries and the other elements of the communities in which we and our subsidiaries operate or are located;
- The projected social, legal and economic effects of the proposed action or transaction upon us or our subsidiaries, employees, suppliers, customers and others having similar relationships with us, and the communities in which we and our subsidiaries do business;
- The general desirability of our continuance as an independent entity; and
- Such other factors as the continuing directors may deem relevant.

Provisions of Delaware Law That Could Delay or Prevent a Change in Control

We are subject to the provisions of Section 203 of the General Corporation Law of the State of Delaware. With some exceptions, this law prohibits us from engaging in some types of business combinations with a person who owns 15% or more of our outstanding voting stock for a three-year period after that person acquires the stock. This prohibition does not apply if:

- our board of directors approved the business combination or the transaction of our stock before the person became an interested stockholder;
- upon consummation of the transaction that resulted in the person becoming an interested stockholder, that person owned at least 85% of our outstanding voting stock outstanding at the time of the transaction, excluding certain shares; or
- at or subsequent to such time the business combination is approved by the board of directors and by at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

A business combination includes mergers, consolidations, stock sales, asset sales and other transactions resulting in a financial benefit to the interested stockholder.

Forum Selection

Our bylaws provide that, unless the Company consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any Internal Corporate Claims. As defined in our bylaws, “Internal Corporate Claims” means claims, including claims in the right of the Company, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity or (ii) as to which the General Corporation Law of the State of Delaware confers jurisdiction upon the Court of Chancery of the State of Delaware. Although we have included a choice of forum clause in our bylaws, it is possible that a court could rule that such clause is inapplicable or unenforceable.

Transfer Agent; Registrar

The transfer agent and registrar for our common stock is EQ Shareowner Services, Mendota Heights, Minnesota.

Listing

Our common stock is listed on the New York Stock Exchange and trades under the symbol “MDU.”