ENERGY AND ENVIRONMENTAL SERVICES, INC.

2601 NW Expressway, Suite 605W
Oklahoma City, Oklahoma 73112
Telephone: 800-635-7716

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

May 30, 2024

To the Shareholders:

Energy and Environmental Services, Inc. ("*EES*" or "*We*") will hold an Annual Meeting of Shareholders (the "*Annual Meeting*") on Thursday, May 30, 2024, at 11:00 a.m., CT, in the Continental Room of the Petroleum Club, 35th Floor, BancFirst Tower, 100 N Broadway Ave., Oklahoma City, Oklahoma 73102. You will also have the option to attend the Annual Meeting virtually via live webcast by visiting the Facebook page for the EES Shareholder Meeting (https://www.facebook.com/ees.shareholdermeeting) and sending a friend request. We will accept requests from shareholders of record. Before the Annual Meeting, you will be able to vote by mail, telephone or Internet for the purpose of considering and voting upon:

(1) Electing five directors to serve until the 2025 Annual Meeting of Shareholders;

(2) Approving a Agreement and Plan of Merger that would (i) reincorporate EES, which is a Colorado corporation, as an Oklahoma corporation and (ii) change EES's name and make certain other changes as described in this Proxy Statement; and

(3) Transacting such other business as may properly come before the Annual Meeting.

The record date for the Annual Meeting is April 11, 2024. Only Shareholders of record at the close of business on that date can vote at the Annual Meeting. If your shares are held in an account at a brokerage firm or bank participating in this program, you may vote those shares by calling the telephone number specified on your proxy or accessing the Internet website address specified on your proxy instead of completing and signing the proxy itself.

In connection with Proposal 2 (Reincorporation), the Board of Directors has determined that the shareholders are entitled to assert appraisal rights under Article 113 of the Colorado Business Corporation Act. See "*Reincorporation – Appraisal Rights*".

Your vote is important to us. If you do not plan to attend the Annual Meeting, please sign and return the enclosed proxy in the envelope provided or follow the Internet or telephone voting procedures described on the proxy form.

Sincerely,

/s/ Troy Todd

Troy Todd
Secretary

April 24, 2024

PROXY STATEMENT

ANNUAL MEETING OF SHAREHOLDERS

May 30, 2024

Energy and Environmental Services, Inc. ("*EES*" or "*We*") welcomes you to our Annual Meeting of Shareholders. We engage in oilfield chemicals, anti-corrosive coatings, and biotech segments. We began in 1991, and our management has over 50 years of experience blending, manufacturing and packaging custom liquids and solid chemicals for the oil and gas and agricultural industries. Additionally, we have expanded to develop innovative products and applications for enzyme system technologies, livestock feed supplements, and specialized anti-corrosive coatings. Our Annual Report for the year ended 2023 contains more about our business.

This Proxy Statement is intended to inform our Shareholders about the upcoming Annual Meeting. To encourage Shareholder participation, we are soliciting proxies to be used at the Annual Meeting.

We are mailing a notice of Annual Meeting, proxy cards, and a notice regarding the availability of a Proxy Statement and Annual Report to Shareholders beginning April 24, 2024. Shareholders can access the Proxy Statement and the Annual Report on our website, https://eesokc.com/investors/.

General Information

When and Where is the Annual Meeting. You may personally attend the Annual Meeting, which will be held on Thursday, May 30, 2024, at 11:00 a.m., CT, in the Continental Room of the Petroleum Club, 35th Floor, BancFirst Tower, 100 N. Broadway Ave., Oklahoma City, Oklahoma 73102. You may also attend virtually by viewing the Annual Meeting through a live webcast on the Facebook page for the EES Shareholder Meeting (https://www.facebook.com/ ees.shareholdermeeting) and sending a friend request. We will accept requests from shareholders of record. You can then access the page before the meeting and will see an announcement post for the live broadcast. You may click "get reminder" to receive a notification shortly before the meeting begins.

Who Votes. If you hold shares as of the Record Date, April 11, 2024, you may vote by mail, telephone or Internet. If you hold shares in "street name", you may vote only if you hold a valid proxy from your broker. On April 11, 2024, we had 53,829,393 shares of common stock issued and outstanding, which were held by 230 Shareholders of record. Each share is entitled to one vote.

How to Vote. You may vote by any of the following means:

- **by mail** – mark, sign, date and return the proxy card in a timely manner;
- **by telephone** –using a touch-tone telephone or cell phone, comply with the telephone voting instructions on the proxy card for "street name" holders;
- **by Internet** – comply with the Internet voting instructions on the proxy card; and
- **by attending** – shareholders of record may vote in person at the Annual Meeting.

For shareholders with shares registered in the name of a brokerage firm or bank, most brokerage firms and banks participate in a program for shares held in "street name" that offers telephone and Internet voting options. Shareholders with shares registered directly in their names with EQ Shareowner Services, our transfer agent, will also be able to vote in person, by mail or by using the Internet or telephone. If your shares are held in an account at a brokerage firm or bank participating in this program, you should follow the procedures provided by your bank, broker or nominee to provide voting instructions. The telephone and Internet voting procedures are designed to authenticate shareholders' identities, to allow shareholders to give their voting instructions, and to confirm that shareholders' instructions have been recorded properly. If you are voting by telephone or Internet, you may incur costs for telephonic or electronic access, such as usage charges from telephone companies and Internet access providers.

If you return a signed proxy card, but do not tell us how you want to vote, we shall vote your shares "for" all director nominees.

Canceling Your Proxy. You can cancel your proxy at any time before the Annual Meeting and provide a new proxy in a timely manner by mail, telephone or Internet. Only your latest dated proxy will count. Only shareholders of record who personally attend will be able to vote during the Annual Meeting.

Counting the Necessary Votes. Directors are elected by a plurality of votes, which means that the director nominees for the positions to be filled (five positions) receiving the highest number of votes will be elected.

Shareholders present and voting do not include Shareholders who have abstained from voting. Abstentions are counted as present at the Annual Meeting for purposes of determining whether a quorum exists, but are not counted as voting and thus have no effect on the outcome. Shareholders present and entitled to vote include Shareholders who abstain. Proxies submitted by brokers that do not indicate a vote for the proposal (usually because the brokers do not have discretionary voting authority and have not received instructions as to how to vote) are referred to as "broker non-votes". Broker non-votes are not counted as shares present and are not counted in determining whether a proposal is approved by a majority vote of the shares present and voting. Broker non-votes are counted in the total number of outstanding shares entitled to vote and would have the same legal effect as a vote against a proposal that requires an affirmative vote based on the number of outstanding shares entitled to vote.

ITEM 1
ELECTION OF DIRECTORS

The Shareholders will elect five directors at this year's Annual Meeting. Each director will serve for a one-year term ending at the 2024 Annual Meeting or until he is succeeded by another qualified director who has been elected.

We shall vote your shares as you tell us. If unforeseen circumstances (such as death or disability) make it necessary for the Board to substitute another person for any of the nominees, we will vote your shares for that other person unless you have withheld authority.

All five nominees for directors are presently members of the Board of Directors.

The Board of Directors recommends voting "For" the nominees.

Biographical Information

The following table sets forth the name and age of each director nominee and the year he became a director.

Name	Age	Director Since	Position
Leon Joyce	54	2017	Chairman of the Board and Chief Executive Officer/President
Gary Presley	68	2020	Director and Vice President of Sales
Mark Day	67	2017	Director
Brad Fruit	61	2022	Director
Matthew Hoffman	61	2020	Director

The Director Nominees. The Board of Directors has nominated five candidates for election. If elected, these nominees will serve one-year terms. A brief summary of each director nominee's principal occupation, business affiliations and other information follows.

Leon Joyce became President in December 2019, Chief Executive Officer in January 2018, and previously served as President from April 2017 to January 2018. Mr Joyce became a Director in June 2017. He joined us in 2007 as a sales and marketing representative in Oklahoma, Kansas and Colorado and became national accounts manager in 2011, Business Development Manager in 2013, Vice President of Sales in 2015, and Senior Vice President in November 2016. Mr. Joyce attended Marymount College and Benedictine College.

Mark Day became a Director in June 2017. He is the co-owner and President of Opeco, Inc., a privately held sales and distribution company with over 40 employees in seven locations in five states. Before forming Opeco in 1984, he worked in various capacities with Bethlehem Steel. Mr. Day holds a Bachelor of Science degree in business education from the University of Wyoming.

Brad Fruit is the CEO and CFO of Pollution Control Corp., Chickasha, Oklahoma, a privately held, environmental company marketing patented spill

prevention products to the oil and gas industry. Before joining Pollution Control in 2004, Mr. Fruit served as a Controller for a Solvay Polymers/BP joint venture, Houston, Texas, and as an analyst for Halliburton Energy Services, Houston, Texas. He is a Certified Public Accountant and a graduate of Oklahoma State University, where he received a Bachelor of Science in Business Administration.

Matthew Hoffman became a Director in November 2020. Since 2018, he has been a Workover Completions Manager at New IPT Inc., a Colorado-based independent petroleum consulting firm. He previously worked in similar capacities at Halliburton, Maverick Stimulation Co, LLC and Basic Energy Services designing and implementing stimulation treatments on oil and gas wells. Mr. Hoffman holds a Bachelor of Science degree from the Colorado School of Mines specializing in Petroleum Engineering.

Gary Presley serves as our Vice President of Sales, a position he has held since the Patriot acquisition in May 2019. Mr. Presley was appointed to the Board in November 2020. Since 2010, he was the President of Patriot. Before forming Patriot in 2010, Mr. Presley spent over 30 years in the production chemical business with companies like Champion, Multichem, and Tretolite/Baker Petrolite. He holds a Bachelor of Science degree in biology from Southeastern Oklahoma State University.

Other Executive Officers

In addition to the executive officers who serve on the Board of Directors, we have the following executive officers:

Troy Todd, age 61, became Vice President of Operations in April 2017. He served as a Director from June 2017 to November 2020. Mr. Todd joined us in 2001 as a coating technician and became inventory/ procurement manager in 2007, Manager of Solid Chemical in 2010, Manager of the Chemical Division in 2011, Director of Operations for EES in 2014, and Vice President of Operations in November 2016. Mr. Todd has an Associate degree in business management from Oklahoma State University.

Todd Jelinek, age 54, became Vice President in December 2019, served as President between then and January 2018, and was Chief Executive Officer from April 2017 to January 2018. He served as a Director from September 2016 to November 2020. Mr. Jelinek joined us in 2012 as our Research & Development Director and became Executive Vice President in September 2016. Mr. Jelinek has over 22 years' experience in research and development in the areas of biotechnology, pharmaceutical and environmental sciences. He has a Bachelor of Science in microbiology and a minor in chemistry from South Dakota State University.

Andrew Schmidt, age 54, serves as our Chief Financial Officer, a position he has held since 2018. He is a certified public accountant and the managing partner of Schmidt & Associates, PC, a certified public accounting firm established in 2003. From 1992 to 2003, he worked with Jerry L. Williams as an employee and a partner. Mr. Schmidt holds a Bachelor of Arts degree in accounting and business from Benedictine College.

OTHER INFORMATION ABOUT DIRECTORS, OFFICERS AND CERTAIN SHAREHOLDERS

Stock Ownership of Management and Certain Shareholders

The following table sets forth certain information regarding the beneficial ownership of our common stock as of April 11, 2024, by (a) each director and nominee, (b) each NEO in the Summary Compensation Table, (c) each person that we know or believe to own beneficially five percent or more of the common stock, and (d) all directors and NEOs as a group. Unless indicated otherwise, each person has sole voting and dispositive power with respect to the shares.

Name of Director, Executive Officer, or Shareholders Holding 5% or More	Beneficial Ownership[1]	
	Number of Shares	Percent
Melvin Smith Revocable Trust Vickie Smith, Trustee 602 Carlyon Avenue SE Olympia, WA 98501	13,250,000	24.6%
Leon Joyce	1,357,603	2.5%
Troy Todd	1,325,400	2.5%
Todd Jelinek	1,381,324	2.6%
Mark Day[2]	540,000	1.0%
Matthew Hoffman	25,000	*
Gary Presley[4]	1,580,000	2.9%
Brad Fruit	60,000	*
Estate of George Shaw 17504 Cranbrook Rd. Edmond, OK 73015	2,932,383	5.4%
All directors and named executive officers as a group (7 persons)	6,269,327/	11.6%

* Less than one percent.

(1) Disclosures regarding "beneficial ownership" are made as that term is defined under Federal securities laws.

(2) Mr. Day has beneficial ownership over 450,000 shares, which are held of record by Doubleday Investments, Inc., a company owned by Mr. Day and his spouse. These shares are included in the above amount.

(3) Mr. Presley's beneficial ownership includes 600,000 shares held by his spouse, Shelley Presley. These shares are included in the above amount.

Corporate Governance

Board Composition and Meetings. Our Board of Directors is currently composed of five directors. The Board has determined that three of the directors, Mark Day, Matthew Hoffman and Brad Fruit, are independent.

In 2023, the full Board met twice with all directors attending either in person or virtually. The Board acted four times by written consent during the year. Management also periodically conferred with directors between meetings regarding our affairs.

The Compensation Committee. The Compensation Committee is composed of the independent directors: Mr. Day (Chair) and Mr. Fruit. It met once in 2023 with all members participating physically. It sets the compensation levels of the Chief Executive Officer, Chief Operating Officer, and the Chief Financial Officer, and oversees the operation of the equity incentive program and other employee benefits.

The Audit Committee. The Audit Committee is composed of the independent directors: Mr. Fruit (Chair) and Mr. Day. The Board has determined that our Audit Committee members meet the required financial literacy and sophistication requirements, and that its Chair, Mr. Fruit, qualifies as an "audit committee financial expert" under the SEC rules. After terminating our registration under the Securities Exchange Act of 1934 (the "*Exchange Act*") in 2011, we stopped auditing our financial statements. We intend to register under the Exchange Act eventually and will resume financial audits. We do not anticipate, however, undertaking the costs of financial audits until our financial condition is stronger. The Audit Committee did not meet in 2023.

Director Nominations. The Board has not delegated its functions to any other standing committees, and thus has not created executive, nominating or other similar committees. The task of nominating directors is undertaken by the full Board. In selecting candidates for director appointments or reelection, the Board believes that it should be composed of directors having a diversified background of knowledge and management expertise. We do not have a formal policy about the consideration of diversity in identifying director nominees, but the Board seeks directors with a variety of complementary skills and perspectives so that, as a group, the Board will possess the appropriate talent, skills, and expertise to oversee our business. The Board considers independence, diversity, age, skills, expertise, time availability, and industry backgrounds in the context of the needs of the Board and Enduro-Tech.

Departure of Director. Effective February 1, 2024, Michael Smith notified us that he was resigning from the Board of Directors and its committees due to increasing professional commitments. He confirmed that his decision to resign was not the result of any disagreement with us. We thank him for his service and wish him well in his future endeavors.

The Board has not at this time appointed a successor.

Annual Meeting Attendance. We have a policy of encouraging all directors to attend the Annual Meetings. Our 2022 Annual Meeting was conducted virtually with all directors present. All our directors attended the 2023 Annual Meeting in person.

Outside Director Compensation. With the industry downturn in 2020, the directors elected to waiver all fees and other compensation for attendance at board or committee meetings. In lieu of fees, we compensate our outside directors with restricted shares of common stock generally payable at the end of each year. We reimburse all ordinary and necessary expenses, including travel expenses, incurred in the conduct of our business.

We intended to grant stock awards to the outside directors in 2022. To correct the error, we granted 30,000 shares to each of our outside directors, Mr. Day, Mr. Fruit, Mr. Hoffman and Mr. Smith, in March 2023. In December 2023, we awarded 30,000 shares to each of our outside directors, Mr. Day, Mr. Fruit and Mr. Hoffman. The shares vest over a one-year period.

Director Insurance and Indemnity. We maintain directors' and officers' liability insurance policies covering our directors and officers in the course of their service. Our bylaws provide for mandatory indemnification and advancement to hold our directors and executive officers harmless in the event claims are made against them in the course of their service.

Director Communication. Shareholders may send communications to the Board (and to individual directors) through Mr. Troy Todd, Secretary, Energy and Environmental Services, Inc., 2601 NW Expressway, Suite 605W, Oklahoma City, Oklahoma 73112, and telephone 800-635-7716. He will forward to the directors all communications that, in his judgment, are appropriate for consideration by the directors. Comments or questions regarding our accounting, internal controls or auditing matters will be referred to members of the Audit Committee. Comments or questions regarding the nomination of directors and other corporate governance matters will be referred to all members of the Board.

Code of Ethics

We have adopted a Code of Ethics that applies to our directors, management and employees. The latest copy of our Code of Ethics is available under the heading "Governance" on our web site at https://eesokc.com/investors/. We intend to disclose future amendments to certain provisions of our Code of Ethics, or waivers of those provisions, at the same location on our web site.

Executive Compensation

The following table sets forth the compensation paid or accrued to the Chief Executive Officer and President, the Chief Operating Officer, the Vice President and the Vice President of Sales (they are sometimes called the "*named executive officers*" or "*NEOs*") for services performed in 2022 and 2023.

Summary Compensation Table

Name and Principal Position	Fiscal Year	Annual Compensation			Other Annual Compen-sation[3]
		Salary	Bonus[1]	Stock Awards[2]	
Leon Joyce	2023	$181,500	$60,000	$ -	$19,080
Chief Executive Officer/President	2022	$165,000	$26,200	$ -	$18,000
Troy Todd	2023	$126,500	$50,000	$ -	$16,640
Vice President of Operations	2022	$115,000	$27,025	$ -	$13,723
Todd Jelinek	2023	$108,000	$4,780	$ -	$12,513
Vice President	2022	$122,149	$1,200	$ -	$13,150
Gary Presley	2023	$126,500	v $52,295	$ -	$16,605
Vice President of Sales	2022	$115,000	$47,643	$ -	$15,740

(1) Bonuses are paid to the NEOs based solely on the Board's discretion and upon recommendation of the Compensation Committee.

(2) No equity incentive awards were granted in 2022 or 2023.

(3) Messrs. Joyce and Jelinek received automobile allowances, which are reflected in the above amounts. Messrs. Presley and Todd have company-owned vehicles, the payments for which are reflected in the above amounts. Mr. Joyce is reimbursed for the cost of his cell phone, which is reflected in the above amounts. We have a 401K program for employees and match up to 4% of the employee's contribution. In 2022, we matched Mr. Jelinek's contribution of $$4,898 and Mr. Todd's contribution of $5,273. In 2023, we matched Mr. Jelinek's contribution of $$5,196.

Employment Agreements

We have entered into written term employment agreements with each of the Named Executive Officers. These employment agreements provide for "at will" employment. The agreements define the rights and responsibilities of each party, including the rights and responsibilities upon termination of employment. Upon involuntary termination for death or disability, for voluntary terminations by the executive officer, for terminations by Enduro-Tech with or without cause, the executive officer receives only his accrued compensation (including accrued vacation) through the termination date. For terminations after a change in control or for good reason, the executive officer will receive compensation through the end of the employment term and an additional six months' compensation. "Good reason" is defined as the executive officer's termination after a reduction in compensation, an assignment of duties inconsistent with his office, or an assignment of duties in an office more than ten miles from his present office. The agreements prohibit the executive officer from disclosing our confidential information or business practices or engaging directly or indirectly in competition with us. The executive officer is also prohibited from competing against us or soliciting our clients for two years after his employment terminates.

Outstanding Equity Awards at Year-End

At December 31, 2023, the Named Executive Officers held no stock or other equity awards that had not vested, and no stock or other equity awards held by them vested in 2023. At December 31, 2023, our outside directors, Mr. Day, Mr. Fruit and Mr. Hoffman, each held a 30,000 restricted share award that was not vested.

ITEM 2
REINCORPORATION OF EES IN OKLAHOMA AND CHANGES TO EES'S NAME

General

The Board of Directors proposes that we change our state of incorporation from Colorado to Oklahoma (the "*Reincorporation*"). The Reincorporation would also change our name to "EES Energy Services, Inc." The reasons for the Reincorporation are explained below under the caption "*Purposes for the Reincorporation*". The terms of the Reincorporation are set out in the Agreement and Plan of Merger (the "*Merger Agreement*"), which is attached to this Proxy Statement as Appendix A. The Board of Directors has unanimously approved the Reincorporation, subject to shareholder approval.

The Reincorporation will be accomplished by merging EES into our newly formed Oklahoma subsidiary, EES Energy Services, Inc. ("*EES Energy*"). and continue conducting business as the successor to EES. If our shareholders adopt and approve the Reincorporation, the Reincorporation will take effect on the date on which a certificate of merger is filed with the appropriate officers of the States of Oklahoma and Colorado (the "*Effective Date*"). These filings are anticipated to be made within 48 hours after adoption and approval of the Reincorporation at the Meeting.

IT WILL NOT BE NECESSARY FOR SHAREHOLDERS
TO EXCHANGE THEIR EXISTING STOCK CERTIFICATES
FOR STOCK CERTIFICATES OF EES ENERGY.

Following the Reincorporation, certificates representing previously outstanding shares of our common stock may be delivered in effecting sales through a broker, or otherwise, of EES Energy common stock. When presently outstanding certificates are presented for transfer after the Reincorporation, new certificates for the stock of EES Energy will be issued. New certificates will also be issued upon the request of any shareholders, subject to normal requirements regarding proper endorsement, signature guarantee, if required, and payment of applicable taxes.

Approval of the Reincorporation will effect a change in our legal domicile and certain other changes of a legal nature, as described in this Proxy Statement. Our Reincorporation will not result in any change in our business, management, location of the principal executive offices, assets, liabilities or shareholders' equity. EES Energy will possess all the assets and be responsible for all the liabilities of EES. The Reincorporation will not change our financial condition.

We are currently governed, and the shareholder rights are defined, by the corporate law of Colorado, our state of incorporation, and by our current Articles of Incorporation (the "*Colorado Articles*") and EES Bylaws (the "*Colorado Bylaws*"), which have been adopted under Colorado law. In addition, we have adopted an Omnibus Equity Compensation Plan, under which restricted stock and stock options have been granted to directors, officers and certain employees. All of these instruments will be substantially the same for EES Energy as they were before the Reincorporation. Some of the items will be the same. Some changes will be made to the others.

The officers and directors of EES Energy will be the same people who currently serve as our officers and directors. The EES Energy Bylaws will be like our Colorado Bylaws, although there will be material changes as described below. The certificate of incorporation for EES Energy will be changed somewhat. Although substantially the same, the statutes governing corporations in Oklahoma and Colorado are different in some respects. The changes and differences are set forth below under the caption "*Significant Changes Caused by Reincorporation*".

Purposes for the Reincorporation

Greater Flexibility and Predictability Under Oklahoma Law. The Board also believes that the Oklahoma General Corporation Act (the "*OGCA*") will afford us greater flexibility and predictability than is afforded by Colorado Business Corporation Act (the "*CBCA*"). The OGCA is modeled after the General Corporation Law of the State of Delaware (the "*DGCL*"), which is generally recognized as the preeminent situs for large U.S. corporations.

Delaware has achieved its pre-eminence for several reasons. Delaware has encouraged incorporation in that state by revising its corporate laws regularly to meet changing business circumstances. The Delaware legislature has attempted to balance equitably the competing needs of shareholders, directors and officers, and persons doing business with Delaware corporations. The Delaware courts have developed considerable expertise in dealing with corporate issues, and Delaware corporations are guided by a substantial body of case law construing Delaware corporate law. Delaware's success in achieving its goals is evidenced by the incorporation within Delaware of over 60% of the Fortune 500 companies within the U.S.

Oklahoma has encouraged incorporation by emulating Delaware. The OGCA, adopted in 1986, was patterned after the DGCL, and the Oklahoma legislature has continued to follow the Delaware example by regularly adopting the Delaware corporate law changes in Oklahoma. By following the Delaware example, the Oklahoma courts have and will look to Delaware corporate case law as highly persuasive in construing the meaning of the OGCA. In contrast, the CBCA is not patterned after the DGCL, and Delaware case law would be no more persuasive in Colorado than the case law of other states. As a result of these factors, it is anticipated that the OGCA will provide greater predictability in our legal affairs than is presently available under the CBCA.

Under the Colorado Articles and the Colorado Bylaws, the affirmative vote of a majority of our outstanding shares of voting stock is required for approval of the Reincorporation. If approved by the shareholders, it is anticipated that the

Reincorporation will be completed as soon thereafter as practicable. The Reincorporation may be abandoned or the Merger Agreement may be amended (with certain exceptions), either before or after shareholder approval has been obtained if, in the opinion of the Board of Directors, circumstances arise that make such action advisable; provided, that any amendment that would effect a material change from the charter provisions discussed in this Proxy Statement would require further approval by the holders of at least a majority of the outstanding voting shares.

Name Change. We believe that changing its name from "Energy and Environmental Services, Inc" to "EES Energy Services, Inc." would benefit us and our shareholders. The change shortens our name for better efficiency. The acronym shortens our name, which is helpful from a branding standpoint. It continues the link with our stock trading symbol "EESE". We regularly use the trademark 'EES" and want to retain that mark in our name. The change would eliminate the reference to "Environmental", which infers an industry segment in which we do not operate. "Energy Services" implies that we render services to the energy industry, which is an accurate portrayal of what we do.

Significant Changes Caused by Reincorporation

In general, our corporate affairs are governed at present by the corporate law of Colorado, our state of incorporation, and by the Colorado Articles and the Colorado Bylaws, which have been adopted under the CBCA. The Colorado Articles and Colorado Bylaws are available for inspection during business hours at our principal executive offices. In addition, copies may be obtained by writing to us at 2601 NW Expressway, Suite 605W, Oklahoma City, Oklahoma 73112, Attention: Corporate Secretary.

If the Reincorporation proposal is adopted, we will merge into, and its business will be continued by, EES Energy. Following the merger, issues of corporate governance and control would be controlled by the OGCA rather than the CBCA. Our current Colorado Articles and Colorado Bylaws will, in effect, be replaced by the EES Energy Certificate of Incorporation (the "*Oklahoma Charter*") and EES Energy Bylaws (the "*Oklahoma Bylaws*"), copies of which are attached as Appendixes B and C to this Proxy Statement. Accordingly, the differences among these documents and between Oklahoma and Colorado corporate law are relevant to your decision whether to approve the Reincorporation proposal.

A number of differences between the CBCA and the OGCA and between provisions of the Colorado and Oklahoma charter documents are summarized in the chart below. Shareholders are requested to read the following chart in conjunction with the discussion following the chart and the Merger Agreement, the Oklahoma Charter and the Oklahoma Bylaws attached to this Proxy Statement.

Oklahoma	**Colorado**
Capitalization	
The Oklahoma Charter authorizes the same number and class as the Colorado Articles: 100,000,000 shares of common	The Colorado Articles authorize EES to issue 100,000,000 shares of common stock, par value $0.00001 per

Oklahoma	Colorado
stock, par value $0.00001 per share, and 20,000,000 shares of preferred stock, par value $0.00001 per share. Upon the Reincorporation, EES Energy will have the same number of shares issued and outstanding as EES had before the Reincorporation. No shares of preferred stock will be issued and outstanding	share, and 20,000,000 shares of preferred stock, par value $0.00001 per share. As of the close of business on April 11, 2024, the record date, EES had 53,829,393 shares of EES common stock outstanding and no shares of preferred stock issued and outstanding.

Description of Capital Stock

Common Stock The Oklahoma Charter authorizes the board of directors to issue shares of common stock and to fix the designations, powers, rights, preferences, qualifications, restrictions and limitations of the common stock in one or more classes and series; provided that one class of common stock shall entitle its holders to one vote for each share held on all matters voted upon by the shareholders, shall be issued and outstanding at all times, and shall not be subject to redemption. The holders of common stock do not have cumulative voting rights or preemptive rights. *Preferred Stock* The Oklahoma Charter authorizes the board, subject to limitations prescribed by law, to provide for issuance of shares of preferred stock in one or more series, to establish the number of shares to be included in each such series, and to fix the designations, powers, preferences, and rights of the shares of each such series, and any qualifications, limitations or restrictions thereof.	*Common Stock* The Colorado Articles provide that all shares of common stock share equally in dividends and liquidating distributions. Each share entitles its holder to one vote at shareholder meeting, either in person or by proxy. No cumulative voting or preemptive rights are permitted under the Colorado Articles. *Preferred Stock* Under the Colorado Articles, the board of directors is authorized to issue shares of preferred stock and to fix the designations, powers, rights, preferences, qualifications, restrictions and limitations of the preferred stock in one or more classes and series.

Limitations on Directors Liability

The OGCA permits corporations to limit the personal liability of directors if	The CBCA permits a corporation to provide in its articles a provision

Oklahoma

authorized by the corporate charter. The statute does not permit liability limitations for: (i) acts or omissions by such director not in good faith or which involve intentional misconduct or a knowing violation of law, (ii) the payment of dividends or the redemption or purchase of stock in violation of Section 1053 of the OGCA, (iii) any breach of such director's duty of loyalty to EES Energy or its shareholders, or (iv) any transaction from which the director derived an improper personal benefit.

The Oklahoma Charter eliminates the liability of the directors for monetary damages to the fullest extent permitted by law.

The Oklahoma Charter does not provide that a director or officer is not personally liable for any injury to a person or property arising out of a tort committed by an employee.

The Oklahoma Charter does not expressly limit the duty of a director or officer to offer the Corporation the right to participate in business opportunities, before the director or officer pursues the opportunity.

Colorado

eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for: (i) the amount of a financial benefit received by a director to which the director is not entitled; (ii) an intentional infliction of harm on the corporation or the shareholders; (iii) unlawful dividends or other distributions or redemptions; or (iv) an intentional violation of criminal law.

The Colorado Articles have a provision eliminating or limiting the liability of a director to EES or its shareholders for money damages. The provision does not eliminate or limit the liability of a director for: (i) any breach of the director's duty of loyalty to EES or to its shareholders; (ii) acts or omissions of the director not in good faith or which involve intentional misconduct or a knowing violation of the law; (iii) acts by such director as specified by Colorado law; or (iv) any transaction from which such director derived an improper personal benefit.

The CBCA and the Colorado Articles also provide that a director or officer is not personally liable for any injury to person or property arising out of a tort committed by an employee unless the director or officer was personally involved in the situation giving rise to the litigation or unless the director or officer committed a criminal offense in connection with the situation.

The CBCA permits a corporation to provide in its charter a provision limiting or eliminating a duty of a director or officer to offer the corporation the right to participate in business

Oklahoma	Colorado
	opportunities, before the director or officer pursues the opportunity if the provision as applied to an officer or a related person of that officer: (i) requires the disinterested directors of the board to determine by action of taken in compliance with the procedures set forth in section 7-108-402 of the CBCA; and (ii) may be limited by the authorizing action of the board.
Indemnification	
Under Section 1031 of the OGCA, a corporation may indemnify its directors and officers made a party to a proceeding because the person was a director or officer, against expenses, including attorneys' fees, judgements and fines, and amounts paid in settlement actually and reasonably incurred, whether in civil, criminal, administrative, or investigative proceedings, by him or her if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. A corporation may not indemnify a director or officer under Section 1031 in respect of any claim or matter as to which the person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which the action was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses which the court shall deem proper.	The CBCA provides that a corporation may indemnify its directors and officers made a party to a proceeding because the person was a director or officer, against liability incurred in the proceeding if:: (i) the person's conduct was in good faith, and (ii) the person believed that his or her conduct as a director or officer was in the corporation's best interests, or the conduct done in any other capacity was not opposed to the corporation's best interests, and (iii) in a criminal proceeding, the person had no reasonable cause to believe the person's conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent will not of itself create a presumption that the person did not meet the applicable stand of conduct. A corporation may not indemnify a person in a proceeding by or in the right of the corporation when the director or officer was adjudged liable to the corporation, except for expenses incurred in the proceeding if the director or officer has met the relevant standards of conduct for indemnification, or (ii) in any other
The Oklahoma Bylaws provide that EES Energy will indemnify any person who was or is a party or is threatened to be	

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made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative, including an action by or in the right of EES Energy, because he or she is or was a director, officer, employee or agent of EES Energy or is or was serving at the request of EES Energy as a director, officer, employee or agent of another corporation, partnership, joint venture or other enterprise against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of EES Energy and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent will not of itself create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of EES Energy and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. In an action by or in the right of EES Energy, EES Energy will not indemnify a person who has been adjudged liable to it unless and only to the extent that the court rendering judgment has determined that despite the adjudication of liability, but in the view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court deems proper.

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proceeding if the director or officer is determined to have received an improper person benefit.

A corporation shall indemnify an individual who was wholly successful in the defense of any proceeding to which he or she was a party as a director or officer.

The CBCA further provides that a corporation may advance the reasonable expense incurred by a person who is a party to a proceeding because the person is a director or officer if: (i) the director or officer delivers to the corporation a written affirmation of director's or officer's good faith belief that he or she has met the applicable standard of conduct or the proceeding involves conduct for which liability has been eliminated under the corporations articles of incorporation, and (ii) the director or officer delivers a written undertaking to repay any funds advanced if the director or officer is later determined not to be entitled to indemnification.

The Colorado Articles empower EES to indemnify its officers and directors to the fullest extent provided by law, including but not limited to the provisions set forth in the CBCA, or any successor provision

Oklahoma	Colorado
The Oklahoma Bylaws provide that EES Energy may pay the expenses incurred in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by EES Energy as authorized by the Oklahoma Bylaws.	
Number of Directors	
Under the OGCA, the number of directors are fixed by the bylaws unless otherwise determined by the certificate of incorporation. The Oklahoma Bylaws provides that the board determines the number of directors by resolution adopted by a vote of a majority of the entire board,	The CBCA provides that the number of directors must be set forth in a corporation's bylaws, amendment of which can be effected by either the board of directors or the shareholders separately. The Colorado Bylaws fix the number of directors at no fewer than three or more than ten, as the board determines by resolution.
Calling of Special Shareholder Meeting	
The OGCA provides that a special shareholder meeting may be called as provided in the certificate of incorporation or bylaws. If not so provided, the meeting is called by the board. Under the Oklahoma Bylaws, special meetings of the shareholders may be called, by (i) the chairperson of the board, (ii) the chief executive officer, or (iii) a resolution of a majority of the entire board.	The CBCA provides that a special shareholder meeting may be called by (i) the board of directors, (ii) a person authorized by the bylaws, (iii) a resolution of the board of directors, or (iv) a written demand by shareholders holding at least 10% of the voting stock of the corporation. The Colorado Bylaws provide that the board, the president or shareholders holding at least 10% of the shares entitled to vote at a meeting may call a special meeting of the shareholders.

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Shareholder Action by Written Consent

The OGCA provides that, unless otherwise stated in a company's certificate of incorporation, any action which may be taken at an annual meeting or special meeting of stockholders may be taken without a meeting, if a consent in writing is signed by the holders of the outstanding stock having the minimum number of votes necessary to authorize the action at a meeting of shareholders at which all shares entitled to vote thereon were present and voted.	Under the CBCA, unless the articles of incorporation provide otherwise, any action that may be taken at a shareholders' meeting may be taken without a meeting upon the unanimous consent of the shareholders.
The Oklahoma Charter provides that action required or permitted to be taken at any annual or special meeting of shareholders may be taken only upon the vote of shareholders at an annual or special meeting duly noticed and called in accordance with the OGCA, the Oklahoma Charter and the Oklahoma Bylaws and may not be taken by written consent of shareholders without a meeting.	The Colorado Articles permit shareholder action by the written consent of shareholders holding shares with not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the shares entitled to vote thereon were present and voted, consent to such action in writing. Under the Colorado Bylaws, action taken by written consent without a meeting is effective only if signed by shareholders with shares representing not less than 75% of the shares eligible to vote as of the effective date of the action and delivered to EES.

Advance Notice Requirement for Shareholder Proposals and Director Nominations

Shareholder Proposals. The Oklahoma Bylaws provide that business may be brought before an annual meeting (i) by or at the direction of the board of directors or (ii) by any shareholder of EES Energy who was a shareholder of record at the time of giving notice provided for in the Oklahoma Bylaws and at the time of the annual meeting, who is entitled to vote at such meeting and who complies with the procedures set forth in the Oklahoma Bylaws. To be timely, a shareholder must give written notice to the corporate secretary not later than the close of	Under the CBCA, there is no specific requirement with regard to advance notice of director nominations and shareholder proposals. The Colorado Bylaws provide that business may be brought before an annual meeting (i) by or at the direction of the board of directors, (ii) by shareholders of record holding 50% or more of the voting stock, or (iii) by any shareholder or record who was a shareholder of record providing advance notice as set forth in the Oklahoma Bylaws. Advance notice is given when

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business on the 90th day nor earlier than the close of business on the 120th day before the anniversary date of the immediately preceding annual meeting of shareholders. If the annual meeting is called for a date that is more than 30 days earlier or more than 60 days after such anniversary date, notice by the shareholder must be so received (i) no earlier than the close of business on the 120th day before the meeting and (ii) not later than the close of business on the 90th day before the meeting, or the 10th day following the day on which public announcement of the date of such meeting is first made by EES Energy.

The shareholder's notice shall set forth, as to the shareholder giving the notice and each beneficial owner, if any, on whose behalf the proposal is made:

- a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting including the text of any resolutions proposed for consideration and, if such business includes a proposal to amend the Oklahoma Bylaws, the language of the proposed amendment;
- the name and address of the shareholder proposing such business, as they appear on EES's books, and of any beneficial owner;
- (a) the class or series and number of shares of EES Energy which are, directly or indirectly, held of record or owned beneficially by each proposing shareholder, and, (b) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or

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delivered to or mailed and received at the principal executive offices of EES, not less than 30 days nor more than 60 days before the meeting; provided, however, that if both (i) fewer than 40 days' advance notice of the meeting is given to the shareholders, and (ii) such meeting is held more than 30 days before or after the corresponding date of the annual meeting held in the preceding year, then such written notice shall be received not later than the close of the fifth day following the day on which notice of the meeting was mailed to the shareholders.

To nominate a person as director, a proposing shareholder's advance notice shall set forth as to each person the proposing shareholder proposes to nominate before the annual meeting: (i)(A) the name, age, business address and residence address of each person to be nominated, (B) the principal occupation or employment of such person, (C) the class and number of shares of EES that are beneficially owned by such person, (D) a description of all arrangements or understandings between the proposing shareholder, any affiliate of the proposing shareholder, and each nominee and any other person or persons (naming such person or persons) under which the nominations are to be made by the proposing shareholder, and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case under Regulation 14A under the Securities Exchange Act of 1934 (including such person's written consent to being nominated and to serving as a director if elected); (ii) the proposing shareholder's name and address, as they appear on the

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mechanism at a price related to any class or series of shares of EES Energy, (c) a description of any agreement, arrangement, understanding or relationship under which each proposing shareholder and beneficial holder has any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of EES Energy, (d) representation that the proposing shareholder is a holder of record of stock of EES Energy entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring the business before the meeting; and (e) a representation as to whether the shareholder or any beneficial owner intends or is part of a group that intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of EES's outstanding shares required to approve or adopt the proposal.

- The chair of the meeting, acting in good faith, shall reasonably determine, based on the facts, whether the business was properly brought before the meeting. If the proposed business is not in compliance the chair shall declare that such business shall not be transacted.

The Oklahoma Bylaws do not provide for submission of shareholder proposals for consideration at special meetings.

Director Nominations

At an annual meeting, a shareholder entitled to vote may nominate a person for election of the board by delivering timely notice to the corporate secretary. The shareholder's notice shall set forth for each

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corporation's books, (iii) the class and number of shares of stock of which the proposing shareholder is the beneficial owner, and (iv) any material relationship between the proposing shareholder, any affiliate of the proposing shareholder, and the nominee. The nomination made by the proposing shareholder can only be made in a meeting of the shareholders called for the election of directors at which the proposing shareholder is present in person or by proxy and by a proposing shareholder who has complied with the notice provisions of the Colorado Bylaws.

For all other matters, a proposing shareholder's advance notice must set forth as to each matter the proposing shareholder proposes to bring before the annual meeting: (i) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting business at the annual meeting, and any material interest of the proposing shareholder in the business, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (iii) a reasonably detailed description of all agreements, arrangements and understandings (A) between or among any of the proposing shareholders or their affiliates, or (B) between or among any proposing shareholders or affiliates and any other person or entity (including their names) in connection with the proposal of such business by the proposing shareholder.

All business at the annual meeting shall be conducted according to the procedures set forth in the Colorado Bylaws. The Chairman of the annual meeting determines whether a nomination or business is properly

Oklahoma	Colorado
nominee such shareholder proposes to nominate at the meeting: • (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class and number of shares of each class of capital stock which are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, and (5) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved) (including such person's written consent to being named as a nominee and to serving as a director if elected); and • (B) the information required by Section 2.2(b)(iv). The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such proposed nominee a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting including the text of any resolutions proposed for consideration and, if such business includes a proposal to amend the Oklahoma Bylaws, the language of the proposed amendment;	brought before the meeting. If he or she determines that a nomination or other business is not proper, he or she shall so declare to the meeting and the defective nomination or improper business shall be disregarded. Shareholders of record holding less than 50% of the voting stock are not permitted to propose business or make nominations at a special meeting of the shareholders.

Oklahoma	Colorado
• the name and address of the shareholder proposing such business, as they appear on EES's books, and of any beneficial owner; • (a) the class or series and number of shares of EES Energy which are, directly or indirectly, held of record or owned beneficially by each proposing shareholder, and, (b) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of EES Energy, (c) a description of any agreement, arrangement, understanding or relationship under which each proposing shareholder and beneficial holder has any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of EES Energy, (d) representation that the proposing shareholder is a holder of record of stock of EES Energy entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring the business before the meeting; and (e) a representation as to whether the shareholder or any beneficial owner intends or is part of a group that intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of EES's outstanding shares required to approve or adopt the proposal. To be timely, a shareholder must give written notice to the corporate secretary not later than the close of business on the 90th day nor earlier than the close of business on the 120th day before the anniversary date of the immediately	

Oklahoma	Colorado
preceding annual meeting of shareholders. If the annual meeting is called for a date that is more than 30 days earlier or more than 60 days after such anniversary date, notice by the shareholder must be so received (i) no earlier than the close of business on the 120th day before the meeting and (ii) not later than the close of business on the 90th day before the meeting, or the 10th day following the day on which public announcement of the date of such meeting is first made by EES Energy. The Oklahoma Bylaws provide that business may be brought before an annual meeting (i) by or at the direction of the board of directors or (ii) by any shareholder of EES Energy who was a shareholder of record at the time of giving notice provided for in the Oklahoma Bylaws and at the time of the annual meeting, who is entitled to vote at such meeting and who complies with the procedures set forth in the Oklahoma Bylaws. To be timely, a shareholder must give written notice to the corporate secretary not later than the close of business on the 90th day nor earlier than the close of business on the 120th day before the anniversary date of the immediately preceding annual meeting of shareholders. If the annual meeting is called for a date that is more than 30 days earlier or more than 60 days after such anniversary date, notice by the shareholder must be so received (i) no earlier than the close of business on the 120th day before the meeting and (ii) not later than the close of business on the 90th day before the meeting, or the 10th day following the day on which public announcement of the date of such meeting is first made by EES Energy.	

Oklahoma	Colorado
The shareholder's notice shall set forth, as to the shareholder giving the notice and each	

Amendment of Governing Documents

Oklahoma	Colorado
Certificate of Incorporation Under the OGCA, a corporation's charter is amended when authorized by the board and approved by a majority vote of the shareholders. The approval of a majority of the outstanding shares of each class is entitled to a class vote if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class or alter or change the powers, preference, or special rights of the shares of such class so as to affect them adversely, provided that if the amendment would alter or change the powers, preferences or special rights of one or more series of a class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected shall be considered a separate class for purposes of the vote. The Oklahoma Charter does not change the merger procedures set by the OGCA. *Bylaws* The Oklahoma Bylaws may be amended or repealed either by the board or by shareholders having a majority of the outstanding voting stock.	*Certificate of Incorporation* The Colorado Articles may be amended by a majority of the board and shareholders having a majority of the outstanding voting stock. The amendment must be approved by a majority of the outstanding shares of each class, whether or not entitled to vote by the provisions of the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of the class, increase or decrease the par value of the shares of the class, or alter or change the powers, preferences or special rights of the shares of the class so as to affect them adversely. *Bylaws* The Colorado Bylaws may be amended or repealed either by the board or by shareholders having a majority of the outstanding voting stock.

Transactions with Directors and Other Interested Parties

Oklahoma	Colorado
Under the OGCA, no contract or transaction between a corporation and its directors or officers, or a company in which they have an interest, is void or voidable solely because the director or	Under the CBCA, a conflicting interest transactions is not void or voidable and does not give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in

Oklahoma	Colorado
officer participates in the meeting of the board that authorizes the contact or transaction, or solely because the person's votes are counted for such purpose, if: (i) the material facts as to the director's relationship or interest are disclosed or are known to the board, and the board in good faith authorizes, approves, or ratifies the conflicting interest transaction by a majority of the disinterested directors (even though less than a quorum); (ii) the material facts as to the director's relationship or interest are disclosed or are known to the shareholders, and the contract or transaction is specifically approved in good faith by a vote of the shareholders, or (iii) the conflicting interest transaction is fair to EES Energy. The Oklahoma Charter and Bylaws do not address transactions between EES Energy and its directors and officers.	the right of the corporation, solely because it is a conflicting interest transaction or because the director participates in the meeting of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction or because the director's vote is counted for that purpose if: (i) the material facts as to the director's relationship or interest are disclosed or are known to the board, and the board in good faith authorizes, approves, or ratifies the conflicting interest transaction by a majority of the disinterested directors; (ii) the material facts as to the director's relationship or interest are disclosed or are known to the shareholders, and the disinterested shareholders by majority vote specifically authorize, approve, or ratify the taking, or (iii) the conflicting interest transaction is fair to the corporation. The Colorado Articles have a similar provision.

Forum Selection

The Oklahoma Bylaws provide that, unless EES Energy consents in writing to the selection of an alternative forum, the state courts of Oklahoma (or, if no such state court has jurisdiction, the United States District Court for the Western District of Oklahoma) will be the sole and exclusive forum for (i) any derivative action or proceeding brought on EES's behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former directors, officers, other employees or shareholders to EES Energy or to the shareholders, (iii) any action asserting a claim arising under any provision of the OGCA, the Oklahoma Charter or the Oklahoma	The Colorado Bylaws provide that, unless EES consents in writing to the selection of an alternative forum, the state courts of the Eighteenth Judicial District of the State of Colorado sitting in Arapahoe County, Colorado (or, if no such state court has jurisdiction, the United States District Court for the Western District of Colorado) will be the sole and exclusive forum for (i) any derivative action or proceeding brought on EES's behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former directors, officers or other employees of EES or to the shareholders, (iii) any action asserting

Oklahoma	Colorado
Bylaws, or (iv) any action asserting a claim related to or involving EES Energy that is governed by the internal affairs doctrine. Unless EES Energy consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Federal Securities Act.	a claim arising under any provision of the CBCA, or (iv) any action asserting a claim related to or involving EES that is governed by the internal affairs doctrine.

Federal Income Tax Consequences of the Reincorporation

The Reincorporation provided for in the Merger Agreement is intended to be a tax free reorganization under the Internal Revenue Code of 1986, as amended. Assuming the Reincorporation qualifies as a reorganization, no gain or loss will be recognized to the holders of capital stock of EES in the consummation of the Reincorporation, and no gain or loss will be recognized by EES or EES Energy Services. Each former holder of capital stock of EES will have the same basis in the capital stock of EES Energy Services received by such holder under the Reincorporation as such holder has in the capital stock of EES held by such holder at the time of consummation of the Reincorporation. Each shareholder's holding period with respect to EES Energy Services's capital stock will include the period during which such holder held the corresponding Company capital stock, provided the latter was held by such holder as a capital asset at the time of consummation of the Reincorporation. EES has not obtained a ruling from the Internal Revenue Service or an opinion of legal or tax counsel with respect to the consequences of the Reincorporation.

The foregoing is only a summary of certain Federal income tax consequences. Shareholders should consult their own tax advisers regarding the specific tax consequences to them of the merger, including the applicability of the laws of any state or other jurisdiction.

Board Recommendation

The foregoing discussion is an attempt to summarize the more important differences in the corporate laws of Oklahoma and Colorado and does not purport to be an exhaustive discussion of all of the differences. Such differences can be determined in full by reference to the CBCA and to the OGCA. In addition, both the CBCA and the OGCA provide that some of the statutory provisions as they affect various rights of holders of shares may be modified by provisions in the charter or bylaws of EES Energy.

A vote FOR the Reincorporation proposal will constitute approval of the merger, the Oklahoma Charter, the Oklahoma Bylaws, the assumption by EES Energy of EES's liabilities and obligations and all other aspects of this proposal.

The Board of Directors Recommends a Vote in Favor of Reincorporation.

Appraisal Rights

The shareholders are entitled to appraisal rights in the Reincorporation. The following disclosures summarize the appraisal rights and the statutory procedures required to be followed to perfect such rights. A copy of Article 113 of the CBCA, which is the provision governing appraisal rights under the CBCA, is attached to this proxy statement as Appendix D. The following summary is qualified in its entirety by reference to Article 113 of the CBCA, and such Article should be reviewed carefully by the shareholders. Failure to comply strictly with all conditions for asserting rights as a shareholder asserting appraisal rights, including the time limits, will result in loss of such appraisal rights by the shareholder asserting appraisal rights.

A record shareholder may assert appraisal rights as to fewer than all of the shares of common stock registered in such record holder's name only if the record holder seeks appraisal and does not vote in favor of the Reincorporation proposal with respect to all shares of common stock beneficially owned by any one person and causes us to receive written notice seeking appraisal and the name, address and federal taxpayer identification number, if any, of each beneficial holder on whose behalf the record holder asserts appraisal rights.

A beneficial shareholders may assert appraisal rights as to the shares held on such beneficial shareholder's behalf only if the beneficial holder causes us to receive the record holder's written consent to the appraisal not later than the time the beneficial holder asserts appraisal rights and the beneficial holder dissents and causes the record holder to refrain from voting in favor of the Reincorporation proposal with respect to all shares of common stock owned by the beneficial holder.

If the shareholder desires to seek appraisal, it must send to us, before the vote on the Reincorporation is taken, written notice of its intention to demand payment for its shares of common stock if the Reincorporation is effectuated. Neither a vote against the Reincorporation proposal nor any proxy directing such vote, nor abstention from voting on the Reincorporation proposal will satisfy the requirement for a written notice to us. All such notices should be mailed to Energy and Environmental Services, Inc., 2601 NW Expressway, Suite 605W, Oklahoma City, Oklahoma 73112, Attention: Corporate Secretary.

If the Reincorporation is authorized at the meeting, then, within ten days thereafter, we will provide to the shareholders, if still entitled to demand payment, a written notice containing all information required by Colorado law. The holder entitled to demand payment must, in accordance with the provisions of Article 113 of the CBCA, demand payment and deposit share certificates representing such holder's shares of common stock.

We will pay to a shareholder, if eligible, and if it has validly exercised its appraisal rights under Article 113 of the CBCA, the amount we estimate is the fair value of the holder's shares plus interest at the rate provided in Article 113 of the CBCA from the effective date of the Reincorporation until the payment date. We also will provide the information required by Article 113 of the CBCA to the owner of common stock entitled to receive payment.

If the holder of shares of common stock has validly exercised appraisal rights under Article 113 of the CBCA and believes that the amount offered or paid is less than the fair value of such holder's shares or that the interest was incorrectly calculated, the holder may notify us of such holder's estimate of the fair market value of such holder's shares and the amount of interest due and demand payment of such estimate, less any payment previously made by us. If the holder does not notify us within 30 days after receiving payment, the holder waives the right to demand appraisal and is entitled only to the payment made.

If a holder's demand for payment remains unresolved, then we may, within 60 days of receipt thereof, commence a proceeding and petition the court to determine the fair value of all holder whose payment demands are unresolved. If we do not timely make such a request, we must pay the holder the amount set forth in such holder's demand for payment.

Because the exercise of appraisal rights can adversely affect our capitalization, the Board of Directors of EES Energy may terminate the Merger Agreement and abandon the Merger, even if a majority of shares are voted in favor of the Reincorporation, if the Board determines that the exercise of appraisal would impair our financial condition.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Related Person Transactions

We own 50% of Vortex Oilfield Products, LLC ("*Vortex*"), which was formed in 2017 to market and distribute pump barrels coated with our anti-corrosive Enduro-Bond® coating. The other 50% owner is Daxon Investments, LLC ("*Daxon*"), which is 50% owned and managed by our director, Mark Day. Mr. Day and Leon Joyce are the managers of Vortex. Under the arrangement, Vortex buys the pump barrels and has contracted with us for an exclusive ten-year term to coat the pump barrels at our standard pricing. In 2022 and 2023, Vortex paid us $21,562 and $20,580, respectively, for coating pump barrels. Once coated, Vortex distributes the pump barrels through direct sales and sales representatives. Vortex has contracted with Opeco, Inc., which is also partially owned and managed by Mr. Day. Under the distribution agreement, Opeco purchases the coated pump barrels from Vortex at a discount and distributes them within the states of Oklahoma, Arkansas, Kansas, Alabama, Mississippi, McCook County, Nebraska, certain counties in northern Louisiana, and certain counties in northern and eastern Texas and the Texas panhandle. In 2022, Vortex sold $129,529 in pump barrels to Opeco and $105,214 in pump barrels in 2023.

We have a separate distribution agreement with Opeco for the sale of our coating products. The agreement covers the same territory as the Vortex distribution agreement described above. Opeco receives a 10% sales commission on coating sales within the territory and may buy coating products from us at a 20% discount for resale. In 2022 and 2023, we paid Opeco $8,830 and $8,996, respectively, for sales under the distribution agreement. Opeco purchased $51,114 of coatings products from us in 2022, and $48,342.

We believe that these arrangements are appropriate, and the payments are reasonable and equal to or less than amounts that would be payable to an unaffiliated third party for comparable service.

Related Person Transactions Policy and Procedures

We have a corporate policy for the identification, review, consideration and approval or ratification of "related person transactions". For purposes of our policy only, a "related-person transaction" is a transaction, arrangement or relationship (or any series of similar transactions, arrangements or relationships) in which we and any "related person" are participants involving an amount that exceeds $10,000. Transactions involving compensation for services provided to us as an employee, director, consultant or similar capacity by a related person are not covered by this policy. A related person is any executive officer, director, or more than 5% shareholder, including any of their immediate family members, and any entity owned or controlled by those persons. The Board has adopted a written policy covering related party transactions.

OTHER INFORMATION ABOUT THE ANNUAL MEETING

Other Matters Coming Before the Meeting

As of the date of this Proxy Statement, we know of no business to come before the Annual Meeting other than that referred to above. Our rules of conduct for the Annual Meeting prohibit the introduction of substantive matters not previously presented to the Shareholders in a proxy statement. As to other business, such as procedural matters that may come before the meeting, the person or persons holding proxies will vote those proxies in the manner they believe to be in the best interests of us and our Shareholders.

Shareholder Proposals for the Next Annual Meeting

Any shareholder proposal intended for inclusion in our Proxy Statement for the 2025 Annual Meeting must be received at our offices, at 2601 NW Expressway, Suite 605W, Oklahoma City, Oklahoma 73112, no later than March 1, 2025. Any shareholder proposals received after this date will be considered untimely.

Shareholders who intend to present a proposal at the 2025 Annual Meeting without including the proposal in our Proxy Statement, or who propose to nominate a person for election as a director at the 2025 Annual Meeting, are required to provide notice of the proposal or nomination, containing the information required by our Bylaws, to us no more than 120 days or less than 90 days before the one-year anniversary of the 2024 Annual Meeting.

Additional Information

We bear the cost of soliciting proxies. Our officers and regular employees may solicit proxies by further mailings, personal conversations, or by telephone, facsimile or other electronic transmission. They will do so without compensation other than their regular compensation.

Our Annual Report and past newsletters are available without charge to any Shareholder, upon request, by calling 800-635-7716 or writing to Mr. Troy Todd, Secretary, Energy and Environmental Services, Inc., 2601 NW Expressway, Suite 605W, Oklahoma City, Oklahoma 73112.

By Order of the Board of DireSctors

/s/ Troy Todd

Troy Todd
Secretary

April 24, 2024

Appendix A
Form of Agreement and Plan of Merger

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (the "*Merger Agreement*") dated as of May [●], 2024, by and between Energy and Environmental Services, Inc., a Colorado corporation ("*EES*"), and EES Energy Services, Inc., an Oklahoma corporation ("*EES Energy Services*"), sometimes referred to as the "*Surviving Corporation*"; EES and EES Energy Services being sometimes collectively referred to as the "Constituent Corporations".

Recitals

A. EES Energy Services is a corporation organized and existing under the laws of the State of Oklahoma and having an authorized capitalization of (i) 100,000,000 shares of Common Stock, having a par value of $.00001 per share, of which 500 shares are currently issued and outstanding, and (ii) 20,000,000 shares of Preferred Stock, having a par value of $.00001 per share, of which no shares are currently issued and outstanding. All outstanding shares of EES Energy Services Common Stock have been duly authorized and validly issued, and are fully paid and non-assessable. All outstanding shares are held of record and beneficially by EES; and

B. EES is a corporation organized and existing under and by virtue of the laws of the State of Colorado and having an authorized capitalization of (i) 100,000,000 shares of Common Stock, having a par value of $.00001 per share, of which 53,829,393 shares are currently issued and outstanding, and (ii) 20,000,000 shares of Preferred Stock, having a par value of $.00001 per share, of which no shares are currently issued and outstanding. All outstanding shares of EES Common Stock have been duly authorized and validly issued, and are fully paid and non-assessable; and

C. The respective Boards of Directors of each of the Constituent Corporations deem it advisable and in the best interest of each such corporation and their respective Shareholders that EES be merged with and into EES Energy Services in the manner contemplated herein and have adopted resolutions approving this Merger Agreement and have recommended that the merger of EES with and into EES Energy Services (the "*Merger*") be approved and that this Merger Agreement be approved and adopted by the Shareholders of the Constituent Corporations.

For the purpose of stating the terms and conditions of the Merger, the parties agree as follows:

Terms and Conditions

Article I

The Constituent Corporations shall be merged into a single corporation by EES merging into and with EES Energy Services, the Surviving Corporation, which shall survive the Merger, under the provisions of the Oklahoma General Corporation Act and the Colorado Business Corporation Act. Upon such Merger, the separate existence of EES shall cease, and the Surviving Corporation shall become the owner, without transfer, of all rights and property of the Constituent Corporations, and shall be subject to all the liabilities of the Constituent Corporations in the same manner as if the Surviving

Corporation had itself incurred them, all as provided by the Oklahoma General Corporation Act.

Article II

2.1. On the Effective Date of the Merger, which shall be 5:00 p.m., CT, on the date the Certificate of Merger is filed with the Oklahoma Secretary of State (the "*Effective Date of the Merger*"):

(a) the Certificate of Incorporation of EES Energy Services, as currently in effect, shall be the Certificate of Incorporation of the Surviving Corporation;

(b) the Bylaws of EES Energy Services, as in effect on the Effective Date of the Merger, shall become the bylaws of the Surviving Corporation; and

(c) the directors and officers of EES shall become the directors and officers of EES Energy Services until their successors are duly elected and qualified.

Article III

3.1. On the Effective Date of the Merger, each share of EES Common Stock issued and outstanding immediately before the Effective Date of the Merger (the "*Pre-Merger Shares*"), by virtue of the Merger and without any action on the part of the holder thereof, shall be converted into one share of EES Energy Services Common Stock (the "*Post-Merger Shares*"), subject to the treatment of fractional share interests as described below.

3.2. Each holder of a certificate or certificates, which immediately before the Effective Date, represented outstanding Pre-Merger Shares (the "*Pre-Merger Certificates*," whether one or more), shall be entitled to receive, upon surrender of such Pre-Merger Certificates to EQ Shareowner Services, EES's exchange agent (the "*Exchange Agent*") for cancellation, a certificate or certificates representing the number of whole Post-Merger Shares into which and for which the Pre-Merger Shares, formerly represented by such Pre-Merger Certificates so surrendered, are converted under the terms hereof (the "*Post-Merger Certificates*", whether one or more).

3.3. If any Post-Merger Certificate is to be issued in a name other than that in which the Pre-Merger Certificates surrendered for exchange are issued, the Pre-Merger Certificates so surrendered shall be properly endorsed and otherwise in proper form for transfer, and the person or persons requesting such exchange shall affix any requisite stock transfer tax stamps to the Pre-Merger Certificates surrendered, or provide funds for their purchase, or establish to the satisfaction of the Exchange Agent that such taxes are not payable.

3.4. Before or after the vote by the shareholders to approve this Merger Agreement, the Board of Directors of EES shall have the authority to determine, in its sole discretion, that it is in the best interest of EES to abandon the Merger and terminate this Merger Agreement or to amend the Merger Agreement; provided, that any amendment that would effect a material change from the charter provisions discussed in this Proxy Statement would require further approval by the holders of at least a majority of the outstanding voting shares.

3.5. Each outstanding share of EES Energy Services held by EES shall be cancelled and no payment shall be made in respect thereof.

Article IV

This Merger Agreement shall be submitted to the Shareholders of the Constituent Corporations for approval in the manner provided by applicable Oklahoma and Colorado law. After approval by the vote of the holders representing not less than a majority of the issued and outstanding shares of the respective Constituent Corporations entitled to vote on the Merger, a Certificate of Merger containing this Merger Agreement shall be filed in the Office of the Secretary of State of the States of Oklahoma and Colorado.

Article V

For the convenience of the parties hereto and to facilitate the filing and recording of this Merger Agreement, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Merger Agreement to be executed by its respective duly authorized officers as of the day and year first written above.

ENERGY AND ENVIRONMENTAL SERVICES, INC., a Colorado corporation

By: _____

President

ATTEST:

_____

Secretary

EES ENERGY SERVICES, INC., an Oklahoma corporation

By: _____

President

ATTEST:

_____

Secretary

Appendix B
Form of Surviving Corporation's
Certificate of Incorporation

Certificate of Incorporation
of
EES ENERGY SERVICES, INC

This Certificate of Incorporation dated May 14, 2024, has been duly executed and is filed as an agreement with the Secretary of State of the State of Oklahoma for the formation and maintenance of a corporation under the Oklahoma General Corporation Act (the "*Act*").

Section 1. *Name*. The name of the corporation (the "*Corporation*") is:

EES Energy Services, Inc.

Section 2. *Registered Office and Agent*. The address of the registered office of the Corporation in the State of Oklahoma is Derrick & Briggs, LLP, BancFirst Tower, Suite 2700, 100 N. Broadway Ave., Oklahoma City, Oklahoma County, Oklahoma 73102. The name of its registered agent at such address is Gary W. Derrick.

Section 3. *Purposes*. The purposes of the Corporation are To engage in, promote, conduct, and carry on any lawful acts or activities for which corporations may be organized under the Act.

Section 4. *Authorized Capital Stock.*

4.1. *Authorized Shares*. The Corporation shall have authority to issue up to 120,000,000 shares, of which 100,000,000 shares, having a par value of $.00001 per share, shall be a class designated as "*Common Stock*", and 20,000,000 shares, having a par value of $.00001 per share, shall be a class designated as "*Preferred Stock*". The holders of a majority of the stock entitled to vote may increase or decrease the number of authorized shares of Preferred Stock without a separate vote of holders of Preferred Stock as a class.

4.2. *Preferred Stock*. The Corporation may issue Preferred Stock from time to time in one or more series, without further shareholder approval. The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon each series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. The rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including provisions with respect to dividends, liquidation and acquisition preferences, redemption, conversion, approval of matters by vote or combination of the foregoing), or senior to the rights, preferences, privileges or restrictions of any present or future class or series of Preferred Stock or Common Stock. The Board is also authorized to increase or decrease the number of shares of any series before or after the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series is decreased, the shares constituting such decrease shall resume the status that they had before the adoption of the resolution originally fixing the number of shares of such series.

4.3. *Common Stock*. The Corporation may issue Common Stock from time to time in one or more series, without further shareholder approval. The Board is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon each series of Common Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. The rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including provisions with respect to dividends, liquidation and acquisition preferences, redemption, conversion, approval of matters by vote or combination of the foregoing), or senior to any of those of any present or future class or series of Common Stock; provided that at least one series of Common Stock shall entitle its holders to one vote for each share held on all matters voted upon by the shareholders and shall not be subject to redemption. The Board is also authorized to increase or decrease the number of shares of any series before or after the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series is decreased, the shares constituting such decrease shall resume the status that they had before the adoption of the resolution originally fixing the number of shares of such series.

Unless otherwise designated by the Board, the Common Stock shall have no preferences as to dividends or liquidation, shall not be subject to redemption, and shall entitle its holders to one vote for each share held on all matters voted upon by the shareholders.

Section 5. *Incorporator*. The name and mailing address of the sole incorporator are Gary W. Derrick, Derrick & Briggs, LLP, BancFirst Tower, Suite 2700, 100 N. Broadway Avenue, Oklahoma City, Oklahoma 73102.

Section 6. *Board of Directors; Management of the Corporation*.

6.1. *Management of Business*. The following provisions are included for the management of the business and for the conduct of the affairs of the Corporation and for the purpose of creating, defining, limiting and regulating the powers of the Corporation and its directors and shareholders:

(a) The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors that shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Certificate of Incorporation.

(b) The election of directors may be conducted in any manner approved by the Board at the time when the election is held and need not be by written ballot.

(c) Advance notice of nominations for the election of directors will be given in the manner and to the extent provided in the Bylaws of the Corporation.

(d) All corporate powers and authority of the Corporation (except as at the time otherwise provided by law, by this Certificate of Incorporation or by the Bylaws) shall be vested in and exercised by the Board.

(e) The Board shall have the power without the assent or vote of the shareholders to adopt, amend or repeal the Bylaws of the Corporation. The shareholders shall also have the power to adopt, amend or repeal the Bylaws.

6.2. *Director Discretion*. In determining what he or she reasonably believes to be in the best interests of the Corporation in the performance of his or her duties as a director, a director may consider, to the extent permitted by law, both in the consideration of tender and exchange offers, mergers, consolidations and sales of all or substantially all of the Corporation's assets and otherwise, such factors as the Board of Directors determines to be relevant, including without limitation:

(a) The long-term and short-term interests of the Corporation and its shareholders, including the possibility that the interests may be best served by the continued independence of the Corporation;

(b) Whether the proposed transaction might violate state or federal laws;

(c) If applicable, not only the consideration being offered in a proposed transaction, in relation to the then current market price for the outstanding 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 and future prospects; and

(d) The interests of the Corporation's employees, suppliers, creditors and customers, the economy of the state, region and nation, and community and societal considerations.

In connection with any such evaluation, the Board is authorized to conduct such investigations and to engage in such legal proceedings as the Board may determine.

6.3. *Director Exculpation*.

(a) The liability of the directors for monetary damages shall be eliminated to the fullest extent permitted under applicable law.

(b) To the fullest extent permitted under applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and agents of the Corporation (and any other persons to which applicable law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, a vote of the shareholders or disinterested directors or authorizations.

Section 7. *No Action by Written Consent*. Any action required or permitted to be taken at any annual or special meeting of shareholders may be taken only upon the vote of shareholders at an annual or special meeting duly noticed and called in accordance with the Act, this Certificate of Incorporation and the Bylaws and may not be taken by the written consent of shareholders without a meeting.

Section 8. *Election Out of Certain Statutes*. The Corporation elects not to be governed by the provisions of Section 1090.3 of the Act (Business Combination with Interested Shareholders) or Sections 1145 through 1155 of Title 18 of the Oklahoma Statutes (the Control Share Acquisition Act), or any successor provisions.

Section 9. *Reservation of Right to Amend*. The Corporation reserves the right to amend, alter, change, or repeal any provisions of this Certificate of Incorporation, in the

manner now or later prescribed by statute. All rights, powers, privileges, and discretionary authority granted or conferred upon shareholders or directors are granted subject to this reservation.

Executed the date first above written.

By:_____
Gary W. Derrick, Incorporator

Appendix C
Form of Surviving Corporation's Bylaws

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BYLAWS

of

EES ENERGY SERVICES, INC.

Dated as of May 14, 2024

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CONTENTS

BYLAWS

of

EES ENERGY SERVICES, INC.

(an Oklahoma corporation)

Article 1
OFFICES

1.1 *Registered Office*. The registered office in the State of Oklahoma is in the City of Oklahoma City, County of Oklahoma.

1.2 *Other Offices.* The Corporation will also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Oklahoma, as the Board of Directors may determine or the business may require.

Article 2
SHAREHOLDERS' MEETINGS

2.1 *Place of Meetings.* Meetings of the shareholders may be held at such place, either within or without the State of Oklahoma, as may be determined by the Board of Directors. The Board may, in its sole discretion, determine that the meeting will not be held at any place, but may instead be held solely by means of electronic transmission as provided under the Oklahoma General Corporation Law ("*OGCA*").

2.2 *Annual Meeting*.

(a) The annual meeting of the shareholders, for the purpose of election of directors and for such other business as may properly come before it, will be held on such date and at such time as may be designated by the Board. Nominations of persons for election to the Board and the proposal of business to be considered by the shareholders may be made at an annual meeting of shareholders: (i) under the Corporation's notice of meeting of shareholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board; or (iii) by any shareholder who was a shareholder of record at the time of giving the shareholder's notice provided for in Section 2.2(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 2.2. For the avoidance of doubt, clause (iii) above will be the exclusive means for a shareholder to make nominations and submit other business before an annual meeting of shareholders.

(b) At an annual meeting of the shareholders, only such business will be conducted as is a proper matter for shareholder action under Oklahoma law and as will have been properly brought before the meeting in accordance with the procedures below.

(i) For nominations for the election to the Board to be properly brought before an annual meeting by a shareholder under clause (iii) of Section 2.2(a), the shareholder must be entitled to vote at the meeting and deliver written notice to the Secretary at the principal

executive offices on a timely basis as set forth in Section 2.2(b)(iii) and must update and supplement such written notice on a timely basis as set forth in Section 2.2(c). Such shareholder's notice will set forth: (A) as to each nominee such shareholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class and number of shares of each class of capital stock which are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition and (5) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved) (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 2.2(b)(iv). The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such proposed nominee.

(ii) For business other than nominations for the election to the Board to be properly brought before an annual meeting by a shareholder under clause (iii) of Section 2.2(a), the shareholder must deliver written notice to the Secretary at the principal executive offices on a timely basis as set forth in Section 2.2(b)(iii), and must update and supplement such written notice on a timely basis as set forth in Section 2.2(c). Such shareholder's notice will set forth: (A) as to each matter such shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 2.2(b)(iv).

(iii) To be timely, the written notice required by Section 2.2(b)(i) or 2.2(b)(ii) must be received by the Secretary at the principal executive offices not later than the close of business on the 90th day nor earlier than the close of business on the 120th day before the first anniversary of the preceding year's annual meeting; provided, however, that, subject to the last sentence of this Section 2.2(b)(iii), if the date of the annual meeting is advanced more than 30 days before or delayed by more than 30 days after the anniversary of the preceding year's annual meeting, notice by the shareholder to be timely must be so received no earlier than the close of business on the 120th day before such annual meeting and not later than the close of business on the later of the 90th day before such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made. In no event will an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement has been made, commence a new time period for the giving of a shareholder's notice as described above.

(iv) The written notice required by Section 2.2(b)(i) or 2.2(b)(ii) will also set forth, as of the date of the notice and as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "*Proponent* " and collectively, the "*Proponents* "): (A) the name and address of each Proponent, as they appear

on the Corporation's books; (B) the class, series and number of shares that are owned beneficially and of record by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 2.2(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 2.2(b)(ii)); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of holders' voting shares to elect such nominee or nominees (with respect to a notice under Section 2.2(b)(i)) or to carry such proposal (with respect to a notice under Section 2.2(b)(ii)); (F) to the extent known by any Proponent, the name and address of any other shareholder supporting the proposal on the date of such shareholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous 12 month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

(c) A shareholder providing written notice required by Section 2.2(b)(i) or 2.2(b)(ii) will update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five business days before the meeting and, upon any adjournment or postponement, five business days before such adjourned or postponed meeting. In the case of an update and supplement under clause (i) of this Section 2.2(c), such update and supplement will be received by the Secretary at the principal executive offices not later than five business days after the record date for the meeting. In the case of an update and supplement under clause (ii) of this Section 2.2(c), such update and supplement will be received by the Secretary at the principal executive offices not later than two business days before the date for the meeting, and, upon any adjournment or postponement, two business days before such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 2.2(b)(iii) to the contrary, if the number of directors of the Board is increased and there is no public announcement of the appointment of a director, or, if no appointment was made, of the vacancy, made by the Corporation at least ten days before the last day a shareholder may deliver a notice of nomination in accordance with Section 2.2(b)(iii), a shareholder's notice required by this Section 2.2 and which complies with the requirements in Section 2.2(b)(i), other than the timing requirements in Section 2.2(b)(iii), will also be considered timely, but only with respect to nominees for any new positions created by such increase, if it will be received by the Secretary at the principal executive offices not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(e) A person will not be eligible for election or re-election as a director unless the person is nominated either in accordance with clause (ii) of Section 2.2(a), or in accordance with clause (iii) of Section 2.2(a). Except as otherwise required by law, the chairperson of the meeting will have the power and duty to determine whether a nomination or any business proposed to

be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 2.2(b)(iv)(D) and 2.2(b)(iv)(E), to declare that such proposal or nomination will not be presented for shareholder action at the meeting and will be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

(f) For purposes of this Section 2.2,

(i) "*affiliates*" and "*associates*" have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended;

(ii) "*Derivative Transaction*" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial: (A) the value of which is derived in whole or in part from the value of any class or series of shares or other securities, (B) which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities, (C) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes, or (D) which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities, which agreement, arrangement, interest or understanding may include any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member; and

(iii) "*public announcement*" means disclosure in a press release reported by PR Newswire or comparable news service or in a document publicly filed by the Corporation with the OTC Markets Group.

2.3 *Special Meetings*.

(a) Special meetings of the shareholders may be called, for any purpose as is a proper matter for shareholder action under Oklahoma law, by (A) the Chairperson of the Board, (B) the Chief Executive Officer, or (C) the Board under a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption).

(b) For a special meeting called under Section 2.3(a)(A), the Board will determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary will cause a notice of meeting to be given to the shareholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Nominations of persons for election to the Board may be made at a special meeting of shareholders at which directors are to be elected only by or at the direction of the Board. No business may be transacted at a special meeting otherwise than as specified in the notice of meeting.

2.4 *Notice of Meetings.* Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of shareholders will be given not less than ten nor more than 60 days before the date of the meeting to each shareholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of electronic transmissions, if any, by which shareholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the shareholder at such shareholder's address as it appears on the records. Notice of the time, place, if any, and purpose of any meeting of shareholders may be waived in writing, signed by the person entitled to notice or by electronic transmission by such person, either before or after such meeting, and will be waived by any shareholder by his or her attendance thereat in person, by electronic transmission, if applicable, or by proxy, except when the shareholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any shareholder so waiving notice of such meeting will be bound by the proceedings of any such meeting in all respects as if due notice had been given.

2.5 *Participation by Electronic Communications*. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of electronic transmission: (a) participate in a meeting of shareholders and (b) be deemed present in person and vote at a meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of electronic transmission, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of electronic transmission is a shareholder or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings and (iii) if any shareholder or proxyholder votes or takes other action at the meeting by means of electronic transmission, a record of such vote or other action shall be maintained by the Corporation.

2.6 *Quorum.* At all meetings of shareholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by electronic transmission, if applicable, or by proxy duly authorized, of the holders of one-third of the voting power of the outstanding shares of stock entitled to vote will constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of shareholders may be adjourned, from time to time, either by the chairperson of the meeting or by vote of the holders of a majority of the voting power of the shares represented thereat, but no other business will be transacted at such meeting. The shareholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the holders of a majority of the voting power of the shares present in person, by electronic transmission, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter will be the act of the shareholders. Except as otherwise provided by statute, the

Certificate of Incorporation or these Bylaws, directors will be elected by a plurality of the votes of the shares present in person, by electronic transmission, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by statute, by applicable stock exchange rules or by the Certificate of Incorporation or these Bylaws, one-third of the voting power of the outstanding shares of such class or classes or series, present in person, by electronic transmission, if applicable, or represented by proxy duly authorized, will constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute, by applicable stock exchange rules or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the holders of a majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by electronic transmission, if applicable, or represented by proxy at the meeting will be the act of such class or classes or series.

2.7 *Adjournment and Notice of Adjourned Meetings.* Any meeting of shareholders, whether annual or special, may be adjourned either by the chairperson of the meeting or by the vote of the holders of a majority of the voting power of the shares present in person, by electronic transmission, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting will be given to each shareholder of record entitled to vote at the meeting.

2.8 *Voting Rights.* For the purpose of determining those shareholders entitled to vote at any meeting of the shareholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records on the record date, as provided in Section 12 of these Bylaws, will be entitled to vote at any meeting of shareholders. Every person entitled to vote will have the right to do so either in person, by electronic transmission, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Oklahoma law. An agent so appointed need not be a shareholder. No proxy will be voted after three years from its date of creation unless the proxy provides for a longer period. All elections of directors shall be by written ballot unless otherwise provided in the Certificate of Incorporation. If authorized by the Board in its sole discretion, the ballot may be submitted by electronic transmission, provided that any such electronic transmission must either set forth, or be submitted with, information from which it can be determined that the electronic transmission was authorized by the shareholder or proxyholder

2.9 *Joint Owners of Stock.* If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting will have the following effect: (a) if only one votes, his or her act binds all; (b) if more than one votes, the act of the majority so voting binds all; (c) if more than one votes, but the vote is evenly split on any

particular matter, each faction may vote the securities in question proportionally, or may apply to the Oklahoma District Court for relief as provided in Section 1062.B of the OGCA. If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) will be a majority or even-split in interest.

2.10 *List of Shareholders.* The Secretary will prepare and make, at least ten days before every meeting of shareholders, a complete list of the shareholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list will be open to the examination of any shareholder, for any purpose germane to the meeting, (a) 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 (b) during ordinary business hours, at the principal place of business. If the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to shareholders. The list will be open to examination by any shareholder during the time of the meeting as provided by law.

2.11 *No Action by Written Consent*. Subject to the rights of the holders of any class or series of Preferred Stock then outstanding, as may be set forth in the resolution or resolutions adopted by the Board of Directors under Article 2 for such class or series of Preferred Stock, any action required or permitted to be taken at any annual or special meeting of shareholders may be taken only upon the vote of shareholders at an annual or special meeting duly noticed and called in accordance with the OGCA, this Certificate of Incorporation and the Bylaws and may not be taken by written consent of shareholders without a meeting.

2.12 *Organization*.

(a) At every meeting of shareholders, the Chairperson of the Board, or, if a Chairperson has not been appointed or is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, the President, or, if the President is absent, a chairperson of the meeting chosen by a majority in interest of the shareholders entitled to vote, present in person or by proxy, will act as chairperson. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the Chief Executive Officer or the President, will act as secretary of the meeting.

(b) The Board will be entitled to make such rules or regulations for the conduct of meetings of shareholders as it will deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board, if any, the chairperson of the meeting will have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to shareholders of record and their duly authorized and constituted proxies and such other persons as the chairperson will permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter on which the shareholders will vote at the meeting will be announced at

the meeting. Unless and to the extent determined by the Board or the chairperson of the meeting, meetings of shareholders will not be required to be held in accordance with rules of parliamentary procedure.

Article 3
DIRECTORS

3.1 *Powers.* The business and affairs will be managed by or under the direction of the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

3.2 *Election of Directors and Term of Office*. The shareholders shall elect the directors at the annual or adjourned annual meeting (except as otherwise provided for the filling of vacancies). Each director shall hold office until his or her death, resignation, retirement, removal, or disqualification, or until his or her successor shall have been elected and qualified.

3.3 *Number and Term of Office*. The number of directors that shall constitute the whole Board shall be determined by resolution adopted by a vote of a majority of the entire Board, or at an annual or special meeting of shareholders. No reduction in number shall have the effect of removing any director before the expiration of his or her term. All elections of directors shall be by written ballot unless otherwise provided in the Certificate of Incorporation. However, if authorized by the board of directors in its sole discretion, the ballot may be submitted by electronic transmission, provided that any such electronic transmission must either set forth, or be submitted with, information from which it can be determined that the electronic transmission was authorized by the shareholder or proxyholder.

3.4 *Vacancies.* Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock or as otherwise provided by applicable law, any vacancies on the Board resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors will, unless the Board determines by resolution that any such vacancies or newly created directorships will be filled by shareholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board, or by a sole remaining director, and not by the shareholders.

3.5 *Resignation.* Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, the Secretary, in his or her discretion, may either (a) require confirmation from the director before deeming the resignation effective, in which case the resignation will be deemed effective on receipt of such confirmation, or (b) deem the resignation effective at the time of delivery of the resignation to the Secretary. When one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, will have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations will become effective, and each director so chosen will hold office for the unexpired portion of the term of the director whose place will be vacated and until his or her successor will have been duly elected and qualified.

3.6 *Removal.* Subject to any limitation imposed by applicable law and the requirements set forth in the Certificate of Incorporation, any individual director or directors may be removed from office at any time with or without cause by the affirmative vote of the holders of a majority of the voting power of all then outstanding shares of capital stock entitled to vote generally at an election of directors, voting together as a single class.

3.7 *Meetings*

(a) *Regular Meetings.* Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board may be held at any time or date and at any place within or without the State of Oklahoma which has been designated by the Board and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice will be required for regular meetings of the Board.

(b) *Special Meetings.* Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board may be held at any time and place within or without the State of Oklahoma whenever called by the Chairperson of the Board, the Chief Executive Officer or a majority of the authorized number of directors.

(c) *Meetings by Electronic Communications Equipment.* Any member of the Board, or of any committee, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means will constitute presence in person at such meeting.

(d) *Notice of Special Meetings.* Notice of the time and place of all special meetings of the Board will be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least 24 hours before the date and time of the meeting. If notice is sent by U.S. mail, it will be sent by first class mail, postage prepaid at least three days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) *Waiver of Notice.* The transaction of all business at any meeting of the Board, or any committee, however called or noticed, or wherever held, will be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice will sign a written waiver of notice or will waive notice by electronic transmission. All such waivers will be filed with the corporate records or made a part of the minutes of the meeting.

3.8 *Quorum and Voting*.

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 9.1 for which a quorum will be one-third of the exact number of directors fixed from time to time, a quorum of the Board

will consist of a majority of the exact number of directors fixed by the Board in accordance with the Certificate of Incorporation; *provided, however,* at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn until the time fixed for the next regular meeting of the Board, without notice other than by announcement at the meeting.

(b) At each meeting of the Board at which a quorum is present, all questions and business will be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

3.9 *Action Without Meeting.* 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 or of any committee 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 such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing will be in paper form if the minutes are maintained in paper form and will be in electronic form if the minutes are maintained in electronic form.

3.10 *Fees and Compensation.* Directors will be entitled to such compensation for their services as may be approved by the Board, including, if so approved, by resolution of the Board, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board and at any meeting of a committee of the Board. Nothing herein contained will be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

3.11 *Committees*.

(a) *Executive Committee.* The Board may appoint an Executive Committee to consist of one or more members of the Board. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board will have and may exercise all the powers and authority of the Board in the management of the business and affairs, and may authorize the seal to be affixed to all papers which may require it; but no such committee will have the power or authority in reference to (i) approving or adopting, or recommending to the shareholders, any action or matter (other than the election or removal of directors) expressly required by the OGCA to be submitted to shareholders for approval, or (ii) adopting, amending or repealing any bylaw.

(b) *Other Committees.* The Board may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board will consist of one (1) or more members of the Board and will have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event will any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) *Term.* The Board may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member will terminate on the date of his or her death or voluntary resignation from the committee or from the Board. The Board may at any time for any reason remove any individual committee member and the Board may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. 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, and, in addition, in the absence or disqualification

of any member of a committee, the member or members 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 to act at the meeting in the place of any such absent or disqualified member.

(d) *Meetings.* Unless the Board will otherwise provide, regular meetings of the Executive Committee or any other committee appointed under this Section 25 will be held at such times and places as are determined by the Board, or by any such committee, and when notice has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined by such committee, and may be called by any director who is a member of such committee, on notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of the time and place of special meetings of the Board. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee will constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present will be the act of such committee.

3.12 *Duties of Chairperson of the Board.* The Chairperson of the Board, if appointed and when present, will preside at all meetings of the shareholders and the Board. The Chairperson of the Board will perform other duties commonly incident to the office and will also perform such other duties and have such other powers, as the Board designates.

3.13 *Organization.* At every meeting of the directors, the Chairperson of the Board, or, if a Chairperson has not been appointed or is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairperson of the meeting chosen by a majority of the directors present, will preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer, director or other person directed to do so by the person presiding over the meeting, will act as secretary of the meeting.

Article 4
OFFICERS

4.1 *Officers Designated.* The officers will include, if and when designated by the Board of Directors, the Chairperson, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Technology Officer, the Chief Financial Officer, and the Treasurer. The Board may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it deems necessary. The Board may assign such additional titles to one or more of the officers as it deems appropriate. Any one person may hold any number of offices at any one time unless specifically prohibited

therefrom by law. The salaries and other compensation of the officers will be fixed by or in the manner designated by the Board or a committee to which the Board has delegated such responsibility.

4.2 *Tenure and Duties of Officers.*

(a) *General.* All officers will hold office at the pleasure of the Board and until their successors have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board may be removed at any time by the Board. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board.

(b) *Duties of Chief Executive Officer.* The Chief Executive Officer will preside at all meetings of the shareholders and at all meetings of the Board (if a director), unless the Chairperson of the Board has been appointed and is present. Unless an officer has been appointed Chief Executive Officer, the President will be the Chief Executive Officer and will, subject to the control of the Board, have general supervision, direction and control of the business and officers. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President will be deemed references to the Chief Executive Officer. The Chief Executive Officer will perform other duties commonly incident to the office and will also perform such other duties and have such other powers, as the Board designate from time to time.

(c) *Duties of President.* The President will preside at all meetings of the shareholders and at all meetings of the Board (if a director), unless the Chairperson of the Board, or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer, the President will be the chief executive officer and will, subject to the control of the Board, have general supervision, direction and control of the business and officers. The President will perform other duties commonly incident to the office and will also perform such other duties and have such other powers, as the Board (or the Chief Executive Officer, if the Chief Executive Officer and President are not the same person and the Board has delegated the designation of the President's duties to the Chief Executive Officer) designate from time to time.

(d) *Duties of Vice Presidents.* A Vice President may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant (unless the duties of the President are being filled by the Chief Executive Officer). A Vice President will perform other duties commonly incident to their office and will also perform such other duties and have such other powers as the Board or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President designate from time to time.

(e) *Duties of Secretary.* The Secretary will attend all meetings of the shareholders and of the Board and will record all acts and proceedings in the minute book. The Secretary will give notice in conformity with these Bylaws of all meetings of the shareholders and of all meetings of the Board and any committee requiring notice. The Secretary will perform all other duties provided for in these Bylaws and other duties commonly incident to the office and will also perform such other duties and have such other powers, as the Board will designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct any Assistant Secretary or other officer to assume and perform the duties of the

Secretary in the absence or disability of the Secretary, and each Assistant Secretary will perform other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President designate from time to time.

(f) *Duties of Chief Financial Officer.* The Chief Financial Officer will keep or cause to be kept the books of account in a thorough and proper manner and will render statements of the financial affairs in such form and as often as required by the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President. The Chief Financial Officer, subject to the order of the Board, will have the custody of all funds and securities. The Chief Financial Officer will perform other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer will be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the controller or any assistant controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each controller and assistant controller will perform other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President designate from time to time.

(g) *Duties of Treasurer.* Unless another officer has been appointed Chief Financial Officer, the Treasurer will be the chief financial officer and will keep or cause to be kept the books of account in a thorough and proper manner and will render statements of the financial affairs in such form and as often as required by the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, and, subject to the order of the Board, will have the custody of all funds and securities. The Treasurer will perform other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President and Chief Financial Officer (if not Treasurer) designate from time to time.

(h) *Duties of Chief Technology Officer.* The Chief Technology Officer shall have responsibility for the general research and development activities, for supervision's research and development personnel, for new product development and product improvements, for overseeing the development and direction's intellectual property development and such other responsibilities as may be given to the Chief Technology Officer by the Board, subject to: (a) the provisions of these Bylaws; (b) the direction of the Board; and (c) the supervisory powers of the Chief Executive Officer.

4.3 *Delegation of Authority.* The Board may delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision.

4.4 *Resignations.* Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board or to the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President or to the Secretary. Any such resignation will be effective when received by the person or persons to whom such notice is given, unless a later time is

specified therein, in which event the resignation will become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation will not be necessary to make it effective. Any resignation will be without prejudice to the rights, if any, under any contract with the resigning officer.

4.5 *Removal***.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers on whom such power of removal may have been conferred by the Board.

Article 5
EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

5.1 *Execution of Corporate Instruments.* The Board may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf any corporate instrument or document, or to sign on behalf the corporate name, or to enter into contracts on behalf, except where otherwise provided by law or these Bylaws, and such execution or signature will be binding on the Corporation. All checks and drafts drawn on banks or other depositaries on funds to the credit or in special accounts will be signed by such person or persons as the Board authorize so to do. Unless authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee will have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

5.2 *Voting of Securities Owned by the Corporation.* All stock and other securities of other Corporations owned or held by the Corporation for itself, or for other parties in any capacity, will be voted, and all proxies with respect thereto will be executed, by the person authorized so to do by resolution of the Board, or, in the absence of such authorization, by the Chairperson of the Board, the Chief Executive Officer, the President, or any Vice President.

Article 6
SHARES OF STOCK

6.1 *Form and Execution of Certificates.* The shares will be represented by certificates, or will be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock, if any, will be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the Corporation represented by certificate will be entitled to have a certificate signed by or in the name by the Chairperson of the Board, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the Corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed on a certificate will have ceased to be such officer, transfer agent, or registrar before such certificate is

issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

6.2 *Lost Certificates.* A new certificate or certificates will be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed, on the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The Corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the Corporation in such manner as it will require or to give the Corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

6.3 *Transfers*.

(a) Transfers of record of shares of stock will be made only on its books by the holders, in person or by attorney duly authorized, and, in the case of stock represented by certificate, on the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The Corporation will have power to enter into and perform any agreement with any number of shareholders of any one or more classes of stock to restrict the transfer of shares of stock of any one or more classes owned by such shareholders in any manner not prohibited by the OGCA.

6.4 *Fixing Record Dates.*

(a) So that the Corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment, the Board may fix a record date, which record date will not precede the date on which the resolution fixing the record date is adopted by the Board, and which record date will, subject to applicable law, not be more than 60 nor less than ten days before the date of such meeting. If no record date is fixed by the Board, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders will be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders will apply to any adjournment of the meeting; *provided, however,* that the Board may fix a new record date for the adjourned meeting.

(b) So that the Corporation may determine the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders 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 may fix, in advance, a record date, which record date will not precede the date on which the resolution fixing the record date is adopted, and which record date will be not more than 60 days before such action. If no record date is fixed, the record date for determining shareholders for any such purpose will be at the close of business on the day on which the Board adopts the resolution relating thereto.

6.5 *Registered Shareholders.* The Corporation will 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 will 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 will have express or other notice, except as otherwise provided by the laws of Oklahoma.

Article 7
OTHER SECURITIES

7.1 *Execution of Other Securities.* All bonds, debentures and other corporate securities, other than stock certificates (covered in Section 36), may be signed by the Chairperson of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security will be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture under which such bond, debenture or other corporate security will be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, will be signed by the Treasurer or an Assistant Treasurer or such other person as may be authorized by the Board, or bear imprinted thereon the facsimile signature of such person. In case any officer who will have signed or attested any bond, debenture or other corporate security, or whose facsimile signature will appear thereon or on any such interest coupon, will have ceased to be such officer before the bond, debenture or other corporate security so signed or attested will have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the Corporation and issued and delivered as though the person who signed the same or whose facsimile signature will have been used thereon had not ceased to be such officer.

Article 8
DIVIDENDS

8.1 *Declaration of Dividends.* Dividends on the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors under law at any regular or special meeting. The Board may paid dividends in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

8.2 *Dividend Reserve.* Before payment of any dividend, the Board in its absolute discretion may set aside out of any funds available for dividends such sum as it determines as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property, or for such other purpose as the Board thinks conducive to the interests of the Corporation, and the Board may modify or abolish any such reserve in the manner in which it was created.

Article 9
INDEMNIFICATION

9.1 *Indemnification of Directors, Officers, Employees and Other Agents.*

(a) *Directors and Officers.* The Corporation will indemnify its directors and officers to the fullest extent not prohibited by the OGCA or any other applicable law; *provided, however,* that the Corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, *provided, further,* that the Corporation will not be required to indemnify any director or officer in connection with any proceeding (or part) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors, (iii) such indemnification is provided by the Board, in its sole discretion, under the powers vested in the Corporation under the OGCA or any other applicable law or (iv) such indemnification is required to be made under subsection (d) of this Section.

(b) *Employees and other Agents.* The Corporation will have the power to indemnify its employees and other agents as set forth in the OGCA or any other applicable law. The Board will have the power to delegate the determination of whether indemnification will be given to any such person as the Board determines.

(c) *Expenses.* The Corporation will advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer,, or is or was serving at the request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, before the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding provided, however, that if the OGCA requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including service to an employee benefit plan) will be made only on delivery to the Corporation of an undertaking (an "*undertaking*"), by or on behalf of such indemnitee, to repay all amounts so advanced if it will ultimately be determined by final judicial decision from which there is no further right to appeal (a "*final adjudication*") that such indemnitee is not entitled to be indemnified for such expenses under this Section 9.1 or otherwise. Notwithstanding the foregoing, unless otherwise determined under subsection (e) of this Section 9.1, no advance will be made by the Corporation to an officer (except by reason of the fact that such officer is or was a director in which event this sentence will not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests.

(d) *Enforcement.* Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Section 9.1 will be deemed to be contractual rights and be effective to the same extent and as if provided for in a

contract between the Corporation and the director or officer. Any right to indemnification or advances granted by this Section 9.1 to a director or officer will be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within 90 days of request. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, will be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the Corporation will be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the OGCA or any other applicable law for the Corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director) for advances, the Corporation will be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his or her conduct was lawful. Neither the failure (including its Board, independent legal counsel or its shareholders) to have made a determination before the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the OGCA or any other applicable law, nor an actual determination by the Corporation (including its Board, independent legal counsel or its shareholders) that the claimant has not met such applicable standard of conduct, will be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Section 9.1 or otherwise will be on the Corporation.

(e) *Non-Exclusivity of Rights.* The rights conferred on any person by this Section 9.1 will not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the OGCA or any other applicable law.

(f) *Survival of Rights.* The rights conferred on any person by this Section 9.1 will continue as to a person who has ceased to be a director, officer, employee or other agent and will inure to the benefit of the heirs, executors and administrators of such a person.

(g) *Insurance.* To the fullest extent permitted by the OGCA or any other applicable law, the Corporation, on approval by the Board, may purchase insurance on behalf of any person required or permitted to be indemnified under this Section 9.1.

(h) *Amendments.* Any repeal or modification of this Section 9.1 will only be prospective and will not affect the rights under this Section 9.1 in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent.

(i) *Saving Clause.* If this Section 9.1 or any portion will be invalidated on any ground by any court of competent jurisdiction, then the Corporation will nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Section 9.1 that will not have been invalidated, or by any other applicable law. If this Section 9.1 will be invalid due to the application of the indemnification provisions of another jurisdiction, then the Corporation will indemnify each director and executive officer to the full extent under any other applicable law.

(j) *Certain Definitions***.** For the purposes of this Section 9.1, the following definitions will apply:

(i) The term "*proceeding*" will be broadly construed and includes the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term "*expenses*" will be broadly construed and includes court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term the "*corporation*" will include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, will stand in the same position under the provisions of this Section 9.1 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a "*director*", "*executive officer*", "*officer*", "*employee*", or "*agent*" will include situations where such person is serving at the request as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to "*other enterprises*" will include employee benefit plans; references to "*fines*" will include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "*serving at the request*" will include any service as a director, officer, employee or agent which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner "not opposed to the best interests" as referred to in this section.

Article 10
NOTICES

10.1 *Notices*.

(a) *Notice to Shareholders.* Written notice to shareholders of shareholder meetings will be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to shareholders under any agreement or contract with such shareholder, and except as otherwise required by law, written notice to shareholders for purposes other than shareholder meetings may be sent by United States mail or nationally recognized overnight courier, or electronic mail or other electronic means.

(b) *Notice to Directors.* Any notice required to be given to any director may be given by the method stated in subsection (a) or as otherwise provided in these Bylaws. If such notice is not delivered personally, it will be sent to such address (including an e-mail address) as such director has filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address or e-mail address of such director.

(c) *Affidavit of Mailing.* An affidavit of mailing, executed by a duly authorized and competent employee or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the shareholder or shareholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, will in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) *Methods of Notice.* It will not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) *Notice to Person with Whom Communication is Unlawful.* Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person will not be required and there will be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which will be taken or held without notice to any such person with whom communication is unlawful will have the same force and effect as if such notice had been duly given. If the action taken by the Corporation is such as to require the filing of a certificate under any provision of the OGCA, the certificate will state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) *Notice to Shareholders Sharing an Address.* Except as otherwise prohibited under OGCA, any notice given under the provisions of OGCA, the Certificate of Incorporation or the Bylaws will be effective if given by a single written notice to shareholders who share an address if consented to by the shareholders at that address to whom such notice is given. Such consent will have been deemed to have been given if such shareholder fails to object in writing to the Corporation within 60 days of having been given notice by the Corporation of its intention to send the single notice. Any consent will be revocable by the shareholder by written notice to the Corporation.

Article 11
MISCELLANEOUS

11.1 *Electronic Transmission*. The term "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient, and that may be directly reproduced in paper form by a recipient through an automated process. It includes e-mail, other Internet-based communications and electronic transmissions.

11.2 *Corporate Seal*. The Board may provide for a suitable seal containing the name, of which the Secretary shall be in charge. The Treasurer, any Assistant Secretary, or any Assistant Treasurer may keep and use the seal or duplicates of the seal if and when the Board or a committee of the Board so directs. The absence of the corporate seal in the execution of any instrument by an authorized officer or officers shall not affect the validity of any such instrument. All documents, instruments, contracts, and writings of all kinds signed for the Corporation by any authorized officer or officers shall be as effective and binding on the Corporation without the corporate seal as if the execution had been evidenced by the corporate seal.

11.3 *Fiscal Year*. The Board shall have the authority to fix and change the fiscal year.

11.4 *Other Terms; Headings; Interpretations*. The captions of the articles and sections of these Bylaws are for convenience only and are not deemed part of the text of these Bylaws. All references to "*Articles*" and "*Sections*" contained in these Bylaws are, unless specifically indicated otherwise, references to articles, sections, subsections, and paragraphs of these Bylaws. Whenever in these Bylaws the singular number is used, the same includes the plural where appropriate (and vice versa), and words of any gender includes each other gender where appropriate. All pronouns and any variations refer to the masculine, feminine, neuter, singular or plural as required for the identification of the Person or Persons. Any day or deadline or time period that falls on a weekend or a national holiday refers to the first business day following such day. As used in these Bylaws, the following words or phrases have the meanings indicated: (a) "*or*" means "*and/or*"; (b) "*day*" means a calendar day; and (c) "*including*" or "*include*" means "*including, without limitation*". Whenever any provision of these Bylaws requires or permits the Board to take or omit to take any action, or make or omit to make any decision, unless the context clearly requires otherwise, such provision is interpreted to authorize an action taken or omitted, or a decision made or omitted, by the Board acting alone and in good faith. Whenever a provision of these Bylaws provides that the Board is authorized to take or omit to take any action, or make or omit to make any decision, in its "*sole judgment*", "*sole discretion*" or "*absolute discretion*" such authority supersedes any limiting or conflicting standard that might otherwise be applicable under these Bylaws, the Act or otherwise.

Article 12
AMENDMENTS

12.1 *Amendments*. Subject to the limitations set forth in Section 9.1(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board is expressly empowered to adopt, amend or repeal the Bylaws. Any adoption, amendment or repeal of the Bylaws by the Board of Directors will require the approval of a majority of the authorized number of directors. The shareholders also will have power to adopt, amend or repeal the Bylaws; provided, however, that, in addition to any vote of the holders of any class or series of stock required by law or by

the Certificate of Incorporation, such action by shareholders will require the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of the capital stock entitled to vote generally in the election of directors, voting together as a single class.

Appendix D
Colorado Business Corporations Act
Appraisal Rights

Colorado Business Corporations Act
Appraisal Rights

7-113-101. *Definitions*.

As used in this article 113, unless the context otherwise requires:

(1) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person or is a senior executive of the other person. For purposes of section 7-113-102 (2)(d), a person is deemed to be an affiliate of its senior executives.

(2) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 7-113-203 to 7-113-401, includes the surviving entity in a merger.

(3) "Fair value" means the value of the corporation's shares determined:

(a) Immediately before the effectuation of the corporate action to which the shareholder objects;

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(c) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to section 7-113-102 (1)(e).

(4) "Interest" means interest, from the effective date of the corporate action until the date of payment, at the legal rate as specified in section 5-12-101.

(5) "Interested transaction" means a corporate action described in section 7-113-102 (1), other than a merger pursuant to section 7-111-104, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used only in this subsection (5):

(a)

(I) "Beneficial owner" means any person that, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted.

(II) When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed by the agreement is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(b) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year before the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(c) "Interested person" means a person, or an affiliate of a person, that, at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(I) Was the beneficial owner of twenty percent or more of the voting power of the corporation, other than as owner of excluded shares;

(II) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent or more of the directors to the board of directors of the corporation; or

(III) Was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(A) Employment, consulting, retirement, or similar benefits established separately, and not as part of, or in contemplation of, the corporate action; or

(B) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 7-108-501; or

(C) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of the entity or affiliate.

(6) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(7) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

7-113-102. Right to appraisal.

(1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(a) Consummation of a merger to which the corporation is a party if:

(I) Shareholder approval is required for the merger by section 7-111-103 and the shareholder is entitled to vote on the merger; except that appraisal rights are not available to a shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(II) The corporation is a subsidiary that is merged with its parent corporation under section 7-111-104;

(b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange; except that appraisal rights are not available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(c) Consummation of a disposition of assets pursuant to section 7-112-102 (1) if the shareholder is entitled to vote on the disposition;

(d) Consummation of a disposition of assets of an entity controlled by the corporation pursuant to section 7-112-102 (2) if the shareholders of the corporation were entitled to vote on the consent of the corporation to the disposition;

(e) An amendment to the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(f) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or resolution of the board of directors;

(g) Consummation of a conversion of the corporation to nonprofit status pursuant to section 7-90-201;

(h) Consummation of a conversion of the corporation to an unincorporated entity pursuant to section 7-90-206 (2) if the shareholder is entitled to vote on the conversion; or

(i) Consummation of a division, as defined in section 10-3-1701 (4), to which the corporation is a party if the corporation does not survive the division, subject to the limitations set forth in section 10-3-1713.

(2) Notwithstanding subsection (1) of this section, the availability of appraisal rights under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), (1)(h), and (1)(i) of this section are limited in accordance with the following provisions:

(a) Appraisal rights are not available for the holders of shares of any class or series of shares that is:

(I) A covered security under section 18 (b)(1)(A) or 18 (b)(1)(B) of the federal "Securities Act of 1933", 15 U.S.C. 77r (b)(1)(A) and 77r (b)(1)(B); or

(II) Not a covered security but is traded in an organized market and has a market value of at least twenty million dollars, exclusive of the value of the shares held by the corporation's subsidiaries, senior executives, directors, and persons known to the corporation owning more than ten percent of the shares; or

(III) Issued by an open-end management investment company registered with the federal securities and exchange commission under the federal "Investment Company Act of 1940", 15 U.S.C. sec. 80a-1 et seq., and that may be redeemed at the option of the holder at net asset value.

(b) The applicability of subsection (2)(a) of this section is determined as of:

(I) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(II) The day before the effective date of the corporate action if there is no meeting of shareholders.

(c) Subsection (2)(a) of this section does not apply and appraisal rights are available pursuant to subsection (1) of this section for the holders of any class or series of shares that is required by the terms of the corporate action requiring appraisal rights to accept for the shares anything other than:

(I) Cash; or

(II) Shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfy the standards set forth in subsection (2)(a) of this section at the time the corporate action becomes effective.

(d) Subsection (2)(a) of this section does not apply and appraisal rights are available pursuant to subsection (1) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or as amended may limit or eliminate appraisal rights for any class or series of preferred shares; except that an amendment to the articles of incorporation does not apply to any corporate action that becomes effective within one year after the effective date of the amendment if:

(a) That action would otherwise afford appraisal rights; and

(b) The amendment limits or eliminates appraisal rights for shares that:

(I) Are outstanding immediately before the effective date of the amendment; or

(II) The corporation is or may be required to issue or sell after the effective date of the amendment pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment.

7-113-103. ***Assertion of rights by nominees and beneficial owners*****.**

(1) A shareholder may assert appraisal rights as to fewer than all the shares registered in the shareholder's name but owned by a beneficial owner other than the shareholder only if the shareholder objects with respect to all shares of the class or series owned by the beneficial owner and notifies the corporation in writing of the name and address and federal taxpayer identification number, if any, of each beneficial owner on whose behalf appraisal rights are being asserted. The rights of a shareholder who asserts appraisal rights under this subsection (1) for only part of the shares held of record in the shareholder's name are determined as if the shares as to which the shareholder objects and the shareholder's other shares were registered in the names of different shareholders.

(2) A beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the beneficial owner only if the beneficial owner:

(a) Submits to the corporation the shareholder's written consent to the assertion of the rights no later than the date specified in section 7-113-203 (2)(b)(II); and

(b) Does so with respect to all shares of the class or series that are owned by the beneficial owner.

(3) The corporation may require that, when a shareholder objects with respect to the shares of any class or series held by any one or more beneficial owners, each such beneficial owner must certify to the corporation that the beneficial owner and the shareholder or shareholders of all shares of that class or series owned by the beneficial owner have asserted, or will timely assert, the beneficial owner's appraisal rights as to all shares as to which there is no limitation on the ability to exercise appraisal rights. Any such requirement must be stated in the notice given pursuant to section 7-113-202.

7-113-201. Notice of appraisal rights.

(1) Where any corporate action specified in section 7-113-102 (1) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under this article 113. If the corporation concludes that appraisal rights are or may be available, a copy of this article 113 must accompany the meeting notice sent to those shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to section 7-111-104, the parent corporation shall notify in writing all shareholders of the subsidiary that are entitled to assert appraisal rights that the corporate action became effective. The notice shall be sent within ten days after the corporate action became effective and must include the materials described in section 7-113-203.

(3) Where any corporate action specified in section 7-113-102 (1) is to be approved by written consent of the shareholders pursuant to section 7-107-104:

(a) Notice that appraisal rights are, are not, or may be available shall be given to each shareholder from whom a consent is solicited at the time consent of the shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article 113; and

(b) Notice that appraisal rights are, are not, or may be available shall be delivered, together with the notice to nonconsenting and nonvoting shareholders required by section 7-107-104 (5.5); may include the materials described in section 7-113-203; and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article 113.

(4) Where corporate action described in section 7-113-102 (1) is proposed or a merger pursuant to section 7-111-104 is effected, the notice required by subsection (1) or (3) of this

section, if the corporation concludes that appraisal rights are or may be available and by subsection (2) of this section, must be accompanied by:

(a) The annual financial statements specified in section 7-116-105 of the corporation that issued the shares that may be subject to appraisal, which statements must be as of a date ending not more than sixteen months before the date of the notice and must comply with section 7-116-105; except that, if the annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(b) The latest available quarterly financial statements of the corporation, if any.

(5) The right to receive the information described in subsection (4) of this section may be waived in writing by a shareholder before or after the corporate action.

7-113-202. Notice of intent to demand payment.

(1) If a proposed corporate action specified in section 7-113-102 (1) is submitted to a vote at a shareholders' meeting, a shareholder that wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must deliver to the corporation, before the vote is taken, notice of the shareholder's intent to demand payment if the proposed corporate action is effectuated; and

(b) Must not vote, or cause or permit to be voted, any shares of the class or series in favor of the proposed corporate action.

(2) If a proposed corporate action specified in section 7-113-102 (1) is to be approved by less than unanimous written consent, a shareholder that wishes to assert appraisal rights with respect to any class or series of shares must not execute a consent in favor of the proposed corporate action with respect to that class or series of shares.

(3) A shareholder that fails to satisfy the requirements of subsection (1) or (2) of this section is not entitled to demand payment under this article 113.

7-113-203. Appraisal notice and form.

(1) If a proposed corporate action requiring appraisal rights under section 7-113-102 (1) becomes effective, the corporation shall deliver a written appraisal notice and form to all shareholders that may be entitled to assert appraisal rights.

(2) The appraisal notice required by subsection (1) of this section shall be sent no earlier than the date the corporate action specified in section 7-113-102 (1) became effective, and no later than ten days after that date, and must:

(a) Include a form that:

(I) Specifies the first date of any announcement to shareholders, made before the date the corporate action became effective, of the principal terms of the proposed corporate action;

(II) If the announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(III) Requires the shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction;

(b) State:

(I) Where the form must be sent, where certificates for certificated shares must be deposited, and the date by which those certificates must be deposited, which date must not be earlier than the date for receiving the required form under subsection (2)(b)(II) of this section;

(II) A date by which the corporation must receive the form, which date must not be fewer than forty nor more than sixty days after the date the appraisal notice and form are required to be sent pursuant to the introductory portion to subsection (2) of this section, and state that the shareholder waives the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(III) The corporation's estimate of the fair value of the shares;

(IV) That, if requested in writing, the corporation will provide to the shareholder so requesting, within ten days after the date specified in subsection (2)(b)(II) of this section, a statement of the number of shareholders that return the forms by the specified date and the total number of shares owned by them; and

(V) The date by which the notice to withdraw under section 7-113-204 must be received, which date must be within twenty days after the date specified in subsection (2)(b)(II) of this section; and

(c) Be accompanied by a copy of this article 113.

7-113-204. Perfection of rights - right to withdraw.

(1) A shareholder that receives notice pursuant to section 7-113-203 and that wishes to exercise appraisal rights must sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice given pursuant to section 7-113-203 (2)(b)(II). In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to section 7-113-203 (2)(a). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 7-113-206. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (2) of this section.

(2) A shareholder who has complied with subsection (1) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice given pursuant to section 7-113-203 (2)(b)(V). A shareholder that fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder that does not sign and return the form and, in the case of certified shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in section 7-113-203 (2), is not entitled to payment under this article 113.

7-113-205. *Payment.*

(1) Except as provided in section 7-113-206, within thirty days after the date specified in section 7-113-203 (2)(b)(II), the corporation shall pay in cash to those shareholders who complied with section 7-113-204 (1) the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) of this section must be accompanied by:

(a)

(I) The annual financial statements specified in section 7-116-105 of the corporation that issued the shares to be appraised, which statement must be as of a date ending not more than sixteen months before the date of payment; except that, if the annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(II) The latest available quarterly financial statements of the corporation, if any;

(b) A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to section 7-113-203 (2)(b)(III); and

(c) A statement that shareholders described in subsection (1) of this section have the right to demand further payment under section 7-113-207 and that if any such shareholder does not do so within the period specified in section 7-113-207 (2), the shareholder shall be deemed to have accepted the payment in full satisfaction of the corporation's obligations under this article 113.

7-113-206. After-acquired shares.

(1) The corporation may elect to withhold payment otherwise required by section 7-113-205 from any shareholder that was required to certify, but did not certify, that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notices sent pursuant to section 7-113-203 (2)(a).

(2) If the corporation elected to withhold payment under subsection (1) of this section, it must, within thirty days after the date specified in section 7-113-203 (2)(b)(II), notify all shareholders that are described in subsection (1) of this section:

(a) Of the information required by section 7-113-205 (2)(a);

(b) Of the corporation's estimate of fair value pursuant to section 7-113-205 (2)(b);

(c) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 7-113-207;

(d) That those shareholders that wish to accept the offer must notify the corporation of their acceptance of the corporation's offer within thirty days after receiving the offer; and

(e) That those shareholders who do not satisfy the requirements for demanding appraisal under section 7-113-207 shall be deemed to have accepted the corporation's offer.

(3) Within ten days after receiving the shareholder's acceptance pursuant to subsection (2)(d) of this section, the corporation shall pay in cash the amount it offered under section 7-113-206 (2)(b) to each shareholder that agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within forty days after sending the notice described in subsection (2) of this section, the corporation shall pay in cash the amount it offered to pay under subsection (2)(b) of this section to each shareholder described in subsection (3) of this section.

7-113-207. Procedure if shareholder is dissatisfied with payment or offer.

(1) A shareholder that is paid pursuant to section 7-113-205 and is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate, plus interest, less any payment made under section 7-113-205. A shareholder that is offered payment under section 7-113-206 and is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(2) A shareholder that fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) of this section within thirty days after receiving the corporation's payment or offer of payment under section 7-113-205 or 7-113-206, respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

7-113-301. Court action.

(1) If a demand for payment under section 7-113-207 remains unresolved, the corporation shall commence a proceeding within sixty days after receiving the payment demand

and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 7-113-207 plus interest.

(2) The corporation shall commence the proceeding described in subsection (1) of this section in:

(a) The district court for the county in this state in which the street address of the corporation's principal office is located;

(b) The district court for the county in which the street address of its registered agent is located if the corporation has no principal office in this state; or

(c) The district court for the city and county of Denver if the corporation has no registered agent; except that, if the corporation is a foreign corporation without a registered agent, the corporation shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation that merged with the foreign corporation was located at the time of the merger.

(3)

(a) The corporation shall:

(I) Make all shareholders whose demands remain unresolved, whether or not residents of this state, parties to the proceeding as in an action against their shares; and

(II) Serve all parties with a copy of the petition.

(b) Service on each shareholder demanding appraisal rights must be by registered or certified mail or by electronic transmission to the address stated in the shareholder's payment demand or, if no such address is stated in the payment demand, to the address shown on the corporation's current record of shareholders for the shareholder holding the shares as to which appraisal rights are demanded, or as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to the order. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(5) Each shareholder made a party to the proceeding commenced under subsection (2) of this section is entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation for the shares; or

(b) For the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 7-113-206.

7-113-302. Court costs and expenses.

(1) The court in an appraisal proceeding commenced under section 7-113-301 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation; except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article 113.

(2) The court in an appraisal proceeding may also assess the fees and expenses of the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with section 7-113-201, 7-113-203, 7-113-205, or 7-113-206; or

(b) Against either the corporation or one or more shareholders demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article 113.

(3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that the expenses should not be assessed against the corporation, the court may direct that the expenses be paid out of the amounts awarded to the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to section 7-113-205, 7-113-206, or 7-113-207, the shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all expenses of the suit, including reasonable attorney fees.

7-113-401. Other remedies limited.

(1) The legality of a proposed or completed corporate action described in section 7-113-102 (1) may not be contested, nor may the corporate action be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(2) Subsection (1) of this section does not apply to a corporate action that:

(a) Was not authorized and approved in accordance with the applicable provisions of:

(I) Article 109, 110, 111, or 112 of this title 7;

(II) The articles of incorporation or bylaws; or

(III) The resolution of the board of directors authorizing the corporate action;

(b) Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(c) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section 7-108-501 and has been approved by the shareholders, in the same manner as is provided in section 7-108-501, as if the interested transaction were a director's conflicting interest transaction; or

(d) Was approved by less than unanimous consent of the voting shareholders pursuant to section 7-107-104 if:

(I) The challenge to the corporate action is brought by a shareholder that did not consent and as to whom notice of the approval of the corporate action was not effective at least ten days before the corporate action was effected; and

(II) The proceeding challenging the corporate action is commenced within ten days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.