

May 16, 2022

Via Electronic Mail & Hand Delivery

Mr. Steve Kahl
Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

**In re: Joint Transfer Application – Certificate of Site Compatibility
Ashtabula Wind III, LLC / Otter Tail Power Company
Our File No. 035218-000075**

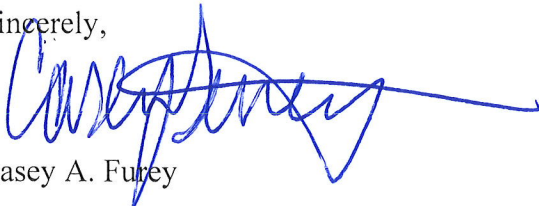
Dear Mr. Kahl:

Please find enclosed five copies of the following documents for filing with the Commission:

- Ashtabula Wind III, LLC and Otter Tail Power Company's Joint Application for Transfer of Certificate of Site Compatibility No. 17 and corresponding Exhibit Nos. 1-7;
- Notice of Appearance designating Casey A. Furey, Crowley Fleck PLLP, as attorney of record for Ashtabula Wind III, LLC in the above-referenced matter.

Please feel free to contact me with any questions. Thank you.

Sincerely,



Casey A. Furey

CAF/lh
Enc.

cc:	Tracy Davis	(via email)	Harvey McMahan	(via email)
	Laura Pena	(via email)	Carol Westergard	(via email)
	Andrew Young	(via email)	Lisa McFarland	(via email)

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

**In the matter of the Joint Application of
Ashtabula Wind III, LLC and Otter Tail
Power Company for Transfer of
Certificate of Site Compatibility**

Case No. PU-22-___

**JOINT APPLICATION FOR TRANSFER
OF CERTIFICATE OF SITE COMPATIBILITY**

Pursuant to N.D.C.C. Chapter 49-22 and N.D. Admin. Code Article 69-06, Ashtabula Wind III, LLC (“Ashtabula Wind III”) and Otter Tail Power Company (“Otter Tail”) (collectively, “Applicants”) hereby submit this Joint Application for Transfer of Certificate of Site Compatibility No. 17 (“Application”), originally issued to Ashtabula Wind III, LLC in Case No. PU-10-147.

I. Statutory Authority

The transfer of a certificate of site compatibility is authorized under N.D.C.C. § 49-22-07(1) and N.D. Admin. Code § 69-06-01-02(4). Pursuant to N.D. Admin. Code § 69-06-01-02(4) and N.D.C.C. § 49-22-13(2), the North Dakota Public Service Commission (“Commission”) shall publish notice of opportunity for a public hearing on such application for transfer. The Commission is not required to hold a public hearing on such transfer unless there is both a request by an interested person, and a showing of good cause. N.D.C.C. § 49-22-13(2).

II. Background

In Case No. PU-10-147, the Commission adopted Findings of Fact, Conclusions of Law and Order dated August 4, 2010 (“Order”) issuing the Certificate of Site Compatibility No. 17 (“Certificate”) to Ashtabula Wind III for the construction and operation of the Ashtabula III Wind

Energy Center and associated facilities (“Ashtabula III WEC”) in Barnes County, North Dakota. The Ashtabula III WEC consists of 39 1.6-megawatt General Electric wind turbines. The Ashtabula III WEC went into commercial operation in December 2010.

III. Application for Transfer of Certificate of Site Compatibility

Applicants respectfully request the transfer of the Certificate from Ashtabula Wind III to Otter Tail, and state as follows:

1. Ashtabula Wind III is an indirect wholly owned subsidiary of NextEra Energy Resources, LLC. Ashtabula Wind III is a Delaware limited liability company with its principal place of office in Juno Beach, Florida, and is authorized to do business in the State of North Dakota. The corporate documents of Ashtabula Wind III are attached hereto in accordance with N.D. Admin. Code § 69-02-02-04(3)(a). Attached hereto as **Exhibit 1**, is a certified copy of the Certificate of Formation from the State of Delaware. A Certificate of Good Standing for Ashtabula Wind III from the North Dakota Secretary of State is attached hereto as **Exhibit 2**. A Certificate of Good Standing from the Delaware Secretary of State is attached hereto as **Exhibit 3**.

2. Otter Tail is a Minnesota corporation with its principal place of office in Fergus Falls, Minnesota, and is authorized to do business in the State of North Dakota. The corporate documents of Otter Tail are attached hereto in accordance with N.D. Admin. Code § 69-02-02-04(3)(a). Attached hereto as **Exhibit 4**, is a certified copy of Otter Tail’s Articles of Incorporation from the State of Minnesota. A Certificate of Good Standing from the North Dakota Secretary of State is attached hereto as **Exhibit 5**. A Certificate of Good Standing from the Minnesota Secretary of State is attached hereto as **Exhibit 6**.

3. The proposed transfer is based on an existing Wind Energy Purchase Power Agreement (“PPA”) entered in 2013 between the Applicants whereby Otter Tail currently

purchases power generation from the Ashtabula III WEC. Under the PPA Otter Tail has a binary and time sensitive choice to either remain in the PPA through 2037 or to exercise an option to purchase the Ashtabula III WEC. Otter Tail desires to exercise its option to purchase the Ashtabula III WEC.

4. In July 2021, the Applicants entered into a certain purchase and sale agreement (“PSA”), subject to regulatory approvals, for Otter Tail’s purchase of the Ashtabula III WEC.

5. Pursuant to the terms of the PSA, Applicants seek transfer of the Certificate from Ashtabula Wind III to Otter Tail.

6. Otter Tail has the financial and technical qualifications to own and operate the Ashtabula III WEC. Otter Tail is an experienced, safe, responsible and reliable owner and operator of electric wind generation assets and systems and is highly qualified to incorporate the Ashtabula III WEC into its generation system in order to continue providing safe, reliable and cost-effective electric service for its customers. On March 30, 2022, the Commission approved an order granting Otter Tail’s Application for Public Convenience and Necessity (Case No. PU-22-027) for Otter Tail’s acquisition of the Ashtabula III WEC. The Commission found that public convenience and necessity will be served by Otter Tail’s ownership and operation of the Ashtabula III WEC, and that Otter Tail is fit, willing, and able to provide service.

7. Otter Tail agrees to assume the rights and obligations of Ashtabula Wind III with respect to the Certificate for the Ashtabula III WEC, and to comply with the terms and conditions of the Certificate and Order. *See Exhibit 7*, Affidavit of Bradley Tollerson, Vice President of Energy Supply, of Otter Tail, attached hereto.

8. The Applicants anticipate the PSA closing on or around January 2, 2023. The Applicants request the Commission proceed to grant this Application conditioned upon the closing

contemplated in the PSA. Applicants further request that upon notice to the Commission confirming the PSA's closing, the Commission subsequently issue the Certificate to Otter Tail.

9. In compliance with N.D. Admin. Code Chapter 69-09-09, before commencing operation of Ashtabula III WEC Otter Tail will provide the Commission a decommissioning plan and financial assurance for the Ashtabula III WEC, to replace Ashtabula Wind III's existing decommissioning plan and financial assurance filed in Case. No. PU-11-171.

Applicants seek authorization for the transfer and reissuance of the Certificate from Ashtabula Wind III to Otter Tail and respectfully request that the Commission:

1. Deem this Application complete and publish a notice of opportunity for public hearing once in the official newspaper of Barnes County, North Dakota;
2. Grant the transfer of Certificate of Site Compatibility No. 17 from Ashtabula Wind III, LLC to Otter Tail Power Company conditioned on the closing of the transaction contemplated by the PSA;
3. Issue the aforementioned Certificate in the name of Otter Tail Power Company upon notice from Applicants that the PSA has closed; and
4. Grant such other relief as the Commission shall deem appropriate.

Dated this 10 day of May, 2022.

ASHTABULA WIND III, LLC

By: 
Lane S. Witten
Vice President

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

Subscribed and sworn before me on this 10 day of May 2022, by Lane S. Witten, known to me to be the Vice President, of the Delaware limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.




Notary Public

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "ASHTABULA WIND III, LLC", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF OCTOBER, A.D. 2009, AT 1:03 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

4741295 8100
SR# 20221883243

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203419530

Date: 05-12-22

EXHIBIT

1

STATE of DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE of FORMATION

The undersigned, an authorized natural person, for the purpose of forming a limited liability company under the provisions and subject to the requirements of the laws of the State of Delaware (including Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified, and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

FIRST: The name of the limited liability company (hereinafter called the "limited liability company") is **Ashtabula Wind III, LLC**

SECOND: The address of the registered office and the name and address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are:

The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Executed this 13th day of October, 2009.



By: Charles S. Schultz
An Authorized Person

State of North Dakota SECRETARY OF STATE



Certificate of Good Standing of ASHTABULA WIND III, LLC

SOS Control ID#: 0000096728

Certificate #: 021418930

The undersigned, as Secretary of State of the state of North Dakota, hereby certifies that, according to the records of this office,

ASHTABULA WIND III, LLC

a Limited Liability Company - Business - Foreign was formed under the laws of DELAWARE and filed with this office effective October 22, 2009. This entity has, as of the date set forth below, complied with all applicable North Dakota laws.

ACCORDINGLY, the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Good Standing.

DATE: February 28, 2022

Handwritten signature of Alvin A. Jaeger in black ink.

Alvin A. Jaeger
Secretary of State



Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "ASHTABULA WIND III, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIRST DAY OF MARCH, A.D. 2022.




Jeffrey W. Bullock, Secretary of State

4741295 8300

SR# 20220771986

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 202790957

Date: 03-01-22

EXHIBIT

3

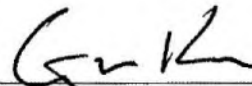
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DC - RA

**ARTICLES OF AMENDMENT
RESTATING
SECOND RESTATED ARTICLES OF INCORPORATION
OF
OTTER TAIL POWER COMPANY**

1. The name of the corporation is Otter Tail Power Company, a Minnesota corporation.
2. The document entitled "Third Restated Articles of Incorporation of Otter Tail Power Company," marked Exhibit A attached hereto, contains the full text of amendments to the articles of incorporation of Otter Tail Power Company.
3. The date of adoption of the amendment by the board of directors of such corporation was July 1, 2009.
4. The amendment merely restates the existing Second Restated Articles of Incorporation of the corporation as heretofore amended, and the amendment correctly sets forth without change the corresponding provisions of the Second Restated Articles of Incorporation of the corporation as previously amended.
5. The amendment restates the Second Restated Articles of Incorporation in their entirety and has been adopted pursuant to Chapter 302A of the Minnesota Statutes.

IN WITNESS WHEREOF, the undersigned Corporate Secretary and General Counsel of Otter Tail Power Company, being duly authorized on behalf of the corporation, has executed this document this 1st day of July, 2009.



George A. Koeck
Corporate Secretary and General Counsel

**THIRD RESTATED ARTICLES OF INCORPORATION
OF
OTTER TAIL POWER COMPANY
(restated as of July 1, 2009)**

ARTICLE I.

The name of the corporation shall be Otter Tail Power Company.

ARTICLE II.

The purposes of the corporation shall be as follows:

(a) To generate, produce, buy or in any manner acquire, and to sell, dispose of, and distribute electricity for light, heat and power and other purposes, and to carry on the business of furnishing, supplying, manufacturing, and selling light, heat, power, gas, water, and steam, and any and all business incidental thereto; and to build, construct, develop, improve, buy, acquire by condemnation or otherwise, hold, own, lease, maintain and operate plants, facilities, systems, and works for the manufacture, generation, production, accumulation, transmission, and distribution of electricity, gas, water, and steam, and to exercise rights of condemnation and eminent domain in connection with the doing of any of its purposes as herein set forth so far as may be permissible by law.

(b) To produce, mine, buy, sell, store, market, deal in, and prospect for, coal, oil and minerals of all kinds and the products and by-products thereof.

(c) To manufacture, buy, sell, trade, and deal in goods, wares, merchandise, property, and commodities of any and every class and description.

(d) To purchase, acquire, and lease, and to sell, lease, and dispose of water, water rights, and power privileges for power, light, heat, mining, milling, irrigation, agricultural, domestic or any other use or purpose.

(e) To acquire, hold, mortgage, pledge, or dispose of the shares, bonds, securities, and other evidences of indebtedness of any domestic or foreign corporation.

(f) To endorse or guarantee the promissory notes, checks, drafts, evidences of indebtedness or obligations of whatsoever nature of any corporation, domestic or foreign, of which the corporation shall own or control, directly or indirectly a majority of the stock then entitled to elect directors, or a majority thereof.

(g) To do or perform any and all lawful business necessary, essential or expedient to the proper conduct of any of the purposes aforesaid.

ARTICLE III.

The period of duration of the corporation shall be perpetual.

ARTICLE IV.

The location and post-office address of the registered office of the corporation in Minnesota is 215 Cascade Street South, Fergus Falls, Minnesota 56537.

ARTICLE V.

The total authorized number of shares of the corporation is 52,500,000, divided into three classes; namely, 1,500,000 Cumulative Preferred Shares without par value (the "Cumulative Preferred Shares"); 1,000,000 Cumulative Preference Shares without par value (the "Cumulative Preference Shares"); and 50,000,000 Common Shares of the par value of \$5 per share (the "Common Shares"). No fractional shares of any class or series shall be issued by the corporation.

ARTICLE VI.

The designations, relative rights, voting power, preferences and restrictions of the Cumulative Preferred Shares, the Cumulative Preference Shares and the Common Shares, respectively, shall be as set forth in Division I through Division VI, inclusive, of this Article VI.

The term "subordinate shares," when hereinafter in this Article VI used with reference to shares junior to the Cumulative Preferred Shares, means the Cumulative Preference Shares, the Common Shares and shares of any other class, which may hereafter be authorized, ranking junior to the Cumulative Preferred Shares with respect to the payment of dividends or the distribution of assets; and when hereinafter used with reference to shares junior to the Cumulative Preference Shares, means the Common Shares and shares of any other class, which may hereafter be authorized, ranking junior to the Cumulative Preference Shares with respect to the payment of dividends or the distribution of assets.

DIVISION I

Provisions Relating to Cumulative Preferred Shares

A. Issue in Series. The Cumulative Preferred Shares may be issued from time to time in one or more series, each of which series shall have such designation and such relative rights, voting power, preferences and restrictions as are hereinafter provided and, to the extent hereinafter permitted, as are determined and stated by the Board of Directors in the resolution or resolutions authorizing the creation of shares of such series.

All Cumulative Preferred Shares shall be of equal rank and shall be identical, except in respect of their relative voting power (determined as hereinafter provided in Division IV) and the particulars that may be determined by the Board of Directors as hereinafter provided; and each share of each series shall be identical in all respects with the other shares of such series, except

as to the dates from which dividends thereon shall be cumulative. Cumulative Preferred Shares shall be issued only as fully paid and nonassessable shares.

Subject to the provisions of the last paragraph of this Subdivision A, authority is hereby expressly granted to the Board of Directors to authorize the issuance of Cumulative Preferred Shares in one or more series, and to determine and state, by the resolution or resolutions authorizing the creation of each series: (i) the designation of the series and the number of shares which shall constitute such series, which number may be altered from time to time by like action of the Board of Directors in respect of shares then unallotted; (ii) the annual rate of dividends payable on shares of such series; (iii) the price or prices per share at which the shares of such series shall be redeemable; (iv) the amount payable on shares of such series in the event of any dissolution, liquidation or winding up of the affairs of the corporation, which amount may differ in the case of a voluntary or involuntary dissolution, liquidation or winding up of such affairs; (v) the conversion rights, if any, with respect to the conversion of shares of such series into Common Shares of the corporation; and (vi) the sinking or purchase fund provisions, if any, for the mandatory redemption or purchase of shares of such series.

In the case of each series of Cumulative Preferred Shares created after April 1, 1977, the amount (in addition to accrued and unpaid dividends, if any) which the holders of shares of such series shall be entitled to receive in the event of any dissolution, liquidation or winding up of the affairs of the corporation which shall be involuntary shall be equal to the gross consideration received by the corporation upon the issuance thereof (without regard to any premium received or any underwriting discount or commission, private placement fee or other expense incurred by the corporation in connection with the issuance thereof).

B. Dividends. Before any dividends on any subordinate shares shall be paid or declared and set apart for payment, the holders of the Cumulative Preferred Shares of each series shall be entitled to receive, when and as declared by the Board of Directors, out of any funds legally available for such purpose, cash dividends at the annual rate for such series theretofore fixed by the Board of Directors as hereinbefore provided, and no more, payable quarterly on such dates as may be fixed in the resolution or resolutions adopted by the Board of Directors authorizing the creation of such series. Such dividends shall be paid to shareholders of record on the respective dates, not exceeding twenty (20) days prior to such payment dates, fixed by the Board of Directors for such purpose. Such dividends shall be cumulative, in the case of shares of each particular series:

(1) if issued prior to the record date for the first dividend on shares of such series, then from and including the date fixed for such purpose by the Board of Directors in the resolution or resolutions creating such series;

(2) if issued during the period commencing immediately after the record date for a dividend on shares of such series and terminating at the close of the payment date for such dividend, then from and including such last mentioned dividend payment date;

(3) otherwise from and including the quarterly dividend payment date next preceding the date of issue of such shares.

No dividend shall be paid, or declared and set apart for payment, upon any Cumulative Preferred Shares of any series for any quarterly dividend period unless at the same time a like proportionate dividend for the same or comparable quarterly period, ratable in proportion to the respective annual dividend rates fixed therefor, shall be paid, or declared and set apart for payment, upon all Cumulative Preferred Shares of all series then issued and outstanding.

In no event shall any dividend be paid or declared, nor shall any distribution be made, on any subordinate shares, nor shall any subordinate shares be purchased, redeemed or otherwise acquired by the corporation for value, nor shall any moneys be paid to or set aside or made available for a purchase fund or sinking fund for the purchase or redemption of any subordinate shares, unless (i) all dividends on the Cumulative Preferred Shares of all series for all past quarterly dividend periods and for the then current quarterly dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart for payment; and (ii) the corporation shall not be in default or deficient under any requirement of a sinking or purchase fund established with respect to outstanding Cumulative Preferred Shares of any series for any period then elapsed.

Subject to the provisions of this Article VI, and not otherwise, dividends may be declared by the Board of Directors and paid from time to time, out of any funds legally available therefor, upon the then outstanding subordinate shares, and the holders of the Cumulative Preferred Shares shall not be entitled to participate in any such dividends.

C. Redemption of Cumulative Preferred Shares. Subject to the limitations stated in Subdivision D of this Division I, the Cumulative Preferred Shares of any or all series may be redeemed, as a whole at any time or in part from time to time, at the option of the corporation by resolution of the Board of Directors, at the applicable redemption price for the shares of such series as determined by the Board of Directors in the resolution or resolutions authorizing the creation of such series, together with an amount (hereinafter referred to as "accrued dividends to the redemption date") in the case of each share, computed at the annual dividend rate for the series of which the particular share is a part, from and including the date on which dividends on such shares become cumulative to and including the date of redemption, less the aggregate amount of all dividends which have theretofore been paid thereon or which have been declared thereon and for which moneys for payment have been set apart and remain available for payment. To the extent that Cumulative Preferred Shares of any series are redeemed through the operation of a sinking or purchase fund provided for in the resolution or resolutions of the Board of Directors creating such series, such shares shall be redeemed by resolution of the Board of Directors at the time and at the applicable redemption price specified for redemption of shares of such series pursuant to such sinking or purchase fund by the resolution or resolutions creating such series. If less than all the outstanding Cumulative Preferred Shares of any series are to be redeemed, the shares to be redeemed shall be determined by lot in such manner as the Board of Directors may prescribe.

Notice of every redemption of Cumulative Preferred Shares shall be mailed, addressed to the holders of record of the shares to be redeemed at their respective addresses as they shall appear on the stock books of the corporation, not less than thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption.

If notice of redemption shall have been duly given as aforesaid, and if, on or before the redemption date specified in the notice, all funds necessary for the redemption shall have been deposited in trust with a bank or trust company in good standing and doing business at any place within the United States, having capital, surplus and undivided profits aggregating at least \$1,000,000 and designated in the notice of redemption, for the pro rata benefit of the holders of the shares so called for redemption, so as to be and continue to be available therefor, then from and after the date of such deposit, notwithstanding that any certificate for Cumulative Preferred Shares so called for redemption shall not have been surrendered for cancellation, the shares represented thereby shall no longer be deemed outstanding, the dividends thereon shall cease to accumulate from and after the date fixed for redemption, and all rights with respect to the Cumulative Preferred Shares so called for redemption shall forthwith on the date of such deposit cease and terminate, except only the right of the holders thereof to receive the redemption price of the shares so redeemed, including accrued dividends to the redemption date, but without interest. Any funds deposited by the corporation pursuant to this paragraph and unclaimed at the end of six (6) years after the date fixed for redemption shall be repaid to the corporation upon its request expressed in a resolution of its Board of Directors, after which repayment the holders of the shares so called for redemption shall look only to the corporation for the payment thereof.

All Cumulative Preferred Shares converted, redeemed or purchased voluntarily or pursuant to any sinking fund or purchase fund for the mandatory redemption or purchase of shares shall be retired and cancelled and shall have the status of authorized but unissued Cumulative Preferred Shares of the corporation and may be reissued in the same manner as authorized but unissued Cumulative Preferred Shares undesignated as to series.

D. Limitations on Purchase and Redemption of Cumulative Preferred Shares. No Cumulative Preferred Shares of any series shall be purchased, redeemed or otherwise acquired by the corporation for value, nor shall any moneys be paid to or set aside or made available for a purchase fund or sinking fund for the purchase or redemption of Cumulative Preferred Shares of any series, unless all dividends on the Cumulative Preferred Shares of all series for all past quarterly dividend periods and for the current quarterly period shall have been paid or declared and a sum sufficient for the payment thereof set apart for payment, except in the event all of the Cumulative Preferred Shares shall be called for redemption.

E. Liquidation Preferences. In the event of any dissolution, liquidation or winding up of the affairs of the corporation, before any distribution or payment shall be made to the holders of any subordinate shares, the holders of the shares of each series of Cumulative Preferred Shares shall be entitled to be paid in full the respective amounts fixed by the Board of Directors in the resolution or resolutions authorizing the issue of such series, together with a sum, in the case of each share, computed at the annual dividend rate for the series of which the particular share is a part, from the date on which dividends on such shares became cumulative to and including the date fixed for such distribution or payment, less the aggregate amount of all dividends which have theretofore been paid thereon or which have been declared thereon and for which moneys have been set apart and remain available for payment. If such distribution or payment shall have been made to the holders of the Cumulative Preferred Shares, or moneys made available for such payment in full, the remaining assets and funds of the corporation shall be distributed among the holders of the classes of subordinate shares, according to their respective rights and preferences and in each case according to their respective shares. If the

assets available are not sufficient to pay in full the amounts so payable to the holders of all outstanding Cumulative Preferred Shares, the holders of all series of such shares shall share ratably in any distribution of assets in proportion to the full amounts to which they would otherwise be respectively entitled. The consolidation or merger of the corporation into or with any other corporation or corporations pursuant to the statutes of the State of Minnesota providing for consolidation or merger shall not be deemed a liquidation, dissolution or winding up of the affairs of the corporation within the meaning of any of the provisions of this Subdivision E.

F. Voting and Restrictions on Certain Corporate Action. The holders of the Cumulative Preferred Shares shall not be entitled to vote at any meetings of the shareholders of the corporation, except as required by law or as hereinafter otherwise provided in this Subdivision F and in Division IV:

(1) So long as any Cumulative Preferred Shares of any series are outstanding, the corporation shall not without the consent (given by vote at a special meeting of shareholders called for the purpose) of the holders of at least two-thirds (2/3) of the aggregate voting power (determined as hereinafter provided in Division IV) vested in the Cumulative Preferred Shares of all series then outstanding:

(a) Create, authorize or issue any shares of any class ranking prior to, or any securities of any kind or class convertible into shares of any class ranking prior to, the Cumulative Preferred Shares as to dividends or assets; or

(b) Amend the Articles of Incorporation so as to affect adversely any of the preferences or other rights of the holders of the Cumulative Preferred Shares, provided, however, that if any such amendment would affect adversely the holders of one or more, but not all, of the series of Cumulative Preferred Shares at the time outstanding, consent only of the holders of at least two-thirds (2/3) of the aggregate voting power (determined as hereinafter provided in Division IV) vested in the shares of each series so adversely affected shall be required.

(2) So long as any Cumulative Preferred Shares of any series are outstanding, the corporation shall not without the consent (given by vote at a special meeting of shareholders called for the purpose) of the holders (i) of at least a majority of the aggregate voting power (determined as hereinafter provided in Division IV) vested in the Cumulative Preferred Shares of all series then outstanding, or (ii) in case of the negative vote at such meeting of the holders of more than one-fourth (1/4) of the aggregate voting power (determined as hereinafter provided in Division IV) vested in the Cumulative Preferred Shares of all series then outstanding, of at least two-thirds (2/3) of aggregate voting power (determined as hereinafter provided in Division IV) vested in the Cumulative Preferred Shares of all series then outstanding:

(a) Increase the authorized number of Cumulative Preferred Shares, or create, authorize or issue any shares of any class ranking on a parity with the Cumulative Preferred Shares as to dividends or assets, or any securities of any

kind or class convertible into Cumulative Preferred Shares or shares of any class on a parity with the Cumulative Preferred Shares; or

(b) Issue any Cumulative Preferred Shares of any series if as a result thereof more than 60,000 Cumulative Preferred Shares of all series will then be outstanding, unless:

(i) The corporation's "Adjusted Income Available for Interest," as hereinafter defined, shall be at least equal to one-and-one-half (1-1/2) times the corporation's "Adjusted Interest and Preferred Charges," as hereinafter defined; and

(ii) The corporation's "Adjusted Income Available for Preferred Dividends," as hereinafter defined, shall be at least equal to two-and-one-half (2-1/2) times the corporation's "Adjusted Preferred Charges," as hereinafter defined; and

(iii) The corporation's "Common Share Equity," as hereinafter defined, shall equal at least one-fourth (1/4) of the corporation's "Total Capitalization," as hereinafter defined; or

(c) Declare, pay or set apart for payment any dividend on any subordinate shares, or purchase, redeem or otherwise acquire for value any subordinate shares, or pay or set aside or make available any moneys for a purchase fund or sinking fund for the purchase or redemption of any such subordinate shares, unless after giving effect to the payment of such dividend or such purchase, redemption or other acquisition of such payment or setting aside of moneys in a purchase fund or sinking fund,

(i) The "Common Share Equity," as hereinafter defined, shall equal at least one-fourth (1/4) of the "Total Capitalization," as hereinafter defined; and

(ii) The earned surplus of the corporation shall be not less than \$831,398.

(d) Consolidate or merge into or with any other corporation or corporations pursuant to the statutes of the State of Minnesota providing for consolidation or merger, unless, immediately after such consolidation or merger shall become effective:

(i) The Cumulative Preferred Shares of the corporation outstanding immediately prior to such consolidation or merger shall remain outstanding or be constituted as shares of the corporation resulting from such consolidation or merger in the same number and with the same relative rights, voting power, preferences and restrictions as theretofore, the authorized number thereof shall not be increased, there shall be no shares of the resulting corporation outstanding or authorized ranking prior

to or on a parity with the Cumulative Preferred Shares, except shares of the corporation outstanding or authorized immediately prior to such consolidation or merger, and the indebtedness for borrowed money of the resulting corporation immediately after such consolidation or merger shall be no greater than the indebtedness for borrowed money of the corporation immediately preceding such consolidation or merger; or

(ii) (aa) The "Adjusted Income Available for Interest," as hereinafter defined, of the resulting corporation shall be at least equal to one-and-one-half (1-1/2) times its "Adjusted Interest and Preferred Charges," as hereinafter defined; and

(bb) The "Adjusted Income Available for Preferred Dividends," as hereinafter defined, of the resulting corporation shall be at least equal to two-and-one-half (2-1/2) times its "Adjusted Preferred Charges," as hereinafter defined; and

(cc) The "Common Share Equity," as hereinafter defined, of the resulting corporation shall equal at least one-fourth (1/4) of its "Total Capitalization," as hereinafter defined.

(e) Sell, lease or exchange all or substantially all of its property and assets, unless, after the completion of such transaction, the fair value of the assets of the corporation shall at least equal the preference on voluntary liquidation of all Cumulative Preferred Shares of all series then outstanding and of all shares then outstanding of a class on parity with the Cumulative Preferred Shares, after first deducting an amount equal to all then existing indebtedness of the corporation and an amount equal to the preference on voluntary liquidation of all shares ranking prior to the Cumulative Preferred Shares.

(3) For the purposes of the foregoing provisions of this Subdivision F:

(a) The term "Adjusted Income Available for Interest" shall mean the gross income of the corporation for a period of twelve (12) consecutive calendar months selected by the corporation out of the fifteen (15) calendar months immediately preceding the proposed issuance of additional Cumulative Preferred Shares, or the proposed consolidation or merger, determined in accordance with such system of accounts as may be prescribed by governmental authorities having jurisdiction in the premises or, in the absence thereof, in accordance with generally accepted accounting practice, available for the payment of interest, but after deduction of taxes of all kinds (including taxes based on income) including for a like period such gross income (similarly computed and with similar deductions and eliminating any duplication of income) of any property which was or will have been an operating unit or a part of an operating unit preceding its acquisition by the corporation and which has been acquired within the past twelve (12) months immediately preceding or is to be acquired by the corporation

substantially contemporaneously with the proposed issuance of additional Cumulative Preferred Shares, or the proposed consolidation or merger.

(b) The term "Adjusted Interest and Preferred Charges" is hereby defined as the sum of (i) the interest charges for one year upon all interest bearing indebtedness of the corporation outstanding at the time of issuance of such Cumulative Preferred Shares or of the proposed consolidation or merger, including that, if any, proposed to be issued or assumed substantially contemporaneously, or to which property theretofore acquired or to be acquired substantially contemporaneously is or will be subject (adjusted for all amortization of debt discount and expense, or of premium on debt, as the case may be), and (ii) the dividend requirements for one year on all outstanding Cumulative Preferred Shares, and on all other shares of a class ranking prior to or on a parity with the Cumulative Preferred Shares as to dividends or assets, outstanding at the time of issuance of such additional Cumulative Preferred Shares, or of such consolidation or merger, including all such shares proposed to be issued, or all such shares of the resulting corporation, as the case may be.

(c) The term "Adjusted Income Available for Preferred Dividends" is hereby defined as the "Adjusted Income Available for Interest" for the aforesaid twelve (12) months' period, less the interest charges for one year and the dividend requirements for one year on any shares ranking prior to the Cumulative Preferred Shares, included in determining the "Adjusted Interest and Preferred Charges."

(d) The term "Adjusted Preferred Charges" is hereby defined as the "Adjusted Interest and Preferred Charges" for one year determined at the time of issuance of such Cumulative Preferred Shares or of the proposed consolidation or merger, less the interest charges for one year and the dividend requirements for one year on any shares ranking prior to the Cumulative Preferred Shares, included in determining the "Adjusted Interest and Preferred Charges."

(e) The term "Common Share Equity" is hereby defined as the sum of (i) the stated capital of the corporation applicable to its Common Shares and to all other subordinate shares (including shares, if any, proposed to be issued substantially contemporaneously or any additional such shares of the resulting corporation, as the case may be), (ii) capital surplus to the extent of premium on Common Shares and on all other subordinate shares (including premium, if any, on shares proposed to be issued substantially contemporaneously or any additional such shares of the resulting corporation, as the case may be), (iii) contributions in aid of construction, and (iv) earned surplus, all determined in accordance with such system of accounts as may be prescribed by governmental authorities having jurisdiction in the premises or, in the absence thereof, in accordance with generally accepted accounting practice.

(f) The term "Total Capitalization" is hereby defined as the sum of (i) the Common Share Equity, (ii) the involuntary liquidation preference of all Cumulative Preferred Shares and all other shares prior to or on a parity with the

Cumulative Preferred Shares to be outstanding after the proposed event, and (iii) the principal amount of all interest bearing debt (including debt to which property theretofore acquired or to be acquired substantially contemporaneously is or will be subject) to be outstanding after the proposed event, excluding, however, all indebtedness maturing by its terms within one year from the time of creation thereof unless the corporation, without the consent of the lender, has the right to extend the maturity of such indebtedness for a period or periods which, with the original period of such indebtedness, aggregates one year or more.

DIVISION II

Provisions Relating to Cumulative Preference Shares

A. Issue in Series. The Cumulative Preference Shares may be issued from time to time in one or more series, each of which series shall have such designation and such relative rights, voting power, preferences and restrictions as are hereinafter provided and, to the extent hereinafter permitted, as are determined and stated by the Board of Directors in the resolution or resolutions authorizing the creation of shares of such series.

All Cumulative Preference Shares shall be of equal rank and shall be identical, except in respect of their relative voting power (determined as hereinafter provided in Division IV) and the particulars that may be determined by the Board of Directors as hereinafter provided; and each share of each series shall be identical in all respects with the other shares of such series, except as to the dates from which dividends thereon shall be cumulative. Cumulative Preference Shares shall be issued only as fully paid and nonassessable shares.

Subject to the provisions of the last paragraph of this Subdivision A, authority is hereby expressly granted to the Board of Directors to authorize the issuance of Cumulative Preference Shares in one or more series, and to determine and state, by the resolution or resolutions authorizing the creation of each series: (i) the designation of the series and the number of shares which shall constitute such series, which number may be altered from time to time by like action of the Board of Directors in respect of shares then unallotted; (ii) the annual rate of dividends payable on shares of such series; (iii) the price or prices per share at which the shares of such series shall be redeemable; (iv) the amount payable on shares of such series in the event of any dissolution, liquidation or winding up of the affairs of the corporation, which amount may differ in the case of a voluntary or involuntary dissolution, liquidation or winding up of such affairs, provided that the amount in the case of an involuntary dissolution, liquidation or winding up of such affairs shall be determined as provided in the following paragraph; (v) the conversion rights, if any, with respect to the conversion of shares of such series into Common Shares of the corporation; and (vi) the sinking or purchase fund provisions, if any, for the mandatory redemption or purchase of shares of such series.

The amount (in addition to accrued and unpaid dividends, if any) which the holders of Cumulative Preference Shares of each series shall be entitled to receive in the event of any dissolution, liquidation or winding up of the affairs of the corporation which shall be involuntary shall be equal to the gross consideration received by the corporation upon the issuance thereof (without regard to any premium received or any underwriting discount or commission, private

placement fee or other expense incurred by the corporation in connection with the issuance thereof).

B. Dividends. Subject to the preferential rights of the holders of Cumulative Preferred Shares with respect to payment of dividends as set forth in Subdivision B of Division I, the holders of the Cumulative Preference Shares of each series shall be entitled to receive, when and as declared by the Board of Directors, out of any funds legally available for such purpose, cash dividends at the annual rate for such series theretofore fixed by the Board of Directors as hereinbefore provided, and no more, payable quarterly on such dates as may be fixed in the resolution or resolutions adopted by the Board of Directors authorizing the creation of such series. Such dividends shall be paid to shareholders of record on the respective dates, not exceeding twenty (20) days prior to such payment dates, fixed by the Board of Directors for such purpose. Such dividends shall be cumulative from and including the date or dates fixed for such purpose by the Board of Directors in the resolution or resolutions authorizing the creation of such series.

No dividend shall be paid, or declared and set apart for payment, upon any Cumulative Preference Shares of any series for any quarterly dividend period unless at the same time a like proportionate dividend for the same or comparable quarterly period, ratable in proportion to the respective annual dividend rates fixed therefor, shall be paid, or declared and set apart for payment, upon all Cumulative Preference Shares of all series then issued and outstanding.

In no event shall any dividend be paid or declared, nor shall any distribution be made, on any subordinate shares, other than a dividend or distribution payable solely in subordinate shares, nor shall any subordinate shares be purchased, redeemed or otherwise acquired by the corporation for value, nor shall any moneys be paid to or set aside or made available for a purchase fund or sinking fund for the purchase or redemption of any subordinate shares, unless (i) all dividends on the Cumulative Preference Shares of all series for all past quarterly dividend periods and for the then current quarterly dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart for payment; and (ii) the corporation shall not be in default or deficient under any requirement of a sinking or purchase fund established with respect to outstanding Cumulative Preference Shares of any series for any period then elapsed.

Subject to the provisions of this Article VI, and not otherwise, dividends may be declared by the Board of Directors and paid from time to time, out of any funds legally available therefor, upon the then outstanding subordinate shares, and the holders of the Cumulative Preference Shares shall not be entitled to participate in any such dividends.

C. Redemption of Cumulative Preference Shares. Subject to the limitations stated in Subdivision B of Division I and in Subdivision D of this Division II, the Cumulative Preference Shares of any or all series may be redeemed, as a whole at any time or in part from time to time, at the option of the corporation by resolution of the Board of Directors, at the applicable redemption price for the shares of such series as determined by the Board of Directors in the resolution or resolutions authorizing the creation of such series, together with an amount (hereinafter referred to as "accrued dividends to the redemption date") in the case of each share, computed at the annual dividend rate for the series of which the particular share is a part, from and including the date on which dividends on such share became cumulative to and including the

date of redemption, less the aggregate amount of all dividends which have theretofore been paid thereon or which have been declared thereon and for which moneys for payment have been set apart and remain available for payment. Each such redemption shall be effected upon the same notice as provided in Subdivision C of Division I in respect of the redemption of Cumulative Preferred Shares, and all other provisions of said Subdivision C with respect to the method and effect of redemption of Cumulative Preferred Shares shall be applicable to the redemption of Cumulative Preference Shares in the same manner and with the same force and effect as though such provisions were set forth in full in this Subdivision C.

All Cumulative Preference Shares converted, redeemed or purchased voluntarily or pursuant to any sinking fund or purchase fund for the mandatory redemption or purchase of shares shall be retired and cancelled and shall have the status of authorized but unissued Cumulative Preference Shares of the corporation and may be reissued in the same manner as authorized but unissued Cumulative Preference Shares undesignated as to series.

D. Limitation on Purchase and Redemption of Cumulative Preference Shares. No Cumulative Preference Shares of any series shall be purchased, redeemed or otherwise acquired by the corporation for value, nor shall any moneys be paid to or set aside or made available for a purchase fund or sinking fund for the purchase or redemption of Cumulative Preference Shares of any series, unless all dividends on the Cumulative Preference Shares of all series for all past quarterly dividend periods and for the current quarterly period shall have been paid or declared and a sum sufficient for the payment thereof set apart for payment, except in event all of the Cumulative Preference Shares shall be called for redemption.

E. Liquidation Preferences. In the event of any dissolution, liquidation or winding up of the affairs of the corporation, before any distribution or payment shall be made to the holders of any class of subordinate shares, the holders of the shares of each series of Cumulative Preference Shares shall be entitled to be paid in full the respective amounts fixed by the Board of Directors in the resolution or resolutions authorizing the creation of such series together with an amount, in the case of each share, computed at the annual dividend rate for the series of which the particular share is a part, from and including the date on which dividends on such share became cumulative to and including the date fixed for such payment, less the aggregate amount of all dividends which have theretofore been paid thereon or which have been declared thereon and for which moneys have been set apart and remain available for payment; provided, however, that no such payment to the holders of Cumulative Preference Shares shall be made until payment in full shall have been made to the holders of Cumulative Preferred Shares, or moneys made available for such payment in full, in accordance with the provisions of Subdivision E of Division I. If such payment shall have been made to the holders of the Cumulative Preference Shares, or moneys made available for such payment in full, the remaining assets and funds of the corporation shall be distributed among the holders of the classes of subordinate shares according to their respective rights and preferences and in each case according to their respective shares. If the assets available are not sufficient to pay in full the amounts so payable to the holders of all outstanding Cumulative Preference Shares, the holders of all series of such shares shall share ratably in any distribution of assets in proportion to the full amounts to which they would otherwise be respectively entitled. The consolidation or merger of the corporation into or with any other corporation or corporations pursuant to the statutes of the State of Minnesota providing

for consolidation or merger shall not be deemed a liquidation, dissolution or winding up of the affairs of the corporation within the meaning of any of the provisions of this Subdivision E.

F. Voting and Restrictions on Certain Corporate Action. The holders of the Cumulative Preference Shares shall not be entitled to vote at any meetings of the shareholders of the corporation, except as required by law or as hereinafter otherwise provided in this Subdivision F and in Division IV:

(1) So long as any Cumulative Preference Shares of any series are outstanding, the corporation shall not, without the consent (given by vote at a special meeting of shareholders called for the purpose) of the holders of at least two-thirds (2/3) of the aggregate voting power (determined as hereinafter provided in Division IV) vested in the Cumulative Preference Shares of all series then outstanding:

(a) Create or authorize any shares of any class (other than the Cumulative Preferred Shares, whether now or hereafter authorized) ranking prior to the Cumulative Preference Shares as to dividends or assets; or

(b) Amend the Articles of Incorporation so as to affect adversely any of the preferences or other rights of the holders of the Cumulative Preference Shares, provided, however, that if any such amendment would affect adversely the holders of one or more, but not all, of the series of Cumulative Preference Shares at the time outstanding, consent only of the holders of at least two-thirds (2/3) of the aggregate voting power (determined as hereinafter provided in Division IV) vested in the shares of each series so adversely affected shall be required.

(2) So long as any Cumulative Preference Shares of any series are outstanding, the corporation shall not, without the consent (given by vote at a special meeting of shareholders called for the purpose) of the holders (i) of at least a majority of the aggregate voting power (determined as hereinafter provided in Division IV) vested in the Cumulative Preference Shares of all series then outstanding, or (ii) in case of the negative vote at such meeting of the holders of more than one-fourth (1/4) of the aggregate voting power (determined as hereinafter provided in Division IV) vested in the Cumulative Preference Shares of all series then outstanding, of at least two-thirds (2/3) of the aggregate voting power (determined as hereinafter provided in Division IV) vested in the Cumulative Preference Shares of all series then outstanding:

(a) Increase the authorized number of Cumulative Preference Shares, or create or authorize any shares of any class ranking on a parity with the Cumulative Preference Shares as to dividends or assets; or

(b) Consolidate or merge into or with any other corporation or corporations pursuant to the statutes of the State of Minnesota providing for consolidation or merger unless, immediately after such consolidation or merger shall become effective, the Cumulative Preference Shares of the corporation outstanding immediately prior to such consolidation or merger shall remain

outstanding or be constituted as shares of the corporation resulting from such consolidation or merger in the same number and with the same relative rights, voting power, preferences and restrictions as theretofore, the authorized number thereof shall not be increased, and there shall be no shares of the resulting corporation outstanding or authorized ranking prior to or on a parity with the Cumulative Preference Shares, except shares of the corporation outstanding or authorized immediately prior to such consolidation or merger; or

(c) Sell, lease or exchange all or substantially all of its property and assets, unless, after the completion of such transaction, the fair value of the assets of the corporation shall at least equal the preference on voluntary liquidation of all Cumulative Preference Shares of all series then outstanding and of all shares then outstanding of a class on a parity with the Cumulative Preference Shares, after first deducting an amount equal to all then existing indebtedness of the corporation and an amount equal to the preference on voluntary liquidation of all shares ranking prior to the Cumulative Preference Shares.

DIVISION III

Provisions Relating to Common Shares

A. Dividends. Subject to the preferential rights of the holders of the Cumulative Preferred Shares and the Cumulative Preference Shares with respect to the payment of dividends, as set forth in Subdivision B of Division I and Subdivision B of Division II, respectively, holders of the Common Shares shall be entitled to receive dividends, out of any funds legally available therefor, when and as declared by the Board of Directors.

B. Liquidation Preferences. In the event of any dissolution, liquidation or winding-up of the affairs of the corporation, whether voluntary or involuntary, holders of the Common Shares shall be entitled to receive ratably, in accordance with the numbers of shares held by them respectively, the assets of the corporation available for payment to shareholders remaining after payment in full shall have been made to holders of the Cumulative Preferred Shares and the Cumulative Preference Shares in accordance with the provisions of Subdivision E of Division I and Subdivision E of Division II, respectively.

DIVISION IV

Voting Rights and Other Provisions Relating to Cumulative Preferred Shares, Cumulative Preference Shares and Common Shares

A. Voting Rights of Common Shares. Except as otherwise expressly set forth in this Article VI and as provided by law, the holders of Common Shares shall have the sole voting rights of shareholders of the corporation and shall be entitled to one vote for each share held, and the holders of a majority of the Common Shares outstanding shall have power to authorize the sale, lease, exchange or other disposal of all, or substantially all, of the property and assets of the

corporation, including its good will, to adopt or reject an agreement of consolidation or merger and to amend the Articles of Incorporation.

B. Voting Rights of Cumulative Preferred Shares.

(1) After an amount equivalent to four (4) full quarterly dividend installments on the Cumulative Preferred Shares of any series outstanding shall be in default, the holders of Cumulative Preferred Shares of all series at the time outstanding, voting separately as a class, shall, at any annual meeting of the shareholders or any special meeting of the shareholders called as herein provided occurring during such period, elect three members of the Board of Directors, and the holders of the Common Shares, voting separately as a class, shall, subject to any rights of the holders of Cumulative Preference Shares to elect directors as provided in Subdivision C of this Division IV, elect the remaining directors of the corporation.

(2) After an amount equivalent to twelve (12) full quarterly dividend installments on the Cumulative Preferred Shares of any series outstanding shall be in default, the holders of Cumulative Preferred Shares of all series at the time outstanding, voting separately as a class, shall at any annual meeting of the shareholders or any special meeting of the shareholders called as herein provided occurring during such period, elect the smallest number of directors necessary to constitute a majority of the full Board of Directors, and the holders of the Common Shares, voting separately as a class, shall, subject to any rights of the holders of Cumulative Preference Shares to elect directors as provided in Subdivision C of this Division IV, elect the remaining directors of the corporation.

(3) At any annual meeting or special meeting of the shareholders for the election of directors occurring after all dividends then in default on the Cumulative Preferred Shares then outstanding shall be paid (and such dividends shall be declared and paid out of any funds legally available therefor as soon as reasonably practical), the Cumulative Preferred Shares shall thereupon be divested of any special rights with respect to the election of directors provided in paragraphs (1) and (2) of this Subdivision B, but always subject to the same provisions for the vesting of such voting power in the holders of the Cumulative Preferred Shares in the case of a future like default or defaults in dividends thereon.

(4) Voting power vested in the holders of the Cumulative Preferred Shares as provided in paragraphs (1) and (2) of this Subdivision B may be exercised at any annual meeting of shareholders or at a special meeting of shareholders held for such purpose, which special meeting of shareholders shall be called by the proper officers of the corporation at any time when such voting power shall be so vested, within twenty (20) days after written request therefor signed by the holders of not less than five percent (5%) of the aggregate voting power (determined as hereinafter provided in Subdivision D of this Division IV) vested in the Cumulative Preferred Shares of all series then outstanding, the date of such special meeting to be not more than forty (40) days from the date of giving of notice thereof.

(5) Notice of any annual or special meeting of shareholders for the election of directors held when voting powers as aforesaid shall be vested in the holders of Cumulative Preferred Shares shall be given to all holders of Cumulative Preferred Shares not less than fifteen (15) days prior to said meeting, and such notice shall describe with particularity the voting rights of the holders of each series of Cumulative Preferred Shares.

(6) At any such annual or special meeting the presence in person or by proxy of the holders of a majority of the aggregate voting power (determined as hereinafter provided in Subdivision D of this Division IV) vested in the Cumulative Preferred Shares of all series then outstanding shall be required to constitute a quorum of the holders of the Cumulative Preferred Shares for the election by them of the directors whom they are entitled to elect; provided, however, that the holders of a majority of the aggregate voting power (determined as hereinafter provided in Subdivision D of this Division IV) vested in the Cumulative Preferred Shares who are present in person or by proxy shall have power to adjourn such meeting for the election of directors by the holders of the Cumulative Preferred Shares from time to time, without notice other than announcement at the meeting.

C. Voting Rights of Cumulative Preference Shares.

(1) After an amount equivalent to four (4) full quarterly dividend installments on the Cumulative Preference Shares of any series outstanding shall be in default, the holders of Cumulative Preference Shares of all series at the time outstanding, voting separately as a class, shall, at any annual meeting of the shareholders or any special meeting of the shareholders called as herein provided occurring during such period, elect two members of the Board of Directors, and the holders of the Common Shares, voting separately as a class, shall, subject to any rights of the holders of Cumulative Preferred Shares to elect directors as provided in Subdivision B of this Division IV, elect the remaining directors of the corporation.

(2) At any annual meeting or special meeting of the shareholders for the election of directors occurring after all dividends then in default on the Cumulative Preference Shares then outstanding shall be paid (and such dividends shall be declared and paid out of any funds legally available therefor as soon as reasonably practical), the Cumulative Preference Shares shall thereupon be divested of any special rights with respect to the election of directors provided for in paragraph (1) of this Subdivision C, but always subject to the same provisions for the vesting of such voting power in the holders of the Cumulative Preference Shares in the case of a future like default or defaults in dividends thereon.

(3) All provisions of paragraphs (4), (5) and (6) of Subdivision B of this Division IV with respect to the method of exercising the special voting rights of the holders of Cumulative Preferred Shares shall be applicable to the special voting rights of the holders of Cumulative Preference Shares in the same manner and with the same force and effect as though such provisions were set forth in full in this Subdivision C.

D. Number of Votes Applicable to Each Cumulative Preferred Share and to Each Cumulative Preference Share. For the purpose of each vote or consent under the Articles of Incorporation or pursuant to applicable law, the number of votes to which each Cumulative Preferred Share and each Cumulative Preference Share shall be entitled shall be determined as follows:

(a) In voting by holders of Cumulative Preferred Shares, separately as a class, or by series, each Cumulative Preferred Share entitled to receive the smallest fixed amount (in addition to accrued and unpaid dividends, if any) in the event of any dissolution, liquidation or winding-up of the affairs of the corporation which shall be involuntary shall have one vote, and each Cumulative Preferred Share entitled to receive a greater fixed amount (in addition to accrued and unpaid dividends, if any) in any such event shall have the number of votes which is in the same proportion as such greater amount shall be to such smallest amount;

(b) In voting by holders of Cumulative Preference Shares, separately as a class, or by series, each Cumulative Preference Share entitled to receive the smallest fixed amount (in addition to accrued and unpaid dividends, if any) in the event of any dissolution, liquidation or winding up of the affairs of the corporation which shall be involuntary shall have one vote, and each Cumulative Preference Share entitled to receive a greater fixed amount (in addition to accrued and unpaid dividends, if any) in any such event shall have the number of votes which is in the same proportion as such greater amount shall be to such smallest amount; and

(c) In voting by holders of Cumulative Preferred Shares and/or Cumulative Preference Shares and/or holders of Common Shares, together as a single class, each Common Share shall have one vote, each Cumulative Preferred Share and each Cumulative Preference Share entitled to receive \$100 (in addition to accrued and unpaid dividends, if any) in the event of any dissolution, liquidation or winding up of the affairs of the corporation which shall be involuntary shall have one vote and each Cumulative Preferred Share and each Cumulative Preference Share entitled to receive a different fixed amount (in addition to accrued and unpaid dividends, if any) in such event shall be entitled to such greater or lesser number of votes which is in the same proportion as such different amount shall be to \$100.

E. Number and Term of Directors and Manner of Election.

(1) Except at such times as the holders of Cumulative Preferred Shares and/or Cumulative Preference Shares shall have voting rights for the election of directors, (a) the Board of Directors shall consist of such number of persons as may be determined from time to time by the Board of Directors, (b) each director shall hold office until the regular meeting of shareholders next held after such director's election and until such director's successor shall have been elected and shall qualify, or until the earlier death, resignation, removal or disqualification of such director.

(2) If at any time the holders of Cumulative Preferred Shares and/or Cumulative Preference Shares of the corporation shall, under the provisions of paragraph (1) of Subdivision B of this Division IV or of paragraph (1) of Subdivision C of this Division IV, become entitled to elect any directors, then the terms of all incumbent directors shall expire at the time of the first annual meeting thereafter at which such holders of Cumulative Preferred Shares and/or Cumulative Preference Shares are so entitled to elect directors. If at any time the holders of Cumulative Preferred Shares of the corporation shall, under the provisions of paragraph (2) of Subdivision B of this Division IV, become entitled to elect a majority of the Board of Directors, the terms of all incumbent directors shall expire whenever such majority has been duly elected and qualified. During any period during which the holders of Cumulative Preferred Shares and/or Cumulative Preference Shares of the corporation shall have voting rights with respect to directors under the provisions of this Division IV, the Board of Directors shall consist of eleven (11) persons and the entire number of persons composing such Board shall be elected at each annual or special meeting of shareholders for the election of directors and shall serve until the next such annual or special meeting or until their successors have been elected and qualified, provided, however, that whenever the holders of Cumulative Preferred Shares and/or Cumulative Preference Shares acquire voting rights under paragraph (1) of Subdivision B of this Division IV or under paragraph (1) of Subdivision C of this Division IV, and exercise such rights at a special meeting called therefor, the terms of office of directors theretofore elected by the holders of Common Shares will not expire until the next annual meeting. If a vacancy or vacancies in the Board of Directors shall exist with respect to a director or directors who shall have been elected by the holders of either Cumulative Preferred Shares or Cumulative Preference Shares, the remaining directors elected by the holders of Cumulative Preferred Shares or Cumulative Preference Shares, as the case may be, by affirmative vote of a majority thereof, or the remaining director so elected if there be but one, may elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Likewise, if a vacancy or vacancies shall exist with respect to a director or directors who shall have been elected by the holders of Common Shares, the remaining directors elected by the holders of Common Shares, by affirmative vote of a majority thereof, or the remaining director so elected if there be but one, may elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant.

(3) Whenever the Cumulative Preferred Shares shall be divested of voting powers with respect to the election of directors as provided in paragraph (3) of Subdivision B of this Division IV, the terms of all incumbent directors, other than directors elected by the holders of Cumulative Preference Shares pursuant to Subdivision C of this Division IV, shall expire upon the election of their successors by the holders of the Common Shares at the next annual or special meeting of shareholders for the election of directors. A special meeting shall be called for such purpose within twenty (20) days after the written request therefor signed by the holders of not less than five percent (5%) of the Common Shares outstanding, the date of such special meeting to be not more than forty (40) days from the date of giving of notice thereof. Upon the election and qualification of directors by the holders of Common Shares as aforesaid the provisions of paragraph (1) of Subdivision E of this Division IV shall again control,

unless at that time the holders of Cumulative Preference Shares have voting rights for the election of directors.

(4) Whenever the Cumulative Preference Shares shall be divested of voting powers with respect to the election of directors as provided in paragraph (2) of Subdivision C of this Division IV, the terms of all incumbent directors, other than directors elected by the holders of Cumulative Preferred Shares pursuant to Subdivision B of this Division IV, shall expire on the election of their successors by the holders of the Common Shares at the next annual or special meeting of shareholders for the election of directors. A special meeting shall be called for such purpose within twenty (20) days after the written request therefor signed by the holders of not less than five percent (5%) of the Common Shares outstanding, the date of such special meeting to be not more than forty (40) days from the date of giving of notice thereof. Upon the election and qualification of directors by the holders of Common Shares as aforesaid, the provisions of paragraph (1) of Subdivision E of this Division IV shall again control, unless at that time the holders of Cumulative Preferred Shares have voting rights for the election of directors.

F. Cumulative Voting. The holders of Common Shares of the corporation shall have no right to cumulate votes in the election of directors. If notice in writing is given by any holder of Cumulative Preferred Shares or Cumulative Preference Shares to any officer of the corporation before a meeting for the election of directors at which such shareholder is entitled to vote, or to the presiding officer at such meeting at any time before the election of directors takes place, that he intends to cumulate his votes in such election, each holder of shares of the class with respect to which such notice has been given shall have the right to multiply the number of votes to which he may be entitled by the number of directors to be elected by the holders of shares of such class, and he may cast all such votes for one candidate or distribute them among any two or more candidates. In such case, it shall be the duty of the presiding officer, before the election of directors at the meeting, to announce that all shareholders of the class with respect to which such notice has been given shall cumulate their votes.

G. Preemptive Rights. No holder of shares of the corporation of any class or of any security or obligation convertible into, or of any warrant, option or right to purchase, subscribe for or otherwise acquire, shares of any class of the corporation, whether now or hereafter authorized, shall, as such holder, have any preemptive or preferential right whatsoever to purchase, subscribe for or otherwise acquire shares of any class of the corporation or of any security or obligation convertible into, or of any warrant, option or right to purchase, subscribe for or otherwise acquire, shares of any class of the corporation, whether now or hereafter authorized, other than such rights of subscription, if any, as the Board of Directors may from time to time determine.

DIVISION V

Voting Rights of Common Shares Relating To Certain Business Combinations

A. In addition to any other affirmative vote required by law or these Articles of Incorporation, and except as otherwise expressly provided in Subdivision B of this Division V,

(1) any merger or consolidation of the corporation or any Subsidiary (as hereinafter defined) with (a) an Interested Shareholder (as hereinafter defined) or (b) any other corporation (whether or not itself an Interested Shareholder) which is, or after such merger or consolidation would be, an Affiliate or Associate (as such terms are hereinafter defined) of an Interested Shareholder, or

(2) any sale, lease, exchange, mortgage, pledge, grant of a security interest, transfer or other disposition (in one transaction or a series of transactions), other than in the ordinary course of business, to or with (a) an Interested Shareholder or (b) any other person (whether or not itself an Interested Shareholder) which is, or after such sale, lease, exchange, mortgage, pledge, grant of a security interest, transfer or other disposition would be, an Affiliate or Associate of an Interested Shareholder, directly or indirectly, of all or any Substantial Part (as hereinafter defined) of the assets of the corporation (including, without limitation, any voting securities of a Subsidiary) or any Subsidiary, or both, or

(3) the issuance or transfer by the corporation or any Subsidiary (in one transaction or a series of transactions) of any securities (except pursuant to stock dividends, stock splits or similar transactions which would not have the effect of increasing the proportionate voting power of an Interested Shareholder) of the corporation or any Subsidiary, or both, to (a) an Interested Shareholder or (b) any other person (whether or not itself an Interested Shareholder) which is, or after such issuance or transfer would be, an Affiliate or Associate of an Interested Shareholder, or

(4) the adoption of any plan or proposal for the liquidation or dissolution of the corporation proposed by or on behalf of an Interested Shareholder or any Affiliate or Associate of an Interested Shareholder, or

(5) any reclassification of securities (including any reverse stock split), or recapitalization of the corporation, or any merger or consolidation of the corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Shareholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the corporation or any subsidiary directly or indirectly beneficially owned by (a) an Interested Shareholder or (b) any other person (whether or not itself an Interested Shareholder) which is, or after such reclassification, recapitalization, merger or consolidation or other transaction would be, an Affiliate or Associate of an Interested Shareholder,

shall not be consummated unless such consummation shall have been approved by the affirmative vote of the holders of at least 75% of the voting power of the then outstanding Common Shares. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law, in these Articles of Incorporation or in any agreement with any national securities exchange or otherwise.

B. The provisions of Subdivision A of this Division V shall not be applicable to any particular Business Combination (as hereinafter defined) and such Business Combination shall require only such affirmative vote as is required by law and any other provision of these Articles of Incorporation, if the Business Combination shall have been approved by a majority of the Continuing Directors (as hereinafter defined) or all of the following conditions shall have been met:

(1) The transaction constituting the Business Combination shall provide for a consideration to be received by all holders of Common Shares in exchange for all their Common Shares, and the aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of Common Shares in such Business Combination shall be at least equal to the higher of the following:

(a) (if applicable) the highest per-share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid in order to acquire any Common Shares beneficially owned by an Interested Shareholder (i) within the two-year period immediately prior to the Announcement Date (as hereinafter defined), (ii) within the two-year period immediately prior to the Determination Date (as hereinafter defined) or (iii) in the transaction in which it became an Interested Shareholder, whichever is highest; or

(b) the Fair Market Value per Common Share on the Announcement Date or on the Determination Date, whichever is higher.

(2) The consideration to be received by holders of Common Shares shall be in cash or in the same form as was previously paid in order to acquire the Common Shares that are beneficially owned by an Interested Shareholder and, if an Interested Shareholder beneficially owns Common Shares that were acquired with varying forms of consideration, the form of consideration for such Common Shares shall be either cash or the form used to acquire the largest number beneficially owned by it. The price determined in accordance with paragraph 1 of this Subdivision B shall be subject to appropriate adjustment in the event of any recapitalization, stock dividend, stock split, combination of shares or similar event.

(3) After such Interested Shareholder has become an Interested Shareholder and prior to the consummation of such Business Combination:

(a) except as approved by a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular date therefor the

full amount of any dividends (whether or not cumulative) payable on any outstanding Cumulative Preferred Shares or Cumulative Preference Shares;

(b) there shall have been (i) no reduction in the annual rate of dividends paid on the Common Shares (except as necessary to reflect any subdivision of the Common Shares) other than as approved by a majority of the Continuing Directors and (ii) an increase in such annual rate of dividends as necessary to prevent any such reduction in the event of any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding Common Shares, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and

(c) such Interested Shareholder shall not have become the beneficial owner of any additional Common Shares except as part of the transaction in which it became an Interested Shareholder.

(4) After such Interested Shareholder has become an Interested Shareholder, such Interested Shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the corporation, whether in anticipation of or in connection with such Business Combination or otherwise; and

(5) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to the shareholders of the corporation, no later than the earlier of (a) 30 days prior to any vote on the proposed Business Combination or (b) if no vote on such Business Combination is required, 60 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions). Such proxy statement shall contain at the front thereof, in a prominent place, any recommendations as to the advisability (or inadvisability) of the Business Combination which the Continuing Directors, or any of them, may have furnished in writing and, if deemed advisable by a majority of the Continuing Directors, an opinion of a reputable investment banking firm as to the fairness (or lack of fairness) of the terms of such Business Combination, from the point of view of the holders of the Common Shares other than an Interested Shareholder (such investment banking firm to be selected by a majority of the Continuing Directors, to be furnished with all information it reasonably requests and to be paid a reasonable fee for its services upon receipt by the corporation of such opinion).

C. For the purposes of this Division V:

(1) "Business Combination" shall mean any transaction that is referred to in any one or more of paragraphs 1 through 5 of Subdivision A of this Division V.

(2) "Person" shall mean any individual, firm, trust, partnership, association, corporation or other entity.

(3) "Interested Shareholder" shall mean any person (other than the corporation or any Subsidiary) who or which:

(a) is the beneficial owner, directly or indirectly, of more than 10% of the voting power of the then outstanding Common Shares; or

(b) is an Affiliate of the corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of more than 10% of the voting power of the then outstanding Common Shares; or

(c) is an assignee of or has otherwise succeeded to the beneficial ownership of any Common Shares which were, at any time within the two-year period immediately prior to the date in question, beneficially owned by an Interested Shareholder, unless such assignment or succession shall have occurred pursuant to a Public Transaction (as hereinafter defined) or any series of transactions involving a Public Transaction.

For the purpose of determining whether a person is an Interested Shareholder, the number of Common Shares deemed to be outstanding shall include shares deemed owned through application of paragraph 5 below, but shall not include any other Common Shares that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(4) "Public Transaction" shall mean any (a) purchase of shares offered pursuant to an effective registration statement under the Securities Act of 1933 or (b) open-market purchase of shares on a national securities exchange or in the over-the-counter market if, in either such case, the price and other terms of sale are not negotiated by the purchaser and the seller of the beneficial interest in the shares.

(5) A person shall be a "beneficial owner" of any Common Shares:

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

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

(c) which is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any

agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any Common Shares.

(6) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1986.

(7) "Subsidiary" shall mean any corporation of which a majority of any class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1986) is owned, directly or indirectly, by the corporation; provided, however, that, for purposes of the definition of Interested Shareholder set forth in paragraph 3, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the corporation.

(8) "Continuing Director" shall mean any member of the Board of Directors of the corporation who (1) is not an Affiliate or Associate of, and not a nominee of, an Interested Shareholder having any interest, direct or indirect, in the proposed Business Combination and (2) was a member of the Board of Directors prior to the time that such Interested Shareholder became an Interested Shareholder, and any successor of a Continuing Director who is not an Affiliate or Associate of, and not a nominee of, such Interested Shareholder and is recommended to succeed a Continuing Director by a majority of Continuing Directors then on the Board of Directors.

(9) "Announcement Date" shall mean the date of the first public announcement of the proposed Business Combination.

(10) "Determination Date" shall mean the date on which an Interested Shareholder became an Interested Shareholder.

(11) "Fair Market Value" shall mean: (a) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation or last reported sale price, whichever is applicable, with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the Continuing Directors in good faith; and (b) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the Continuing Directors in good faith.

(12) "Substantial Part" shall mean more than 30% of the fair market value of the total assets of the corporation as of the end of its most recent fiscal year ending prior to the time the determination is being made.

D. A majority of the Continuing Directors shall have the power and duty to determine for the purposes of this Division V, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Division V, including, without limitation, (1) whether a person is an Interested Shareholder, (2) the number of Common Shares beneficially owned by any person, (3) whether a person is an Affiliate or Associate of another, (4) whether the assets which are the subject of any Business Combination constitute a Substantial Part of the assets of the corporation or the Subsidiary, or both, (5) whether the requirements of Subdivision B of this Division V have been met, and (6) such other matters with respect to which a determination is required under this Division V. The good faith determination of a majority of the Continuing Directors on such matters shall be conclusive and binding for all purposes of this Division V.

E. Nothing contained in this Division V shall be construed to relieve an Interested Shareholder from any fiduciary obligation imposed by law.

F. Notwithstanding any other provisions of these Articles of Incorporation or the Bylaws of the corporation or the fact that a lesser percentage may be specified by law, these Articles of Incorporation or the Bylaws of the corporation, the affirmative vote of the holders of at least 75% of the voting power of the then outstanding Common Shares, shall be required to amend, alter, adopt any provision inconsistent with or repeal this Division V unless the Board of Directors, if all such directors are Continuing Directors, shall unanimously recommend such amendment, alteration, adoption or repeal.

DIVISION VI

Provisions Relating to Purchases Of Common Shares Of The Corporation

A. Except as otherwise expressly provided in this Division VI, the corporation may not purchase any Common Shares at a per-share price in excess of the Fair Market Price (as hereinafter defined) as of the time of such purchase from a person known by the corporation to be a Substantial Shareholder (as hereinafter defined), unless such purchase has been approved by the affirmative vote of the holders of at least two-thirds (2/3) of the Common Shares voted thereon held by Disinterested Shareholders (as hereinafter defined). Such affirmative vote shall be required notwithstanding the fact that no vote may be required or that a lesser percentage may be specified by law, in these Articles of Incorporation or in any agreement with any national securities exchange or otherwise.

B. The provisions of this Division VI shall not apply to (1) any purchase pursuant to an offer to purchase which is made on the same terms and conditions to the holders of all of the outstanding Common Shares or (2) any open market purchase that constitutes a Public Transaction (as hereinafter defined).

C. For the purposes of this Division VI:

(1) The terms "Continuing Director," "Person," "Public Transaction," "Affiliate" and "Associate" shall have the meanings given to them in Division V of this Article VI.

(2) "Substantial Shareholder" shall mean any person (other than any employee benefit plan or trust of the corporation or any similar entity) who or which:

(a) is the beneficial owner of more than 10% of the voting power of the then outstanding Common Shares, the acquisition of any shares of which has occurred within the two-year period immediately prior to the date on which the corporation purchases any such shares; or

(b) is an assignee of or has otherwise succeeded to the beneficial ownership of any Common Shares beneficially owned by a Substantial Shareholder, unless such assignment or succession shall have occurred pursuant to a Public Transaction or any series of transactions involving a Public Transaction and, with respect to all Common Shares owned by such person, such person has been the beneficial owner of any such shares for a period of less than two years (including, for these purposes, the holding period of the Substantial Shareholder from whom such person acquired shares).

For the purposes of determining whether a person is a Substantial Shareholder, the number of Common Shares deemed to be outstanding shall include shares deemed owned through application of paragraph 5 below, but shall not include any other Common Shares which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(3) "Disinterested Shareholders" shall mean those holders of Common Shares who are not Substantial Shareholders.

(4) "Fair Market Price" shall mean the highest closing sale price on the Composite Tape for New York Stock Exchange-Listed Stocks during the 30-day period immediately preceding the date in question of a Common Share or, if such Common Shares are not quoted on the Composite Tape, on the New York Stock Exchange or, if such Common Shares are not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such Common Shares are listed, or, if such Common Shares are not listed on any such exchange, the highest closing bid quotation with respect to a Common Share during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or, if no such quotations are available, the fair market value on the date in question of a Common Share, as determined by a majority of the Board of Directors in good faith.

(5) A person shall be a "beneficial owner" of any Common Shares:

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

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

(c) which is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any Common Shares.

D. A majority of the Board of Directors shall have the power and duty to determine for the purposes of this Division VI, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Division VI, including without limitation, (1) whether a person is a Substantial Shareholder, (2) the number of Common Shares beneficially owned by any person, (3) whether a person is an Affiliate or Associate of another, (4) whether a price is in excess of the Fair Market Price, (5) whether a purchase constitutes a Public Transaction, and (6) such other matters with respect to which a determination is required under this Division VI. The good faith determination of a majority of the Board of Directors on such matters shall be conclusive and binding for all purposes of this Division VI.

E. Nothing contained in this Division VI shall be construed to relieve a Substantial Shareholder from any fiduciary obligation imposed by law.

F. Notwithstanding any other provisions of these Articles of Incorporation or the Bylaws of the corporation or the fact that a lesser percentage may be specified by law, these Articles of Incorporation or the Bylaws of the corporation, the affirmative vote of the holders of at least 75% of voting power of the then outstanding Common Shares shall be required to amend, alter, adopt any provision inconsistent with or repeal this Division VI unless the Board of Directors, if all such directors are Continuing Directors, shall unanimously recommend such amendment, alteration, adoption or repeal.

ARTICLE VII.

The Board of Directors of the corporation shall have authority to accept or reject subscriptions for shares.

ARTICLE VIII.

Except as herein otherwise limited or qualified, the corporation reserves the right to amend, alter, change or repeal any of the terms or provisions of these Articles of Incorporation, all in the manner now or hereafter prescribed by the laws of the State of Minnesota, and all rights conferred herein upon officers, directors and shareholders of the corporation are granted subject to this reservation.

ARTICLE IX.

The Board of Directors shall have the power, to the extent permitted by law, to adopt, amend or repeal the Bylaws of the corporation, subject to the power of the shareholders to adopt, amend or repeal such Bylaws.

Notwithstanding any other provisions of these Articles of Incorporation or the Bylaws of the corporation or the fact that a lesser percentage may be specified by law, these Articles of Incorporation or the Bylaws of the corporation, the affirmative vote of the holders of at least 75% of the voting power of the then outstanding Common Shares shall be required to amend, alter, adopt any provision inconsistent with, or repeal this Article IX unless the Board of Directors, if all such directors are Continuing Directors, as defined in Article VI of the Articles of Incorporation, shall unanimously recommend such amendment, alteration, adoption or repeal.

ARTICLE X.

A director of the corporation shall not be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Sections 302A.559 or 80A.23 of the Minnesota Statutes; (iv) for any transaction from which the director derived an improper personal benefit; or (v) for any act or omission occurring prior to the date when this Article X became effective.

Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

ARTICLE XI.

Any action or transaction by or involving the corporation, other than the election or removal of directors of the corporation, that requires for its adoption under the Minnesota Business Corporation Act or these Articles of Incorporation, the approval of the shareholders of the corporation shall, pursuant to Section 302A.626 (subd. 3(8)(i)) of the Minnesota Business Corporation Act, require, in addition to the approval of the shareholders of the corporation, the approval of the shareholders of Otter Tail Corporation, a Minnesota corporation (or any successor by merger), so long as such corporation or its successor is the ultimate parent, directly or indirectly, of the corporation, by the same vote that is required by the Minnesota Business Corporation Act and/or by these Articles of Incorporation. For the purposes of this Article XI, the term "parent" shall mean a corporation that owns, directly or indirectly, any outstanding capital stock of the corporation entitled to vote in the election of directors of the corporation.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUL 01 2009

Mark Fitchie
Secretary of State

STATE OF MINNESOTA

DEPARTMENT OF STATE

I hereby certify that this is a true and complete copy of the document as filed for record in this office.

DATED 7/1/09

Mark Ritchie

Secretary of State



By

Linda Jewley

State of North Dakota

SECRETARY OF STATE



Certificate of Good Standing of OTTER TAIL POWER COMPANY

SOS Control ID#: 0000016296

Certificate #: 021710112

The undersigned, as Secretary of State of the state of North Dakota, hereby certifies that, according to the records of this office,

OTTER TAIL POWER COMPANY

a Corporation - Business - Foreign was formed under the laws of MINNESOTA and filed with this office effective February 24, 1914. This entity has, as of the date set forth below, complied with all applicable North Dakota laws.

ACCORDINGLY, the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Good Standing.

DATE: April 22, 2022

A handwritten signature in black ink, appearing to read "Alvin A. Jaeger".

Alvin A. Jaeger
Secretary of State

EXHIBIT

5

**Office of the Minnesota Secretary of State
Certificate of Good Standing**

I, Steve Simon, Secretary of State of Minnesota, do certify that: The business entity listed below was filed pursuant to the Minnesota Chapter listed below with the Office of the Secretary of State on the date listed below and that this business entity is registered to do business and is in good standing at the time this certificate is issued.

Name: Otter Tail Power Company
Date Filed: 07/05/1907
File Number: 26525-AA
Minnesota Statutes, Chapter: 302A
Home Jurisdiction: Minnesota

This certificate has been issued on: 04/22/2022



Steve Simon

Steve Simon
Secretary of State
State of Minnesota

EXHIBIT
6

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

**In the matter of the Joint Application of
Ashtabula Wind III, LLC and Otter Tail
Power Company for Transfer of
Certificate of Site Compatibility**

Case No. PU-22-

AFFIDAVIT OF BRADLEY E. TOLLERSON

STATE OF MINNESOTA)
)SS.
COUNTY OF OTTER TAIL)

Bradley E. Tollerson, under oath, states:

1. I am the Vice President of Energy Supply for Otter Tail Power Company ("Otter Tail"), a Minnesota corporation, with its principal office in Fergus Falls, Minnesota, which is authorized to do business in the State of North Dakota. I attest to the content of this affidavit on the basis of my own personal knowledge and belief as to the matters contained herein.
2. Ashtabula Wind III is an indirect wholly owned subsidiary of NextEra Energy Resources, LLC. Ashtabula Wind III is a Delaware limited liability company with its principal office in Juno Beach, Florida, and is authorized to do business in the State of North Dakota.
3. I am familiar with the Commission's Findings of Fact, Conclusions of Law and Order dated August 4, 2010, in Case No. PU-10-147, and with Certificate of Compatibility No. 17 issued in said case to Ashtabula Wind III for the construction and operation of Ashtabula III Wind Energy Center and associated facilities ("Ashtabula III WEC").
4. I am familiar with the Commission's Order granting Otter Tail's Application for Public Convenience and Necessity, in Case No. PU-22-027, for Otter Tail's acquisition of Ashtabula III WEC.
5. Otter Tail and Ashtabula Wind III entered into a Wind Energy Purchase Power Agreement ("PPA") in 2013 whereby Otter Tail purchases power generation from Ashtabula III WEC.
6. In May of 2013, Otter Tail and Ashtabula Wind III also entered into an Option Agreement which would allow Otter Tail to purchase the Ashtabula III WEC at a future date. Otter Tail

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

In the matter of the Joint Application of
Ashtabula Wind III, LLC and Otter Tail
Power Company for Transfer of
Certificate of Site Compatibility

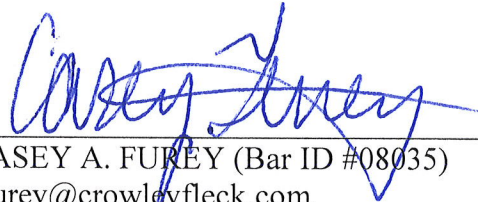
Case No. PU-22-_____

NOTICE OF APPEARANCE

Notice is hereby given that Casey A. Furey, Crowley Fleck PLLP, will be appearing in the above-entitled matter on behalf of Ashtabula Wind III, LLC. All correspondence, notices, pleadings, and other material relevant to this matter should be served upon the undersigned.

Dated this 16th day of May, 2022.

By: _____


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