

**BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

UG-_____

NORTHWEST NATURAL GAS COMPANY

**Application for Approval of Corporate Reorganization
to Create a Holding Company**

Exhibit A

February 10, 2017

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger, dated as of [_____] (the “*Agreement*”), is between Northwest Natural Gas Company, an Oregon corporation (“*NW Natural*”), [*HOLDCO*], an Oregon corporation and a wholly owned subsidiary of NW Natural (“*Holdco*”), and NWN Merger Sub, Inc., an Oregon corporation and a wholly owned subsidiary of Holdco (“*Merger Sub*”).

RECITALS

A. The Board of Directors of each of NW Natural, Holdco and Merger Sub deems it advisable to merge Merger Sub into NW Natural in accordance with the Oregon Business Corporation Act (the “*OBCA*”) and to approve this Agreement for the purpose of establishing Holdco as the parent corporation of NW Natural, as a result of which the holders of common stock of NW Natural (the “*NW Natural Common Stock*”) would hold, in lieu thereof, common stock of Holdco (the “*Holdco Common Stock*”).

B. The Board of Directors of each of NW Natural, Holdco and Merger Sub has determined to recommend that their respective shareholders approve this Agreement, the merger of Merger Sub into NW Natural (the “*Merger*”) and the other matters set forth herein.

C. For federal income tax purposes, the Merger is intended to qualify as a “reorganization” under Section 368(a) of the Internal Revenue Code of 1986, as amended.

In consideration of the premises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

ARTICLE 1 THE MERGER

1.1 Merger. Merger Sub will merge into NW Natural, with NW Natural surviving the Merger.

1.2 Articles of Merger. Subject to and in accordance with the provisions of this Agreement, Articles of Merger of NW Natural shall be delivered for filing with the Office of the Secretary of State of Oregon.

1.3 Effective Time. The Merger will become effective at the time specified in the Articles of Merger or, if no time is specified, when the Articles of Merger are filed with the Office of the Secretary of State of Oregon (the “*Effective Time*”). At the Effective Time, the separate existence of Merger Sub will cease and Merger Sub will merge into NW Natural, which will continue its corporate existence as the surviving corporation (the “*Surviving Corporation*”).

1.4 Appropriate Actions. Holdco, NW Natural and Merger Sub shall take all necessary and appropriate to complete the Merger. In this connection, Holdco shall issue and

deliver the shares of Holdco Common Stock into which outstanding shares of NW Natural Common Stock are converted on the basis and to the extent provided in Article 2 of this Agreement, and shall take other actions necessary to fulfill Holdco's obligations under this Agreement, including, without limitation, those specified in Article 6 of this Agreement. If, after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full title to all properties, assets, privileges, rights, immunities and franchises of either of NW Natural or Merger Sub, NW Natural shall, and shall cause the individuals who were the officers and directors of Merger Sub as of the Effective Time to, take all such further action.

ARTICLE 2 TERMS OF CONVERSION AND EXCHANGE OF SHARES

2.1 NW Natural Common Stock. At the Effective Time, each share of NW Natural Common Stock issued and outstanding immediately prior to the Effective Time will automatically convert into one share of Holdco Common Stock, and such Holdco Common Stock will thereupon be issued and outstanding and fully-paid and non-assessable.

2.2 Merger Sub Common Stock. The shares of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Time will convert into all of the issued and outstanding shares of Common Stock of the Surviving Corporation, which will thereupon be issued and outstanding and fully-paid and non-assessable, with the effect that the number of issued and outstanding shares of Common Stock of the Surviving Corporation will be the same as the number of issued and outstanding shares of Merger Sub Common Stock immediately prior to the Effective Time.

2.3 Holdco Common Stock. Each share of Holdco Common Stock issued and outstanding immediately prior to the Effective Time will automatically be canceled.

ARTICLE 3 ARTICLES OF INCORPORATION AND BYLAWS

3.1 NW Natural Articles and Bylaws. The Articles of Incorporation and Bylaws of NW Natural will be the Articles of Incorporation and Bylaws of the Surviving Corporation.

3.2 Holdco Articles. Prior to the Effective Time and until thereafter amended in accordance with applicable law, the Board of Directors of Holdco shall take such further steps as necessary to amend and restate the Articles of Incorporation of Holdco, pursuant to the OBCA, as provided in Annex 1 attached hereto.

ARTICLE 4 DIRECTORS AND OFFICERS

4.1 NW Natural Directors and Officers. The persons who are directors and officers of NW Natural immediately prior to the Effective Time will continue as directors and officers of

NW Natural and will continue to hold office as provided in the Articles of Incorporation and Bylaws of NW Natural.

4.2 Holdco Directors and Officers. NW Natural, as sole shareholder of Holdco prior to the Effective Time, shall take such steps as necessary to cause, pursuant to the OBCA, the persons who are directors and officers of NW Natural prior to the Effective Time to become, prior to the Effective Time, directors and officers of Holdco, and the directors and officers will continue after the Effective Time to hold office as provided in the Articles of Incorporation and Bylaws of Holdco.

ARTICLE 5 STOCK CERTIFICATES

5.1 Outstanding Certificates. Following the Effective Time, certificates representing shares of NW Natural Common Stock outstanding at the Effective Time (“*NW Natural Certificates*”) will represent the same number of shares of Holdco Common Stock and will evidence the right of the registered holder thereof to receive, and may be exchanged for, certificates for the shares of Holdco Common Stock into which such shares of NW Natural Common Stock were converted in accordance with Section 2.1. At the Effective Time, Holdco shall issue and deliver, or cause to be issued and delivered, to the transfer agent for Holdco Common Stock (the “*Transfer Agent*”) certificates representing shares of Holdco Common Stock into which outstanding shares of NW Natural Common Stock have been converted as provided above. As promptly as practicable following the Effective Time, Holdco shall send or cause to be sent to each former shareholder of record of NW Natural immediately prior to the Effective Time who holds a NW Natural Certificate written instructions and transmittal materials (a “*Transmittal Letter*”) for use in surrendering NW Natural Certificates to the Transfer Agent. Upon the proper surrender and delivery to the Transfer Agent (in accordance with Holdco’s instructions, and accompanied by a properly completed Transmittal Letter) by a former shareholder of NW Natural of such shareholder’s NW Natural Certificate(s), and in exchange therefor, the Transfer Agent shall, as soon as practicable, issue, register and deliver to such shareholder a certificate evidencing the shares of Holdco Common Stock or register such shares in electronic form.

5.2 Stock Transfer Books. The stock transfer books for NW Natural Common Stock will be closed at the Effective Time and no transfer of shares of NW Natural Common Stock outstanding immediately prior to the Effective Time shall thereafter be made on such books. As of the Effective Time, Holdco shall establish a stock register reflecting ownership of Holdco Common Stock by former holders of record of NW Natural Common Stock.

5.3 Post-Merger Rights of Holders. At the Effective Time, the holders of certificates for NW Natural Common Stock outstanding immediately prior to the Effective Time will cease to have any rights with respect to the stock of NW Natural and their sole rights will be with respect to the Holdco Common Stock into which their shares of NW Natural Common Stock are converted by the Merger.

5.4 Unsurrendered Certificates. Subject to Section 5.5 below, no Holdco Common Stock certificate may be delivered to any former holder of NW Natural Common Stock unless and until such shareholder properly surrenders to the Transfer Agent the NW Natural Certificate(s) formerly representing his or her shares of NW Natural Common Stock, together with a properly completed Transmittal Letter.

5.5 Lost, Etc., Certificates. Any former holder of NW Natural Common Stock whose certificate for shares of NW Natural Common Stock has been lost, destroyed, stolen or otherwise is missing will be entitled to receive a certificate representing the shares of Holdco Common Stock to which he or she is entitled in accordance with and upon compliance with conditions imposed by the Transfer Agent or Holdco (including, without limitation, a requirement that the shareholder provide a lost instruments indemnity or surety bond in form, in substance and amount satisfactory to the Transfer Agent and Holdco).

ARTICLE 6 NORTHWEST NATURAL GAS STOCK PLANS

NW Natural and Holdco shall take all actions required to provide that, from and after the Effective Time, all director, officer, employee, customer, shareholder and other plans of NW Natural or its affiliates, to the extent they directly or indirectly utilize NW Natural Common Stock, will utilize Holdco Common Stock instead of NW Natural Common Stock.

ARTICLE 7 CONDITIONS OF THE MERGER

Completion of the Merger is subject to the satisfaction of the following conditions.

7.1 Shareholder Approval. The principal terms of this Agreement are approved by such holders of capital stock of the parties as required by the OBCA.

7.2 Stock Exchange Listing. All conditions for the listing on the New York Stock Exchange as of the Effective Time of the Holdco Common Stock to be issued and to be reserved for issuance pursuant to the Merger are satisfied.

7.3 Regulatory Approvals. All necessary orders, consents, authorizations, approvals or waivers from the Oregon Public Utilities Commission[, the Washington Utilities and Transportation Commission] and all other regulatory bodies, boards or agencies, or from other third parties, have been received, are in full force and effect, and do not include, in the sole judgment of the Board of Directors of NW Natural, unacceptable conditions.

7.4 Filings. All documents that are required to be filed pursuant to the OBCA have been duly executed and filed with the appropriate agency.

7.5 Tax Opinion. NW Natural receives an opinion of Stoel Rives LLP confirming the United States federal income tax consequences of the Merger contemplated by this Agreement.

**ARTICLE 8
AMENDMENT AND TERMINATION**

8.1 Amendment. This Agreement may be amended by the parties at any time before or after obtaining the approval of the NW Natural shareholders, but if the shareholder approval has been obtained, no amendment may thereafter be made which by law requires further approval by the NW Natural shareholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

8.2 Termination. This Agreement may be terminated and the transactions provided for by this Agreement may be abandoned at any time, whether before or after approval of this Agreement by the shareholders of NW Natural, by action of the Board of Directors of NW Natural if the Board of Directors determines for any reason that the completion of the transactions provided for in this Agreement would for any reason be inadvisable or not in the best interests of NW Natural or its shareholders.

**ARTICLE 9
MISCELLANEOUS**

9.1 Counterparts. This Agreement may be executed in multiple counterparts, each of which is deemed an original hereof.

9.2 Oregon Law. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of Oregon, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Oregon.

NW Natural, Holdco and Merger Sub have each caused this Agreement to be executed by an authorized officer.

NORTHWEST NATURAL GAS COMPANY

By: _____

Its: _____

[HOLDCO]

By: _____

Its: _____

NWN MERGER SUB, INC.

By: _____

Its: _____

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

[*HOLDCO*]

(These Amended and Restated Articles of Incorporation of [*HOLDCO*] supersede its theretofore existing Articles of Incorporation.)

ARTICLE I

The name of this corporation is [*HOLDCO*], and its duration shall be perpetual.

ARTICLE II

The purposes of the corporation are to engage in any lawful activity for which corporations may be organized under the Oregon Business Corporation Act.

ARTICLE III

- A. The aggregate number of shares of capital stock which the corporation shall have authority to issue is 103,500,000 shares, divided into 3,500,000 shares of Preferred Stock, issuable in series as hereinafter provided, and 100,000,000 shares of Common Stock.
- B. A statement of the preferences, limitations and relative rights of each class of capital stock of the corporation, namely, the Preferred Stock and the Common Stock, of the variations in the relative rights and preferences as between series of the Preferred Stock, insofar as the same are fixed by these Restated Articles of Incorporation, and of the authority vested in the board of directors of the corporation to establish series of Preferred Stock and to fix and determine the variations in the relative rights and preferences as between series insofar as the same are not fixed by these Restated Articles of Incorporation, is as follows:

Preferred Stock

- 1. The shares of the Preferred Stock may be divided into and issued in series. Each series shall be so designated as to distinguish the shares thereof from the shares of all other series of the Preferred Stock and all other classes of capital stock of the corporation. To the extent that these Restated Articles of Incorporation shall not have established series of the Preferred Stock and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority, and is hereby expressly vested with authority, to divide the Preferred Stock into series and, within the limitations set forth in these Restated Articles of Incorporation and such limitations as may be provided by law, to fix and determine the relative rights and preferences of any series of the Preferred Stock so established. Such action by the board of directors shall be expressed in a resolution or resolutions adopted by it prior to the issuance of shares of each series, which resolution or resolutions shall also set forth the distinguishing

designation of the particular series of the Preferred Stock established thereby. Without limiting the generality of the foregoing, authority is hereby expressly vested in the board of directors so to fix and determine with respect to any series of the Preferred Stock:

- (a) The rate of dividend and the relative preference of each series in the payment of dividends;
- (b) The price at which and the terms and conditions on which shares may be redeemed;
- (c) The amount payable upon shares in the event of voluntary and involuntary liquidation and the relative preference of each series on liquidation;
- (d) Sinking fund provisions, if any, for the redemption or purchase of shares;
- (e) The terms and conditions, if any, on which shares may be converted if the shares of any series are issued with the privilege of conversion; and
- (f) Any other relative right or preference as permitted by law.

All shares of the Preferred Stock of the same series shall be identical except that shares of the same series issued at different times may vary as to the dates from which dividends thereon shall be cumulative; and all shares of the Preferred Stock, irrespective of series, shall constitute one and the same class of stock and shall be identical except as to the designation thereof, the date or dates from which dividends on shares thereof shall be cumulative, and the relative rights and preferences set forth above in clauses (a) through (f) of this subdivision, as to which there may be variations between different series. Except as otherwise may be provided by law or by the resolutions establishing any series of Preferred Stock in accordance with the foregoing provisions of this subdivision, whenever the written consent, affirmative vote, or other action on the part of the holders of the Preferred Stock may be required for any purpose, such consent, vote or other action shall be taken by the holders of the Preferred Stock as a single class irrespective of series and not by different series.

2. The holders of shares of the Preferred Stock of each series shall be entitled to receive dividends, when and as declared by the board of directors, out of any funds legally available for the payment of dividends, at the annual rate fixed and determined with respect to each series either by these Restated Articles of Incorporation or in accordance with subdivision III. B. 1., and no more, payable quarterly on the 15th day of February, May, August and November in each year or on such other date or dates as the board of directors shall determine in the resolutions establishing such series. Such dividends shall be cumulative in the case of shares of each series either from the date of issuance of shares of such series or from the first day of the current dividend period within which shares of such series shall be issued, as the board of directors shall determine, so that if dividends on all outstanding shares of each particular series of the Preferred Stock, at the annual dividend rates fixed and determined either by these Restated Articles of

Incorporation or in accordance with subdivision III. B. 1., shall not have been paid or declared and set apart for payment for all past dividend periods and for the then current dividend periods, the deficiency shall be fully paid or dividends equal thereto declared and set apart for payment at said rates before any dividends on the Common Stock shall be paid or declared and set apart for payment. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments which may be in arrears.

3. In the event of any dissolution, liquidation or winding up of the corporation, before any distribution or payment shall be made to the holders of the Common Stock, the holders of the Preferred Stock of each series then outstanding shall be entitled to be paid out of the net assets of the corporation available for distribution to its shareholders the respective amounts per share fixed and determined with respect to each series either by these Restated Articles of Incorporation or in accordance with subdivision III. B. 1., and no more. If upon dissolution, liquidation or winding up of the corporation, whether voluntary or involuntary, the net assets of the corporation available for distribution to its shareholders shall be insufficient to pay the holders of all outstanding shares of Preferred Stock of all series the full amounts to which they shall be respectively entitled as aforesaid, the net assets of the corporation so available for distribution shall be distributed to the holders of Preferred Stock in accordance with the relative preferences of each series of Preferred Stock established either by these Restated Articles of Incorporation or in accordance with subdivision III. B. 1. For the purposes of this subdivision, any dissolution, liquidation or winding up which may arise out of or result from the condemnation or purchase of all or a major portion of the properties of the corporation by (i) the United States Government or any authority, agency or instrumentality thereof (ii) a State of the United States or any political subdivision, authority, agency or instrumentality thereof, or (iii) a district, cooperative or other association or entity not organized for profit, shall be deemed to be an involuntary dissolution, liquidation or winding up; and a consolidation, merger or amalgamation of the corporation with or into any other corporation or corporations shall not be deemed to be a dissolution, liquidation or winding up of the corporation, whether voluntary or involuntary.
4. The holders of shares of the Preferred Stock shall have no right to vote in the election of directors or for any other purpose, except as may be otherwise provided by law or by resolutions establishing any series of Preferred Stock in accordance with subdivision III. B. 1. Holders of Preferred Stock shall be entitled to notice of each meeting of shareholders at which they shall have any right to vote, but shall not be entitled to notice of any other meeting of shareholders.

Common Stock

5. Subject to the limitations set forth in subdivisions III. B. 2. (and subject to the rights of any class of stock hereafter authorized), dividends may be paid upon the Common Stock when and as declared by the board of directors of the corporation out of any funds legally available for the payment of dividends.

6. Subject to the limitations set forth in subdivisions III. B. 3. (and subject to the rights of any other class of stock hereafter authorized), upon any dissolution, liquidation or winding up of the corporation, whether voluntary or involuntary, the net assets of the corporation shall be distributed ratably to the holders of the Common Stock.
7. Except as may be otherwise provided by law or by the resolutions establishing any series of Preferred Stock in accordance with subdivision III. B. 1., the holders of the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes. In the election of directors of the corporation, every holder of record of any share or shares of the Common Stock of the corporation shall have the right to cast as many votes for one candidate as shall equal the number of such shares multiplied by the number of directors to be elected, or to distribute such number of votes among any two or more candidates for such election.
8. Upon the issuance for money or other consideration of any shares of capital stock of the corporation, or of any security convertible into capital stock of the corporation, no holder of shares of the capital stock, irrespective of the class or kind thereof, shall have any preemptive or other right to subscribe for, purchase or receive any proportionate or other amount of such shares of capital stock, or such security convertible into capital stock, proposed to be issued; and the board of directors may cause the corporation to dispose of all or any of such shares of capital stock, or of any such security convertible into capital stock, as and when said board may determine, free of any such right, either by offering the same to the corporation's then shareholders or by otherwise selling or disposing of such shares of other securities, as the board of directors may deem advisable.

ARTICLE IV

- A. The business and affairs of the corporation shall be managed by a board of directors. Except as provided in subdivision B. below, the number of members of the board, their classifications and terms of office, and the manner of their election and removal shall be as follows:
 1. The number of directors shall be that number, not less than nine or more than thirteen, determined from time to time by resolution adopted by affirmative vote of a majority of the entire board of directors. The directors shall be divided into three classes, designated Class I, Class II, and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of directors. At the 1984 annual meeting of shareholders, Class I directors shall be elected for a one-year term, Class II directors for a two-year term, and Class III directors for a three-year term. At each succeeding annual meeting of shareholders, successors to directors whose terms expire at that annual meeting shall be of the same class as the directors they succeed, and shall be elected for three-year terms. If the number of directors should be changed by resolution of the board of directors, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors shorten the term of any incumbent director.

2. A director shall hold office until the annual meeting for the year in which his or her term shall expire and until his or her successor shall have been elected and qualified, subject, however, to prior death, resignation, retirement or removal from office. Any newly created directorship resulting from an increase in the number of directors and any other vacancy on the board of directors, however caused, may be filled by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director.
 3. One or more of the directors may be removed with or without cause by the affirmative vote of the holders of not less than two-thirds of the shares entitled to vote thereon at a meeting of the shareholders called expressly for that purpose; provided, however, that for as long as the corporation shall have cumulative voting, if fewer than all the directors should be candidates for removal, no one of them shall be removed if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the class of directors of which he or she shall be a part.
 4. No person, except those persons nominated by the board, shall be eligible for election as a director at any annual or special meeting of shareholders unless a written request that his or her name be placed in nomination shall be received from a shareholder of record entitled to vote at such election by the secretary of the corporation not later than the latter of (a) the thirtieth day prior to the date fixed for the meeting, or (b) the tenth day after the mailing of notice of that meeting, together with the written consent of the nominee to serve as a director.
- B. Notwithstanding the provisions of subdivision A. above, whenever the holders of any one or more classes of the capital stock of the corporation shall have the right, voting separately as a class or classes, to elect directors at an annual or special meeting of shareholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the provisions of these Restated Articles of Incorporation applicable thereto. Directors so elected shall not be divided into classes unless expressly provided by such provisions, and during their prescribed terms of office, the board of directors shall consist of such directors in addition to the directors determined as provided in subdivision A. above.
- C. This Article IV may not be repealed or amended in any respect unless such action shall be approved by the affirmative vote of the holders of not less than two-thirds of the shares entitled to vote at an election of directors determined as provided in subdivision A. above, at a meeting of the shareholders called expressly for that purpose.

ARTICLE V

A. For purposes of this Article V:

1. The term “Affiliate”, as used to indicate a relationship with a specified “Persons” (as hereinafter defined), shall mean a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

2. The term “Associate”, as used to indicate a relationship with a specified Person, shall mean (a) any Person (other than the corporation) of which such specified Person is a director, officer, partner, trustee, guardian, fiduciary or official or is, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities or any beneficial interest, (b) any Person who is a director, officer, partner, trustee, guardian, fiduciary or official or is, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities or any beneficial interest of or in such specified Person (other than the corporation), and (c) any relative or spouse of such specified Person, or any relative of such spouse who has the same home as such specified Person.
3. The term “Beneficial Owner” shall have the meaning set forth in Rule 13d-3 of the General Rules and Regulations under the Securities Exchange Act of 1934 as in effect on April 9, 1984; provided, however, that, notwithstanding the provisions of such Rule, a Person shall be deemed to be the Beneficial Owner of any share of the capital stock of the corporation that such Person shall have the right to acquire at any time pursuant to any agreement, contract, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise, and any such share of capital stock shall be deemed to be outstanding for purposes of subdivision V.A.9.
4. The term “Business Transaction” shall include, without limitation, (a) any merger, consolidation or plan of exchange of the corporation, or any Person controlled by or under common control with the corporation, with or into any “Related Person” (as hereinafter defined), (b) any merger, consolidation or plan of exchange of a Related Person with or into the corporation or any Person controlled by or under common control with the corporation, (c) any sale, lease, exchange, transfer or other disposition (in one transaction or a series of transactions) including without limitation a mortgage or any other security device, of all or any “Substantial Part” (as hereinafter defined) of the property and assets of the corporation, or any Person controlled by or under common control with the corporation, to or with a Related Person, (d) any purchase, lease, exchange, transfer or other acquisition (in one transaction or a series of transactions), including without limitation a mortgage or any other security device, of all or any Substantial Part of the property and assets of a Related Person, by or with the corporation or any Person controlled by or under common control with the corporation, (e) any recapitalization of the corporation that would have the effect of increasing the voting power of a Related Person, (f) the issuance, sale, exchange or other disposition of any securities of the corporation, or of any Person controlled by or under common control with the corporation, by the corporation or by any Person controlled by or under common control with the corporation, (g) any liquidation, spinoff, splitoff, splitup or dissolution of the corporation, and (h) any agreement, contract or other arrangement providing for any of the transactions described in this subdivision.
5. The term “Continuing Director” shall mean a director who was a director of the corporation on April 9, 1984 and a director who shall become a director subsequent thereto whose election, or whose nomination for election by the shareholders, shall have been approved by a vote of a majority of the then Continuing Directors.

6. The term “Highest Purchase Price” shall mean, with respect to the shares of any class or series of the capital stock of the corporation, the highest amount of consideration paid by a Related Person for a share of the same class and series at any time regardless of whether the share was acquired before or after such Related Person became a Related Person; provided, however, that the Highest Purchase Price shall be appropriately adjusted to reflect the occurrence of any reclassification, recapitalization, stock split, reverse stock split or other readjustment in the number of outstanding shares of that class or series, or the declaration of a stock dividend thereon. The Highest Purchase Price shall include any brokerage commissions, transfer taxes and soliciting dealers’ fees paid by such Related Person with respect to any shares of the capital stock acquired by such Related Person.
 7. The term “Other Consideration” shall include, without limitation, capital stock to be retained by the shareholders of the corporation in a Business Transaction in which the corporation shall be the survivor.
 8. The term “Person” shall mean any natural person, corporation, partnership, trust, firm, association, government, governmental. agency or any other entity whether acting in an individual, fiduciary or other capacity.
 9. The term “Related Person” shall mean (a) any Person which, together with its Affiliates and Associates, shall be the Beneficial Owner in the aggregate of 10 percent or more of the capital stock of the corporation, and (b) any Affiliate or Associate (other than the corporation or a wholly owned subsidiary of the corporation) of any such Person. Two or more Persons acting in concert for the purpose of acquiring, holding or disposing of the capital stock of the corporation shall be deemed to be a “Related Person”. A Related Person shall be deemed to have acquired a share of capital stock at the time when such Related Person became the Beneficial Owner thereof. With respect to the shares of the capital stock of the corporation owned by any Related Person, if the price paid for such shares cannot be determined by a majority of the Continuing Directors, the price so paid shall be deemed to be the market price of the shares in question at the time when such Related Person became the Beneficial Owner thereof.
 10. The term “Substantial Part” shall mean 10% or more of the fair market value of the total assets of a Person, as reflected on the most recent balance sheet of such Person available to the Continuing Directors on the date of mailing of the notice of the meeting of shareholders called for the purpose of voting with respect to a Business Transaction involving the assets constituting any such Substantial Part.
- B. The corporation shall not enter into any Business Transaction with a Related Person or in which a Related Person shall have an interest (except proportionately as a shareholder of the corporation) without first obtaining both (1) the affirmative vote of the holders of not less than two-thirds of the outstanding shares of the capital stock of the corporation not held by such Related Person, and (2) the determination of a majority of the Continuing Directors that the cash or fair market value of the property, securities or Other Consideration to be received per share by the holders, other than such Related Person, of the shares of each class or series

of the capital stock of the corporation in such Business Transaction shall not be less than the Highest Purchase Price paid by such Related Person in acquiring any of its holdings of shares of the same class or series, unless the Continuing Directors by a majority vote shall either (a) have expressly approved the acquisition of the shares of the capital stock of the corporation that caused such Related Person to become a Related Person, or (b) have expressly approved such Business Transaction.

- C. For the purposes of this Article V, a majority of the Continuing Directors shall have the power to make a good faith determination, on the basis of information known to them, of: (1) the number of shares of capital stock of the corporation of which any Person shall be the Beneficial Owner, (2) whether a Person is an Affiliate or Associate of another Person, (3) whether a Person has an agreement, contract, arrangement or understanding with another Person as to the matters referred to in subdivision V.A.3. or clause (h) of subdivision V.A.4., (4) the Highest Purchase Price paid by a Related Person for shares of any class or series of the capital stock, (5) whether the assets subject to any Business Transaction constitute a Substantial Part, (6) whether any Business Transaction is one in which a Related Person has an interest (except proportionately as a shareholder of the corporation), and (7) such other matters with respect to which a determination may be required under this Article V.
- D. In determining whether to give their approval as provided in subdivision V.B., the Continuing Directors shall give due consideration to all relevant factors involved, including, without limitation, (1) the value of the corporation in a freely negotiated transaction and its future value as an independent entity, (2) the recognition of gain or loss to the corporation for tax purposes or the postponement of such recognition in a tax-free transaction, (3) the anticipated developments of the business of the corporation not yet reflected in the price of its shares, and (4) the impact on employees, customers, suppliers and the public generally within the geographical area it serves.
- E. This Article V may not be repealed or amended in any respect unless such action shall be approved by the affirmative vote of the holders of not less than two-thirds of the capital stock of the corporation not held by a Related Person at a meeting of the shareholders called expressly for that purpose.

ARTICLE VI

No director of the corporation shall be personally liable to the corporation or its shareholders for monetary damages for conduct as a director; provided that this Article VI shall not eliminate the liability of a director for any act or omission for which such elimination of liability is not permitted under the Oregon Business Corporation Act. No amendment to the Oregon Business Corporation Act that further limits the acts or omissions for which elimination of liability is permitted shall affect the liability of a director for any act or omission which occurs prior to the effective date of such amendment.

ARTICLE VII

The corporation shall indemnify to the fullest extent then permitted by law any person who is made, or threatened to be made, a party to any threatened, pending or completed action, suit or

proceeding, whether civil, criminal, administrative, investigative or otherwise (including an action, suit or proceeding by or in the right of the corporation) by reason of the fact that the person is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against all judgments, amounts paid in settlement, fines and such expenses (including attorneys' fees), actually and reasonably incurred in connection therewith. This Article shall not be deemed exclusive of any other provisions for indemnification of directors and officers that may be included in any statute, bylaw, agreement, vote of shareholders or directors or otherwise, both as to action in any official capacity and as to action in another capacity while holding an office.