

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Restated Certificate of Incorporation (changing name of company)		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
National Water & Power, Inc.		10/22/2002	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	NWP Services Corporation		
Street Address:	22 Executive Park		
City:	Irvine		
State/Country:	CALIFORNIA		
Postal Code:	92614		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	2797800	EIS+	
Registration Number:	3136421	NWP SERVICES CORPORATION	
CORRESPONDENCE DATA			
Fax Number:	(734)930-2494		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	734-761-3780		
Email:	asujek@bodmanllp.com		
Correspondent Name:	Angela Alvarez Sujek - Bodman LLP		
Address Line 1:	201 South Division, Ste 400		
Address Line 4:	Ann Arbor, MICHIGAN 48104		
NAME OF SUBMITTER:	Angela Alvarez Sujek		
Signature:	/Angela Alvarez Sujek/		
Date:	06/09/2010		
Total Attachments: 31			

OP \$65.00 2797800

900164188

**TRADEMARK
 REEL: 004221 FRAME: 0500**

source=NWP Name Change#page1.tif
source=NWP Name Change#page2.tif
source=NWP Name Change#page3.tif
source=NWP Name Change#page4.tif
source=NWP Name Change#page5.tif
source=NWP Name Change#page6.tif
source=NWP Name Change#page7.tif
source=NWP Name Change#page8.tif
source=NWP Name Change#page9.tif
source=NWP Name Change#page10.tif
source=NWP Name Change#page11.tif
source=NWP Name Change#page12.tif
source=NWP Name Change#page13.tif
source=NWP Name Change#page14.tif
source=NWP Name Change#page15.tif
source=NWP Name Change#page16.tif
source=NWP Name Change#page17.tif
source=NWP Name Change#page18.tif
source=NWP Name Change#page19.tif
source=NWP Name Change#page20.tif
source=NWP Name Change#page21.tif
source=NWP Name Change#page22.tif
source=NWP Name Change#page23.tif
source=NWP Name Change#page24.tif
source=NWP Name Change#page25.tif
source=NWP Name Change#page26.tif
source=NWP Name Change#page27.tif
source=NWP Name Change#page28.tif
source=NWP Name Change#page29.tif
source=NWP Name Change#page30.tif
source=NWP Name Change#page31.tif

RESTATED CERTIFICATE OF INCORPORATION
OF
NATIONAL WATER & POWER, INC.

National Water & Power, Inc., a Delaware corporation, hereby certifies as follows:

1. The name of the Corporation immediately prior to the effectiveness of this Restated Certificate of Incorporation is National Water & Power, Inc. (the "Corporation"). The original Certificate of Incorporation of the Corporation was filed with the Secretary of the State of Delaware on December 4, 1997.
2. The Board of Directors of the Corporation, in accordance with Sections 242 and 245 of the Delaware General Corporation Law, duly adopted resolutions, effective as of July 24, 2002, setting forth the following restatement of and further amendment to the Certificate of Incorporation of the Corporation, declaring such restatement and amendments to be advisable.
3. The stockholders of the Corporation, in accordance with Sections 228, 242 and 245 of the Delaware General Corporation Law and Section 2.10 of the Corporation's Restated Bylaws, consented to the adoption of the following restatement of and further amendment to the Certificate of Incorporation of the Corporation, by written consent in lieu of a meeting of the stockholders.
4. Pursuant to Sections 242 and 245 of the Delaware General Corporation Law, this Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of this Corporation.
5. The text of the Certificate of Incorporation is hereby restated and further amended to read in its entirety as follows:

FIRST: The name of the corporation is NWP Services Corporation (hereinafter referred to as the "Corporation").

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

THIRD: The purposes of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

FOURTH:

PART A. AUTHORIZED SHARES

The total number of shares of capital stock which the Corporation has authority to issue is 139,015,960 shares, consisting of:

- (1) 8,905 shares of Series A preferred stock, par value \$.01 per share (the "*Series A Preferred*"); and
- (2) 12,644 shares of Series B preferred stock, par value \$.01 per share (the "*Series B Preferred*"); and
- (3) 17,646 shares of Series C preferred stock, par value \$.01 per share (the "*Series C Preferred*"); and
- (4) 305,000 shares of Series D preferred stock, par value \$.01 per share (the "*Series D Preferred*"); and
- (5) 1,411,765 shares of Series E preferred stock, par value \$.01 per share (the "*Series E Preferred*"); and
- (6) 8,000,000 shares of Series F preferred stock, par value \$.01 per share (the "*Series F Preferred*"); and
- (7) 1,500,000 shares of Series G preferred stock, par value \$.01 per share (the "*Series G Preferred*"); and
- (8) 28,000,000 shares of Series H preferred stock, par value \$.001 per share (the "*Series H Preferred*"); and
- (9) 900,000 shares of Series P preferred stock, par value \$.01 per share (the "*Series P Preferred*"); and
- (10) 98,860,000 shares of common stock, par value \$.01 per share (the "*Common Stock*").

The Series A Preferred, Series B Preferred and Series C Preferred are sometimes collectively referred to herein as the "*Junior Preferred*." The Series D Preferred, Series E Preferred, Series F Preferred, Series G Preferred and Series H Preferred are sometimes collectively referred to herein as the "*Senior Preferred*." The Series P Preferred is sometimes referred to herein as the "*Performance Preferred*." The Junior Preferred, the Performance Preferred and the Senior Preferred are sometimes collectively referred to as the "*Preferred Stock*."

Certain capitalized terms used in this Certificate of Incorporation are defined in Section 7 of Part G of this Article FOURTH.

PART B. PROVISIONS APPLICABLE TO JUNIOR PREFERRED

Section 1. *Dividends.*

(a) *General Obligation.* When and as declared by the Corporation's Board of Directors and to the extent permitted under the General Corporation Law of Delaware, and subject to Part C of this Article FOURTH, the Corporation shall pay preferential dividends in cash to the holders of the Junior Preferred as provided in this Section 1. Dividends on each share of any series of Junior Preferred (for purposes of this Part B, a "Share") shall accrue on a daily basis at the rate of 10% per annum on the applicable Junior Preferred Issue Price therefor from and including the date of issuance of such Share to and including the first to occur of (i) the date on which the applicable Junior Preferred Issue Price therefor (plus all accrued and unpaid dividends thereon) is paid to the holder thereof in connection with the Liquidation of the Corporation, (ii) the date on which such Share is converted into shares of Common Stock hereunder or (iii) the date on which such Share is otherwise acquired by the Corporation. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. The date on which the Corporation initially issues any Share shall be deemed to be its "date of issuance" regardless of the number of times transfer of such Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Share.

(b) *Priority of Junior Preferred on Dividends and Redemptions.* So long as any Junior Preferred remains outstanding, without the prior written consent of the holders of a majority of the outstanding shares of Junior Preferred voting as a single class, the Corporation shall not, nor shall it permit any Subsidiary to, redeem, purchase or otherwise acquire, directly or indirectly, any Common Stock, nor shall the Corporation, directly or indirectly, pay or declare any dividend or make any distribution upon any Common Stock; *provided* that the Corporation may effect Permitted Redemptions.

(c) *Distribution of Partial Dividend Payments.* Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Junior Preferred, such payment shall be distributed *pro rata* among the holders thereof based upon the aggregate accrued but unpaid dividends on the Shares held by each such holder.

(d) *Participating Dividends.* In the event that the Corporation declares or pays any dividends (whether payable in cash, securities or other property) upon the Common Stock (other than dividends payable solely in shares of Common Stock), the Corporation shall also declare and pay to the holders of the Junior Preferred at the same time that it declares and pays such dividends to the holders of the Common Stock, the dividends which would have been declared and paid with respect to the Common Stock issuable upon conversion of the Junior Preferred had all of the outstanding Junior Preferred been converted immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined.

Section 2. Liquidation. Upon any Liquidation of the Corporation, each holder of any series of Junior Preferred shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, (a) before any distribution or payment is made upon any Common Stock or Series P Preferred, but subject to the prior rights of the holders of Senior Preferred pursuant to Section 2(a) of Part C of this Article FOURTH, an amount in cash equal to the aggregate Junior Preferred Issue Price of all Shares held by such holder (plus all accrued and unpaid dividends thereon) and (b) after payment in full of all amounts owing to the holders of Junior Preferred pursuant to the preceding clause (a) and after payment in full of all amounts owing to the holders of Series P Preferred pursuant to Section 1 of Part E, the holders of Junior Preferred shall be entitled to participate together with the holders of Senior Preferred on an "as if converted" basis, and with the holders of the Common Stock, as a single class, in the distribution of the assets of the Corporation with regard to the Common Stock. If upon any such Liquidation, the Corporation's assets to be distributed among the holders of the Junior Preferred are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid under clause (a) of this Section 2, then the entire assets available to be distributed to the holders of Junior Preferred shall be distributed *pro rata* among such holders based upon the aggregate Junior Preferred Issue Price (plus all accrued and unpaid dividends) of the Junior Preferred held by each such holder.

Section 3. Voting Rights. The holders of the Junior Preferred shall be entitled to notice of all stockholders' meetings in accordance with the Corporation's bylaws, and except as otherwise required by applicable law, the holders of the Junior Preferred shall be entitled to vote on all matters submitted to the stockholders for a vote together with the holders of the Senior Preferred and the holders of the Common Stock, voting together as a single class, with each Share of Junior Preferred (or Senior Preferred, as the case may be) entitled to vote for each share of Common Stock issuable upon conversion of such series of the Junior Preferred (or Senior Preferred, as the case may be) as of the record date for such vote or, if no record date is specified, as of the date of such vote.

Section 4. Conversion.

(a) Conversion Procedure.

(i) At any time and from time to time, any holder of Junior Preferred may convert all or any portion of the Junior Preferred held by such holder into a number of shares of Common Stock computed by multiplying the number of Shares to be converted by the applicable Junior Preferred Issue Price and dividing the result by the applicable Junior Preferred Applicable Conversion Price with respect to each respective series of Junior Preferred then in effect.

(ii) Upon the consummation of a Qualified Public Offering, all outstanding shares of each series of Junior Preferred will automatically be converted into a number of shares of Common Stock by multiplying the number of outstanding shares of such series of Junior Preferred by the applicable Junior Preferred Issue Price and dividing the result by the Applicable Conversion Price with respect to each respective series of Junior Preferred then in effect.

(iii) Except as otherwise provided herein, each conversion of Junior Preferred shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Junior Preferred to be converted have been surrendered for conversion at the principal office of the Corporation. At the time any such conversion has been effected, the rights of the holder of the Shares converted as a holder of Junior Preferred shall cease and the Person or Persons in whose name or names the certificate or certificates for shares of Common Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iv) As soon as possible after a conversion has been effected (but in any event, within five Business Days in the case of subparagraph (A) below), the Corporation shall deliver to the converting holder:

(A) a certificate or certificates representing the number of shares of Common Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(B) payment in an amount equal to all accrued dividends with respect to each Share converted which have not been paid prior thereto, provided however, if the Corporation's underwriters in a Qualified Public Offering require that cash dividends not be paid pursuant to this section, then such dividends shall be converted into an additional number of shares of Common Stock determined by dividing the amount of the unpaid dividends to be applied for such purpose by the applicable Junior Preferred Conversion Price then in effect; and

(C) a certificate representing any Shares of Junior Preferred which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(v) If for any reason the Corporation is unable to pay any portion of the accrued and unpaid dividends on Junior Preferred being converted, such dividends may, at the converting holder's option, be converted into an additional number of shares of Common Stock determined by dividing the amount of the unpaid dividends to be applied for such purpose by the Applicable Conversion Price then in effect for the series of Preferred Stock that accrued such dividends.

(vi) The issuance of certificates for shares of Common Stock upon conversion of Junior Preferred shall be made without charge to the holders of such Junior Preferred for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of any Share of Junior Preferred, the Corporation shall take all such actions as are necessary in order to ensure that the Common Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof.

(vii) The Corporation shall not close its books against the transfer of Junior Preferred or of Common Stock issued or issuable upon conversion of Junior Preferred in any manner which interferes with the timely conversion of Junior Preferred. The Corporation shall assist and cooperate with any holder of Shares required to make any governmental filings or obtain any governmental approval prior to, or in connection with, any conversion of Shares hereunder (including, without limitation, making any filings required to be made by the Corporation).

(viii) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of issuance upon conversion of the Junior Preferred, such number of shares of Common Stock issuable upon the conversion of all outstanding Junior Preferred. All shares of Common Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance, which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action which would cause the number of authorized but unissued shares of Common Stock to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Junior Preferred.

PART C. PROVISIONS APPLICABLE TO SENIOR PREFERRED

Section 1. *Dividends.*

(a) *General Obligation.* When and as declared by the Corporation's Board of Directors and to the extent permitted under the General Corporation Law of Delaware, the Corporation shall pay preferential dividends in cash to the holders of the Senior Preferred as provided in this Section 1. Dividends on each share of the Senior Preferred (for purposes of this Part C, a "Share") shall accrue on a daily basis at a per annum rate equal to the applicable Senior Preferred Dividend Rate on the sum of the applicable Senior Preferred Issue Price for such Share of Senior Preferred, from and including the date of issuance of such Share to and including the first to occur of (i) the date on which the Redemption Price of such Share is paid to the holder thereof in connection with the Liquidation of the Corporation or the redemption of such Share by the Corporation, (ii) the date on which such Share is converted into shares of Common Stock hereunder or (iii) the date on which such Share is otherwise acquired by the Corporation. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. The date on which the Corporation initially issues any Share shall be deemed to be its "date of issuance" regardless of the number of times transfer of such Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Share.

(b) *Dividend Payment Dates.* All dividends which have accrued on the Senior Preferred shall be payable if declared on the thirtieth day of each of March, June, September and December of each year, beginning September 30, 2000 (the "*Dividend Payment Dates*").

(c) *Distribution of Partial Dividend Payments.* Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Senior Preferred, such payment shall be distributed *pro rata* among the holders thereof based upon the aggregate Accreted Value of the Shares held by each such holder.

(d) *Participating Dividends.* In the event that the Corporation declares or pays any dividends upon the Common Stock (whether payable in cash, securities or other property) other than dividends payable solely in shares of Common Stock, the Corporation shall also declare and pay to the holders of the Senior Preferred at the same time that it declares and pays such dividends to the holders of the Common Stock, the dividends which would have been declared and paid with respect to the Common Stock issuable upon conversion of the Senior Preferred had all of the outstanding Senior Preferred been converted immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined.

(e) *Priority of Senior Preferred or Dividends and Redemptions.* So long as any shares of Senior Preferred are outstanding, the Corporation shall not declare, pay or set apart for payment any dividend on any of Common Stock or Junior Securities or make any payment on account of, or set apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of, any Common Stock or Junior Securities or any warrants, rights, calls or options exercisable for or convertible into any of Common Stock or Junior Securities, or make any distribution in respect thereof, either directly or indirectly, and whether in cash, obligations or shares of the capital stock of the Corporation or other property (other than dividends on Common Stock or Junior Securities paid in additional shares of Common Stock or Junior Securities), as applicable, and shall not permit any corporation or other entity directly or indirectly controlled by the Corporation to purchase or redeem any of the Common Stock or Junior Securities or any such warrants, rights, calls or options; *provided* that the Corporation may effect Permitted Redemptions.

(f) If any Dividend Payment Date occurs on a day that is not a Business Day, any dividends otherwise payable on such Dividend Payment Date shall be paid on the next succeeding Business Day.

Section 2. *Liquidation.*

(a) Subject to Section 2(b) below, upon any Liquidation of the Corporation, each holder of any series of Senior Preferred shall be entitled to be paid for each share of Senior Preferred held by such holder, out of the assets of the Corporation available for distribution to its stockholders, (i) before any payment shall be made or any assets distributed to the holders of any of the Common Stock or Junior Securities, an amount in cash equal to the Accreted Value of such share and (ii) after payment in full of all amounts owing to the holders of Senior Preferred pursuant to clause (i) above and payment in full of amounts owing to the holders of Junior Preferred pursuant to Section 2 of Part B of this Article FOURTH and to the holders of Series P

Preferred pursuant to Section 1 of Part E of this Article FOURTH, the holders of Senior Preferred shall be entitled to participate together with the holders of Junior Preferred, on an "as if converted" basis with the holders of the Common Stock, as a single class, in the distribution of the assets of the Corporation with regard to the Common Stock. If the assets of the Corporation are not sufficient to pay in full the amount to which the holders of outstanding shares of the Senior Preferred are entitled to be paid pursuant to clause (i) of this Section 2(a), then the entire assets available to be distributed to the holders of Senior Preferred shall be distributed *pro rata* among such holders based upon the aggregate Accreted Value of the Senior Preferred held by each such holder.

(b) Notwithstanding the foregoing, if upon a Liquidation of a Company, the liquidation value of the Corporation is less than \$50,000,000, each holder of Series H Preferred shall be entitled to be paid for each share of Series H Preferred held by such holder, out of the assets of the Corporation available for distribution to its stockholders, (i) before any payment shall be made or any assets distributed to the holders of any of the Common Stock, Junior Securities or Senior Preferred (other than the Series H Preferred), an amount in cash equal to the Accreted Value of such share and (ii) after payment in full of all amounts owing to the holders of Series H Preferred pursuant to clause (i) above and payment in full of amounts owing to the holders of Senior Preferred (other than the Series H Preferred) pursuant to paragraph (a) above, and to the holders of Junior Preferred pursuant to Section 2 of Part B of this Article FOURTH and to the holders of Series P Preferred pursuant to Section 1 of Part E of this Article FOURTH, the holders of Series H Senior Preferred shall be entitled to participate together with the holders of Senior Preferred (other than the Series H Preferred), and holders of Junior Preferred, on an "as if converted" basis with the holders of the Common Stock, as a single class, in the distribution of the assets of the Corporation with regard to the Common Stock. If the assets of the Corporation are not sufficient to pay in full the amount to which the holders of outstanding shares of the Series H Preferred are entitled to be paid pursuant to clause (i) of this Section 2(b), then the entire assets available to be distributed to the holders of Series H Preferred shall be distributed *pro rata* among such holders based upon the aggregate Accreted Value of the Series H Preferred held by each such holder. If the holders of Series H Preferred receive the preference set forth in this Section 2(b), such holders will not receive the preference set forth in Section 2(a) above.

Section 3. *Redemptions.*

(a) *Redemptions upon Request.* Each holder of Senior Preferred shall have the right to require the Corporation to repurchase such holder's Senior Preferred at any time on or after the fifth anniversary of the applicable Initial Closing Date by delivering written notice of such request to the Corporation at least 90 days prior to such holder's proposed date of redemption. Within five days after receipt of such request, the Corporation shall give written notice of such request to all other holders of Senior Preferred, and such other holders may request redemption of their Shares of Senior Preferred by delivering written notice to the Corporation within ten days after receipt of the Corporation's notice. The Corporation shall be required to redeem all Shares with respect to which such redemption requests have been made at a price per Share equal to the Redemption Price thereof commencing within 90 days after receipt of the initial redemption request (the "Redemption Date"). If any holders of any series of Senior Preferred have the right to request redemption of such holders shares and such holders elect to have the shares redeemed, the holders of all other series of Senior Preferred shall have the

simultaneous right to cause the Corporation to redeem such holders' shares of Senior Preferred regardless of whether the applicable fifth anniversary of the Initial Closing Date for such series has occurred.

(b) *Change of Control.* If a Change of Control has occurred or the Corporation obtains knowledge that a Change of Control is proposed to occur, the Corporation shall give prompt written notice of such Change of Control describing in reasonable detail the material terms and date of consummation thereof to each holder of Senior Preferred, but in any event such notice shall not be given later than fifteen days prior to the occurrence of such Change of Control, and the Corporation shall give each holder of Senior Preferred prompt written notice of any material change in the terms or timing of such transaction. Any holder of Senior Preferred may require the Corporation to redeem all or any portion of the Senior Preferred owned by such holder at a price per Share equal to the Redemption Price by giving written notice to the Corporation of such election prior to the later of (a) fifteen days after receipt of the Corporation's notice and (b) five days prior to the consummation of the Change of Control (the "*Expiration Date*"). The Corporation shall give prompt written notice of any such election to all other holders of Senior Preferred within three days after the receipt thereof, and each such holder shall have until the later of (a) the Expiration Date or (b) ten days after receipt of such second notice to request redemption hereunder (by giving written notice to the Corporation) of all or any portion of the Senior Preferred owned by such holder. Upon receipt of such election(s), the Corporation shall be obligated to redeem the aggregate number of Shares specified therein on the occurrence of the Change of Control. If any proposed Change of Control does not occur, all requests for redemption in connection therewith shall be automatically rescinded, or if there has been a material change in the terms or the timing of the transaction, any holder of Senior Preferred may rescind such holder's request for redemption by giving written notice of such rescission to the Corporation.

(c) *Redemption Payments.* For each Share which is to be redeemed hereunder, the Redemption Price for such Share shall be payable in three (3) equal installments, each such installment due on the Redemption Date and the first and second anniversaries of the Redemption Date, respectively (upon surrender by such holder at the Corporation's principal office of the certificate representing such Share). If the funds of the Corporation legally available for redemption of Shares on any redemption date are insufficient to redeem the total number of Shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of Shares *pro rata* among the holders of the Shares to be redeemed based upon the aggregate Redemption Price of such Shares held by each such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Shares, such funds shall immediately be used to redeem the balance of the Shares which the Corporation has become obligated to redeem on any redemption date but which it has not redeemed.

(d) *Partial Redemption.* In case fewer than the total number of Shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed Shares shall be issued to the holder thereof without cost to such holder within five Business Days after surrender of the certificate representing the redeemed Shares.

(e) *Dividends After Redemption Date.* No Share shall be entitled to any dividends accruing after the date on which the Redemption Price of such Share is paid to the holder of such Share. On such date, all rights of the holder of such Share shall cease, and such Share shall no longer be deemed to be issued and outstanding.

(f) *Redeemed or Otherwise Acquired Shares.* Any Shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares and shall not be reissued, sold or transferred.

(g) *Other Redemptions or Acquisitions.* The Corporation shall not, nor shall it permit any Subsidiary to, redeem or otherwise acquire any Shares of Senior Preferred, except (i) as expressly authorized herein (ii) pursuant to the right of first offer as expressly provided in Section 5.1 of the Amended and Restated Securityholders Agreement or (iii) pursuant to a purchase offer made *pro rata* to all holders of Senior Preferred on the basis of the number of Shares owned by each such holder; provided, however, that in the case of clause (iii), the Corporation shall first get the approval of the holders of a majority of the then outstanding Series H Preferred shares.

Section 4. *Election of Directors.*

(a) *Election of Series D Directors.* In the election of directors of the Corporation, the holders of the Series D Preferred, voting separately as a single class to the exclusion of all other classes of the Corporation's capital stock and with each Share of Series D Preferred entitled to one vote, shall be entitled to elect three directors to serve on the Corporation's Board of Directors until their successors are duly elected by the holders of the Series D Preferred or they are removed from office by the holders of the Series D Preferred. If the holders of the Series D Preferred for any reason fail to elect anyone to fill any such directorship, such position shall remain vacant until such time as the holders of the Series D Preferred elect a director to fill such position and shall not be filled by resolution or vote of the Corporation's Board of Directors or the Corporation's other stockholders.

(b) *Election of Series E Directors.* In the election of directors of the Corporation, the holders of the Series E Preferred, voting separately as a single class to the exclusion of all other classes of the Corporation's capital stock and with each Share of Series E Preferred entitled to one vote, shall be entitled to elect one director to serve on the Corporation's Board of Directors until his/her successor is duly elected by the holders of the Series E Preferred or he or she is removed from office by the holders of the Series E Preferred. If the holders of the Series E Preferred for any reason fail to elect anyone to fill such directorship, such position shall remain vacant until such time as the holders of the Series E Preferred elect a director to fill such position and shall not be filled by resolution or vote of the Corporation's Board of Directors or the Corporation's other stockholders.

(c) *Other Voting Rights.* The holders of the Senior Preferred shall be entitled to notice of all stockholders meetings in accordance with the Corporation's bylaws, and except in the election of directors and as otherwise required by applicable law, the holders of the Senior Preferred shall be entitled to vote on all matters submitted to the stockholders for a vote together with the holders of the Common Stock and the Junior Preferred voting together as a single class

with each share of Common Stock entitled to one vote per share and each Share of Senior Preferred (or Junior Preferred, as the case may be) entitled to one vote for each share of Common Stock issuable upon conversion of the Senior Preferred (or Junior Preferred, as the case may be) as of the record date for such vote or, if no record date is specified, as of the date of such vote.

Section 5. Conversion.

(a) Conversion Procedure.

(i) At any time and from time to time, any holder of Senior Preferred may convert all or any portion of the Senior Preferred (including any fraction of a Share) held by such holder into a number of shares of Common Stock computed by dividing the aggregate Accreted Value for the shares to be converted by the Applicable Conversion Price, then in effect.

(ii) Upon the consummation of a Qualified Public Offering, all outstanding shares of Senior Preferred will automatically be converted into a number of shares of the Corporation's Common Stock by multiplying the number of outstanding shares of such Senior Preferred by the aggregate Accreted Value for the shares and dividing the result by the Applicable Conversion Price, then in effect.

(iii) Except as otherwise provided herein, each conversion of Senior Preferred shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Senior Preferred to be converted have been surrendered for conversion at the principal office of the Corporation. At the time any such conversion has been effected, the rights of the holder of the Shares converted as a holder of Senior Preferred shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iv) The conversion rights of any Share subject to redemption hereunder shall terminate on the redemption date for such Share unless the Corporation has failed to pay to the holder thereof the Redemption Price of such Share.

(v) As soon as possible after a conversion has been effected (but in any event within five Business Days in the case of subparagraph (a) below), the Corporation shall deliver to the converting holder:

(A) a certificate or certificates representing the number of shares of Common Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified; and

(B) a certificate representing any Shares of Senior Preferred which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(vi) If for any reason the Corporation is unable to pay any portion of the accrued and unpaid dividends on Senior Preferred being converted, such dividends may, at the converting holder's option, be converted into an additional number of shares of Common Stock determined by dividing the amount of the unpaid dividends to be applied for such purpose, by the Applicable Conversion Price, then in effect.

(vii) The issuance of certificates for shares of Common Stock upon conversion of Senior Preferred shall be made without charge to the holders of such Senior Preferred for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of each Share of Senior Preferred, the Corporation shall take all such actions as are necessary in order to insure that the Common Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof.

(viii) The Corporation shall not close its books against the transfer of Senior Preferred or of Common Stock issued or issuable upon conversion of Senior Preferred in any manner which interferes with the timely conversion of Senior Preferred. The Corporation shall assist and cooperate with any holder of Shares required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of Shares hereunder (including, without limitation, making any filings required to be made by the Corporation).

(ix) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of issuance upon the conversion of the Senior Preferred, such number of shares of Common Stock as shall be issuable upon the conversion of all outstanding Senior Preferred hereunder. All shares of Common Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirement of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action which would cause the number of authorized but unissued shares of Common Stock to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Senior Preferred.

Section 6. *Approval Rights.* (a) So long as at least 500,000 Shares of Senior Preferred are outstanding (as adjusted for any subsequent stock splits), the Corporation shall not, without the approval, by vote or written consent, of the holders of at least a two-thirds majority of the shares of Senior Preferred then outstanding, voting together as a single class:

- (i) consummate a Change of Control;
- (ii) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity

security, in an amount greater than \$500,000, except for securities issued pursuant to Excepted Transactions;

(iii) issue debt securities in excess of \$500,000 in original principal amount; or

(iv) pledge in excess of \$500,000 of the Corporation's assets.

(b) So long as at least twenty-five percent (25%) of the shares of Series H Preferred issued pursuant to the Investment Agreement remain outstanding (as adjusted for any subsequent stock splits), the Corporation shall not, without the approval (by vote or written consent), of the holders of at least a majority of the then-outstanding Senior Preferred shares, voting together as a single class:

(i) sell, convey or otherwise dispose of all or substantially all of the Corporation's property, assets or business or merge into, or consolidate with, any other corporation (other than a wholly-owned subsidiary corporation) or effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of;

(ii) authorize any action that results in any voluntary dissolution or liquidation of the Corporation or any reclassification of the Corporation's capital stock;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Common Stock or Preferred Stock;

(iv) pay or declare any cash dividend on any security; or

(v) redeem or repurchase shares of capital stock (excluding shares repurchased at or below cost upon termination of an officer, employee or director or consultant pursuant to a restricted stock purchase agreement).

(c) So long as any of the shares of Series F Preferred shall remain outstanding, the Corporation shall not, without the approval by vote or written consent of the holders of at least a majority of the then-outstanding Series F Preferred shares:

(i) alter or change the rights, preferences or privileges of the shares of Series F Preferred; or

(ii) authorize or designate (whether by reclassification or otherwise), or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over Series F Preferred with respect to redemption, voting, dividends, or upon liquidation (other than a security that is senior to the Series F Preferred to the same extent the Series H Preferred is senior to the Series F Preferred).

(d) So long as any of the shares of Series G Preferred shall remain outstanding, the Corporation shall not, without the approval by vote or written consent of the holders of at least a majority of the then-outstanding Series G Preferred shares:

(i) alter or change the rights, preferences or privileges of the shares of Series G Preferred; or

(ii) authorize or designate (whether by reclassification or otherwise), or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over Series G Preferred with respect to redemption, voting, dividends, or upon liquidation (other than a security that is senior to the Series G Preferred to the same extent the Series H Preferred is senior to the Series G Preferred).

(e) So long as any of the shares of Series H Preferred shall remain outstanding, the Corporation shall not, without the approval by vote or written consent of the holders of at least a majority of the then-outstanding Series H Preferred shares, including DQE and EIF (or any Affiliate of EIF), so long as DQE and EIF (or any Affiliate of EIF) (as applicable) holds any shares of Series H Preferred:

(i) alter or change the rights, preferences or privileges of the shares of Series H Preferred; or

(ii) authorize or designate (whether by reclassification or otherwise), or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over Series H Preferred with respect to redemption, voting, dividends, or upon liquidation.

PART D. PROVISIONS APPLICABLE TO JUNIOR PREFERRED AND SENIOR PREFERRED

(a) *Conversion Price.* In order to prevent dilution of the conversion rights granted under the Restated Certificate of Incorporation, the Applicable Conversion Price of each series of Preferred Stock (which for purposes of this Part D excludes Performance Preferred) shall be subject to adjustment from time to time pursuant to this Part D, Section 1; provided, however, that for purposes of calculating the anti-dilution protection provided for in this Section, the shares of Series G Preferred and Series H Preferred will be deemed to have been issued simultaneously.

(i) *Adjustment of Applicable Conversion Price upon Issuance of Common Stock.* If and whenever after the Restatement Date the Corporation issues or sells, or is deemed to have issued or sold (other than pursuant to an Excepted Transaction), any shares of Common Stock for a consideration per share less than the lesser of (x) the Applicable Conversion Price of the Series H Preferred immediately before such sale or issuance (or deemed sale or issuance) and (y) the Applicable Conversion Price for such series of Preferred Stock subject to adjustment hereunder immediately prior to such sale or issuance (or deemed sale or issuance), then, and in each such case, the Applicable Conversion Price for such series will be reduced, but not

increased, as of the close of business on the date of such issue or sale, to a price determined by multiplying such Applicable Conversion Price by a fraction, the numerator of which will be (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock which the aggregate consideration received by the Company for the total number of Additional Shares of Common Stock so issued (which aggregate consideration shall be determined in accordance with clause (ii)(E) below) would purchase at the lesser of (x) the Applicable Conversion Price of the Series H Preferred immediately before such sale or issuance (or deemed sale or issuance) and (y) the Applicable Conversion Price for such series of Preferred Stock subject to adjustment hereunder immediately prior to such sale or issuance (or deemed sale or issuance), and the denominator of which will be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue will be calculated on a fully diluted basis, as if all shares of Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and all outstanding Options had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date, but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Preferred Stock, solely as a result of the adjustment of the respective Applicable Conversion Prices (or other conversion ratios) resulting from the issuance of the Additional Shares of Common Stock causing the adjustment in question.

(ii) *Effect on Applicable Conversion Price of Certain Events.* For purposes of determining the adjusted Applicable Conversion Price under paragraph (a)(i) of this Section 1, the following shall be applicable:

(A) *Issuance of Rights or Options.* If the Corporation in any manner grants or sells any Options and the price per share for which shares of Common Stock are issuable upon the exercise of such Options, or upon conversion or exchange of any Convertible Securities issuable upon exercise of such Options, is less than the Applicable Conversion Price of the applicable series of Preferred Stock immediately prior to the time of the granting or sale of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options, or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options, shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Options for such price per share. For purposes of this Section, the "price per share for which Common Stock is issuable upon exercise of such Options or upon conversion or exchange of such Convertible Securities" is determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the

Corporation upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of the Applicable Conversion Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities.

(B) *Issuance of Convertible Securities.* If the Corporation in any manner issues or sells any Convertible Securities and the price per share for which shares of Common Stock are issuable upon conversion or exchange thereof is less than the Applicable Conversion Price of the applicable Series of Preferred Stock immediately prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issue or sale of such Convertible Securities for such price per share. For the purposes of this Section, the "price per share for which Common Stock is issuable upon conversion or exchange thereof" is determined by dividing (A) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Applicable Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustments of the Applicable Conversion Price have been or are to be made pursuant to other provisions of paragraph (a)(ii) of this Section 1, no further adjustment of the Applicable Conversion Price shall be made by reason of such issue or sale.

(C) *Change in Option Price or Conversion Rate.* If any of the purchase price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Applicable Conversion Price in effect at the time of such change shall be adjusted immediately to the Applicable Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold and the number of shares of Common Stock issuable as a result of the conversion of the applicable series of Senior Preferred shall be correspondingly readjusted.

(D) *Treatment of Expired Options and Unexercised Convertible Securities.* Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Securities, in either case without the exercise of such Option or right, the Applicable Conversion Price then in effect and the number of shares of Common Stock acquirable hereunder shall be adjusted immediately to the Applicable Conversion Price and the number of shares which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(E) *Calculation of Consideration Received.* If any Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the net amount received by the Corporation therefor. In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration. In case any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or securities shall be determined jointly by the Corporation and the holders of Senior Preferred representing a majority of the shares of Common Stock obtainable upon conversion of such Senior Preferred. If such parties are unable to reach agreement within a reasonable period of time, such fair value shall be determined by an appraiser jointly selected by the Corporation and the holders of the Preferred Stock representing a majority of the shares of Common Stock obtainable upon conversion of such Preferred Stock. The determination of such appraiser shall be final and binding on the Corporation and the holders of the Preferred Stock, and the fees and expenses of such appraiser shall be paid by the Corporation.

(F) *Integrated Transactions.* In case any Option is issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options shall be deemed to have been issued for the value allocated to such option by the parties in that transaction.

(G) *Treasury Shares.* The number of shares of Common Stock outstanding at any given time does not include shares owned or held by or for the account of the Corporation or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(H) *Record Date.* If the Corporation takes a record of the holders of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(iii) *Subdivision or Combination of Common Stock.* If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, Applicable Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced and the number of shares of Common Stock obtainable upon conversion of the applicable series of Preferred Stock shall be proportionately increased. If the Corporation at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Applicable Conversion Price in effect immediately prior to such combination shall be proportionately increased and the number of shares of Common Stock obtainable upon conversion of the series of Preferred Stock shall be proportionately decreased.

(iv) *Reorganization, Reclassification, Consolidation, Merger or Sale.* Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Corporation's assets or other transaction, in each case which is effected in such a way that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as "*Organic Change.*" Prior to the consummation of any Organic Change, the Corporation shall make appropriate provision (in form and substance satisfactory to the holders of the Preferred Stock representing a majority of the Common Stock obtainable upon conversion of all Preferred Stock then outstanding) to insure that each of the holders of the Preferred Stock shall thereafter have the right to acquire and receive, in lieu of or addition to (as the case may be) the shares of Common Stock immediately theretofore acquirable and receivable upon the conversion of such holder's shares of Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for the number of shares of Common Stock immediately theretofore acquirable and receivable upon conversion of such holder's shares of Preferred Stock had such Organic Change not taken place. In any such case, the Corporation shall make appropriate provision (in form and substance satisfactory to the holders of the Preferred Stock representing a majority of the Common Stock obtainable upon conversion of all Preferred Stock then outstanding) with respect to such holders' rights and interests to insure that the provisions of this Section 1 hereof shall thereafter be applicable to the Preferred Stock (including, in the case of any such consolidation, merger or sale in which the successor entity or purchasing entity is other than the Corporation, an immediate adjustment of the Applicable Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Common Stock acquirable and receivable upon conversion of the Preferred Stock, if the value so

reflected is less than the Applicable Conversion Price in effect immediately prior to such consolidation, merger or sale). The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor entity (if other than the Corporation) resulting from consolidation or merger or the entity purchasing such assets assumes by written instrument (in form and substance satisfactory to the holders of Preferred Stock representing a majority of the Common Stock obtainable upon conversion of all of the Preferred Stock then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(v) *Certain Events.* If any event occurs of the type contemplated by the provisions of this Section 5 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's board of directors shall make an appropriate adjustment in the Applicable Conversion Price and the number of shares of Common Stock obtainable upon conversion of such shares so as to protect the rights of the holders of the Preferred Stock; provided that no such adjustment shall increase the Applicable Conversion Price or decrease the number of shares of Common Stock obtainable as otherwise determined pursuant to this Section 5.

(vi) *Notices.*

(A) Immediately upon any adjustment of the Applicable Conversion Price, the Corporation shall give written notice thereof to the holder, setting forth in reasonable detail and certifying the calculation of such adjustment.

(B) The Corporation shall give written notice to the holder at least 20 days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any *pro rata* subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Organic Change or Liquidation.

(C) The Corporation shall also give written notice to the holders at least 20 days prior to the date on which any Organic Change or Liquidation shall take place.

PART E. PROVISIONS APPLICABLE TO SERIES P PREFERRED

Section 1. *Liquidation.* Upon any Liquidation of the Corporation, each holder of any shares of Series P Preferred shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, before any distribution or payment is made upon any Common Stock, but subject to the prior rights of the holders of Junior Preferred pursuant to Section 2 of Part B of this Article FOURTH and Senior Preferred pursuant to Section 2(a) of Part C of this Article FOURTH, an amount in cash equal to the aggregate Series P Preferred Stated Value of all Shares held by such holder. If upon any such Liquidation, the Corporation's assets to be distributed among the holders of the Series P Preferred are insufficient

to permit payment to such holders of the aggregate amount which they are entitled to be paid under the preceding sentence of this Section 1, then the entire assets available to be distributed to the holders of Series P Preferred shall be distributed *pro rata* among such holders based upon the aggregate Series P Preferred Stated Value of the Series P Preferred held by each such holder.

Section 2. *Mandatory Redemptions.*

(a) *Mandatory Redemption Trigger Event.* Upon the earlier to occur of (1) the closing of a Qualified Public Offering, and (2) the occurrence of a Qualified Change of Control, and subject to the terms and conditions set forth in this Section 2, the Corporation shall redeem that amount of the Series P Preferred then outstanding as is determined pursuant to the applicable subsection of the following two subsections.

(i) If the closing of a Qualified Public Offering is the event triggering the mandatory redemption, the Corporation shall redeem the outstanding shares of Series P Preferred by paying out of any source of funds legally available therefor an amount equal to the Series P Preferred Stated Value per share.

(ii) If the occurrence of a Qualified Change of Control is the event triggering the mandatory redemption, then subject to the elective redemption rights of the holders of Senior Preferred set forth above in Section 3(b) of Part C (all claims in that section to be paid in full prior to claims under this section), the Corporation shall redeem the outstanding shares of Series P Preferred by (i) paying out of any source of funds legally available therefor an amount in cash equal to the Series P Preferred Stated Value per share, or (ii) if the consideration paid in a Qualified Change of Control is in the form of securities, then each share of Series P Preferred shall be redeemed for such number of shares of such securities having a value equal to the Series P Preferred Stated Value per share. However, if the funds legally available therefor are not sufficient to pay the Series P Preferred Stated Value per share in cash or in kind, the Corporation shall redeem the outstanding shares of Series P Preferred by (i) paying out of any source of funds legally available therefore an amount per share in cash equal to the available proceeds divided by the outstanding shares of Series P Preferred (the "Adjusted Series P Preferred Stated Value"), in full redemption thereof, or (ii) if the consideration paid in a Qualified Change of Control is in the form of securities, then each share of Series P Preferred shall be redeemed for such number of shares of such securities having a value equal to the Adjusted Series P Preferred Stated Value per share, in full redemption thereof.

(b) *Redemption Payments.* For each share of Series P Preferred which is to be redeemed under this Section 2, the Corporation shall be obligated on the redemption date to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such Share) an amount in cash equal to the amount determined pursuant to Section 2(a) above.

(c) *Redeemed or Otherwise Acquired Shares.* Any shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares and shall not be reissued, sold or transferred.

Section 3. *No Voting Rights.* The holders of the Series P Preferred shall not be entitled to vote on any matter except as required by Delaware General Corporation Law.

Section 4. *No Dividend Rights.* The holders of the Series P Preferred shall not be entitled to any dividends.

PART F. PROVISIONS APPLICABLE TO COMMON STOCK

Section 1. *Voting Rights*

Except as otherwise required by applicable law and the provisions of this Certificate of Incorporation, the holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the Corporation's stockholders.

Section 2. *Dividends.*

As and when dividends are declared or paid on the Common Stock, whether in cash, property or securities of the Corporation subject to Section 1(b) of Part B and Section 1(f) of Part C of the Article FOURTH, the holders of Common Stock shall be entitled to participate in such dividends ratably on a per share basis.

Section 3. *Liquidation.*

Subject to the prior rights of the holders of Preferred Stock, the holders of the Common Stock shall be entitled to participate together with the holders of Preferred Stock on an "as if converted" basis ratably on a per share basis in all amounts available to be distributed to the holders of the Common Stock in any Liquidation.

PART G. PROVISIONS APPLICABLE TO CAPITAL STOCK

Section 1. *Registration of Transfer.*

The Corporation shall keep at its principal office a register for the registration of capital stock of the Corporation. Upon the surrender of any certificate representing capital stock of the Corporation at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the capital stock of the Corporation represented by such new certificate from the date to which dividends have been fully paid on such capital stock represented by the surrendered certificate. The issuance of new certificates shall be made without charge to the holders of the surrendered certificates for any issuance tax in respect therefor or other cost incurred by the Corporation in connection with such issuance.

Section 2. *Replacement.*

Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of any series of capital stock of the Corporation, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (*provided* that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such series represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the capital stock of the Corporation represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 3. *Amendment and Waiver.*

No amendment, modification or waiver shall be binding or effective with respect to any provision of (i) Part B of this Article FOURTH (or any definitions used therein) without the prior approval of the holders of a majority of the Junior Preferred outstanding at the time such action is taken and (ii) Part C of this Article FOURTH (or any definitions used therein) without the prior approval of the holders of a two-thirds majority of the Senior Preferred outstanding at the time such action is taken; provided, however, that Sections 6(c),(d) and (e) of Part C of this Article FOURTH shall not be amended without the prior approval of the holders of a majority of the Series F Preferred, Series G Preferred and Series H Preferred, respectively; provided, further, that the approval of the majority of Series H Preferred for purposes of amending Section 6(e) of Part C of this Article FOURTH must include DQE and EIF (or any Affiliate of EIF) as the case may be, so long as DQE and EIF (or any Affiliate of EIF) (as applicable) holds any shares of Series H Preferred and (iii) Part D of this Article FOURTH (or any definitions used therein) without the prior approval of holders of a majority of the Junior Preferred and a two-thirds majority of the Senior Preferred outstanding at the time such action is taken, (iv) Part E of this Article FOURTH (or any definitions used therein) without the prior approval of the holders of a majority of the Series P Preferred outstanding at the time such action is taken, and (v) Part F of this Article FOURTH (or any definitions used therein) without the prior approval of the holders of a majority of the Common Stock and the Preferred Stock outstanding at the time such action is taken, voting together as one class. Any approval required by this Section 3 may be obtained by vote at an annual or special meeting of the Corporation's stockholders or without a meeting by written consent.

Section 4. *Notices.*

Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, or by reputable overnight courier service, charges prepaid, and shall be deemed to have been given three days after the date of mailing or one day after the date of delivery with such overnight courier service; *provided* that such notices are sent (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

Section 5. Business Day.

If any payment, redemption or exchange shall be required by the terms hereof to be made on a day that is not a Business Day, such payment, redemption or exchange shall be made on the immediately succeeding Business Day.

Section 6. Cash Payments.

Notwithstanding any other provision to the contrary contained in these Parts B and C, any amount due in cash to the holders under the terms hereof shall be rounded to the nearest whole cent, and the Corporation shall be deemed to have paid in full any such amount when the Corporation has paid such rounded amount as provided herein.

Section 7. Definitions.

As used in this Article FOURTH, the following terms shall have the following meanings (with terms defined in the singular having comparable meanings when used in the plural and vice versa), unless the context otherwise requires:

"1997 Option Plan" means the Corporation's Amended and Restated 1997 Equity Participation Plan, as amended.

"Accreted Value" means for any share of Senior Preferred as of any date of determination, the Senior Preferred Issue Price for such share of Senior Preferred plus all accrued but unpaid dividends thereon as of such date.

"Additional Shares of Common Stock" means all shares of Common Stock issued by the Company after the Restatement Date, other than shares of Common Stock issued or issuable in connection with (or on Convertible Securities issued as a part of) an Excepted Transaction.

"Affiliate" of any particular Person means any other Person Controlling, Controlled by or under common Control with such particular Person or, in the case of a natural Person, any other member of such Person's Family Group.

"Agreement and Plan of Recapitalization" means that certain Agreement and Plan of Recapitalization drafted pursuant to the terms of the memorandum dated as of April 30, 1998 and amended as of May 8, 1998.

"Amended and Restated Securityholders Agreement" means the Seventh Amended and Restated Securityholders Agreement dated as of May 13, 2002, by and among the Company and certain investors listed on the schedule thereto.

"Applicable Conversion Price" means (i) for each share of Series A Preferred, \$2.93, (ii) for each share of Series B Preferred, \$3.00, (iii) for each share of Series C Preferred, \$3.00, (iv) for each share of Series D Preferred, \$3.00, (v) for each share of Series E Preferred, \$2.40, (vi) for each share of Series F Preferred, \$1.00, (vii) for each share of Series G Preferred,

\$1.5638471; and (viii) for each share of Series H Preferred, \$1.5638471, in each case adjusted pursuant to Part D of Article Fourth.

"Board of Directors" means the Board of Directors of the Corporation, or any authorized committee of the Board of Directors.

"Business Day" means any day other than a Legal Holiday.

"Change of Control" means the consummation of a transaction, whether in a single transaction or in a series of related and substantially contemporaneous transactions, where Persons other than those Persons holding equity securities or options and warrants to acquire such securities of the Corporation as of the date hereof, (a) acquire (whether by merger, consolidation, or transfer or issuance of membership interests, capital stock or otherwise) capital stock of the Corporation (or any surviving or resulting entity) possessing more than 50% of the voting power of the voting securities of the Corporation (or such surviving or resulting entity) or (b) acquire assets constituting all or substantially all of the assets of the Corporation and its Subsidiaries (as determined on a consolidated basis).

"Common Stock Equivalents" means (without duplication with any Common Stock or other Common Stock Equivalents) rights, warrants, options, convertible securities, or exchangeable securities or indebtedness, or other rights, exercisable for or convertible or exchangeable into, directly or indirectly, Common Stock or securities exercisable for or convertible or exchangeable into Common Stock, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

"Convertible Securities" means any evidences of indebtedness, shares (other than Common Stock and Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred, Series F Preferred, Series G Preferred, Series H Preferred and Series P Preferred) or other securities convertible into or exchangeable for Common Stock.

"DQE" means DQE Enterprises, Inc.

"EIF" means Dresdner Kleinwort Holdings Inc.

"Enterprise" means Enterprise Partners IV, L.P.

"Enterprise Associates" means Enterprise Partners IV Associates, L.P.

"Enterprise Warrants" means the warrants issued by the Corporation to Enterprise and Enterprise Associates pursuant to the Note and Warrant Purchase Agreement, dated as of May 8, 1998.

"Excepted Transactions" means (i) the award of options pursuant to the 1997 Amended and Restated Equity Participation Plan to acquire up to an aggregate of one million nine hundred thousand (1,900,000) shares of Common Stock, (ii) the award of options or restricted stock awards pursuant to the 2000 Stock Incentive Plan to acquire up to an aggregate of ten million one hundred thousand (10,100,000) shares of Common Stock, (iii) the award of compensatory options to directors of the Corporation for services rendered that has been

approved by the Corporation's Board of Directors (including the majority consent of the Corporation's Series D Directors, Series E Director and Series H Directors) at a per share exercise price not less than the higher of (x) \$1.56 or (y) the then Fair Market Value of the Common Stock not to exceed an aggregate of three percent (3%) of the Fully Diluted Shares, (iv) any issuance of Securities pursuant to options, warrants, notes or other rights to acquire securities of the Corporation issued before the date hereof, (v) any issuance of Securities to any Person or Persons that are not directors, officers, employees or Affiliates of the Corporation in a transaction that has been approved by the Corporation's Board of Directors (including the unanimous consent of the Corporation's Series D Directors, Series E Director and Series H Directors), not to exceed an aggregate of five percent (5%) of the Fully Diluted Shares, (vi) the issuance of Securities, options or warrants (other than Common Stock Equivalents) issued in connection with equipment leases, bank financings, or distribution channel agreements which issuance shall have been approved by the Board of Directors, subject to a cumulative limit of the lesser of fifty million dollars (\$50,000,000) or five percent (5%) of the Fully Diluted Shares, (vii) the issuance of Securities in connection with acquisition transactions, subject to a cumulative limit of one hundred million (\$100,000,000), (viii) Securities issued upon conversion of the Preferred Stock, (ix) Securities issued in connection with an underwritten public offering, (x) up to three hundred twenty thousand five hundred thirteen (320,513) Units issued prior to the Restatement Date consisting of one (1) share of Series H Preferred and one (1) Warrant to purchase .95 of a share of Common Stock, (xi) any issuance prior to the Restatement Date of shares of Series F Preferred, Series G Preferred or Series H Preferred issued as payments of interest on notes convertible into Series F Preferred, Series G Preferred or Series H Preferred, (xii) any issuance of Series H Preferred on or after the Restatement Date, (xiii) any Securities issued in connection with those certain Note and Warrant Purchase Agreements by and between the Corporation and (a) the Norton Family Living Trust (2/4/91), dated as of April 5, 2002 and July 24, 2002, as the same may be amended from time to time, (b) Endeavor Capital Management LLC, dated as of May 13, 2002, as the same may be amended from time to time, and (c) Landmark Co-Investment Partners IX, L.P., dated as of July 15, 2002, as the same may be amended from time to time, and (xiv) any issuance of Common Stock by the Corporation upon the exercise, exchange or conversion of any of the securities described in clauses (i) through (xiii) above.

"FBR" means FBR Private Equity Fund, L.P., a Delaware limited partnership.

"FBR Warrant" means the warrant issued by National Water and Power Company, LLC, a California limited liability company (predecessor in interest to the Corporation) to FBR pursuant to the Purchase Agreement.

"Fully-Diluted Shares" means, as of any date of determination, the number of shares of Common Stock outstanding plus (without duplication) all shares of Common Stock issuable, whether at such time or upon the passage of time or the occurrence of future events, upon the exercise, conversion or exchange of all then-outstanding Common Stock Equivalents.

"Initial Closing Date" means for the Series D Preferred, October 8, 1997, for the Series E Preferred, April 23, 1999 and for the Series F Preferred, Series G Preferred and Series H Preferred, December 20, 2000.

"Investment Agreement" means the Investment Agreement dated December 20, 2000 by and among the Company, DQE and certain investors listed on the schedules thereto.

"Junior Preferred Issue Price" means (i) for each share of Series A Preferred, \$29.29, (ii) for each share of Series B Preferred, \$39.54, and (iii) for each share of Series C Preferred, \$42.50.

"Junior Securities" means the Series A Preferred, the Series B Preferred, the Series C Preferred and the Series P Preferred.

"Legal Holiday" means a Saturday, a Sunday or a day on which federal offices or banking institutions in the State of California or at a place of payment are authorized by law, regulation or executive order to remain closed.

"Liquidation" means any (a) voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, (b) sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property, or assets of the Corporation or (c) merger, consolidation or reorganization in which the Corporation is not the surviving entity (or is the surviving subsidiary in a reverse triangular merger) or any transaction or series of related transactions in which in excess of 50% of the Corporation's then voting power is transferred (by new stock issuance or transfer of outstanding shares).

"Market Price" means as to any security the average of the closing prices of such security's sales on all domestic securities exchanges on which such security may at the time be listed, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the Nasdaq System as of 4:00 P.M., New York time, on such day, or, if on any day such security is not quoted in the Nasdaq System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of 21 days consisting of the day as of which "Market Price" is being determined and the 20 consecutive Business Days prior to such day; provided that if such security is listed on any domestic securities exchange the term "Business Days" as used in this sentence means Business Days on which such exchange is open for trading. If at any time such security is not listed on any domestic securities exchange or quoted in the Nasdaq System or the domestic over-the-counter market, the "Market Price" shall be the fair value thereof determined jointly by the Corporation and the holders of Senior Preferred representing a majority of the shares of Common Stock purchasable upon exercise of all the Senior Preferred then outstanding; provided that if such parties are unable to reach agreement within a reasonable period of time, such fair value shall be determined by an appraiser jointly selected by the Corporation and such holders. The determination of such appraiser shall be final and binding on the Corporation and the holders of the Senior Preferred, and the fees and expenses of such appraiser shall be paid by the Corporation.

"Options" means rights, options, or warrants to subscribe for, purchase or otherwise acquire Common Stock or Series A Preferred, Series B Preferred, Series C Preferred,

Series D Preferred, Series E Preferred, Series F Preferred, Series G Preferred, Series H Preferred, or Series P Preferred or Convertible Securities.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, other business entity or government or agency or political subdivision thereof (including any subdivision or ongoing business of any such entity or substantially all of the assets of any such entity, subdivision or business).

"Permitted Redemptions" means (i) shares of the Corporation's Common Stock (or options to acquire the same) repurchased pursuant to the Employment Agreements between the Corporation and Howard Freedland, and the Corporation and Gary Smith, each dated as of September 26, 1997, as amended and in effect on the Series E Primary Closing Date, or pursuant to exercise agreements for options issued under the 1997 Option Plan, as in effect on the Series E Primary Closing Date, (ii) repurchase by the Corporation of shares of its Common Stock held by employees of the Corporation pursuant to Restricted Stock Purchase and Pledge Agreements executed pursuant to the 1997 Option Plan, (iii) the Corporation's obligation to repurchase the FBR Warrant under Section 3 of the FBR Warrant, (iv) the Corporation's obligation to repurchase the Enterprise Warrants, (v) the Corporation's obligation to repurchase shares of Senior Preferred pursuant to Section 3 of Part C and to repurchase shares of Series P Preferred pursuant to Section 2 of Part E, (vi) the Corporation's repurchase or exchange prior to the Restatement Date of various securities described in the Agreement and Plan of Recapitalization and contemplated to occur on the Recapitalization Date or the Financing Closing Date (as defined in the Agreement and Plan of Recapitalization), (vii) repurchases by the Corporation of shares of Common Stock pursuant to that certain Securities Purchase Agreement between the Corporation and ERP Operating Limited Partnership as in effect on the date of execution of such agreement, without amendments, (viii) repurchases by the Corporation of shares of Series D Preferred or Common Stock pursuant to that certain Securities Purchase Agreement between the Corporation and United Dominion Realty Trust, Inc. as in effect on the date of execution of such agreement, without amendments, (ix) repurchases by the Corporation of shares of capital stock of the Corporation from any real estate investment trust in order to prevent a change in the real estate investment trust's tax status and (x) repurchases by the Corporation of shares of capital stock issued under the Company's 2000 Stock Incentive Plan.

"Purchase Agreement" means the Note and Warrant Purchase Agreement, dated the Initial Closing Date for the Series D Preferred, between FBR and National Water and Power Company, LLC, a California limited liability company (predecessor in interest to the Corporation).

"Qualified Change of Control" means a Change of Control at a price per share of not less than \$14.00 (as adjusted for stock splits, stock dividends, and other adjustments contemplated herein).

"Qualified Public Offering" means an underwritten public offering of the Corporation's Common Stock (i) at a pre-offering price per share valuation of no less than 2.5 times the Series H Preferred Issue Price and (ii) with net proceeds to the Corporation of not less than \$25 million.

"Redemption Price" means (a) for any share of Senior Preferred as of any date of determination, shall mean the sum of (i) the Accreted Value of such share of Senior Preferred as of such date of determination, plus (ii) the aggregate Market Price as of such date of the number of shares of Common Stock into which such share of Senior Preferred is convertible as of such date.

"Recapitalization" means the proposed recapitalization as described in that certain Agreement and Plan of Recapitalization.

"Recapitalization Date" means the date of the closing of the Recapitalization.

"Restatement Date" means August 16, 2001.

"Securities" means, collectively, any share of Common Stock and any Common Stock Equivalent.

"Senior Preferred Dividend Rate" means with respect to Series D Preferred, Series E Preferred, Series F Preferred, Series G Preferred and Series H Preferred, a rate per annum equal to (i) from the date of issuance until the third anniversary of the Initial Closing Date for such series, 10%; (ii) from and after the third anniversary of the Initial Closing Date for such series to the fourth anniversary of the Initial Closing Date for such series, 12%; and (iii) from and after the fourth anniversary of the Initial Closing Date for such series, 14%.

"Senior Preferred Issue Price" means the Series D Preferred Issue Price, the Series E Preferred Issue Price, the Series F Preferred Issue Price, the Series G Preferred Issue Price and the Series H Preferred Issue Price, as applicable.

"Series D Director" means a member of the Corporation's Board of Directors that is elected by the holders of the Series D Preferred as provided in Section 4(a) of Part C of this Article FOURTH.

"Series D Preferred Issue Price" means, for each share of Series D Preferred, \$70.00.

"Series E Preferred Issue Price" means, for each share of Series E Preferred, \$8.50.

"Series F Preferred Issue Price" means, for each share of Series F Preferred, \$1.00.

"Series G Preferred Issue Price" means, for each share of Series G Preferred, \$1.5638471.

"Series H Preferred Issue Price" means, for each share of Series H Preferred, \$1.5638471.

"Series P Preferred Stated Value" means, for each share of Series P Preferred, \$1.00.

"Stock Incentive Plan" means the Corporation's Stock Incentive Plan, as amended.

FIFTH: The Corporation is to have perpetual existence.

SIXTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is hereby authorized to adopt, amend or repeal the bylaws of the Corporation.

SEVENTH: Meetings of stockholders may be held within or without the State of Delaware, as the bylaws may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation. Elections of directors need not be by written ballot unless the bylaws of the Corporation so provide.

EIGHTH: To the fullest extent permitted by the General Corporation Law of the State of Delaware (including, without limitation, Section 102(b)(7)), as amended from time to time, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or amendment of this Article EIGHTH or adoption of any provision of this Certificate of Incorporation inconsistent with this Article EIGHTH shall have prospective effect only and shall not adversely affect the liability of a director of the Corporation with respect to any act or omission occurring at or before the time of such repeal, amendment or adoption of an inconsistent provision.

NINTH: The Corporation shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware (including, without limitation, Section 145 thereof), as amended from time to time (the "DGCL"), indemnify any director or officer whom it shall have power to indemnify from and against any and all of the expenses, liabilities or other losses of any nature. The indemnification provided in this Article NINTH shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person. The Corporation shall also, to the fullest extent permitted by the DGCL, make advance payments to any director for expenses.

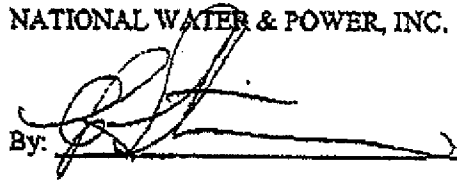
TENTH: The Corporation elects out of and shall not be governed by Section 203 of the DGCL.

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

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed this 21st day of October, 2002.

NATIONAL WATER & POWER, INC.

By: 

Name: Randy Lintecum

Its: Chief Executive Officer