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Secretary of State  
Corporation Division  
200 Capital St. NE, Suite 161  
Salem, OR 97310-0327  
PSE@Oregon.gov

Registered Articles of Incorporation—Business/Professional/Nonprofit

Check the appropriate box below:

- ☒ BUSINESS/PROFESSIONAL CORPORATION  
(Complete only 1, 2, 3, 4, 5, 7)  
☐ NONPROFIT CORPORATION  
(Complete only 1, 2, 3, 5, 6, 7)

FILED

DEC 07 2007

OREGON  
SECRETARY OF STATE

Registry Number: 117990-95

In accordance with Oregon Revised Statute 122.410-122.475, the information on this application is public record.  
We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Block Ink. Attach Additional Sheet if Necessary.

1) NAME OF CORPORATION Ambria, Inc.

2) NEW NAME OF THE CORPORATION (if changed) \_\_\_\_\_

3) A COPY OF THE REGISTERED ARTICLES MUST BE ATTACHED

BUSINESS/PROFESSIONAL CORPORATION ONLY

4) CHECK THE APPROPRIATE STATEMENT

☐ The registered articles contain amendments which do not require shareholder approval. The date of the adoption of the amendments and registered articles was \_\_\_\_\_  
These amendments were duly adopted by the board of directors.

☒ The registered articles contain amendments which require shareholder approval. The date of the adoption of the amendments and registered articles was 12/7/07  
The vote of the shareholders was as follows:

Class of Share	Number of Shares Outstanding	Number of Shares Voted	Number of Shares Required to Pass	Number of Shares Voted Against
Common Series A	2,254,119	2,254,119	2,254,119	0

☐ The corporation has not issued any shares of stock.  
Shareholder action was not required to adopt the registered articles. The registered articles were adopted by the incorporators or by the board of directors.

NONPROFIT CORPORATION ONLY

4) CHECK THE APPROPRIATE STATEMENT

☐ The registered articles contain amendments which do not require membership approval. The date of the adoption of the amendments and registered articles was \_\_\_\_\_  
These amendments were duly adopted by the board of directors.

☐ The registered articles contain amendments which require membership approval. The date of the adoption of the amendments and registered articles was \_\_\_\_\_  
The vote of the members was as follows:

Class of Share	Number of Shares Outstanding	Number of Shares Voted	Number of Shares Required to Pass	Number of Shares Voted Against

6) EXECUTION  
Signature

Printed Name

Howard Bubb

Title

President

7) CONTACT NAME (To answer questions with this filing)

Josetricia Smith

Current Phone Number (include area code)

503-226-1191

FEES

Registered Filing Fee \$50  
Corporation Copy Fee \$5  
Filing Fee of amendments  
Please note that publicly  
"Corporation Division."  
NOTE  
Fees may be paid with cash or  
check. The filing fee and  
corporate copy fee must be submitted  
on a separate check for your  
filing.

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF AMBRIC, INC.**

Pursuant to ORS 60.451, these Second Amended and Restated Articles of Incorporation supersede the existing Articles of Incorporation of Ambric, Inc. and all amendments thereto.

**ARTICLE I**

The name of this Corporation is Ambric, Inc. (the "Corporation").

**ARTICLE II**

The address of the Corporation's registered office in the State of Oregon is c/o AW Services, Inc., 222 SW Columbia Street, Suite 1800, Portland, Oregon 97201.

**ARTICLE III**

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the Oregon Business Corporation Act.

**ARTICLE IV**

This Corporation is authorized to issue two classes of shares to be designated, respectively, "Preferred Stock" and "Common Stock." The total number of shares which the Corporation is authorized to issue is 110,501,118 of which 47,750,559 shares shall be Preferred Stock (the "Preferred Stock") with par value \$0.0001 per share and 62,750,559 shares shall be Common Stock (the "Common Stock") with par value \$0.0001 per share.

**ARTICLE V**

The following is the description of the preferences, limitations and relative rights in respect of each class of shares of the Corporation.

**A. Common Stock.**

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of shareholders (and written actions in lieu of meetings). There shall be no cumulative voting.

**B. Preferred Stock.**

22,750,559 shares of the Preferred Stock of the Corporation are hereby designated "Series A Preferred Stock," and 25,000,000 shares of the Preferred Stock of the Corporation are hereby designated "Series B Preferred Stock." The Series A Preferred Stock and the Series B

Preferred Stock have the following preferences, limitations and relative rights. Unless otherwise indicated, references to "Sections" or "Subsections" in this Part B of Article IV refer to sections and subsections of this Part B of Article IV.

1. Dividends.

The holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of \$0.064664 per share (as adjusted for share splits, share dividends, reclassifications or the like) per annum on each outstanding share of Series A Preferred Stock, and at the rate of \$0.107144 per share (as adjusted for share splits, share dividends, reclassifications or the like) per annum on each outstanding share of Series B Preferred Stock, payable annually when, as and if declared by the Board of Directors. Such dividends shall not be cumulative. After payment of such dividends, any additional dividends shall be distributed among the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Common Stock).

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Share Exchanges, Consolidations and Asset Sales.

a. Preferential Payments to Holders of Preferred Stock.

i. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders before any payment shall be made to the holders of Series A Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to \$1.3393 (the "Series B Original Issue Price"), plus any dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the holders of shares of Series B Preferred Stock the full amount to which they shall be entitled under this Section 2.a.i., the holders of shares of Series B Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

ii. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series B Preferred Stock, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to \$0.8083 (the "Series A Original Issue Price"), plus any dividends declared but unpaid thereon. If

upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled under this Section 2.a.ii., the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

b. Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock and Series B Preferred Stock, the remaining assets of the Corporation available for distribution to its shareholders shall be distributed among the holders of the shares of Series A Preferred Stock, Series B Preferred Stock, and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Articles of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation, until (i) the holders of the Series A Preferred Stock shall have received an aggregate of \$4.0415 per share (as adjusted for stock splits, stock dividends, reclassifications and the like), including amounts paid pursuant to Section 2.a.ii. above, at which point such holders stop participating in such distribution, and (ii) the holders of the Series B Preferred Stock shall have received an aggregate of \$6.6965 per share (as adjusted for stock splits, stock dividends, reclassifications and the like), including amounts paid pursuant to Section 2.a.i. above, at which point such holders stop participating in such distribution; thereafter, if assets remain in the Corporation, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on the number of shares of Common Stock held by each. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under Section 2 is hereinafter referred to as the "Series A Liquidation Amount." The aggregate amount which a holder of a share of Series B Preferred Stock is entitled to receive under Section 2 is hereinafter referred to as the "Series B Liquidation Amount."

c. Deemed Liquidation Events.

i. Definition. Each of the following events shall be considered a "Deemed Liquidation Event" unless the holders of at least a majority of the outstanding shares of Preferred Stock elect otherwise by written notice sent to the Corporation at least 10 days prior to the effective date of any such event:

- (A) a merger, share exchange or consolidation in which
  - (1) the Corporation is a constituent party or
  - (2) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger, share exchange or consolidation,

except any such merger, share exchange or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger, share exchange or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger, share exchange or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger, share exchange or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Section 3.a., all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such merger, share exchange or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger, share exchange or consolidation shall be deemed to be outstanding immediately prior to such merger, share exchange or consolidation and, if applicable, converted or exchanged in such merger, share exchange or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or

(B) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

**d. Effecting a Deemed Liquidation Event.**

i. The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2.c.i.(A)(1) unless the agreement or plan of merger, share exchange or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the shareholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 2.

ii. In the event of a Deemed Liquidation Event referred to in Section 2.c.i.(A)(2) or 2.c.i.(B), the Corporation shall effect a dissolution of the Corporation under the Oregon Business Corporation Act within 90 days after such Deemed Liquidation Event, and distribute the assets of the Corporation to the holders of capital stock of the Corporation in accordance with Section 2.

e. **Amount Deemed Paid or Distributed.** The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, share exchange, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

3. Voting.

a. General. On any matter presented to the shareholders of the Corporation for their action or consideration at any meeting of shareholders of the Corporation (or by written consent of shareholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining shareholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Articles of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

b. Election of Directors. The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect three (3) directors of the Corporation (the "Series A Directors") and the holders of record of the shares of Preferred Stock and Common Stock, voting as a single class, shall be entitled to elect two (2) directors of the Corporation. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders. If the holders of shares of Series A Preferred Stock, or Preferred Stock and Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Section 3.b, then any directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock, or Preferred Stock and Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by shareholders of the Corporation other than by the shareholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series A Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 3.b, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 3.b.

c. Preferred Stock Protective Provisions. At any time when shares of Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, share exchange, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Articles of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and casting the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining shareholders entitled to vote on such matter:

- i. amend or repeal any provision of the Articles of Incorporation or the Corporation's Bylaws;
- ii. amend the preferences, rights, or privileges of the Preferred Stock or increase or decrease (other than by conversion) the total number of authorized shares of Preferred Stock;
- iii. authorize or issue any capital securities or issue any bonds, notes, indebtedness, obligations or other securities convertible into, exchangeable for, or having rights to purchase shares having rights, restrictions or preferences senior to or being on a parity with the Preferred Stock;
- iv. consummate a liquidation, dissolution, or winding up of the Corporation or a Deemed Liquidation Event;
- v. create any new plan or arrangement for the grant of any share options or restricted shares or share equivalents or increase the number of shares under any such plan or arrangement other than one(s) approved by the Board of Directors; or
- vi. agree or commit to take any of the foregoing actions.

d. Series A Preferred Stock Protective Provisions. At any time when at least 2,500,000 shares of Series A Preferred Stock are outstanding (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock), the Corporation shall not, either directly or indirectly by amendment, merger, share exchange, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Articles of Incorporation) the written consent or affirmative vote of the holders of at least 2/3 of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

- i. amend or repeal any provision of the Articles of Incorporation or the Corporation's Bylaws;
- ii. amend the preferences, rights, or privileges of the Series A Preferred Stock or increase or decrease (other than by conversion) the total number of authorized shares of Series A Preferred Stock;
- iii. authorize or issue any capital securities or issue any bonds, notes, indebtedness, obligations or other securities convertible into, exchangeable for, or having rights to purchase shares having rights, restrictions or preferences senior to or being on a parity with the Series A Preferred Stock;
- iv. consummate a liquidation, dissolution, or winding up of the Corporation or a Deemed Liquidation Event;

v. create any new plan or arrangement for the grant of any share options or restricted shares or share equivalents or increase the number of shares under any such plan or arrangement other than one(s) approved by the Board of Directors; or

vi. agree or commit to take any of the foregoing actions.

e. Series B Preferred Stock Protective Provisions. Notwithstanding any provision of these Articles of Incorporation to the contrary, at any time when shares of Series B Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, share exchange, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Articles of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, amend, alter or repeal any provision of the Articles of Incorporation or Bylaws of the Corporation in a manner that has a material, adverse and disproportionate effect on the Series B Preferred Stock relative to the Series A Preferred Stock, nor shall any such action by vote or written consent of the shareholders be binding on the Corporation unless the Corporation obtains the written consent or vote of the holders of a majority of the Series B Preferred Stock.

f. Board of Directors Protective Provisions. Without the prior approval of the Board of Directors, including the votes of at least two of the three Directors elected solely by the Series A Preferred Stock, the Corporation shall not:

i. declare or pay any dividends or make any other distribution (other than dividends payable solely in shares of its own Common Stock or other distributions explicitly set forth in Articles of Incorporation) on any securities junior to the Series A Preferred Stock or Series B Preferred Stock;

ii. repurchase or redeem any securities of the Corporation except repurchases of Common Stock held by employees of, or consultants to, the Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase or pursuant to Bylaws provisions allowing repurchase upon exercise of rights of first refusal or as otherwise expressly authorized herein;

iii. authorize, borrow or enter into any obligation for any form of indebtedness or payment of more than one million dollars (\$1,000,000) in cash or securities of the Corporation;

iv. establish any joint venture or equivalent business combination or arrangement, including, without limitation, a partnership with any subsidiaries or affiliates not wholly owned by this Corporation;

v. enter into any transaction with any shareholder, officer or Director of the Corporation or any affiliate of such person(s) except for (a) employment matters in the ordinary course, (b) arms' length or other sales of securities at fair market value, or (c) other transactions which in case of this clause (c) are approved by a disinterested majority of the



Board of Directors or a special committee composed of one or more such persons and on terms which are fair to the Corporation; or

vi. agree or commit to take any of the foregoing actions.

4. Optional Conversion.

The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

a. Right to Convert.

i. Conversion Ratio. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) in the case of Series A Preferred Stock, the Series A Original Issue Price by the Series A Conversion Price in effect at the time of conversion and (ii) in the case of Series B Preferred Stock, the Series B Original Issue Price by the Series B Conversion Price in effect at the time of conversion. The "Series A Conversion Price" shall initially be equal to \$0.8083. The "Series B Conversion Price" shall initially be equal to \$1.3393. Such initial Conversion Prices, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

ii. Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock or Series B Preferred Stock.

b. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

c. Mechanics of Conversion.

i. Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at

the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Section 4.b. in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

ii. Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price or the Series B Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock, as applicable, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series A Conversion Price or Series B Conversion Price.

iii. Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 4.b. and to receive payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock or Series B

Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for shareholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock or Series B Preferred Stock accordingly.

iv. No Further Adjustment. Upon any such conversion, no adjustment to the Series A Conversion Price or Series B Preferred Stock shall be made for any declared but unpaid dividends on the Series A Preferred Stock or Series B Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

v. Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

d. Adjustments to Conversion Prices for Diluting Issues.

i. Special Definitions. For purposes of this Article IV, the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) "Original Issue Date" with respect to a series of Preferred Stock shall mean the date on which the first share of such series of Preferred Stock was issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(D) "Additional Shares of Common Stock" shall mean, with respect to a series of Preferred Stock, all shares of Common Stock issued (or, pursuant to Section 4.d.iii. below, deemed to be issued) by the Corporation after the Original Issue Date for such series, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, "Exempted Securities"):

(1) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Preferred Stock;

(2) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.e., 4.f., 4.g. or 4.h.;

(3) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation, including a majority of the Series A Directors;

(4) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(5) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including a majority of the Series A Directors;

(6) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of the Corporation, including a majority of the Series A Directors;

(7) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors of the Corporation, including a majority of the Series A Directors; or

(8) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation, including a majority of the Series A Directors; or

(9) shares of Series A Preferred Stock or warrants therefor issued after the Original Issue Date for Series A Preferred Stock, provided that such issuances are approved by the Board of Directors of the Corporation, including a majority of the Series A Directors, or shares of Series A Preferred Stock issued upon exercise of such warrants.

ii. No Adjustment of Conversion Price. No adjustment in the Series A Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least 2/3 of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional

Shares of Common Stock. No adjustment in the Series B Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series B Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

iii. Deemed Issue of Additional Shares of Common Stock.

(A) If the Corporation at any time or from time to time after the Original Issue Date of a series of Preferred Stock shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a ~~enhancement adjustment~~ adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 4.d.iv., are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (B) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) such Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) such Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options - Convertible Securities which are themselves Exempted Securities), the issuance of which does not result in an adjustment to the Conversion Price pursuant to the terms of Section 4.d.iv. (either because the consideration per share (determined pursuant to Section 4.d.v.) of the Additional Shares of Common Stock subject thereto was equal to or greater than the

Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section 4.d.iii.(A)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 4.d.iv., the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(E) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 4.d.iii. shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (B) and (C) of this Section 4.d.iii.). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 4.d.iii. at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

iv. Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Original Issue Date of a series of Preferred Stock issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.d.iii.), without consideration or for a consideration per share less than the Conversion Price for such series of Preferred Stock in effect immediately prior to such issue, then the Conversion Price for such Series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) + (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(A) "CP2" shall mean the Conversion Price of such series of Preferred Stock in effect immediately after such issue of Additional Shares of Common Stock

(B) "CP1" shall mean the Conversion Price of such series of Preferred Stock in effect immediately prior to such issue of Additional Shares of Common Stock;

(C) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(D) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP1); and

(E) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

v. Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(2) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors of the Corporation.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4.d.iii., relating to Options and Convertible Securities, shall be determined by dividing

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

vi. Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Section 4.d.iv., then upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

e. Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date of a series of Preferred Stock effect a subdivision of the outstanding Common Stock, the Conversion Price for such series in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Original Issue Date of a series of Preferred Stock combine the outstanding shares of Common Stock, the Conversion Price for such series in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

f. Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date of a series of Preferred Stock shall make or issue, or fix a record date for the determination of holders of



Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price for such series in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

- i. the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and
- ii. the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of such series of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of such series of Preferred Stock had been converted into Common Stock on the date of such event.

g. Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date of a series of Preferred Stock shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of such series of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of such series of Preferred Stock had been converted into Common Stock on the date of such event.

h. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2.c, if there shall occur any reorganization, recapitalization, reclassification, consolidation, share exchange or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections 4.d., 4.f. or 4.g.), then, following any such reorganization, recapitalization, reclassification, consolidation, share exchange or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the

Corporation issuable upon conversion of such share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation, share exchange or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock.

i. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of a series of Preferred Stock pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which such Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price for such series of Preferred Stock then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of such Preferred Stock.

j. Notice of Record Date. In the event:

i. the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

ii. of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

iii. of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, share exchange, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification,

consolidation, share exchange, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

**5. Mandatory Conversion.**

a. **Trigger Events.** Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least \$2.6786 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$20,000,000 of gross proceeds, before payment of the underwriting discount and commissions, to the Corporation or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Preferred Stock (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "Mandatory Conversion Time"), (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at their respective then-effective Conversion Prices and (ii) such shares may not be reissued by the Corporation. Notwithstanding the foregoing or any other provision of these Articles of Incorporation to the contrary, if the conversion described in the preceding sentence is effected in contemplation of or in connection with a liquidation, dissolution, or winding up of the Corporation or a Deemed Liquidation Event in which the proceeds to holders of Series B Preferred Stock would be less than amount the holders of Series B Preferred Stock would receive in the event of such liquidation, dissolution, or winding up of the Corporation or Deemed Liquidation Event in the absence of such conversion, then such conversion shall not apply to the Series B Preferred Stock without the prior vote or written consent of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, voting as a separate series.

b. **Procedural Requirements.** All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice shall be sent not less than five (5) days in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. Subject to Section 5.a., all rights with respect to the Preferred Stock converted pursuant to Section 5, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time),

except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the following sentence. As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall issue and deliver to such holder, or to his, her or its nominee, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Section 4.b. in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for shareholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption.

7. Waiver. Subject to Section 3.e., any of the preferences, limitations and relative rights of the Preferred Stock as a whole set forth herein may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Preferred Stock then outstanding. Any of the preferences, limitations and relative rights of the Series A Preferred Stock in particular set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding. Any of the preferences, limitations and relative rights of the Series B Preferred Stock in particular set forth herein may be waived on behalf of all holders of Series B Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series B Preferred Stock then outstanding.

8. Notice. Any notice required or permitted by the provisions of this Article IV to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the Oregon Business Corporation Act, and shall be deemed sent upon such mailing or electronic transmission.

## ARTICLE VI

Election of Directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

## ARTICLE VII

Meetings of shareholders may be held within or without the State of Oregon, as the Bylaws of this Corporation may provide. The books of this Corporation may be kept (subject to

any provision contained in the statutes) outside the State of Oregon at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this Corporation.

#### **ARTICLE VIII**

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

#### **ARTICLE IX**

The Corporation is authorized to purchase shares of Common Stock from present and former employees, consultants and Directors pursuant to the arrangements approved by the Board of Directors and to redeem shares of Preferred Stock pursuant to Article V hereof without taking into account the preferential liquidation rights of holders of Preferred Stock set forth in Article V when applying the provisions of the Oregon Business Corporation Act to determine the lawfulness of any such purchase or redemption.

#### **ARTICLE X**

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

#### **ARTICLE XI**

Action required or permitted by the Oregon Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken pursuant to written consent by shareholders having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all shareholders entitled to vote on the action were present and voted.

#### **ARTICLE XII**

A. Indemnification. The Corporation shall indemnify to the fullest extent not prohibited by law any Person who was or is a party or is threatened to be made a party to any Proceeding against all expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by the Person in connection with such Proceeding. Notwithstanding the foregoing, the Corporation shall not indemnify any Person from or on account of acts or omissions of such Person of a type for which liability could not be eliminated for a Director under ORS 60.047(2)(d).

B. Advancement of Expenses. Expenses incurred by a Person in defending a Proceeding shall in all cases be paid by the Corporation in advance of the final disposition of such Proceeding at the written request of such Person, if the Person:

1. furnishes the Corporation a written affirmation of the Person's good faith belief that such Person has met the standard of conduct described in the Oregon Business Corporation Act or is entitled to be indemnified by the Corporation under any other indemnification rights granted by the Corporation to such Person; and
2. furnishes the Corporation a written undertaking to repay such advance to the extent it is ultimately determined by a court that such Person is not entitled to be indemnified by the Corporation under this Article XII or under any other indemnification rights granted by the Corporation to such Person.

Such advances shall be made without regard to the Person's ability to repay such advances and without regard to the Person's ultimate entitlement to indemnification under this Article XII or otherwise.

C. Definition of "Proceeding" and "Person". The term "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether brought in the right of the Corporation or otherwise and whether of a civil, criminal, administrative, or investigative nature, in which an individual may be or may have been involved as a party or otherwise by reason of the fact that the individual is or was a Director or officer of the Corporation or a fiduciary within the meaning of the Employee Retirement Income Security Act of 1974 with respect to any employee benefit plan of the Corporation, or is or was serving at the request of the Corporation as a Director, officer, or fiduciary of an employee benefit plan of another Corporation, partnership, joint venture, trust, or other enterprise, whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification or advancement of expenses can be provided under this Article XII. The term "Person" means any individual serving in a capacity described in this Paragraph.

D. Non-Exclusivity and Continuity of Rights. This Article XII: (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, agreement, general or specific action of the Board of Directors, vote of shareholders or otherwise, both as to action in the official capacity of the Person indemnified and as to action in another capacity while holding office, (ii) shall continue as to a Person who has ceased to be a Director or officer, (iii) shall inure to the benefit of the heirs, executors, and administrators of such Person, and (iv) shall extend to all claims for indemnification or advancement of expenses made after the adoption of this Article XII.

E. Amendments. Any repeal of this Article XII shall only be prospective and no repeal or modification hereof shall adversely affect the rights under this Article XII in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any Proceeding.