

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM465244

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Eleven Wireless Inc.		05/10/2016	Corporation: OREGON
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Eleven Software Inc.		
<b>Street Address:</b>	315 SW 11th Ave. #300		
<b>City:</b>	Portland		
<b>State/Country:</b>	OREGON		
<b>Postal Code:</b>	97205		
<b>Entity Type:</b>	Corporation: OREGON		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4114663	ELEVEN	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	5032202480		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	(503) 294-9851		
<b>Email:</b>	TM-PDX@STOEL.COM		
<b>Correspondent Name:</b>	Matthew R. Wilmot/Stoel Rives LLP		
<b>Address Line 1:</b>	760 SW Ninth Avenue, Suite 3000		
<b>Address Line 4:</b>	Portland, OREGON 97205		
<b>NAME OF SUBMITTER:</b>	Patrick P. Hartigan, SR Paralegal		
<b>SIGNATURE:</b>	/Patrick P. Hartigan/		
<b>DATE SIGNED:</b>	03/12/2018		
<b>Total Attachments: 16</b>			
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**CERTIFICATE ACCOMPANYING  
THIRD AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
ELEVEN WIRELESS INC.**

**FILED**

**MAY 10 2016**

OREGON  
SECRETARY OF STATE


(Business Registry No. 071476-97)

1. The name of the corporation is Eleven Wireless Inc.
2. The attached Third Amended and Restated Articles of Incorporation (the "Restated Articles") contain amendments requiring shareholder approval.
3. The amendments contained in the Restated Articles were approved by the corporation's Board of Directors by written consent effective April 15, 2016. The amendments contained in the Restated Articles were approved by the corporation's shareholders by written consent effective April 15, 2016.
4. Approval of (a) the holders of a majority of the corporation's outstanding Common Stock voting as a single class and (b) the holders of two-thirds of the corporation's outstanding Series A Preferred Stock voting as a single class was required to adopt the amendments contained in the Restated Articles. The amendments contained in the Restated Articles were approved as follows:

	<u>Common Stock</u>	<u>Series A Preferred Stock</u>
No. of shares outstanding:	8,298,945	5,200,127
No. of votes entitled to be cast:	8,298,945	5,200,127
No. of votes cast for:	7,168,330	3,716,076
No. of votes cast against:	0	0

Dated: May 10, 2016

**ELEVEN WIRELESS INC.**

By:   
\_\_\_\_\_  
Andrew Yorra, Chief Strategy Officer

Person to contact about this filing: Mary P. Hull (503)-204-0020

ELEVEN SOFTWARE INC.

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**REEL: 006289 FRAME: 0399**

**THIRD AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
ELEVEN SOFTWARE INC.**

**ARTICLE 1**

**NAME**

The name of the corporation is Eleven Software Inc.

**ARTICLE 2**

**DURATION**

The period of the corporation's duration shall be perpetual.

**ARTICLE 3**

**PURPOSES AND POWERS**

The purpose for which the corporation is organized is to engage in any business, trade or activity, which may lawfully be conducted by a corporation organized under the Oregon Business Corporation Act.

The corporation shall have the authority to engage in any and all such activities as are incidental or conducive to the attainment of the purposes of the corporation and to exercise any and all powers authorized or permitted under any laws that may be now or hereafter applicable or available to the corporation.

**ARTICLE 4**

**SHARES**

**4.1 Authorized Capital.** The corporation is authorized to issue two classes of stock to be designated, respectively, "**Common Stock**" and "**Preferred Stock**." The total number of shares of stock which the corporation shall have authority to issue shall be 25,530,537, consisting of 20,000,000 shares of Common Stock, having a par value of \$.001 per share, and 5,530,537 shares of Preferred Stock, no par value.

**4.2 Common Stock.** Subject to any preferential or other rights granted to any series of Preferred Stock, the holders of shares of the Common Stock shall be entitled to receive dividends out of funds of the corporation legally available therefor, at the rate and at the time or times as may be provided by the Board of Directors and shall be entitled to receive distributions legally payable to shareholders on the liquidation of the corporation. The holders of shares of Common Stock, on the basis of one vote per share, shall have the right to vote for the election of

members of the Board of Directors of the corporation and the right to vote on all other matters, except where a separate class or series of the corporation's shareholders vote by class or series.

**4.3 Preferred Stock.** Except as otherwise expressly prohibited by the provisions of these Articles, shares of Preferred Stock may be issued from time to time in one or more series in any manner permitted by law as determined from time to time by the Board of Directors and stated in the resolution or resolutions providing for the issuance thereof, prior to the issuance of any shares thereof. The Board of Directors shall have the authority to fix and determine, subject to the provisions hereof, the rights and preferences of the shares of any series so established.

**4.3.1 Series A Preferred Stock.**

One series of Preferred Stock shall be designated "Series A Preferred Stock," and shall consist of 5,530,537 shares. The rights, preferences, restrictions and other matters relating to the Series A Preferred Stock (the "Series A Stock") are as follows:

(a) **Dividends.** Subject to the rights of series of Preferred Stock which may from time to time come into existence, the holders of shares of the Series A Stock shall be entitled to receive cumulative dividends, out of any assets of the corporation legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock of the corporation) on the Common Stock of the corporation during any fiscal year, at the rate of 6% of the Series A Original Issue Price (as defined below) per annum per share of Series A Stock then outstanding; provided, however, that the Board of Directors shall have the right, in their sole discretion and in compliance with applicable law, to determine when accrued dividends shall be paid to the holders of Series A Stock. After payment of such dividends to the holders of the Series A Stock (and of any other class or series of Preferred Stock having preferential rights as to dividends) in any fiscal year, the corporation may in the same fiscal year declare or pay a dividend on Common Stock, provided the corporation shall simultaneously declare and pay a dividend on each outstanding share of Series A Stock that is equal to the dividend to be declared or paid on each share of Common Stock times the number of shares of Common Stock into which each such share of Series A Stock is then convertible. No dividend shall be declared or paid on the Common Stock, nor shall any distribution in respect of any shares of the Common Stock otherwise be made, unless approved by the Board of Directors. No dividend shall be paid to the holders of any other series of Preferred Stock or Common Stock unless a dividend of equal amount per share is paid on the Series A Stock as described above. "Series A Original Issue Price" shall mean \$0.30 (appropriately adjusted for any stock dividend, split, combination or similar reorganization of the Series A Stock). For the avoidance of doubt, it is understood and agreed that the above-described 6% rate is non-compounding.

(b) **Liquidation.** Upon the voluntary or involuntary liquidation, sale or winding up of the corporation (each of the foregoing a "Liquidation"), subject to the rights of series of Preferred Stock which may from time to time come into existence, the assets of the corporation available for distribution to its shareholders shall be distributed in the following order and amounts:

(i) The holders of shares of Series A Stock shall be entitled to receive an amount equal to one times the Series A Original Issue Price for each outstanding share of Series A Stock held by them, and, in addition, an amount equal to any dividends accrued but not paid on each such share. If such assets available for distribution shall be insufficient to permit the payment to the holders of Series A Stock of the preferential amounts to which they may be entitled under this Section 4.3.1(b)(i), then, subject to the rights of series of Preferred Stock which may from time to time come into existence, the entire assets of the corporation legally available for distribution shall be distributed ratably among the holders of shares of Series A Stock based upon the number of shares of such stock held by each of such holders.

(ii) Upon the completion of the distributions required by Section 4.3.1(b)(i) above, subject to the rights of series of Preferred Stock which may from time to time come into existence, the remaining assets of the corporation available for distribution to shareholders shall be distributed among the holders of Series A Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming full conversion of all Series A Stock).

(c) **Merger, Reorganization or Other Transaction.** A merger, acquisition, share exchange, consolidation, reorganization or other transaction or series of transactions in which the shareholders of the corporation immediately prior to such transaction or series of transactions do not own a majority of the outstanding shares and a majority of the voting power of the surviving entity after such transaction or transactions or any sale, lease or other disposition of all or substantially all of the corporation's assets (including, without limitation, the exclusive licensing of the corporation's intellectual property) in which the shareholders of the corporation immediately prior to such sale, lease or other disposition do not own a majority of the outstanding shares and a majority of the voting power of the surviving entity after such sale, lease or other disposition (a "Change in Control") shall be deemed a Liquidation.

(d) **Distributions to Shareholders.** The Board of Directors' right to authorize and make distributions to its shareholders is subject to the restrictions set forth in ORS 60.181 and such other applicable legal restrictions as are or may hereafter become effective; *provided, however*, that the corporation is authorized to make distributions (including without limitation any and all Special Distributions and any distribution by purchase, redemption or other acquisition of the corporation's shares), in each case to the extent approved by the Board of Directors, without taking into account (when applying the provisions of the Oregon Business Corporation Act to determine the lawfulness of any such distribution) the amount that would be needed if the corporation were to be dissolved at the time of the distribution to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(e) **Distributions Other than Cash.** The Board of Directors shall have sole discretion in determining whether any distribution under Section 4.3.1(b) (or any Special Distribution) shall be payable in cash or property other than cash, including Series A Stock or Common Stock. Whenever a distribution provided for in Section 4.3.1(b) (or any Special Distribution) shall be payable in property other than cash, the value of such distribution

shall be the fair market value of such property, as determined in good faith by the Board of Directors.

(f) **Certain Distributions.** Notwithstanding anything to the contrary in these Articles, the Board of Directors may from time to time, with the approval (without the requirement of a shareholder vote unless otherwise required by law) of the then-holders of at least two-thirds (66 2/3%) of the shares of Series A Stock then outstanding, make a distribution to the corporation's shareholders in accordance with the terms of this Section 4.3.1(f) (a "**Special Distribution**"). In the event the Board of Directors determines to make a Special Distribution, the provisions of this Section 4.3.1(f) shall apply. For purposes of this Section 4.3.1(f), the quotient obtained by dividing the aggregate amount of the Special Distribution to be made to all shareholders by the value of the corporation immediately prior to the Special Distribution is referred to herein as the "**Special Distribution Percentage**." In the event of a Special Distribution, (1) first, the corporation shall pay to each holder of Series A Stock an amount per share (the "**Partial Payment Amount**") equal to (a) the liquidation preference of such share (which liquidation preference includes, for the avoidance of doubt, the amount equal to any dividends accrued but not declared or paid on such share), calculated as of immediately prior to the payment of the Special Distribution, multiplied by (b) the Special Distribution Percentage, and (2) second, the aggregate amount of the Special Distribution to be made to all shareholders of the corporation, less the aggregate amount of the Partial Payment Amounts paid to the holders of the Series A Stock, shall be paid to the holders of Series A Stock and Common Stock, pro rata based on the number of shares of Common Stock held by each (treating for this purpose all Series A Stock as if it had been converted to Common Stock pursuant to the terms of these Articles immediately prior to such payment). As of immediately after such Special Distribution and notwithstanding anything to the contrary in these Articles, (i) the liquidation preference of each share of Series A Stock as of immediately prior to the Special Distribution shall be reduced, effective as of immediately after the Special Distribution, by the Special Distribution Percentage, (ii) the Series A Original Issue Price shall for all purposes be reduced by the Special Distribution Percentage, (iii) effective as of immediately after the Special Distribution, no dividends shall be deemed to have theretofore accrued under Section 4.3.1(a) on a share of Series A Stock, except that which accrued on such share from the date of issuance of such share at the rate of 6% of such reduced Series A Original Issue Price per annum (which rate is understood and agreed to be non-compounding), and (iv) the dividends described in Section 4.3.1(a) shall, from and after the Special Distribution, accrue on such reduced Series A Original Issue Price at the rate set forth in such section. For purposes of this Section 4.3.1(f), the value of the corporation immediately prior to the Special Distribution shall be as determined by the Board of Directors in good faith. All calculations described in this Section 4.3.1(f) shall be made by the Board of Directors in good faith and shall be final and binding on all shareholders of the corporation. For the avoidance of doubt, Special Distributions shall not be subject to the provisions of Section 4.3.1(a).

#### 4.3.2 Voting Power.

(a) **General Voting Rights.** Except as otherwise provided herein or as required by law, each holder of Series A Stock shall be entitled to vote with respect to any question upon which holders of Common Stock have the right to vote and shall be entitled to that

number of votes equal to the number of shares of Common Stock into which such holder's shares of Series A Stock could be converted under Section 4.3.3 (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share, with one-half being rounded upward) at the record date for the determination of shareholders entitled to vote on such matter or, if no such record date is established, at the date on which notice of the meeting of shareholders at which the vote is to be taken is mailed, or the date any written consent of shareholders is solicited if the vote is not to be taken at a meeting, and, with respect to such votes, shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock. Except as otherwise provided herein or as otherwise expressly provided by the Oregon Business Corporation Act, the holders of shares of Series A Stock and Common Stock shall vote together as a single class on all matters.

**(b) Board of Directors.** The Board of Directors shall consist of seven (7) members which shall include: two (2) persons nominated by the holders of shares of Series A Stock, voting as a separate class; two (2) persons nominated by the holders of shares of Common Stock (other than Common Stock issued upon conversion of any Preferred Stock of the corporation), voting as a separate class; and three (3) persons nominated by the holders of shares of Preferred Stock (voting on an as-converted basis in accordance with Section 4.3.3) and Common Stock, voting together as a single class.

**(c) Series A Vote.** So long as Series A Preferred Stock is still outstanding, the corporation shall not take any of the following actions without first obtaining the approval (without the requirement of a shareholder vote unless otherwise required by law) of the then-holders of at least two-thirds (66 2/3%) of the shares of Series A Stock then outstanding:

**(i)** authorize or issue shares of any new class or series of capital stock having rights, preferences or privileges senior to or on a parity with the rights, preferences and privileges of shares of Series A Stock;

**(ii)** take any action that would alter, change, or repeal any of the rights, preferences, privileges, or restrictions of the Series A Stock so as to materially and adversely affect the rights, preferences, privileges, or restrictions of the Series A Stock;

**(iii)** declare or pay any dividends or otherwise make a distribution in respect of any shares of the Common Stock;

**(iv)** enter into (A) any sale by the corporation of all or substantially all of its assets that results in a Change in Control, (B) any merger of the corporation with another entity that results in a Change in Control;

**(v)** effect any recapitalization or reclassification of any shares of the corporation's outstanding capital stock;

**(vi)** effect any Liquidation;



(vii) increase or decrease the authorized, minimum number of members constituting the Board of Directors above or below five (5) members;

(viii) grant on an exclusive basis a license to another corporation or other entity or person for all or substantially all of the corporation's intellectual property; or

(ix) repurchase or redeem, or agree to repurchase or redeem, or make any dividend or distribution with respect to, any securities of the corporation junior to the Series A Stock, other than repurchases from employees or consultants at cost pursuant to agreements where the corporation has such repurchase rights on certain events, such as termination of employment, provided such agreements are approved by a majority of the Board of Directors.

(d) **Directors Vote.** The corporation shall not take any of the following actions without first obtaining the approval (without the requirement of a shareholder vote unless otherwise required by law) of a majority of the Board of Directors:

(i) adopt or amend any stock option or stock incentive plan providing for the issuance of shares of the corporation's capital stock to employees, directors, consultants or advisers, or grant stock options or issue shares to such individuals;

(ii) exercise or refuse to exercise an option or right of first refusal to redeem, redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any equity securities of the corporation ;

(iii) enter into any financial obligations or commitments, including capital equipment leases or purchases, with a total value greater than in the aggregate, of \$10,000 and which are outside of the then-current scope of business of the corporation (as set forth in the most recent business plan or budget of the corporation approved by the Board of Directors);

(iv) adopt any compensation programs, including base salaries and bonus programs of all officers and key employees;

(v) enter into any written employment agreement other than those providing the corporation the right to terminate any such relationship at-will or without cause;

(vi) enter into any agreement to purchase or lease real estate;

(vii) adopt an annual budget, business plan or financial plan; or

(viii) hire any officer of the corporation.

#### 4.3.3 Conversion Rights.

The holders of the Series A Stock shall have the following rights with respect to the conversion of Series A Stock into shares of Common Stock:

**(a) General.**

**(i) Voluntary Conversion.** Shares of the Series A Stock may, at the option of the holder, be converted at any time into such number of fully paid and nonassessable shares of Common Stock as are equal to the product obtained by multiplying the Series A Conversion Rate (determined under Section 4.3.3(b)) by the number of shares of Series A Stock being converted.

**(ii) Automatic Conversion.** Each share of Series A Stock shall be converted automatically (without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the corporation or its transfer agent for the Common Stock), into the number of shares of Common Stock into which such Series A Stock is convertible pursuant to Section 4.3.3(a)(i), upon the earlier of (A) the closing of a firmly underwritten, public offering by the corporation of shares of Common Stock, registered under the Securities Act of 1933, as amended (the "**Securities Act**"), on Form S-1 (or its successor form), in which the aggregate offering proceeds paid to the corporation are at least \$10,000,000 (before deduction of underwriters' discounts and commissions and expenses of the offering), or (B) the conversion or approval of the conversion by the holders of a majority of the then outstanding shares of Series A Stock.

**(b) Conversion Rate.** The conversion rate for Series A Stock in effect at any time (the "**Series A Conversion Rate**") shall equal the Series A Original Issue Price divided by the Series A Conversion Price, calculated as provided in Section 4.3.3(c).

**(c) Conversion Price.** The conversion price for the Series A Stock in effect from time to time, except as adjusted in accordance with Section 4.3.3(d), shall be the Series A Original Issue Price (the "**Series A Conversion Price**").

**(d) Adjustments to Series A Conversion Price.**

**(i) Extraordinary Common Stock Event.** Upon the happening of an Extraordinary Common Stock Event (as defined below) after the Series A Original Issue Date, the Series A Conversion Price shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the then effective Series A Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock Event (including, if applicable, the number of shares of Common Stock issuable with respect to Common Stock Equivalents (as defined below)), and the product so obtained shall thereafter be the Series A Conversion Price. The Series A Conversion Price, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Extraordinary Common Stock Event or Events.

**“Extraordinary Common Stock Event”** shall mean (x) the issuance of additional shares of Common Stock, as a dividend or other distribution on outstanding Common Stock of the corporation, or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (“Common Stock Equivalents”) without the payment of any consideration, (y) a split or subdivision of outstanding shares of Common Stock into a greater number of shares of Common Stock, or (z) a combination of outstanding shares of Common Stock into a smaller number of shares of Common Stock.

**(ii) Sale of Shares Below Series A Conversion Price.**

**(A)** If the corporation shall issue any Additional Stock (as defined below) without consideration or for a consideration per share less than the Series A Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Series A Conversion Price in effect immediately prior to issuance of such Additional Stock (except as otherwise provided in this Section 4.3.3(d)(ii)) shall be adjusted down to a price equal to the quotient obtained by dividing the total computed under clause (x) below by the total computed under clause (y) below, as follows:

(x) an amount equal to the sum of (1) the result obtained by multiplying the number of shares of Common Stock deemed outstanding immediately prior to such issuance (which shall include the actual number of shares of Common Stock outstanding plus all shares of Common Stock issuable upon the conversion or exercise of all outstanding convertible securities, warrants and options) by the Series A Conversion Price then in effect, and (2) the aggregate consideration, if any, received by the corporation upon the issuance of such Additional Stock;

(y) the number of shares of Common Stock of the corporation outstanding immediately after such issuance (including the shares deemed outstanding as provided in clause (x) above).

**(B)** No adjustment of the Series A Conversion Price shall be made in an amount less than one cent per share, provided, however, that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be taken into account in any subsequent adjustment made to the Series A Conversion Price. Except to the limited extent provided for in Sections 4.3.3(d)(ii)(E)(3) and (4), no adjustment of the Series A Conversion Price pursuant to this Subsection 4.3.3(d)(ii) shall have the effect of increasing the Series A Conversion Price above the Series A Conversion Price in effect immediately prior to such adjustment.

**(C)** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, commissions or other expenses allowed, paid or incurred by the corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

**(D)** In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be

deemed to be the fair value thereof as determined in good faith by the Board of Directors of the corporation, irrespective of any accounting treatment.

(E) In the case of the issuance of options or warrants to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities (which options, warrants, rights, convertible or exchangeable securities are not excluded from the definition of Additional Stock by Section 4.3.3(d)(iii)(B), (C), (E), (F), (G) or (H)), the following provisions shall apply:

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options or warrants to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options, warrants or rights were issued for a consideration equal to the consideration (determined in the manner provided in Sections 4.3.3(d)(ii)(C) and (D) above), if any, received by the corporation upon the issuance of such options, warrants or rights plus the minimum purchase price provided in such options, warrants or rights for the Common Stock covered thereby, but no further adjustment to the Series A Conversion Price shall be made for the actual issuance of Common Stock upon the exercise of such options, warrants or rights in accordance with their terms;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options, warrants or rights were issued for a consideration equal to the consideration received, if any, by the corporation for any such securities and related options, warrants or rights, plus the minimum additional consideration, if any, to be received by the corporation upon the conversion or exchange of such securities or the exercise of any related options, warrants or rights and the subsequent conversion or exchange of the securities issued upon the exercise of such options, warrants or rights (the consideration in each case to be determined in the manner provided in Sections 4.3.3(d)(ii)(C) and (D) above), but no further adjustment to the Series A Conversion Price shall be made for the actual issuance of Common Stock upon the conversion or exchange of such securities or the exercise of any such related options, warrants or rights or such subsequent conversion or exchange in accordance with their terms;

(3) if such options, warrants, rights or convertible or exchangeable securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof, including, without limitation, a change resulting from the anti-dilution provisions thereof, the Series A Conversion Price computed upon the original issue thereof, and any subsequent adjustments based thereon, shall, upon such change becoming effective, be

recomputed to reflect such change, but no further adjustment to the Series A Conversion Price shall be made for the actual issuance of Common Stock upon the exercise of any such options, warrants or rights or the conversion or exchange of such securities in accordance with their terms; and

(4) upon the expiration of any such options, warrants or rights, the termination of any such rights to convert or exchange or the expiration of any options, warrants or rights related to such convertible or exchangeable securities, the Series A Conversion Price shall forthwith be readjusted to the Series A Conversion Price as would have been obtained had the adjustment which was made upon the issuance of such options, warrants, rights or securities or options, warrants or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options, warrants or rights, upon the conversion or exchange of such securities or upon the exercise of the options, warrants or rights related to such securities.

(iii) "Additional Stock" shall mean any shares of Common Stock or securities convertible into or exchangeable or exercisable for shares of Common Stock issued (or deemed to have been issued pursuant to Section 4.3.3(d)(ii)(E) above) by the corporation after the Series A Original Issue Date other than:

(A) shares of Common Stock issued in connection with an Extraordinary Common Stock Event pursuant to Section 4.3.3(d)(i);

(B) a quantity of shares of Common Stock equal to 5,350,000 (adjusted appropriately for stock dividends, splits, combinations and similar transactions) issued to employees, officers or directors of, or consultants or advisors to the corporation or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the corporation's Board of Directors;

(C) shares of Common Stock issued or issuable upon exercise, conversion, or exchange of convertible securities, exercisable securities, options, or warrants that are outstanding on the Series A Original Issue Date;

(D) shares of Common Stock issued or issuable upon conversion of Series A Stock;

(E) shares of Common Stock and/or options, warrants or other Common Stock purchase rights (and the shares of Common Stock issued pursuant to such options, warrants or other rights) issued in connection with commercial credit arrangements, equipment financings or similar transactions that are approved by the corporation's Board of Directors;

(F) shares of Common Stock and/or options, warrants or other Common Stock purchase rights (and the shares of Common Stock issued pursuant to

such options, warrants or other rights) issued in connection with (1) strategic transactions which are primarily non-financing in nature and which involve the corporation and other entities, or (2) merger, acquisition, technology licensing, leasing or joint venture transactions which involve the corporation and other entities, the terms of which, in each case, are approved by the corporation's Board of Directors;

(G) shares of Common Stock issued in connection with a firmly underwritten, public offering by the corporation of shares of Common Stock, registered under the Securities Act of 1933, as amended; and

(H) shares of Common Stock and/or options, warrants or other Common Stock purchase rights (and the shares of Common Stock issued pursuant to such options, warrants or other rights) issued in connection with stock dividends, stock splits or recapitalizations of the capital stock of the corporation.

(e) **Capital Reorganization or Reclassification.** If the Common Stock issuable upon the conversion of the Series A Stock shall be changed into the same or different number of shares of any class or classes of stock of the corporation, whether by capital reorganization, reclassification or otherwise (other than an Extraordinary Common Stock Event provided for in Section 4.3.3(d)(i)), then and in each such event the holders of each share of Series A Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change by holders of the number of shares of Common Stock into which such share of Series A Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to adjustment as provided herein. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4.3.3 with respect to the rights of the holders of the Series A Stock after the reorganization, recapitalization or change to the end that the provisions of this Section 4.3.3 (including adjustment of the Series A Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(f) **Other Distributions.** In the event the corporation shall, with respect to outstanding Common Stock of the corporation, declare a distribution payable in securities of other persons, evidences of indebtedness issued by the corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4.3.3(d)(i) or (ii), then in each case for the purpose of this Section 4.3.3(f) the holders of the Series A Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the corporation into which their shares of Series A Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the corporation entitled to receive such distribution.

(g) **Certificate as to Adjustments; Notice by the Corporation.** In each case of an adjustment or readjustment of the Series A Conversion Rate, the corporation will promptly furnish each holder of Series A Stock with a certificate, prepared by the President or Chief Financial Officer of the corporation, showing such adjustment or readjustment and stating

in detail the facts upon which such adjustment or readjustment is based. The corporation shall, upon the written request at any time of any holder of Series A Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustment and readjustment, (ii) the Series A Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Stock.

**(h) Exercise of Conversion Privilege.** To exercise its conversion privilege pursuant to Section 4.3.3(a)(i), each holder of Series A Stock shall surrender the certificate or certificates representing the shares being converted to the corporation at its principal office, and shall give written notice to the corporation at that office that such holder elects to convert such shares. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series A Stock surrendered for conversion shall be accompanied by proper assignment thereof to the corporation or in blank. The date when such written notice is received by the corporation, together with the certificate or certificates representing the shares of Series A Stock being converted, shall be the "**Conversion Date.**" As promptly as practicable after the Conversion Date, the corporation shall issue and shall deliver to the holder of the shares of Series A Stock being converted, or on its written order, such certificate or certificates as it may request for the number of whole shares of Common Stock issuable upon the conversion of such shares of Series A Stock in accordance with the provisions of this Section 4.3.3, and cash in the amount of any declared and unpaid dividends on such shares of Series A Stock up to and including the Conversion Date. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date and at such time the rights of the holder of the converted shares of Series A Stock shall cease with respect to such shares and the person or persons in whose name or names any certificate or certificates for shares of Common Stock issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion (and payment of any declared and unpaid dividends) shall be conditioned upon the closing with the underwriters of the sale of shares of Common Stock pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Stock shall not be deemed to have converted such securities until immediately prior to the closing of such sale of securities.

**(i) No Fractional Shares.** No fractional shares shall be issued upon the conversion of Series A Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with one-half being rounded upward), determined on the basis of the total number of shares of Series A Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

**(j) Partial Conversion.** In the event some, but not all, of the shares of Series A Stock represented by a certificate or certificates surrendered by a holder are converted, the corporation shall execute and deliver to or on the order of the holder, at the

expense of the corporation, a new certificate representing the shares of Series A Stock that were not converted.

(k) **Reservation of Common Stock.** 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 effecting the conversion of the shares of the Series A Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A 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 Series A 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 purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any amendment to these Articles.

(l) **No Impairment.** The corporation will not, by amendment of its articles of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4.3.3 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Stock against impairment.

#### 4.3.4 Reissuance of Stock.

No share or shares of Series A Stock converted, repurchased or otherwise acquired by the corporation shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the corporation shall be authorized to issue. The corporation may from time to time take such appropriate corporate action as may be necessary to reduce the authorized number of shares of the Series A Stock accordingly.

#### 4.3.5 Notices of Record Date.

In the event that the corporation shall propose at any time:

(a) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(b) to offer for subscription to the holders of any class of series of its stock, any additional shares of stock of any class or series or other rights;

(c) to effect any reclassification or recapitalization of the shares of its Common Stock outstanding involving a change in the Common Stock; or

(d) to merge or consolidate with or into any other corporation, to sell, lease or convey all or substantially all of its property or business, or to liquidate, dissolve or wind up;



then, in connection with each such event, the corporation shall send to the holders of the Series A Stock:

(i) at least 20 days prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (c) and (d) above; and

(ii) in the case of the matters referred to in (c) and (d) above, at least 20 days prior written notice of the date when the same shall take place (and specifying the date on which the holders of the Series A Stock and Common Stock shall be entitled to exchange their shares of Series A Stock and Common Stock for securities or other property deliverable upon the occurrence of such events).

Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Common Stock upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the corporation shall promptly give written notice to each holder of shares of Series A Stock of such material change.

Any notice required by the provisions of this Section 4.3 to be given to the holders of shares of Series A Stock shall be deemed given if deposited in the United States mail, postage prepaid and addressed to each holder of record at such holder's address appearing on the books of the corporation.

#### **4.3.6 Waiver.**

Any of the rights, powers, preferences and other terms of the Series A Stock set forth herein may be waived on behalf of all holders of Series A Stock by the affirmative written consent or vote of the holders of at least two-thirds (66 2/3%) of the shares of Series A Stock then outstanding.

### **ARTICLE 5**

#### **LIMITATION OF DIRECTOR LIABILITY**

To the fullest extent that the Oregon Business Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of the liability of directors, a director of the corporation shall not be liable to the corporation or its shareholders for any monetary damages for conduct as a director. Any amendment to or repeal of this Article or amendment to the Oregon Business Corporation Act shall not adversely affect any right or protection of a director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

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## ARTICLE 6

### INDEMNIFICATION

To the fullest extent not prohibited by law, the corporation: (i) shall indemnify any current or former director of the corporation who is made, or threatened to be made, a party to an action, suit or proceeding, whether civil, criminal, administrative, investigative, or otherwise (including an action, suit or proceeding by or in the right of the corporation), by reason of the fact that the person is or was a director of the corporation, and (ii) may indemnify any person who is made, or threatened to be made, a party to an action, suit or proceeding, whether civil, criminal, administrative, investigative, or otherwise (including an action, suit or proceeding by or in the right of the corporation), by reason of the fact that the person is or was an officer, employee or agent 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 serves or served at the request of the corporation as a director or officer of, or as a fiduciary (as defined above) of an employee benefit plan of, another corporation, partnership, joint venture, trust or other enterprise. The corporation shall pay for or reimburse the reasonable expenses incurred by any such current or former director in any such proceeding in advance of the final disposition of the proceeding if the person sets forth in writing (i) the person's good faith belief that the conduct of the person was in good faith, the person reasonably believed the person's conduct was in the best interests of, or at least not opposed to the best interests of, the corporation, and, in case of a criminal proceeding, the person had no cause to believe the individual's conduct was unlawful, and (ii) the person's agreement to repay all advances if it is ultimately determined that the person is not entitled to indemnification under this Article. No amendment to this Article that limits the corporation's obligation to indemnify any current or former director shall have any effect on such obligation for any act or omission that occurs prior to the later of the effective date of the amendment or the date notice of the amendment is given to the person. This Article shall not be deemed exclusive of any other provisions for the indemnification of directors, officers, employees, or agents that may be included in any statute, bylaw, agreement, resolution of shareholders or directors or otherwise, both as to action in any official capacity and action in any other capacity while holding office, or while an employee or agent of the corporation. For purposes of this Article, "**corporation**" shall mean the corporation incorporated hereunder and any successor corporation thereof.

## ARTICLE 7

Any 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, in accordance with the Oregon Business Corporation Act, 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.