

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

EPAS ID: PAT3135908

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME
<b>CONVEYING PARTY DATA</b>	
<b>Name</b>	<b>Execution Date</b>
SOLIX BIOFUELS, INC.	03/24/2011
<b>RECEIVING PARTY DATA</b>	
<b>Name:</b>	SOLIX BIOSYSTEMS, INC.
<b>Street Address:</b>	500 EAST VINE DRIVE
<b>City:</b>	FORT COLLINS
<b>State/Country:</b>	COLORADO
<b>Postal Code:</b>	80524
<b>PROPERTY NUMBERS Total: 1</b>	
<b>Property Type</b>	<b>Number</b>
<b>Application Number:</b>	13046559
<b>CORRESPONDENCE DATA</b>	
<b>Fax Number:</b>	(303)607-3600
<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>	3036073500
<b>Email:</b>	BENJAMIN.FERNANDEZ@FAEGREBD.COM
<b>Correspondent Name:</b>	FAEGRE BAKER DANIELS LLP
<b>Address Line 1:</b>	1700 LINCOLN STREET
<b>Address Line 2:</b>	3200 WELLS FARGO CENTER
<b>Address Line 4:</b>	DENVER, COLORADO 80203
<b>ATTORNEY DOCKET NUMBER:</b>	477889.397910
<b>NAME OF SUBMITTER:</b>	BENJAMIN S. FERNANDEZ
<b>SIGNATURE:</b>	/s/ Benjamin S. Fernandez
<b>DATE SIGNED:</b>	12/06/2014
<b>Total Attachments: 22</b>	
source=Solix BioFuels to Solix BioSystems Name Change#page1.tif	
source=Solix BioFuels to Solix BioSystems Name Change#page2.tif	
source=Solix BioFuels to Solix BioSystems Name Change#page3.tif	
source=Solix BioFuels to Solix BioSystems Name Change#page4.tif	
source=Solix BioFuels to Solix BioSystems Name Change#page5.tif	
source=Solix BioFuels to Solix BioSystems Name Change#page6.tif	

PATENT

source=Solix BioFuels to Solix BioSystems Name Change#page7.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page8.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page9.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page10.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page11.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page12.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page13.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page14.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page15.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page16.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page17.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page18.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page19.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page20.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page21.tif  
source=Solix BioFuels to Solix BioSystems Name Change#page22.tif



Colorado Secretary of State  
Date and Time: 03/24/2011 09:46 AM  
ID Number: 20051325560  
Document number: 20111175887  
Amount Paid: \$25.00

Document must be filed electronically.  
Paper documents will not be accepted.

Document processing fee  
Fees & forms/cover sheets  
are subject to change.

\$25.00

To access other information or print  
copies of filed documents,  
visit [www.sos.state.co.us](http://www.sos.state.co.us) and  
select Business.

ABOVE SPACE FOR OFFICE USE ONLY

### Amended and Restated Articles of Incorporation

filed pursuant to §7-90-301, et seq. and §7-110-107 and §7-90-304.5 of the Colorado Revised Statutes (C.R.S.)

ID number: 20051325560

1. Entity name: Solix BioFuels, Inc.  
*(If changing the name of the corporation, indicate name BEFORE the name change)*

2. New Entity name:  
(if applicable) Solix BioSystems, Inc.

3. Use of Restricted Words *(if any of these  
terms are contained in an entity name, true  
name of an entity, trade name or trademark  
stated in this document, mark the applicable  
box):*

- ☐ "bank" or "trust" or any derivative thereof  
☐ "credit union" ☐ "savings and loan"  
☐ "insurance", "casualty", "mutual", or "surety"

4. If the corporation's period of duration  
as amended is less than perpetual, state  
the date on which the period of duration  
expires: \_\_\_\_\_  
*(mm/dd/yyyy)*

**OR**

If the corporation's period of duration as amended is perpetual, mark this box: ☒

5. The amended and restated constituent filed document is attached.

6. If the amendment provides for an exchange, reclassification or cancellation of issued shares, the attachment  
states the provisions for implementing the amendment.

7. *(Optional)* Delayed effective date: \_\_\_\_\_  
*(mm/dd/yyyy)*

Notice:

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or  
acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the  
individual's act and deed, or that the individual in good faith believes the document is the act and deed of the  
person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity  
with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic  
statutes, and that the individual in good faith believes the facts stated in the document are true and the  
document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of  
state, whether or not such individual is named in the document as one who has caused it to be delivered.

8. Name(s) and address(es) of the individual(s) causing the document to be delivered for filing:

Coffin Maura M.  
(Last) (First) (Middle) (Suffix)  
c/o Faegre & Benson LLP  
(Street name and number or Post Office Box information)  
1900 Ninth Street  
Boulder CO 80302  
(City) (State) (Postal/Zip Code)  
United States  
(Province – if applicable) (Country – if not US)

(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box ☐ and include an attachment stating the name and address of such individuals.)

**Disclaimer:**

This form, and any related instructions, are not intended to provide legal, business or tax advice, and are offered as a public service without representation or warranty. While this form is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form. Questions should be addressed to the user's attorney.

**SOLIX BIOFUELS, INC.**

**THIRD AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

Pursuant to the provisions of the Colorado Business Corporation Act (the “**Act**”), the undersigned corporation adopts the following amended and restated Articles of Incorporation. These articles correctly set forth the provisions of the Articles of Incorporation, as amended, and supersede the original Articles of Incorporation and all amendments thereto.

**ARTICLE I  
NAME**

The name of the corporation is Solix BioSystems, Inc. (the “**Company**”).

**ARTICLE II  
AUTHORIZED CAPITAL**

**A.** The Company is authorized to issue two classes of stock to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares which the Company is authorized to issue is thirty two million four hundred fifty thousand (32,450,000) shares, twenty million (20,000,000) shares of which shall be Common Stock (the “**Common Stock**”) and twelve million four hundred fifty thousand (12,450,000) shares of which shall be Preferred Stock (the “**Preferred Stock**”). The Preferred Stock shall have no par value per share and the Common Stock shall have no par value per share.

**B.** The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding plus a number of shares of Common Stock necessary to allow for the conversion of the then outstanding shares of Preferred Stock) by the affirmative vote of the holders of at least a majority of the stock of the Company (voting together on an as-if-converted basis).

**C.** Five million two hundred fifty thousand (5,250,000) of the authorized shares of Preferred Stock are hereby designated “Series A Preferred Stock” (the “**Series A Preferred**”), and seven million two hundred thousand (7,200,000) of the authorized shares of Preferred Stock are hereby designated “Series B Preferred Stock” (the “**Series B Preferred**” and with the Series A Preferred, the “**Series Preferred**”).

**D.** The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred are as follows:

**1. DIVIDEND RIGHTS.**

(a) Holders of the Series B Preferred, in preference to the holders of the Series A Preferred, the Common Stock and any other class or series of Preferred Stock, shall be entitled to receive, when and as declared by the Board of Directors of the Company (the “**Board**”), but only out of funds that are legally available therefor, cash dividends at the rate of

seven percent (7%) of the Series B Preferred Original Issue Price (as defined below) per annum on each outstanding share of Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) (the “**Series B Dividends**”). Holders of the Series A Preferred, in preference to the holders of Common Stock and any other class or series of Preferred Stock (other than the Series B Preferred Stock, shall be entitled to receive, when and as declared by the Board of Directors of the Company (the “**Board**”), but only out of funds that are legally available therefor, cash dividends at the rate of seven percent (7%) of the Series A Preferred Original Issue Price (as defined below) per annum on each outstanding share of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof)(the “**Series A Dividends**”). Such dividends shall be payable only when, as and if declared by the Board and shall be non-cumulative.

(b) The “**Series A Preferred Original Issue Price**” shall be \$3.4513 per share and the “**Series B Preferred Original Issue Price**” shall be \$5.2643.

(c) So long as any shares of Series B Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Series A Preferred or the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Series A Preferred or the Common Stock until all Series B Dividends shall have been paid or declared and set apart, except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer. So long as any shares of Series A Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all Series A Dividends above shall have been paid or declared and set apart, except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer.

(d) In the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Series B Preferred or Series A Preferred in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside, and in the same form of consideration, for each share of Common Stock.

(e) The provisions of Sections 1(c) and 1(d) shall not apply to:

(i) a dividend payable in Common Stock for which adjustment is made pursuant to Section 4(f) below; or

(ii) any repurchase of any outstanding securities of the Company that is approved by the Board, including the affirmative vote of the representatives of the Series B Preferred and the Series A Preferred.

(f) The right of the holders of the Series B Preferred to receive payments of Series B Dividends under Section 1(a) may be waived by the holders of a majority of the outstanding Series B Preferred. The right of the holders of the Series A Preferred to receive payments of Series A Dividends under Section 1(a) may be waived by the holders of a majority of the outstanding Series A Preferred.

## **2. VOTING RIGHTS.**

(a) **General Rights.** Each holder of shares of Series Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series Preferred could be converted (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Company. Except as otherwise provided herein or as required by law, the Series Preferred shall vote together with the Common Stock at any annual or special meeting of the shareholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

(b) **Separate Vote of Series Preferred.** For so long as any shares of Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least sixty-five percent (65%) of the outstanding shares of Series Preferred shall be necessary for effecting or validating the following actions:

(i) any amendment, alteration, repeal or waiver of any provision of these Articles of Incorporation or the Bylaws of the Company, that adversely affects the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series B Preferred (including by way of a merger or consolidation);

(ii) any increase or decrease in the authorized number of shares of Preferred Stock;

(iii) any authorization or any designation, whether by reclassification, merger or otherwise, of any new class or series of stock or any other securities convertible into or exercisable for equity securities of the Company ranking on a parity with or senior to the Series B Preferred in right of redemption, conversion, liquidation preference, registration rights, voting or dividends or having voting rights other than those granted to the Preferred Stock generally;

(iv) the entry into any agreement to which the Company is a party regarding an Asset Transfer or Acquisition (each as defined in Section 3) or any other merger (whether or not the Company is the surviving corporation), consolidation, corporate reorganization, reclassification or recapitalization of the Company or effecting or consummating any such transaction;

(v) any redemption, repurchase, or acquisition of the Common Stock (other than acquisitions of Common Stock by the Company permitted by Section 1(e)(ii));

(vi) any action that results in the payment or declaration of a dividend or other distribution with respect to the Common Stock;

(vii) any voluntary dissolution, liquidation or winding-up of the Company;

(viii) any increase or decrease in the authorized number of members of the Board from five (5) members;

(ix) any action that encumbers or grants a security interest in all or substantially all of the assets of the Company in connection with an indebtedness of the Company; or

(x) any transfer of material assets of the Company or a grant of an exclusive license to the Company's technology to any person other than a wholly-owned subsidiary of the Company.

**(c) Election of Board.**

(i) For so long as at least 25% of the shares of Series B Preferred Stock issued pursuant to that certain Series B Preferred Stock and Warrant Purchase Agreement among the Company and the Purchasers a party thereto, dated on or about the date hereof, remain outstanding, the holders of Series B Preferred, voting as a separate class, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office each such director and to fill any vacancy caused by the resignation, death or removal of each such director;

(ii) For so long as at least one million two hundred seventy-eight thousand four hundred eighty-nine (1,278,489) shares of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) remain outstanding, the holders of Series A Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office each such director and to fill any vacancy caused by the resignation, death or removal of each such director; and

(iii) The holders of Common Stock, voting as a separate class, shall be entitled to the remaining member(s) of the Board (one of whom shall be the Chief Executive Officer of the Company) at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office each such director and to fill any vacancy caused by the resignation, death or removal of each such director.



### 3. LIQUIDATION, ASSET TRANSFER OR ACQUISITION RIGHTS.

(a) **Liquidation Preference of Series B Preferred.** Upon the occurrence of a Liquidation Event (as defined below), before any distribution or payment shall be made to the holders of any Series A Preferred or Common Stock, the holders of Series B Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such Liquidation Event, for each share of Series B Preferred held by them, an amount per share of Series B Preferred equal to the Series B Preferred Original Issue Price plus any declared and unpaid dividends on the Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). If, upon any such Liquidation Event, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series B Preferred of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series B Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) **Liquidation Preference of Series A Preferred.** Upon the occurrence of a Liquidation Event, after the payment of the full liquidation preference of the Series B Preferred as set forth in Section 3(a) above before any distribution or payment shall be made to the holders of any Common Stock, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such Liquidation Event, for each share of Series A Preferred held by them, an amount per share of Series A Preferred equal to the Series A Preferred Original Issue Price plus any declared and unpaid dividends on the Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). If, upon any such Liquidation Event, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(c) **Remaining Assets.** After the payment of the full liquidation preference of the Series B Preferred as set forth in Section 3(a) above and of the Series A Preferred as set forth in Section 3(b) above, the remaining assets of the Company legally available for distribution in such Liquidation Event (or the consideration received in such transaction), if any, shall be distributed to the holders of the Series B Preferred, the Series A Preferred and the Common Stock, *pro rata* based on the number of shares of Common Stock held by each on an as-if-converted to Common Stock basis.

(d) **Acquisition and Asset Transfer.** For the purposes of this Section 3, unless the holders of not less than 65% of the outstanding shares of Series Preferred agree otherwise, each of the following events shall be deemed a “**Liquidation Event**”: (i) any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) which will result in the Company’s shareholders immediately prior to such transaction not holding (by virtue of such shares of securities issued solely with respect

thereto) at least a majority of the voting power of the surviving or continuing entity (an “**Acquisition**”); (ii) a sale or other transfer or disposition of all or substantially all of the assets of the Company (including an exclusive license to the Company’s technology) (an “**Asset Transfer**”); or (iii) any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary.

(e) **Determination of Value if Proceeds Other than Cash.** In any Acquisition or Asset Transfer, if the consideration to be received by the Company is other than cash, its value will be deemed its fair market value as determined in good faith by the Board, including the representatives elected by the Series A Preferred, in accordance with this Section 3(d). Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange the value shall be deemed to be the average of the closing prices of the securities on such securities exchange over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board, including the representatives elected by the Series A Preferred.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder’s status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined above in (A)(1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board, including the representatives elected by the Series A Preferred.

**4. CONVERSION RIGHTS.** The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the “**Conversion Rights**”):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the applicable “Series Preferred Conversion Rate” then in effect (determined as provided in Section 4(b)) by the number of shares of Series Preferred being converted.

(b) **Series Preferred Conversion Rates.** The conversion rate in effect at any time for conversion of the Series B Preferred (the “**Series B Preferred Conversion Rate**”) shall be the quotient obtained by dividing the Series B Preferred Original Issue Price of the Series B Preferred by the “Series B Preferred Conversion Price,” calculated as provided in Section 4(c). The conversion rate in effect at any time for conversion of the Series A Preferred (the “**Series A Preferred Conversion Rate**”, and with the Series B Preferred Conversion Rate, the “**Series Preferred Conversion Rates**”) shall be the quotient obtained by dividing the Series A Preferred Original Issue Price of the Series A Preferred by the applicable “Series A Preferred Conversion Price,” calculated as provided in Section 4(c).

(c) **Series Preferred Conversion Prices.** The conversion price for the Series B Preferred shall initially be the Series B Preferred Original Issue Price (the “**Series B Preferred Conversion Price**”). The conversion price for the Series A Preferred shall initially be the Series A Preferred Original Issue Price (the “**Series A Preferred Conversion Price**” and with the Series B Preferred Conversion Price, the “**Series Preferred Conversion Prices**”). Such initial Series Preferred Conversion Prices shall be adjusted from time to time in accordance with this Section 4. All references to the Series Preferred Conversion Prices herein shall mean the applicable Series Preferred Conversion Prices as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, or an affidavit of loss, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock’s fair market value determined by the Board as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted and (ii) in cash (at the Common Stock’s fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), the conversion may, at the option of any holder tendering such Series Preferred for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any persons entitled to receive Common Stock upon conversion of such Series Preferred shall not be deemed to have converted such Series Preferred until immediately prior to the closing of such sale of securities.

(e) **Adjustment for Stock Splits and Combinations.** If at any time or from time to time after the date that the first share of Series B Preferred is issued (the “**Series B Original Issue Date**”) the Company effects a split or subdivision of the outstanding Common Stock without a corresponding split or subdivision of the Series Preferred, the Series Preferred Conversion Prices in effect immediately before that split or subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Series B Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of one or more series of the Series Preferred, the applicable Series Preferred Conversion Prices in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time after the Series B Original Issue Date the Company pays to holders of Common Stock a dividend or other distribution payable in additional shares of Common Stock without a corresponding dividend or other distribution to holders of Series Preferred on an as-if converted to Common Stock basis, the applicable Series Preferred Conversion Price that is then in effect shall be decreased as of the time of such issuance, as provided below:

(i) the applicable Series Preferred Conversion Price shall be adjusted by multiplying the applicable Series Preferred Conversion Price then in effect by a fraction:

(A) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issued or issuable in payment of such dividend or distribution.

(ii) if the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the applicable Series Preferred Conversion Price shall be adjusted according to Section 4(f)(i) above as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date as if such dividend or distribution had been paid or made in full on such record date; and

(iii) if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Series Preferred Conversion Price shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

(g) **Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation.** If at any time or from time to time after the Series B Original Issue Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or Asset Transfer (as defined in Section 3) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the applicable Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable. As a condition to any such recapitalization, reclassification, merger, consolidation or other transaction contemplated above, the Company shall reserve a sufficient number of the shares or securities, or a sufficient amount of the property, received or to be received to allow for the conversion of all outstanding shares of Series Preferred in accordance with this Section 4(g).

(h) **Sale of Shares Below Series Preferred Conversion Price.**

(i) If at any time or from time to time after the Series B Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this Section 4(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 4(f) or 4(g) above, for an Effective Price (as defined below) less than a then effective applicable Series Preferred Conversion Price (a “**Qualifying Dilutive Issuance**”), then and in each such case, such then existing applicable Series Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the applicable Series Preferred Conversion Price in effect immediately prior to such issuance or sale by a fraction:

(A) the numerator of which shall be (x) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (y) the number of shares of Common Stock that the Aggregate Consideration (as defined below) received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such then-existing Series Preferred Conversion Price, and

(B) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (x) the number of shares of Common Stock outstanding immediately preceding the event giving rise to the Qualifying Dilutive Issuance, (y) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted immediately preceding the event giving rise to the Qualifying Dilutive Issuance, and (z) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding immediately preceding the event giving rise to the Qualifying Dilutive Issuance.

(ii) No adjustment shall be made to the Series Preferred Conversion Prices in an amount less than one cent per share. Any adjustment otherwise required by this Section 4(h) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the Series Preferred Conversion Prices.

(iii) For the purpose of making any adjustment required under this Section 4(h), the aggregate consideration received by the Company for any issue or sale of securities (the “**Aggregate Consideration**”) shall be defined as: (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company in connection with such issue or sale, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as unanimously determined by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration that covers both, be computed as the portion of the consideration so received that may be unanimously determined by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iv) For the purpose of the adjustment required under this Section 4(h), if the Company issues or sells (x) Preferred Stock or other stock, options, warrants, purchase rights or other securities convertible into or exchangeable for, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as “**Convertible Securities**”) or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities, and if the Effective Price of such Additional Shares of Common Stock issued or deemed to be issued as provided below is less than a then-existing applicable Series Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus:

(A) in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options; and

(B) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); provided that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(C) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. In either such case, the applicable Series Preferred Conversion Price shall be readjusted accordingly.

(D) No further adjustment of an applicable Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the applicable Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the applicable Series Preferred Conversion Price that would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series Preferred.

(v) Notwithstanding any other provisions of this Section 4(h), except to the limited extent provided for in Section 4(h)(iv), no adjustment of an applicable Series Preferred Conversion Price pursuant to this Section 4(h) shall have the effect of increasing such applicable Series Preferred Conversion Price above the applicable Series Preferred Conversion Price in effect immediately prior to such adjustment.

(vi) For the purpose of making any adjustment to the Conversion Price of the Series A Preferred required under this Section 4(h), “**Additional Shares of Common Stock**” shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(h) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(A) shares of Common Stock issued upon conversion of the Series Preferred or as a dividend or distribution on the Series Preferred;

(B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights issued or issuable after the Series B Original Issue Date to employees, officers or directors of, or consultants or advisors to, the Company or any of its subsidiaries pursuant to stock purchase or stock option plans or other arrangements that are unanimously approved by the Board;

(C) shares of Common Stock issued pursuant to the exercise or conversion or exchange of Convertible Securities outstanding as of the Series B Original Issue Date;

(D) shares of Common Stock and/or Convertible Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition, strategic alliance, joint venture or similar business transaction unanimously approved by the Board;

(E) shares of Common Stock or Convertible Securities issued pursuant to any equipment loan or commercial credit or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution unanimously approved by the Board;

(F) shares of Common Stock issued in connection with any stock split, stock dividend, reclassification or similar non-economic event by the Company, provided that the appropriate adjustment has been made in accordance with Sections 4(e), 4(f) or 4(g), as applicable;

(G) shares of Common Stock or Convertible Securities issued pursuant to a transaction or series of related transactions with respect to which the holders of at least 65% of the outstanding shares of the Series Preferred, voting together as a single class on an as-if-converted basis, have waived any adjustment of the applicable Series Preferred Conversion Prices pursuant to this Section 4(h) in connection with the issuance of such securities;

(H) shares of Common Stock issued pursuant to a Qualified Public Offering (as defined below);

(I) shares of Common Stock or Convertible Securities issued in connection with any settlement involving the Company unanimously approved by the Board;



(J) shares of Common Stock or Convertible Securities issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar arrangements or strategic partnerships unanimously approved by the Board; and

(K) shares of Common Stock or Convertible Securities issued to suppliers of goods or services in connection with the provision of goods or services pursuant to transactions unanimously approved by the Board.

References to Common Stock in the subsections of this clause (vi) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(h). The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 4(h), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 4(h), for such Additional Shares of Common Stock. In the event that the number of shares of Additional Shares of Common Stock or the Effective Price cannot be ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the Effective Price, as applicable, determinable.

(vii) In the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance (the "**First Dilutive Issuance**"), then in the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance pursuant to the same instruments as the First Dilutive Issuance (a "**Subsequent Dilutive Issuance**"), then and in each such case upon a Subsequent Dilutive Issuance the applicable Series Preferred Conversion Price shall be reduced to the Series Preferred Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance.

(i) **Other Distributions.** Subject to the terms of Section 1, in the event the Company shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Company or other persons, assets (excluding cash dividends) or options or rights not referred to in this Section 4, then, in each such case for the purpose of this Section 4, the holders of Series Preferred 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 Company into which their shares of Series Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Company entitled to receive such distribution.

(j) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the applicable Series Preferred Conversion Price for the number of shares of Common Stock or other securities or property issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by

first class mail, postage prepaid, to each registered holder of applicable Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the Aggregate Consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the applicable Series Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, and (iv) the type and amount, if any, of other securities or property that at the time would be received upon conversion of the Series Preferred.

**(k) Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 3) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 3), or any Liquidation Event or other voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of at least a majority of the outstanding Series Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, recapitalization, reclassification, transfer, consolidation, merger, Asset Transfer, Liquidation Event, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, recapitalization, reclassification, transfer, consolidation, merger, Asset Transfer, Liquidation Event, dissolution, liquidation or winding up.

**(l) Automatic Conversion.**

**(i)** Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective applicable Series Preferred Conversion Price, immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act covering the offer and sale of Common Stock for the account of the Company in which (A) the per share price is at least three (3) times the Original Issue Price (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), and (B) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$25,000,000 and with a resulting market capitalization in excess of \$100,000,000 ("**Qualified Public Offering**"). Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective applicable Series Preferred Conversion Price, at any time upon the affirmative election of the holders of 65% of the outstanding shares of the Series Preferred, voting together as a single class on an as-if-converted basis. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) Upon the occurrence of any of the events specified in Section 4(l)(i) above, the outstanding shares of Series Preferred 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 Company or its transfer agent and the holder thereof shall have all rights with respect to the Common Stock to be received regardless of the timing of the delivery of new stock certificates; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(m) **Fractional Shares.** No fractional shares of Common Stock or Series Preferred shall be issued upon conversion of any Series Preferred. All shares of Common Stock (including fractions thereof) or Series Preferred, as applicable, issuable in connection with the conversion of shares of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's or Series Preferred's fair market value as applicable (as determined in good faith by the Board) on the date of conversion.

(n) **Reservation of Stock Issuable Upon Conversion.** The Company 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 Preferred, 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 Preferred. 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 Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(o) **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail, telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (iii) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid to and from locations within the United States, (iv) ten (10) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid to or from a

location outside of the United States, (v) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt to and from locations within the United States, or (vi) four (4) business days after deposit with an international express courier service, specifying delivery within such time period, with written verification of receipt if sent to or from a location outside of the United States. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(p) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

**5. REDEMPTION.** The Series Preferred shall not be redeemable at the election of the holders of the Series Preferred.

**E.** The rights, privileges and restrictions and other matters relating to the Common Stock are as follows:

**1. DIVIDEND RIGHTS.** Subject to the prior rights of the holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board, out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board.

**2. LIQUIDATION RIGHTS.** Upon the occurrence of a Liquidation Event, the assets of the Company shall be distributed as provided in Section D.3.

**3. REDEMPTION.** The Common Stock is not redeemable at the option of the holders of the Common Stock.

**4. VOTING.** Each outstanding share of Common Stock shall be entitled to one vote and each outstanding fractional share of Common Stock shall be entitled to a corresponding fractional vote on each matter submitted to a vote of shareholders.

### **ARTICLE III OFFICES**

The street address of the registered office of the Company is 1900 Nineth Street, Boulder, Colorado 80301 and the name of the registered agent at that address is Faegre & Benson LLP. The address of the Company's principal office is 430B North College Avenue, Fort Collins, CO 80524.

#### **ARTICLE IV PURPOSES**

The purpose for which the Company is organized is to engage in any lawful business.

#### **ARTICLE V PREEMPTIVE RIGHTS**

Except as provided by contract, no holder of any shares of the Company, whether now or hereafter authorized, shall have any preemptive or preferential right to acquire any shares or securities of the Company, including shares or securities held in the treasury of the Company.

#### **ARTICLE VI QUORUM FOR SHAREHOLDERS' MEETINGS**

Except as bylaws adopted by the shareholders may provide for a greater quorum requirement, a majority of the outstanding shares shall constitute a quorum at any meeting of shareholders. Except as bylaws adopted by the shareholders may provide for a greater voting requirement and except as is otherwise provided by the Act with respect to action on amendment to these Articles of Incorporation, on a plan of merger or share exchange, on the disposition of substantially all of the property of the Company, on the granting of consent to the disposition of property by an entity controlled by the Company, and on the dissolution of the Company, action on a matter other than the election of directors is approved if a quorum exists and if the votes cast favoring the action exceed the votes cast opposing the action. Any bylaw adding, changing or deleting a greater quorum or voting requirement for shareholders shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Any action required or permitted to be taken at a shareholders' meeting may be taken without a meeting if the shareholders holding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the shares entitled to vote thereon were present and voted consent to such action in writing.

#### **ARTICLE VII BOARD OF DIRECTORS**

The corporate powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, a Board. The number of directors of the Company shall be fixed and may be altered from time to time in accordance with the Company's Bylaws.

The directors shall be elected at each annual meeting of the shareholders, provided that vacancies may be filled by election by the remaining directors, though less than a quorum or by the shareholders at a special meeting called for that purpose.

Despite the expiration of his or her term, a director continues to serve until his or her successor is elected and qualified.

## **ARTICLE VIII CUMULATIVE VOTING**

Cumulative voting shall not be allowed in the election of directors.

## **ARTICLE IX LIMITATION ON DIRECTOR LIABILITY**

To the fullest extent permitted by law, a director of the Company shall not be personally liable to the Company or to its shareholders for monetary damages for breach of fiduciary duty as a director; except that this provision shall not eliminate or limit the liability of a director to the Company or to its shareholders for monetary damages otherwise existing for

- (i) any breach of the director's duty of loyalty to the Company or to its shareholders;
- (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (iii) acts specified in Section 7-108-403 of the Act; or
- (iv) any transaction from which the director directly or indirectly derived any improper personal benefit.

If the Act is hereafter amended or superseded to eliminate or limit further the liability of a director, then, in addition to the elimination and limitation of liability provided by the preceding sentence, the liability of each director shall be eliminated or limited to the fullest extent permitted by the Act as so amended or superseded. Any repeal or modification of this Article IX shall not adversely affect any right or protection of a director of the Company under this Article IX, as in effect immediately prior to such repeal or modification, with respect to any liability that would have accrued, but for this Article IX, prior to such repeal or modification.

## **ARTICLE X INDEMNIFICATION**

The Company shall indemnify, to the fullest extent permitted by applicable law in effect from time to time, any person, and the estate and personal representative of any such person, against all liability and expense (including attorneys' fees) incurred by reason of the fact that the person is or was a director or officer of the Company or, while serving as a director or officer of the Company, such person is or was serving at the request of the Company as a director, officer, partner, trustee, employee, fiduciary, or agent of, or in any similar managerial or fiduciary position of, another domestic or foreign corporation or other individual or entity or of an employee benefit plan. The Company shall also indemnify any person who is serving or has served the Company as director, officer, employee, fiduciary, or agent, and that person's estate and personal representative, to the extent and in the manner provided in any bylaw, resolution of

the shareholders or directors, contract, or otherwise, so long as such provision is legally permissible. The right to indemnification set forth in this Article X does not include the right to be paid the expenses related to a claim giving rise to indemnification prior to the final resolution of the matter; *provided, however*, that the Board may grant such right at any time by resolution.

Any repeal or modification of the foregoing provisions of this Article X by the shareholders of the Company shall not adversely affect any right or protection of a director of the Company existing at the time of, or increase the liability of any director of the Company with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

## **ARTICLE XI COVERED PERSONS**

To the maximum extent permissible by law:

(i) No (x) director of the Company who is not an employee of the Company or any of its subsidiaries or (y) holder of Series Preferred Stock or any partner, member, director, shareholder or agent of any such holder, other than someone who is an employee of the Company or any of its subsidiaries (collectively, “**Covered Persons**”) shall have any duty or obligation at any time to purchase securities from, to make any investment in or otherwise to provide financing to, or to arrange financing for, the Company;

(ii) No Covered Person shall have any liability to the Company or any shareholder of the Company for failure at any time to purchase securities from, or otherwise make any investment in or otherwise provide financing to, the Company; and

(iii) No Covered Person shall have any liability to the Company or any shareholder of the Company with respect to the purchase of securities from, or otherwise the making of an investment in, the Company in any transaction or series of related transactions if either (x) all holders of the Company’s capital stock have been offered an opportunity to participate in such transaction or series of transactions on a pro rata basis (based on equity ownership in the Company) and on substantially the same terms as the Covered Person, or (y) all holders of the Company’s capital stock who are “accredited investors” within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended, have been offered an opportunity to participate in such transaction or series of transactions on a pro rata basis (based on equity ownership in the Company) and on substantially the same terms, where participation in such transaction is restricted to “accredited investors,” in each case regardless of whether any additional shareholders or other Covered Persons actually participate in such transaction or series of related transactions.

**ARTICLE XII**  
**CORPORATE OPPORTUNITY**

In the event that a member of the Board (a) who is not an employee of the Company or any subsidiary of the Company and (b) who is also a partner or employee of any entity that is a holder of capital stock or other equity securities of the Company and that makes investments and reinvestments in other entities, or any employee of an entity that manages or is an affiliate of such an entity, (each, an “**Excluded Investor**”) acquires knowledge of a potential transaction or other matter in such individual’s capacity as a partner or employee of an Excluded Investor or the manager or general partner of an Excluded Investor (and other than directly in connection with such individual’s service as a member of the Board) and that may be an opportunity of interest for both the Company and such Excluded Investor(s) (a “**Corporate Opportunity**”), then the Company renounces any expectancy that such director or the Excluded Investor(s) offer an opportunity to participate in such Corporate Opportunity to the Company; *provided, however*, that such director acts in good faith.

**ARTICLE XIII**  
**TERM OF EXISTENCE**

The duration of the Company shall be perpetual.

\* \* \* \* \*

The name and mailing address of the individual who causes this document to be delivered for filing, and to whom the Secretary of State may deliver notice if filing of this document is refused, is Maura M. Coffin, Faegre & Benson LLP, 1900 Ninth Street, Boulder, Colorado 80302.