

**PATENT ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

|                       |                          |
|-----------------------|--------------------------|
| SUBMISSION TYPE:      | NEW ASSIGNMENT           |
| NATURE OF CONVEYANCE: | NUNC PRO TUNC ASSIGNMENT |
| EFFECTIVE DATE:       | 10/14/2009               |

**CONVEYING PARTY DATA**

| Name              | Execution Date |
|-------------------|----------------|
| Michael Kyle Ross | 03/19/2010     |
| Gary Luce         | 03/19/2010     |
| John Spencer      | 03/19/2010     |
| Rae Spencer       | 03/19/2010     |

**RECEIVING PARTY DATA**

|                   |                         |
|-------------------|-------------------------|
| Name:             | TERRABON, INC.          |
| Street Address:   | 20333 State Highway 249 |
| Internal Address: | Suite 200               |
| City:             | Houston                 |
| State/Country:    | TEXAS                   |
| Postal Code:      | 77070                   |

**PROPERTY NUMBERS Total: 1**

| Property Type       | Number   |
|---------------------|----------|
| Application Number: | 12629285 |

**CORRESPONDENCE DATA**

Fax Number: (713)226-6294  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 7132266694  
 Email: bgorman@porterhedges.com  
 Correspondent Name: PORTER HEDGES LLP  
 Address Line 1: 1000 MAIN STREET, 36TH FLOOR  
 Address Line 2: JONATHAN M. PIERCE  
 Address Line 4: HOUSTON, TEXAS 77002

ATTORNEY DOCKET NUMBER: 012012-0100

**CH \$40.00 12629285**

NAME OF SUBMITTER:

JONATHAN M. PIERCE

**Total Attachments: 19**

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# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "TERRABON TECHNOLOGY CORP.", CHANGING ITS NAME FROM "TERRABON TECHNOLOGY CORP." TO "TERRABON, INC", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF OCTOBER, A.D. 2009, AT 6:04 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



4721067 8100

090935600

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 7585826

DATE: 10-15-09

**PATENT**  
**REEL: 026832 FRAME: 0156**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 06:04 PM 10/14/2009  
FILED 06:04 PM 10/14/2009  
SRV 090935600 - 4721067 FILE

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
TERRABON TECHNOLOGY CORP.

(Pursuant to Sections 228, 242 and 245 of the  
General Corporation Law of the State of Delaware)

Terrabon Technology Corp. (the "*Corporation*"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware, does hereby certify:

**FIRST:** That the Corporation was originally incorporated pursuant to the General Corporation Law of the State of Delaware on August 17, 2009 under the name Terrabon Technology Corp.

**SECOND:** The Corporation is changing its name to Terrabon, Inc. as set forth in the attached Amended and Restated Certificate of Incorporation.

**THIRD:** The Amended and Restated Certificate of Incorporation of the Corporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 228, 245 and 242 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation.

**FOURTH:** The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is incorporated herein by this reference.

**IN WITNESS WHEREOF**, Terrabon Technology Corp. has caused this Amended and Restated Certificate to be signed by its undersigned officer as of October 13, 2009.

TERRABON TECHNOLOGY CORP.

By: 

Gary W. Luce  
Chief Executive Officer

EXHIBIT A

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AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
TERRABON TECHNOLOGY CORP.

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ARTICLE I

The name of this Corporation is Terrabon, Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, and the name of the registered agent at that address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

A. Classes of Stock. The Corporation is authorized to issue two classes of capital stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of capital stock authorized to be issued is 100,000,000 shares. 66,000,000 shares shall be Common Stock, par value \$0.01 per share ("*Common Stock*"), and 34,000,000 shares shall be Preferred Stock, par value \$0.01 per share ("*Preferred Stock*"), all of which shall be designated as "Series A Convertible Preferred Stock" (the "*Series A Preferred*").

B. Rights, Preferences and Restrictions of Series A Preferred. The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred are as set forth below in this Section B of Article IV.

1. Dividend Provisions.

(a) The holders of shares of Series A Preferred shall be entitled to receive, on a pari passu basis, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (other than dividends payable in Common Stock for which appropriate adjustment is made hereunder) on any other class or series of stock, dividends on each share of Series A Preferred at the rate of \$0.02874 per share (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations and the like with respect to such shares) per annum when, as and if declared by the Board of Directors of the Corporation (the "*Board*"). Such dividends shall accrue starting on the date of issuance and shall be cumulative. Declared

but unpaid dividends shall accrue interest at a rate of 6.0% per annum. Declared and/or accrued but unpaid dividends will be paid upon conversion of the Series A Preferred, at the option of the Corporation, in either (i) cash or (ii) Common Stock based on the fair market value of the Common Stock on such date as determined in good faith by the Board. Any amounts to be so paid for which assets are not legally available shall be paid promptly as assets become legally available therefor. No dividends shall be declared or paid, and no distribution shall be made (other than dividends payable in Common Stock for which appropriate adjustment is made hereunder), on shares of any other class or series unless all dividends declared and/or accrued but unpaid on the Series A Preferred have been paid or set apart for payment. After the payment or setting aside for payment of the dividends described in the first sentence of this Section 1(a), any additional dividends (other than dividends payable in Common Stock for which appropriate adjustment is made hereunder) declared or paid in any year shall be declared or paid among the holders of the Series A Preferred and Common Stock then-outstanding based on the number of shares of Common Stock held by each such holder (assuming full conversion of the Series A Preferred Stock).

(b) Any dividend or distribution that is declared by the Corporation and payable with assets of the Corporation other than cash shall be valued in accordance with the provisions of Subsection 2(c)(ii) below.

## 2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, (a "*Liquidation Event*") the holders of Series A Preferred shall be entitled to receive, on a pari passu basis, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock or any other security ranking junior in priority to the Series A Preferred by reason of their ownership thereof, (i) an amount equal to \$0.4790 (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations and the like with respect to such shares) for each share of Series A Preferred then held by them (the "*Original Series A Purchase Price*") plus (ii) an amount equal to any accrued and/or declared but unpaid dividends on each such share (clauses (i) and (ii) collectively being referred to herein as the "*Series A Liquidation Amount*"). If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred shall be insufficient to permit the payment to such holders of the full Series A Liquidation Amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred in proportion to the Series A Liquidation Amount that each such holder is otherwise entitled to receive.

(b) After payment to the holders of the Series A Preferred of the amounts set forth in Section 2(a) of this Article IV, any additional remaining assets shall be distributed ratably and on a pari passu to the holders of the Series A Preferred and Common Stock based on the number of shares of Common Stock held by each such holder (assuming full conversion of the Series A Preferred).

(c) (i) Unless waived in any specific instance by the holders of at least two-thirds of the outstanding shares of Series A Preferred, for purposes of this Section 2, a Liquidation Event shall be deemed to include, (A) the acquisition of the Corporation by means of

any transaction or series of related transactions (including, without limitation, any stock acquisition, reorganization, merger or consolidation) unless the Corporation's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold at least a majority of the voting power of the surviving or acquiring entity (except that the sale by the Corporation of shares of its capital stock to investors in bona fide equity financing transactions, or in a Qualified Public Offering (as defined below), shall not be deemed a Liquidation Event for this purpose) or (B) a sale, exclusive license or other disposition of all or substantially all of the assets of the Corporation, including a sale, exclusive license or other disposition of all or substantially all of the assets of the Corporation's subsidiaries, if such assets constitute substantially all of the assets of the Corporation and such subsidiaries taken as a whole.

(ii) In any of such events, if the consideration received by the Corporation is other than cash or securities, its value will be deemed its fair market value as determined in good faith by the Board (including at least 2 of the Series A Directors). Any securities to be delivered to the holders of the Series A Preferred or Common Stock, as the case may be, shall be valued as follows:

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the ten day period ending three days prior to the closing;

(B) 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 ten day period ending three days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board;

*provided however*, the foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event may be superseded by any determination of such value set forth in the definitive agreements governing such Liquidation Event.

(iii) 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 stockholder's status as an affiliate or former affiliate) shall be valued at an appropriate discount from the value determined as provided in Subsection 2(c)(ii)(A) or (B) above to reflect the approximate fair market value thereof, as determined in good faith by the Board.

(d) (i) The Corporation shall give each holder of record of Series A Preferred written notice of such impending transaction not later than 20 days prior to the stockholders' meeting called to approve such transaction, or 20 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt written notice of any material changes. The transaction

shall in no event take place sooner than 20 days after the Corporation has given the first notice provided for herein or sooner than 20 days after the Corporation has given notice of any material changes provided for herein; *provided, however*, that such periods may be shortened or waived entirely upon the Corporation's receipt of written consent of the holders of a majority of the Series A Preferred entitled to such notice rights or similar notice rights.

(ii) In the event the requirements of this Subsection 2(d) are not complied with, the Corporation shall either:

(A) cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Subsection 2(d)(i) above.

### 3. Redemption.

(a) Beginning on September 30, 2015, the holders of not less than two-thirds of then-outstanding Series A Preferred may request in writing that all shares of Series A Preferred be redeemed in three equal annual installments. Within 60 days after the receipt by the Corporation of such written request, the Corporation shall, to the extent it may lawfully do so, redeem (the payment date being referred to herein as the "*Initial Redemption Date*") one-third of the then-outstanding shares of Series A Preferred by, concurrently with the surrender by the holders of the certificates representing such shares, paying in cash in exchange for each share of Series A Preferred to be redeemed a sum (the "*Redemption Price*") equal to the Series A Liquidation Amount. The Corporation, to the extent it may lawfully do so, shall redeem, upon the one-year anniversary of the Initial Redemption Date (the "*Second Redemption Date*"), one-half of the then-outstanding shares of Series A Preferred and, upon the two-year anniversary of the Initial Redemption Date (together with the Initial Redemption Date and the Second Redemption Date, each a "*Redemption Date*"), all of the then-outstanding shares of Series A Preferred, by, concurrently with the surrender by the holders of the certificates representing such shares, paying in cash in exchange for each share of Series A Preferred to be redeemed a sum equal to the Redemption Price, as determined as of the applicable Redemption Date. At the time the Corporation delivers the Redemption Price, the Corporation shall deliver a new certificate representing the unredeemed shares of Series A Preferred held by the holders of such certificates surrendered for redemption. Any redemption effected pursuant to this Section B.3 shall be made on a pro rata basis among the holders of the Series A Preferred in proportion to the number of shares of Series A Preferred then held by such holders.

(b) At least 15 but no more than 30 days prior to the Redemption Date, written notice shall be mailed, first class postage prepaid, to each Series A Preferred holder of record (at the close of business on the business day next preceding the day on which notice is given), at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected on the applicable Redemption Date, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price,



the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares to be redeemed (the "*Redemption Notice*"). Except as provided in Subsection B.3(d), on or after the Redemption Date, each holder of Series A Preferred to be redeemed on such Redemption Date shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. No transfers of Series A Preferred shall be permitted during the five-day period prior to and including any Redemption Date, and the Corporation shall not recognize any such prohibited transfer on its books and records.

(c) From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of the Series A Preferred designated for redemption on such Redemption Date in the Redemption Notice (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Preferred on a Redemption Date are insufficient to redeem the total number of such shares of Series A Preferred to be redeemed on such date, those funds that are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of the Series A Preferred such that each holder of Series A Preferred receives the same percentage of the Redemption Price for each share of Series A Preferred. The shares of Series A Preferred not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred, such funds will immediately be used to redeem the balance of the shares of Series A Preferred. Any Series A Preferred which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares and shall not be reissued, sold or transferred.

(d) Except as set forth in this Section B.3 of Article IV, neither the Corporation nor any holder of the Series A Preferred shall have the unilateral right to call or redeem or cause to have called or redeemed any shares of Series A Preferred Stock. The redemption rights of holders of the Series A Preferred under this Section B.3 shall terminate upon the consummation of the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "*Securities Act*").

4. Conversion. The holders of Series A Preferred shall have conversion rights as follows (the "*Conversion Rights*"):

(a) Right to Convert. Each share of Series A of Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined, with respect to each share of Series A Preferred, by dividing (x) the Original Series A Purchase Price by (y) the

Conversion Price in effect for the Series A Preferred on the date the certificate is surrendered for conversion. The initial "*Conversion Price*" per share for the Series A Preferred shall be the Original Series A Purchase Price; *provided, however*, that the Conversion Price for the Series A Preferred shall be subject to adjustment as set forth in Subsection 4(d) below.

(b) Automatic Conversion. Each share of Series A Preferred shall automatically be converted into shares of Common Stock at the applicable Conversion Price then in effect upon the earlier of (i) immediately prior to the closing of the Corporation's sale of its Common Stock for a price per share (before deducting underwriting commissions and expenses) of at least \$2.40 per share (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations and the like with respect to such shares) in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "*Securities Act*"), with aggregate cash proceeds (net of underwriting discounts and commissions) to the Corporation of at least \$50,000,000 (a "*Qualified Public Offering*") or (ii) the date specified by written consent or agreement of the holders of at least two-thirds of the then-outstanding shares of Series A Preferred.

(c) Mechanics of Conversion.

(i) Before any holder of any Series A Preferred shall be entitled to convert the same into shares of Common Stock pursuant to Subsection 4(a) above and upon the occurrence of the events specified in Subsection 4(b) above, as the case may be, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such Series A Preferred and if such conversion is to be effected pursuant to Subsection 4(a) above, shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued; *provided, however*, that any failure by a holder to comply with these provisions shall not have any effect on the automatic conversion of such holder's shares, which shall in any event be deemed to have converted, automatically and without any further action on the part of the holder or the Corporation, in accordance with Subsection 4(b) above. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred or to the nominee or nominees of such holder (A) a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled (including, without limitation, such number of shares, if any, as shall represent payment of declared and/or accrued but unpaid dividends as provided in Section 1(a)) and (B) such amount of cash, if any, as shall represent payment of declared and/or accrued but unpaid dividends as provided in Section 1(a). Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date.

(ii) If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, or any event that would be deemed to be a Liquidation Event under Subsection 2(c)(i) above, the conversion may, at the election of the holder, be conditioned upon the closing with the underwriters of the sale of

securities pursuant to such offering or the closing of such Liquidation Event, as the case may be, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred shall not be deemed to have converted such Series A Preferred until immediately prior to the closing of such sale of securities or of such Liquidation Event, as the case may be.

(d) Conversion Price Adjustments. The Conversion Price shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, after September 30, 2009 (the "*Initial Series A Issue Date*"), any Additional Stock (as defined in Subsection 4(d)(ii) below) without consideration or for a consideration price per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock (a "*Qualifying Dilutive Issuance*"), the Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying the Conversion Price by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to Subsections 4(d)(i)(E)(1) or (2)) plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to Subsections 4(d)(i)(E)(1) or (2)) plus the number of shares of Additional Stock issued. For example, if after the Initial Series A Issue Date, the Corporation issues 2,000,000 shares of Common Stock for consideration per share of \$0.15 and assuming there are 15,000,000 shares of Common Stock deemed outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to Subsections 4(d)(i)(E)(1) or (2)), the Conversion Price immediately would be reduced to the price determined by multiplying \$0.4790, the Conversion Price then in effect, by the following fraction:

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 15,000,000 \\
 \hline
 15,000,000
 \end{array}
 + \frac{\$0.15 \times 2,000,000}{\$0.4790} \\
 \\
 = \frac{15,626,305}{17,000,000} \\
 \\
 = 0.9191944
 \end{array}$$

resulting in an adjusted Conversion Price of \$0.44 (i.e., \$0.4790 x 0.9191944) and an adjusted conversion rate of 1.0886364:1 (i.e., \$0.479/\$0.440).

(B) No adjustment of the Conversion Price shall be made if such adjustment would be in an amount less than one cent per share, but such adjustments shall be carried forward on a cumulative basis until an adjustment to the Conversion Price is made therefor. Except to the limited extent provided for in subsection (d)(1)(E)(3) or (4), no adjustment of the Conversion Price for any Series A Preferred pursuant to this subsection

(d)(1) shall have the effect of increasing any such Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

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

(D) In the case of the issuance of Additional 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 pursuant to Subsection 2(c)(ii) above.

(E) In the case of the issuance (on or after the Initial Series A Issue Date) of (i) options to purchase or rights to subscribe for Common Stock, (ii) securities by their terms convertible into or exchangeable for Common Stock or (iii) options to purchase or rights to subscribe for securities by their terms convertible into or exchangeable for Common Stock, the following provisions shall apply for all purposes of this Subsection 4(d)(i) and Subsection 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (to the extent then exercisable) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Subsections 4(d)(i)(C) and 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of (including, without limitation, shares issuable with respect to the payment of declared and/or accrued dividends on such conversion), or in exchange (to the extent then convertible or exchangeable) for, any such convertible or exchangeable securities or upon the exercise of options 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 or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), 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 or rights (the consideration in each case to be determined in the manner provided in Subsections 4(d)(i)(C) and 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of Subsection

4(d)(i)(A)), the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of Subsection 4(d)(i)(A)), the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Subsection 4(d)(i)(E)(3) or (4).

(ii) "**Additional Stock**" shall mean all shares of Common Stock issued (or deemed to have been issued pursuant to Subsections 4(d)(i)(E)(1) or (2)) by the Corporation after the Initial Series A Issue Date, other than shares of Common Stock (or options therefor) issued or issuable:

(A) upon conversion of any shares of Series A Preferred;

(B) to officers, directors or employees of, or consultants or other service providers to, the Corporation as compensation for services, directly or pursuant to a stock incentive plan or an agreement approved by the Board (including the approval or consent of at least two Series A Directors (as defined in Subsection 5(c) below)) but not exceeding 8,000,000 shares of Common Stock (net of net of any cancellations, expirations or repurchases and as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations and the like with respect to the Common Stock);

(C) to banks, savings and loan associations, equipment lessors or other similar lending institutions in connection with such entities providing working capital credit facilities or equipment financing to the Corporation for a non-equity financing purpose approved by the Board (including the approval or consent of at least two Series A Directors);

(D) pursuant to a transaction for which adjustments of the Conversion Price is made pursuant to Subsection 4 (d)(iii) below;

(E) pursuant to any dividend or distribution on the Series A Preferred;

(F) pursuant to bona fide business or technology acquisitions (or licenses) of or by the Corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock, reorganization or otherwise that is approved by the Board (including the approval or consent of at least two Series A Directors);

(G) pursuant to or in connection with collaboration, technology license, development, OEM, marketing or other similar agreements, joint ventures or strategic partnerships approved by the Board (including the approval or consent of at least two Series A Directors);

(H) pursuant to the sale of shares of the Corporation's capital stock in connection with a Qualified Public Offering; or

(I) upon the exercise of warrants or other securities or rights exercisable to purchase the Corporation's capital stock that were outstanding as of the Initial Series A Issue Date.

(iii) In the event the Corporation should at any time or from time to time after the Initial Series A Issue Date fix a record date for the effectuation of a split or a subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "*Common Stock Equivalents*") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time after the Initial Series A Issue Date is decreased by a combination of the outstanding shares of Common Stock, then, on the effective date of such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred shall be decreased in proportion to such decrease in outstanding shares.

(v) In the event that the Corporation issues or sells, or is deemed to have issued or sold, Additional Stock in a Qualifying Dilutive Issuance (the "*First Dilutive Issuance*"), then in the event that the Corporation issues or sells, or is deemed to have issued or sold, Additional Stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance as a part of the same transaction or series of related transactions as the First Dilutive Issuance (a "*Subsequent Dilutive Issuance*"), then and in each such case upon a Subsequent Dilutive Issuance the Conversion Price shall be adjusted to the 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. The sale and issuance of Additional Stock shall not be considered part of the same transaction or series of related transactions unless the Additional Stock is of the same series, issued at the same price and the closings of such transactions occur not more than six (6) months apart.

(e) Other Distributions. Without limiting the provisions of Section B.1. of Article IV, in the event the Corporation shall declare a dividend or 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 that are not Common Stock Equivalents, then, in each such case, the holders of Series A 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 Corporation into which their shares of Series A Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such dividend or distribution.

(f) Recapitalizations. If at any time or from time to time after the Initial Series A Issue Date, there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2 above) provision shall be made so that the holders of Series A Preferred shall thereafter be entitled to receive upon conversion of their shares of Series A Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. 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 A Preferred after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. The Corporation will not, by amendment of this Amended and Restated Certificate of Incorporation (this "*Certificate of Incorporation*") or through any reorganization, recapitalization, 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 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 Series A Preferred. This provision shall not restrict the Corporation's right to amend its Certificate of Incorporation with the requisite stockholder consent.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Series A Preferred and, in lieu of any fractional shares to which any holder of Preferred Stock would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock on the date of conversion as determined in good faith by the Board of Directors. Whether or not fractional

shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred that the holder is at the time converting (or are being automatically converted) into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion (including, without limitation, shares issuable with respect to the payment of declared and/or accrued but unpaid dividends on the shares converted).

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series A Preferred pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred, a certificate setting forth such adjustment or readjustment and showing 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 Preferred furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) 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 Preferred.

(i) Notices of Record Date. In the event of any taking by the Corporation 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 (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred, at least twenty (20) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) Reservation of Stock Issuable Upon Conversion. 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 Series A 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 Series A Preferred; 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 Series A Preferred, in addition to such other remedies as shall be available to the holder of such Series A Preferred, the Corporation will promptly 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred shall be deemed given five days after deposit 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.



5. Voting Rights; Protective Provisions.

(a) General Voting Rights. The holder of each share of Series A Preferred shall have the right to one vote for each share of Common Stock into which such holder's shares of Series A Preferred could then be converted, with full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, except as required by law or as expressly provided herein, including the protective provisions in Subsection 5(c) below, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation; and shall be entitled to vote, together with holders of Common Stock (voting together with the Common Stock as a single class), with respect to any question upon which holders of Common Stock have the right to vote, *provided* that except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to (or waiver of any provision of) this Certificate of Incorporation that relates solely to the terms of the Series A Preferred, if the holders of the Series A Preferred are entitled to vote thereon pursuant to this Certificate of Incorporation or pursuant to Delaware General Corporation Law. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred held by each holder could be converted) shall be rounded to the nearest whole number (with 0.5 being rounded upward).

(b) Adjustment in Authorized Common Stock. The authorized number of shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then-outstanding or reserved for the exercise of options or warrants or the conversion of Series A Preferred) by the affirmative vote of the holders of a majority of the shares of capital stock of the Corporation entitled to vote, voting as a single class, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

(c) Board of Directors. The holders of Series A Preferred, voting as a single series, shall be entitled to elect three (3) directors (each, a "*Series A Director*") to the Board. Additional members of the Board shall be elected by the vote of the holders of Common Stock and Series A Preferred, voting together as a single class on an as-if-converted-to Common Stock basis. The members of any committee of the Board shall be determined by a majority of the Board, including the approval or consent of the Series A Directors.

(d) Protective Provisions. So long as at least 2,194,556 shares (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations and the like with respect to such shares) of Series A Preferred are outstanding, the Corporation shall not (whether by merger, consolidation or otherwise), without first obtaining the approval (by vote or written consent, as permitted by law) of the holders of at least two-thirds of the then-outstanding shares of Series A Preferred:

- (i) effect any Liquidation Event;
- (ii) except as provided in Section B.3 of Article IV, redeem, repurchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose) any shares of Common Stock or Preferred Stock or options to purchase capital stock (other than (i) the repurchase of shares of Common Stock at cost from employees, officers,

directors, consultants or other service providers pursuant to agreements under which the Corporation has the right to repurchase such stock in connection with the occurrence of certain events, such as the termination of their employment with or services to the Corporation or (ii) pursuant to the Corporation's then effective incentive option plan);

(iii) declare a dividend or distribute cash or property to holders of Common Stock or any other class or series of capital stock of the Corporation (other than dividends payable in Common Stock for which appropriate adjustment is made hereunder);

(iv) amend or waive any provisions of this Certificate of Incorporation or the Bylaws of the Corporation by way of merger, consolidation or otherwise;

(v) take any action, including amending this Certificate of Incorporation or the Bylaws of the Corporation by way of merger, consolidation or otherwise, that would alter, or change or otherwise materially and adversely affect the powers, preferences or privileges of the Series A Preferred;

(vi) authorize, issue any new, or reclassify any existing class or series of equity securities having any preference or priority with respect to dividends rights, voting rights or distribution of assets upon a Liquidation Event that is superior to or on parity with any such preference or priority of the Series A Preferred;

(vii) increase or decrease (other than as a result of conversion or redemption) the number of authorized shares of Series A Preferred;

(viii) increase to more than, or decrease to less than, seven (7) the number of authorized directors on the Board;

(ix) incur, create, assume, become liable in any manner with respect to, or permit to exist any indebtedness (including without limitation, capitalized leases), except for indebtedness not exceeding \$500,000 in the aggregate, unless approved by the Board (including the approval or consent of at least two of the Series A Directors);

(x) make any material change in the nature of the Corporation's business as conducted on the date of filing of this Certificate of Incorporation; *provided*, that any change to the Corporation's operating plan or other plan or budget that is submitted to and approved by the Board, including the approval of at least two Series A Directors, shall not constitute a material change under this Section 5(d);

(xi) increase the number of shares of Common Stock reserved for issuance under the Corporation's current equity incentive plan above 8,000,000 shares of Common Stock or adopt or approve of any new equity incentive or benefit plan;

(xii) enter into any contract, arrangement or transaction with an affiliate of the Corporation, including any loans or advances to employees other than advances for travel, entertainment or other similar expenses incurred by the employee in the ordinary course of business or for the payment of salary, unless approved by the Board (including the approval or consent of at least two Series A Directors);

(xiii) permit any subsidiary to issue or sell, or obligate itself to issue or sell, except to the Corporation or any wholly owned subsidiary, any stock of such subsidiary; except for such subsidiaries that may be created to develop a particular project that is approved by the Board (including the approval or consent of at least two Series A Directors);

(xiv) sell or transfer any material asset of the Corporation, or grant an exclusive license of any intellectual property right with respect to biofuels, in a single transaction or series of related transactions, unless approved by the Board (including the approval or consent of at least two of the Series A Directors); or

(xv) issue or sell more than 21,945,557 shares (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations and the like with respect to such shares) of Series A Preferred, unless approved by the Board (including the approval or consent of at least two of the Series A Directors), except for issuances or sales pursuant to that certain Series A Convertible Preferred Stock Purchase Agreement dated effective on or about the date hereof pursuant to which the Corporation initially sold the Series A Preferred.

(e) Status of Converted or Redeemed Stock. In the event any shares of Series A Preferred shall be converted pursuant to Subsection 4 above or redeemed pursuant to Subsection 3 above, the shares so converted or redeemed, as applicable, the Corporation shall never again issue the shares so converted or redeemed and all such shares so converted or redeemed shall, upon such conversion or redemption, cease to be a part of the Corporation's authorized stock

C. Common Stock. Except as otherwise provided herein, the rights granted to the Common Stock are as set forth below.

1. Dividend Rights. Subject to the provisions of Sections B(1), B(4)(e) or B(5)(d) of this Article IV, the holders of the Common Stock shall be entitled to receive, when, as, and if, declared by the Board, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board.

2. Liquidation Rights. Upon a Liquidation Event, the assets of the Corporation shall be distributed as provided in Section (B)(2) of this Article IV.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. In addition to the voting rights for the election of directors set forth in Section (B)(5) of this Article IV, the holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with this Certificate of Incorporation and the Bylaws of the Corporation; *provided, however*, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms of the Series A Preferred if the holders of the Series A Preferred are entitled to vote, as a single and separate series of shares, thereon pursuant to this Certificate of Incorporation or pursuant to the Delaware General Corporation Law. There shall be no cumulative voting. Notwithstanding anything to the contrary contained herein, 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 or reserved for the exercise of options or warrants or the conversion of Series A Preferred) as set forth in Section (B)(5)(b) of this Article IV.

#### ARTICLE V

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended or superseded after approval by the stockholders of this Article V to eliminate or further limit the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended or superseded.

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

In the event that a director (a) who is not an employee of the Corporation or any subsidiary of the Corporation 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 Corporation 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 Corporation and such Excluded Investor(s) (a "Corporate Opportunity"), then the Corporation renounces any expectancy that such director or the Excluded Investor(s) offer an opportunity to participate in such Corporate Opportunity to the Corporation; provided, however, that such director acts in good faith and executes a form of confidentiality and non-disclosure agreement that is reasonably acceptable to the Board.

#### ARTICLE VI

The management of the business and the conduct of the affairs of the Corporation shall be vested in the Board.

Subject to the provisions of subsections (B)(5)(c) and (B)(5)(d) of Article IV hereof, the number of directors of this Corporation to serve on the Board shall be seven (7).

#### ARTICLE VII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision

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

#### ARTICLE VIII

Election of directors at an annual or special meeting of stockholders need not be by written ballot unless the Bylaws of the Corporation shall so provide.

#### ARTICLE IX

Subject to the approval required in Section (B)(5) of Article IV hereof, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

#### ARTICLE X

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and agents of the Corporation (and any other persons to which the Delaware General Corporation Law permits the Corporation to provide indemnification) through bylaw provisions, agreements, vote of stockholders or disinterested directors or otherwise.

Any amendment, repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director, officer or agent of the Corporation or any other person with respect to any acts or omissions of such director, officer or agent or other person occurring prior to, such amendment, repeal or modification.

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