

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

EPAS ID: PAT7870676

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME	
<b>SEQUENCE:</b>	2	
<b>CONVEYING PARTY DATA</b>		
	<b>Name</b>	<b>Execution Date</b>
	TOCA, LLC	05/20/2016
<b>RECEIVING PARTY DATA</b>		
<b>Name:</b>	TOCA FOOTBALL, INC.	
<b>Street Address:</b>	2777 BRISTOL ST., SUITE D	
<b>City:</b>	COSTA MESA	
<b>State/Country:</b>	CALIFORNIA	
<b>Postal Code:</b>	92626	
<b>PROPERTY NUMBERS Total: 1</b>		
	<b>Property Type</b>	<b>Number</b>
	Application Number:	16995289
<b>CORRESPONDENCE DATA</b>		
<b>Fax Number:</b>	(714)546-9035	
<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>	7146415100	
<b>Email:</b>	jngo@rutan.com	
<b>Correspondent Name:</b>	RUTAN & TUCKER, LLP	
<b>Address Line 1:</b>	18575 JAMBOREE ROAD, 9TH FLOOR	
<b>Address Line 4:</b>	IRVINE, CALIFORNIA 92612	
<b>ATTORNEY DOCKET NUMBER:</b>	031555.0008P6	
<b>NAME OF SUBMITTER:</b>	KYLE M. ST. JAMES, REG. NO. 72791	
<b>SIGNATURE:</b>	/Kyle M. St. James/	
<b>DATE SIGNED:</b>	03/28/2023	
<b>Total Attachments: 24</b>		
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# Delaware

The First State

Page 1

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 CERTIFICATE OF CONVERSION OF A CALIFORNIA LIMITED LIABILITY COMPANY UNDER THE NAME OF "TOCA LLC" TO A DELAWARE CORPORATION, CHANGING ITS NAME FROM "TOCA LLC" TO "TOCA FOOTBALL, INC.", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF MAY, A.D. 2016, AT 5:10 O`CLOCK P.M.

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



6047611 8100F  
SR# 20163534374

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

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

Authentication: 202359960  
Date: 05-20-16

**PATENT**  
**REEL: 063174 FRAME: 0269**

**CERTIFICATE OF CONVERSION FROM A LIMITED LIABILITY  
COMPANY TO A CORPORATION PURSUANT TO SECTION 265  
OF THE GENERAL CORPORATION LAW OF THE STATE OF  
DELAWARE**

1. The jurisdiction where the other entity was first formed is the State of California.
2. The date the other entity was first formed in the State of California is January 29, 2010.
3. The name and type of entity of the other entity immediately prior to filing this Certificate is TOCA LLC, a California limited liability company.
4. The name of the Corporation as set forth in the Certificate of Incorporation is TOCA FOOTBALL, INC.

IN WITNESS WHEREOF, the undersigned, being duly authorized to sign on behalf of the other entity, has executed this Certificate on the 20<sup>th</sup> day of May, 2016.

By: \_\_\_\_\_

Authorized Person

Name: Edward J. Lewis

Print or Type Name


# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND  
CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "TOCA  
FOOTBALL, INC." FILED IN THIS OFFICE ON THE TWENTIETH DAY OF  
MAY, A.D. 2016, AT 5:10 O'CLOCK P.M.

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

  
Jeffrey W. Bullock, Secretary of State

6047611 8100F  
SR# 20163534374

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

Authentication: 202359960  
Date: 05-20-16

**PATENT**  
**REEL: 063174 FRAME: 0271**

CERTIFICATE OF INCORPORATION  
OF  
TOCA FOOTBALL, INC.

ARTICLE I

The name of the corporation is TOCA FOOTBALL, INC. (the "Corporation").

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware, in the County of Kent is 160 Greentree Drive, Suite 101, Dover, DE 19904 and the name of the registered agent at that address is National Registered Agents, Inc.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "General Corporation Law"). The Corporation is being incorporated in connection with the conversion of TOCA LLC, a California limited liability company (the "LLC"), to a Delaware corporation, and this Certificate of Incorporation is being filed simultaneously with the Certificate of Conversion of LLC (the "Certificate of Conversion") to a Delaware corporation.

ARTICLE IV

The name of the Corporation's incorporator is Laurie Biegel, and the incorporator's mailing address is 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626.

ARTICLE V

A. Authorized Stock.

(1) The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 25,000. There shall be 15,000 shares of Common Stock, par value \$0.001 per share, and 10,000 shares of Preferred Stock, par value \$0.001 per share, of which 2,500 shares are designated "Series A Convertible Preferred Stock" and 2,631 shares are designated "Series B Convertible Preferred Stock."

(2) The number of authorized shares of Common Stock and Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the General Corporation Law (or any successor provision thereto), and no vote of the holders of any of the Common Stock or the Preferred Stock voting separately as a class shall be required therefor.

State of Delaware

Secretary of State

Division of Corporations

Delivered 05:10 PM 05/20/2016

FILED 05:10 PM 05/20/2016

SR 20163534374 - File Number 6047611

**PATENT**  
**REEL: 063174 FRAME: 0272**

(3) Upon the effectiveness of the Certificate of Conversion and this Certificate of Incorporation (the "Effective Time"), (i) every Common and Profits Interest unit of membership interest in the LLC outstanding immediately prior to the Effective Time will be deemed to be the number of issued and outstanding, fully paid and nonassessable shares of Common Stock equal to the dollar amount of distributions to which a unit would be entitled (which may be zero) if all assets of the LLC were sold for an assumed value of \$5,500,000, all of the liabilities of the LLC (other than certain convertible notes) were satisfied and the proceeds distributed in accordance with the liquidation provisions of the limited liability company agreement of the LLC, divided by \$1,000, and (ii) every Class A unit of membership interest in the LLC outstanding immediately prior to the Effective Time will be deemed to be the number of issued and outstanding, fully paid and nonassessable shares of Series B Convertible Preferred Stock equal to the dollar amount of distributions to which a unit would be entitled (which may be zero) if all assets of the LLC were sold for an assumed value of \$5,500,000, all of the liabilities of the LLC (other than certain convertible notes) were satisfied and the proceeds distributed in accordance with the liquidation provisions of the limited liability company agreement of the LLC, divided by \$1,000, in each case without any action required on the part of the Corporation or the former holders of those units.

B. Preferred Stock.

(1) The Board of Directors of the Corporation (the "Board of Directors") is authorized to provide for the issuance of the undesignated shares of Preferred Stock from time to time in one or more series, without approval of the stockholders of the Corporation, by filing a certificate pursuant to the applicable law of the State of Delaware (a "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each series, and to fix the designations, preferences and relative, participating, original or other special rights, if any, of the shares of each series, and the qualifications, limitations and restrictions thereof, if any. Each series of Preferred Stock shall have voting powers, full or limited, or no voting powers, as shall be authorized by the Board of Directors and stated in the applicable Preferred Stock Designation.

(2) The Common Stock shall be subject to the express terms of any series of Preferred Stock. Except as (A) expressly provided in this Certificate of Incorporation or in a Preferred Stock Designation or (B) required by applicable law, shares of Preferred Stock shall not entitle the holders thereof to vote at or receive notice of any meeting of stockholders (or to act by written consent in lieu of a meeting).

C. Series A Convertible Preferred Stock. The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of the Series A Convertible Preferred Stock:

(1) Dividends.

(i) The shares of Series A Convertible Preferred Stock shall accrue dividends at a rate per annum equal to 6% (the "Dividend Rate") of the Liquidation Preference (subject to appropriate adjustment in the event of any

stock dividend, subdivision, combination or other similar recapitalization with respect to the Series A Convertible Preferred Stock). The shares of Series A Convertible Preferred Stock shall have a liquidation preference of \$1,000 per share (the "Liquidation Preference").

(ii) Dividends shall be computed and paid quarterly on the 15<sup>th</sup> day of April, July, October and January of each year (in respect of the quarterly periods ending March 31, June 30, September 30 and December 31), or if any of those dates is not a business day, on the business day next preceding that day (each date, regardless of whether any dividends have been paid or declared and set aside for payment on that date, a "Dividend Payment Date"), to holders of record as they appear on the stock records of the Corporation on the 15<sup>th</sup> day prior to the relevant Dividend Payment Date; provided, however, that the Board of Directors declares and the Corporation pays any dividend due hereunder on any Dividend Payment Date. If the Board of Directors does not declare or the Corporation does not pay a dividend due hereunder on any Dividend Payment Date, the amount of the payment then due in respect of dividends shall constitute an Arrearage (as defined below).

(iii) Dividends shall be paid only when, as and if declared by the Board of Directors out of funds at the time legally available for the payment of dividends. Dividends shall begin to accumulate on outstanding shares of Series A Convertible Preferred Stock from the date on which the Corporation initially issues any share of Series A Convertible Preferred Stock (the "Date of Issuance") and shall be deemed to accumulate from day to day whether or not earned or declared until paid. Dividends shall accumulate on the basis of a 360-day year consisting of twelve 30-day months (four 90-day quarters) and the actual number of days elapsed in the period for which payable.

(iv) Dividends on the shares of Series A Convertible Preferred Stock shall be cumulative, and from and after any Dividend Payment Date on which any dividend that has accumulated or been deemed to have accumulated through that date has not been paid in full, additional dividends shall accumulate in respect of the amount of the unpaid dividends (that amount, the "Arrearage") at the Dividend Rate. Additional dividends in respect of any Arrearage shall be deemed to accumulate from day to day whether or not earned or declared until the Arrearage is paid, shall be calculated as of that successive Dividend Payment Date and shall constitute an additional Arrearage from and after any Dividend Payment Date to the extent not paid on that Dividend Payment Date. References herein to dividends that have accumulated or that have been deemed to have accumulated with respect to the shares of Series A Convertible Preferred Stock shall include the amount, if any, of any Arrearage together with any dividends accumulated or deemed to have accumulated on that Arrearage pursuant to the immediately preceding two sentences. Additional dividends in respect of any Arrearage may be declared and paid at any time, in whole or in part, without reference to any regular Dividend Payment Date, to the holders of record as they appear on the stock records of the Corporation on any record date fixed by the



Board of Directors (which record date shall be no less than ten days prior to the corresponding payment date).

(v) Dividends paid on the shares of Series A Convertible Preferred Stock in an amount less than the total amount of the dividends at the time accumulated and payable on all outstanding shares of Series A Convertible Preferred Stock shall be allocated pro rata on a share-by-share basis among all of those shares then outstanding. Dividends that are declared and paid in an amount less than the full amount of dividends accumulated on the shares of Series A Convertible Preferred Stock (and on any Arrearage) shall be applied first to the earliest dividend that has not theretofore been paid.

(vi) For so long as any shares of Series A Convertible Preferred Stock are outstanding, (a) no dividend or other distribution, whether in cash, stock or other property, shall be paid, declared or set apart for payment or made on any date on or in respect of any class of capital stock or series of Preferred Stock hereafter created that does not expressly provide that it ranks senior to or *pari passu* with the Series A Convertible Preferred Stock as to dividends, other distributions, liquidation preference and otherwise (collectively, the "Junior Stock") and (b) no payment on account of the redemption, purchase or other acquisition or retirement for value by the Corporation shall be made on any date of shares of any Junior Stock, unless, in each case, the full amount of unpaid dividends accrued on all outstanding shares of Series A Convertible Preferred Stock shall have been paid or contemporaneously are declared and paid.

(vii) Notwithstanding any other provision of this Section C(1), in the sole discretion of the Board of Directors, any dividends accruing on the Series A Convertible Preferred Stock may be paid, in lieu of cash dividends, by the issuance of additional shares of Series A Convertible Preferred Stock (including fractional shares thereof) having an aggregate Liquidation Preference at the time of the payment equal to the amount of the dividend to have been paid; provided, that if the Corporation pays less than the total amount of dividends then accrued on the shares of Series A Convertible Preferred Stock in the form of additional shares, that payment in shares shall be made pro rata among the holders of Series A Convertible Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares held by each holder thereof. If and when any shares of Series A Convertible Preferred Stock are issued under this Section C(1)(vii) for the payment of accrued dividends, those shares shall be deemed to be validly issued and outstanding and fully paid and nonassessable.

(2) Liquidation Preference.

(i) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or a Liquidation Event (as defined below), and subject to the payment in full of the liquidation preferences with respect to any series of Preferred Stock specifically designated as superior to the Series A Convertible Preferred Stock in a Certificate of Designation, each holder

of shares of Series A Convertible Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to stockholders, prior and in preference to any other payment or distribution to the holders of the shares of Common Stock or any Junior Stock, an amount equal to the greater of (a) the Liquidation Preference, plus any Arrearage unpaid on the Series A Convertible Preferred Stock, whether or not declared, together with any other dividends declared but unpaid thereon or (b) the amount that holder would have received had that holder converted his, her or its shares of Series A Convertible Preferred Stock into shares of Common Stock immediately prior to the liquidation, dissolution, winding up or Liquidation Event. If, upon the occurrence of any one of those events, the assets distributed among the holders of the shares of Series A Convertible Preferred Stock are insufficient to pay those holders the full preferential amount described above, then the entire assets of the Corporation remaining after satisfaction of any superior liquidation preferences and legally available for distribution shall be distributed ratably among the holders of the shares of Series A Convertible Preferred Stock in proportion to the preferential amount each holder is otherwise entitled to receive.

(ii) After payment to the holders of the shares of Series A Convertible Preferred Stock of the amounts set forth in Section C(2)(i) of this Article V, the entire remaining assets of the Corporation legally available for distribution, if any, shall be distributed among the holders of the shares of Common Stock in proportion to the shares of Common Stock then held by them.

(iii) Whenever the distribution provided for in this Section C(2) is payable in securities or other property other than cash, the value of the distribution shall be the fair market value of the securities or other property as determined in good faith by the Board of Directors.

(iv) "Liquidation Event" means:

(a) any consolidation or merger of the Corporation in which the Corporation is not the surviving entity, to the extent that (1) in connection therewith, the holders of shares of Common Stock receive as consideration, whether in whole or in part, for those shares (x) cash, (y) notes or other evidences of indebtedness or obligations to pay cash or (z) preferred stock of the surviving entity (whether or not the surviving entity is the Corporation) that ranks on a parity with or senior to the preferred stock received by holders of the shares of Series A Convertible Preferred Stock with respect to liquidation or dividends or (2) the holders of the shares of Series A Convertible Preferred Stock do not receive preferred stock of the surviving entity with rights, powers and preferences equal to (or more favorable to the holders than) the rights, powers and preferences of the shares of Series A Convertible Preferred Stock;

(b) the sale, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any

subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, except where the sale, lease, transfer or other disposition is to a wholly-owned subsidiary of the Corporation; or

(c) any person or entity, or group of persons or entities acting in concert, other than the holders on the Date of Issuance becoming the beneficial owners, directly or indirectly, of in excess of 50% of the total voting power or equity interest in the Corporation or any successor thereto. As used in the preceding sentence, "voting power" in any entity shall mean the right to vote for the election of directors or other equivalent managing body of the entity or, if there are no directors or is no managing body, the right to make material business decisions with respect to that entity.

D. Series B Convertible Preferred Stock. The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of the Series B Convertible Preferred Stock:

(1) Dividends. The shares of Series B Convertible Preferred Stock shall not be entitled to dividends.

(2) Liquidation Preference.

(i) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or a Liquidation Event, and subject to the payment in full of the liquidation preferences with respect to the Series A Convertible Preferred Stock and any other series of Preferred Stock specifically designated as superior to the Series B Convertible Preferred Stock in a Certificate of Designation, each holder of shares of Series B Convertible Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to stockholders, prior and in preference to any other payment or distribution to the holders of the shares of Common Stock or any Junior Stock, an amount equal to the greater of (a) \$1,000 per share or (b) the amount that holder would have received had that holder converted his, her or its shares of Series B Convertible Preferred Stock into shares of Common Stock immediately prior to the liquidation, dissolution, winding up or Liquidation Event. If, upon the occurrence of any one of those events, the assets distributed among the holders of the shares of Series B Convertible Preferred Stock are insufficient to pay those holders the full preferential amount described above, then the entire assets of the Corporation remaining after satisfaction of any superior liquidation preferences and legally available for distribution shall be distributed ratably among the holders of the shares of Series B Convertible Preferred Stock in proportion to the preferential amount each holder is otherwise entitled to receive.

(ii) After payment to the holders of the shares of Series B Convertible Preferred Stock of the amounts set forth in Section D(2)(i) of this Article V, the

entire remaining assets of the Corporation legally available for distribution, if any, shall be distributed among the holders of the shares of Common Stock in proportion to the shares of Common Stock then held by them.

(iii) Whenever the distribution provided for in this Section D(2) is payable in securities or other property other than cash, the value of the distribution shall be the fair market value of the securities or other property as determined in good faith by the Board of Directors.

E. Series A and Series B Convertible Preferred Stock Voting Rights. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of shares of the Series A and Series B Convertible Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A and Series B Convertible Preferred Stock could be converted as of the record date for determining stockholders entitled to vote on those matters. Except as provided by law or by the other provisions of this Certificate of Incorporation, holders of shares of Series A and Series B Convertible Preferred Stock shall vote together with the holders of shares of the Common Stock as a single class.

F. Series A and Series B Convertible Preferred Stock Conversion. The holders of the Series A and Series B Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(1) Right to Convert. Each share of Series A and Series B Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the Date of Issuance, into a number of shares of fully paid and nonassessable Common Stock (including any fraction of a share) as is determined by (a) adding the Liquidation Preference to all Arrearages, if any, and accrued and unpaid dividends, if any, and then (b) dividing the result by the Conversion Price. The initial conversion price per share of Series A and Series B Convertible Preferred Stock (the "Conversion Price") shall be the Liquidation Preference of that share, subject to adjustment as provided in Section F(4) or (5) of this Article V.

(2) Automatic Conversion. Immediately upon the closing of the sale of shares of Common Stock in an underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act") in which the gross proceeds to the Corporation are \$30,000,000 or more, other than a registration relating solely to a transaction under Rule 145 under the Securities Act (or any successor thereto) or to an employee benefit plan of the Corporation, each share of Series A and Series B Convertible Preferred Stock shall automatically be converted into a number of shares of fully paid and nonassessable Common Stock (including any fraction of a share) as is determined by (a) adding the Liquidation Preference to all Arrearages and accrued and unpaid dividends and then (b) dividing the result by the applicable Conversion Price then in effect.

(3) Mechanics of Conversion. Before any holder of shares of Series A or Series B Convertible Preferred Stock shall be entitled to convert any shares of Series A or Series B Convertible Preferred Stock into shares of Common Stock, he, she or it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the stock, and shall give written notice to the Corporation at its principal office of his, her or its election to convert and shall state therein the name or names in which he, she or it wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at the Corporation's principal office to the converting holder of Series A or Series B Convertible Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he, she or it shall be entitled. The conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A or Series B Convertible Preferred Stock to be converted, and the person or persons and entity or entities entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of those shares of Common Stock on that date.

(4) Adjustments for Stock Dividends and for Combinations or Subdivisions of Common Stock. If the Corporation at any time or from time to time after the Date of Issuance declares or pays, without consideration, any dividend on the shares of Common Stock payable in shares of Common Stock or in any right to acquire shares of Common Stock for no consideration, or effects a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in shares of Common Stock or in any right to acquire shares of Common Stock), or if the outstanding shares of Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the number of shares of Common Stock into which each share of Series A and Series B Convertible Preferred Stock shall be convertible shall, concurrently with the effectiveness of the event, be proportionately decreased or increased, as appropriate. If the Corporation declares or pays, without consideration, any dividend on the shares of Common Stock payable in any right to acquire shares of Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in shares of Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of those rights to acquire shares of Common Stock.

(5) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the shares of Series A and Series B Convertible Preferred Stock is changed into the same or a different number of shares of any other class or classes of stock, whether by reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the shares of Common Stock (but not the shares of Series A and Series B Convertible Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a subdivision or combination of shares provided for in Section F(4) of this Article V), then, concurrently with the effectiveness of the reorganization, recapitalization, reclassification, consolidation or merger, the Conversion Price shall be adjusted so that the shares of Series A and Series B Convertible Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock that the holders would otherwise have been entitled

to receive, a number of shares of the other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the shares of Series A and Series B Convertible Preferred Stock immediately before that change.

(6) Adjustments for Diluting Issues. In order to prevent dilution of the conversion rights granted under this Section F, the Conversion Price shall be subject to adjustment from time to time as provided in this Section F(6).

(i) Except as provided in Section F(6)(iv) and except in the case of an event described in either of Sections F(4) or (5) of this Article V, if the Corporation, at any time or from time to time after the Date of Issuance, issues or sells, or in accordance with Section F(6)(iv) is deemed to have issued or sold, any shares of Common Stock without consideration or for consideration per share less than the Conversion Price in effect immediately prior to that issuance or sale (or deemed issuance or sale), then immediately upon that issuance or sale (or deemed issuance or sale), the Conversion Price in effect immediately prior to that issuance or sale (or deemed issuance or sale) shall be reduced (and in no event increased) to a Conversion Price equal to the quotient obtained by dividing:

(a) the sum of (y) the product obtained by multiplying the Common Stock Deemed Outstanding immediately prior to the issuance or sale (or deemed issuance or sale) by the Conversion Price then in effect plus (z) the aggregate consideration, if any, received by the Corporation upon that issuance or sale (or deemed issuance or sale); by

(b) the sum of (y) the Common Stock Deemed Outstanding immediately prior to the issuance or sale (or deemed issuance or sale) plus (z) the aggregate number of shares of Common Stock issued or sold by the Corporation in that issuance or sale (or deemed issuance or sale).

(ii) Upon any and each adjustment of the Conversion Price as provided in Section F(6)(iv) of this Article V, the number of shares of Common Stock or other capital stock of the Corporation issuable upon conversion of the Series A Convertible Preferred Stock immediately prior to any adjustment shall be increased to a number equal to the quotient obtained by dividing:

(a) the product of (y) the Conversion Price in effect immediately prior to that adjustment multiplied by (z) the number of shares of Common Stock or other capital stock of the Corporation issuable upon conversion of the Series A Convertible Preferred Stock immediately prior to that adjustment; by

(b) the Conversion Price resulting from that adjustment.

(iii) Anything herein to the contrary notwithstanding, there shall be no adjustment to the Conversion Price or the number of shares of Common Stock or

other capital stock of the Corporation issuable upon conversion of the Series A Convertible Preferred Stock with respect to any Excluded Issuance.

(iv) For purposes of determining the adjusted Conversion Price under Section F(6) of this Article V, the following shall apply:

(a) If the Corporation, at any time or from time to time after the Date of Issuance, in any manner grants or sells (whether directly or by assumption in a merger or otherwise) any Options, whether or not the Options or the right to convert or exchange any Convertible Securities issuable upon the exercise of those Options are immediately exercisable, and the price per share (determined as provided in this paragraph and in Section F(6)(iv)(e) of this Article V) for which Common Stock is issuable upon the exercise of those Options or upon the conversion or exchange of Convertible Securities issuable upon the exercise of those Options is less than the Conversion Price in effect immediately prior to the time of the granting or sale of those Options, then the total maximum number of shares of Common Stock issuable upon the exercise of those Options or upon conversion or exchange of the total maximum amount of Convertible Securities issuable upon the exercise of those Options shall be deemed to have been issued as of the date of granting or sale of those Options (and thereafter shall be deemed to be outstanding for purposes of adjusting the Conversion Price under Section F(6)(i) of this Article V), at a price per share equal to the quotient obtained by dividing (A) the sum (which sum shall constitute the applicable consideration received for purposes of Section F(6)(i) of this Article V) of (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of all those Options, plus (y) the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all those Options, plus (z), in the case of those Options that relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the issuance or sale of all those Convertible Securities and the conversion or exchange of all those Convertible Securities, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of all those Options or upon the conversion or exchange of all Convertible Securities issuable upon the exercise of all those Options. Except as otherwise provided in Section F(6)(iv)(c) of this Article V, no further adjustment of the Conversion Price shall be made upon the actual issuance of shares of Common Stock or of Convertible Securities upon exercise of those Options or upon the actual issuance of shares Common Stock upon conversion or exchange of Convertible Securities issuable upon exercise of those Options.

(b) If the Corporation shall, at any time or from time to time after the Date of Issuance, in any manner grant or sell (whether directly or by assumption in a merger or otherwise) any Convertible Securities,

whether or not the right to convert or exchange any such Convertible Securities is immediately exercisable, and the price per share (determined as provided in this paragraph and in Section F(6)(iv)(e) of this Article V) for which Common Stock is issuable upon the conversion or exchange of those Convertible Securities is less than the Conversion Price in effect immediately prior to the time of the granting or sale of those Convertible Securities, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of the total maximum amount of those Convertible Securities shall be deemed to have been issued as of the date of granting or sale of those Convertible Securities (and thereafter shall be deemed to be outstanding for purposes of adjusting the Conversion Price pursuant to Section F(6)(i) of this Article V), at a price per share equal to the quotient obtained by dividing (A) the sum (which sum shall constitute the applicable consideration received for purposes of Section F(6)(i) of this Article V) of (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of those Convertible Securities, plus (y) the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange of all those Convertible Securities, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all those Convertible Securities. Except as otherwise provided in Section F(6)(iv)(c) of this Article V, (A) no further adjustment of the Conversion Price shall be made upon the actual issuance of shares of Common Stock upon conversion or exchange of those Convertible Securities and (B) no further adjustment of the Conversion Price shall be made by reason of the issue or sale of shares of Convertible Securities upon exercise of any Options to purchase any Convertible Securities for which adjustments of the Conversion Price have been made pursuant to the other provisions of this Section F(6)(iv).

(c) Upon any change in any of (A) the total amount received or receivable by the Corporation as consideration for the granting or sale of any Options or Convertible Securities referred to in Section F(6)(iv)(a) of this Article V or Section F(6)(iv)(b) of this Article V, (B) the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise of any Options or upon the issuance, conversion or exchange of any Convertible Securities referred to in Section F(6)(iv)(a) of this Article V or Section F(6)(iv)(b) of this Article V, (C) the rate at which Convertible Securities referred to in Section F(6)(iv)(a) of this Article V or Section F(6)(iv)(b) of this Article V are convertible into or exchangeable for Common Stock, or (D) the maximum number of shares of Common Stock issuable in connection with any Options referred to in Section F(6)(iv)(a) of this Article V or any Convertible Securities referred to in Section F(6)(iv)(b) of this Article V (in each case, other than in connection with an Excluded Issuance), then (whether or not the original issuance or sale of those Options or Convertible Securities resulted in an adjustment to the Conversion Price



pursuant to this Section F(6)(iv)) the Conversion Price in effect at the time of that change shall be adjusted or readjusted, as applicable, to the Conversion Price that would have been in effect at that time pursuant to the provisions of this Section F(6) had those Options or Convertible Securities still outstanding provided for that changed consideration, conversion rate or maximum number of shares, as the case may be, at the time initially granted, issued or sold, but only if as a result of that adjustment or readjustment the Conversion Price then in effect is reduced, and the number of Conversion Shares issuable upon the conversion of the Series A Convertible Preferred Stock immediately prior to any adjustment or readjustment shall be correspondingly adjusted or readjusted pursuant to the Section F(6)(ii) of this Article V.

(d) Upon the expiration or termination of any unexercised Option (or portion thereof) or any unconverted or unexchanged Convertible Security (or portion thereof) for which any adjustment (either upon its original issuance or upon a revision of its terms) was made pursuant to this Section F(6) (including without limitation upon the redemption or purchase for consideration of all or any portion of that Option or Convertible Security by the Corporation), the Conversion Price then in effect hereunder shall forthwith be changed pursuant to the provisions of this Section F(6) to the Conversion Price that would have been in effect at the time of the expiration or termination had that unexercised Option (or portion thereof) or unconverted or unexchanged Convertible Security (or portion thereof), to the extent outstanding immediately prior to the expiration or termination, never been issued.

(e) If the Corporation, at any time or from time to time after the Date of Issuance, issues or sells, or is deemed to have issued or sold in accordance with Section F(6), any shares of Common Stock, Options or Convertible Securities: (A) for cash, the consideration received therefor shall be deemed to be the net amount received by the Corporation therefor; (B) for consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of that consideration, except where that consideration consists of marketable securities, in which case the amount of consideration received by the Corporation shall be the market price (as reflected on any securities exchange, quotation system or association or similar pricing system covering such security) for those securities as of the end of business on the date of receipt of those securities; (C) for no specifically allocated consideration in connection with an issuance or sale of other securities of the Corporation, together comprising one integrated transaction, the amount of the consideration therefor shall be deemed to be the fair value of the portion of the aggregate consideration received by the Corporation in that transaction as is attributable to those shares of Common Stock, Options or Convertible Securities, as the case may be, issued in that transaction; or (D) to the owners of the non-surviving entity in connection

with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of the portion of the net assets and business of the non-surviving entity as is attributable to the shares of Common Stock, Options or Convertible Securities, as the case may be, issued to those owners. The net amount of any cash consideration and the fair value of any consideration other than cash or marketable securities shall be determined in good faith by the Board of Directors.

(f) For purposes of any adjustment to the Conversion Price or the number of Conversion Shares in accordance with this Section F(6), in case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then the record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of that dividend or the making of that other distribution or the date of the granting of that right of subscription or purchase, as the case may be.

(g) The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any of its wholly-owned subsidiaries, and the disposition of any of those shares (other than the cancellation or retirement thereof or the transfer of those shares among the Corporation and its wholly-owned subsidiaries) shall be considered an issue or sale of Common Stock for the purpose of this Section F(6).

(v) For purposes of this Section F(6), the following definitions shall apply:

(a) "Common Stock Deemed Outstanding" means, at any given time, the sum of (A) the number of shares of Common Stock actually outstanding at that time, plus (B) the number of shares of Common Stock issuable upon exercise of Options actually outstanding at that time, plus (C) the number of shares of Common Stock issuable upon conversion or exchange of Convertible Securities actually outstanding at that time (treating as actually outstanding any Convertible Securities issuable upon exercise of Options actually outstanding at that time), in each case, regardless of whether the Options or Convertible Securities are actually exercisable at that time; provided, that Common Stock Deemed Outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any of its wholly-owned subsidiaries.

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

(c) "Excluded Issuances" means any issuance or sale (or deemed issuance or sale in accordance with Section F(6)(iv) of this Article V) by the Corporation after the Date of Issuance of: (A) shares of Common Stock issued on the conversion of the shares of Series A Convertible Preferred Stock; (B) up to an aggregate of 696 shares of Common Stock (as that number of shares is equitably adjusted for subsequent stock splits, stock combinations, stock dividends and recapitalizations) issued directly or upon the exercise of Options to directors, officers, employees, or consultants of the Corporation in connection with their service as directors of the Corporation, their employment by the Corporation or their retention as consultants by the Corporation, in each case authorized by the Board of Directors and issued pursuant to the Corporation's equity incentive plan; (C) shares of Common Stock issued upon the conversion or exercise of Options (other than Options covered by clause (B) above) or Convertible Securities issued prior to the Date of Issuance, provided, that those securities are not amended after the date hereof to increase the number of shares of Common Stock issuable thereunder or to lower the exercise or conversion price thereof; (D) shares of Common Stock, Options or Convertible Securities issued (x) to persons in connection with a joint venture, strategic alliance or other commercial relationship with that person (including persons that are customers, suppliers and strategic partners of the Corporation) relating to the operation of the Corporation's business and not for the primary purpose of raising equity capital, (y) in connection with a transaction in which the Corporation, directly or indirectly, acquires another business or its tangible or intangible assets, or (z) to lenders as equity kickers in connection with debt financings of the Corporation, in each case where those transactions have been approved by the Board of Directors; (E) shares of Common Stock, Options or Convertible Securities issued to the lessor or vendor in any office lease or equipment lease or similar equipment financing transaction in which the Corporation obtains the use of such office space or equipment for its business; or (F) shares of Common Stock issued as a dividend or other distribution on the shares of Series A Convertible Preferred Stock;

(d) "Option" means rights, options or warrants to subscribe for, purchase or otherwise acquire shares of Common Stock or Convertible Securities.

(7) No Impairment. The Corporation will not, by amendment, merger, consolidation or otherwise (including, without limitation, by reorganization, transfer of assets, dissolution or issue or sale of securities), 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 F and in the taking of any action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the shares of Series A Convertible Preferred Stock against impairment.

(8) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Rights pursuant to this Section F, the Corporation at its expense shall promptly compute the adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of shares of Series A Convertible Preferred Stock a certificate executed by the Corporation's Chief Executive Officer or Chief Financial Officer setting forth the adjustment or readjustment and showing in detail the facts upon which the adjustment or readjustment is based.

(9) Notices of Record Date. If the Corporation proposes at any time to: (a) declare any dividend or other distribution upon shares of Common Stock, whether in cash, stock, other securities or other property; (b) offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) effect any reclassification or recapitalization of shares of Common Stock outstanding involving a change in the shares of Common Stock; or (d) merge or consolidate with or into any other entity, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up (voluntarily or involuntarily); then, in connection with each event, the Corporation shall send to the holders of shares of Series A Convertible Preferred Stock:

(i) at least 20 days' prior written notice of the date on which a record of the holders of shares of Common Stock shall be taken for the purpose of entitling or enabling them to receive any dividend, other distribution or subscription rights (and specifying the date on which the holders of shares of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in clauses (c) and (d) above; and

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

(10) Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Series A Convertible Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any conversion.

(11) 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 Convertible Preferred Stock, a number of shares of Common Stock sufficient to effect the

conversion of all outstanding shares of Series A Convertible Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock are not sufficient to effect the conversion of all then outstanding shares of Series A Convertible Preferred Stock, the Corporation will take any corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to a number of shares sufficient for that purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(12) Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Series A Convertible Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Convertible Preferred Stock 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 a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to the fraction a sum in cash equal to the fair value of the fraction on the date of conversion (as determined in good faith by the Board of Directors).

(13) Notices. Any notice required by the provisions of this Section F to be given to the holders of shares of Series A Convertible Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, or if sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at the holder's address or facsimile number appearing in the records of the Corporation.

G. Common Stock.

(1) Voting. Except as otherwise expressly provided herein or the relevant Preferred Stock Designation of any class or series of Preferred Stock or required by law, the holders of outstanding shares of Common Stock shall have the exclusive right to vote for the election of directors and on all other matters submitted to a vote of the stockholders of the Corporation. Except as otherwise expressly provided herein or required by law, each holder of outstanding shares of Common Stock shall be entitled to one vote in respect of each share of Common Stock held thereby of record on the books of the Corporation for the election of directors and on all other matters submitted to a vote of stockholders of the Corporation. Except as otherwise required by law, shares of Common Stock shall not entitle the holders thereof to vote on any amendment to this Certificate of Incorporation (including to a Preferred Stock Designation) that alters or changes the powers, preferences, rights or other terms of solely one or more outstanding series of Preferred Stock if the holders of the shares of affected series are entitled, separately or together with the holders of shares of one or more other affected series, to vote on the amendment pursuant to this Certificate of Incorporation (including a Preferred Stock Designation) or pursuant to the General Corporation Law, or if no vote of stockholders is required pursuant to the General Corporation Law.

(2) Dividends. Subject to applicable law, the holders of shares of Common Stock shall be entitled to receive dividends out of funds legally available therefor at the times and in the amounts as the Board of Directors may determine in its sole discretion, subject to any preferential dividend rights of outstanding shares of Preferred Stock as expressly set forth in this Certificate of Incorporation or in a Preferred Stock Designation.

(3) Liquidation. Upon any Liquidation Event, after the payment or provision for payment of all debts and liabilities of the Corporation and all preferential amounts to which the holders of any outstanding class or series of Preferred Stock may be entitled pursuant to the terms thereof with respect to the distribution of assets in liquidation, the holders of shares of Common Stock shall be entitled to share ratably in the remaining assets of the Corporation available for distribution. The term "Liquidation Event" shall not be deemed to be occasioned by or to include any voluntary consolidation, reorganization, conversion or merger of the Corporation with or into any other corporation or entity or other corporations or entities or a sale, lease or conveyance of all or a part of the Corporation's assets.

H. Super-Majority Vote. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Certificate of Incorporation) the written consent or affirmative vote of the holders of at least two-thirds of the then outstanding Common Stock and Preferred Stock, consenting or voting (as the case may be) together as a single class and on an as-converted basis, and any act or transaction entered into without that consent or vote shall be null and void ab initio, and of no force or effect:

(1) effect any merger, consolidation, sale of all or substantially all of the assets or any other Liquidation Event; or

(2) amend, alter or repeal any provision of this Certificate of Incorporation or the Bylaws.

## ARTICLE VI

A. Exculpation. To the fullest extent authorized by the General Corporation Law, 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 General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is hereafter amended to permit further eliminating or limiting 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 General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article VI by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of that repeal or modification.

B. Indemnification of Directors, Officers and Certain Other Persons. The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law, as the same may be amended and supplemented, indemnify any and all current or former directors and officers of the Corporation from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section; provided, however, that except with respect to proceedings to enforce rights to indemnification, the Bylaws of the Corporation (the "Bylaws") may provide that the Corporation shall indemnify any current or former director or officer in connection with a proceeding (or a part thereof) initiated by that director or officer only if that proceeding (or part thereof) was authorized by the Board of Directors. The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law, as the same may be amended and supplemented, have the power to advance expenses to any and all current or former directors and officers of the Corporation and to provide indemnification or advance expenses to any and all current or former employees and agents of the Corporation or other persons.

## ARTICLE VII

### A. Corporate Opportunity.

(1) Notwithstanding any provision of this Certificate of Incorporation to the contrary, to the fullest extent permitted by applicable law, if any Exempted Person acquires knowledge of a potential Corporate Opportunity or otherwise is then exploiting any Corporate Opportunity, the Corporation and its Affiliates and Subsidiaries shall have no interest or expectancy in that Corporate Opportunity, or in being offered an opportunity to participate in that Corporate Opportunity, and any interest or expectancy in any Corporate Opportunity or any expectation in being offered the opportunity to participate in any Corporate Opportunity is hereby renounced and waived so that, the Exempted Person, to the fullest extent permitted by applicable law, (i) shall have no duty (fiduciary, contractual or otherwise) to communicate or present that Corporate Opportunity to the Corporation or any of its Affiliates or Subsidiaries or any stockholder; (ii) shall have the right to hold or pursue, directly or indirectly, any Corporate Opportunity for the Exempted Person's own account and benefit or that Exempted Person may direct that Corporate Opportunity to another Person; and (iii) shall not be liable to the Corporation, any of its Affiliates or Subsidiaries, their respective Affiliates or their respective direct or indirect partners, members, or stockholders, for breach of any duty (fiduciary, contractual or otherwise) as a stockholder, director or officer of the Corporation or otherwise by reason of the fact that it pursues or acquires that Corporate Opportunity, directs that Corporate Opportunity to another Person or does not communicate information regarding that Corporate Opportunity to the Corporation or any of its Affiliates or Subsidiaries.

(2) The Corporation hereby expressly acknowledges and agrees, in accordance with Section A(1) of this Article VII, that the Exempted Persons have the right to, and shall have no duty (as a fiduciary, contractual or otherwise) not to, (i) directly or indirectly engage in the same or similar business activities or lines of business as the Corporation or any of its Affiliates or Subsidiaries engages or proposes to engage, on that Exempted Person's own behalf, or in partnership with, or as an employee, officer,

director, member or stockholder of any other Person, including those lines of business deemed to be competing with the Corporation or any of its Affiliates or Subsidiaries; (ii) do business with any potential or actual customer or supplier of the Corporation or any of its Affiliates or Subsidiaries; and (iii) employ or otherwise engage any officer or employee of the Corporation or any of its Affiliates or Subsidiaries. The Corporation hereby expressly acknowledges and agrees that neither the Corporation nor any of its Affiliates or Subsidiaries nor any stockholder shall have any rights in and to the business ventures of any Exempted Person, or the income or profits derived therefrom. To the fullest extent permitted by law, none of the Exempted Persons shall be liable to the Corporation, any of its Affiliates or Subsidiaries, their respective Affiliates or their respective direct or indirect partners, members, or stockholders, for breach of any duty (fiduciary, contractual or otherwise) as a stockholder, director or officer of the Corporation or otherwise by reason that the Exempted Person is engaging in any activities or lines of business or competing with the Corporation or its Affiliates or Subsidiaries.

(3) The Corporation hereby acknowledges and agrees that, to the fullest extent permitted by applicable law, (i) in the event of any conflict of interest between the Corporation or any of its Subsidiaries, on the one hand, and any Exempted Person, on the other hand, that Exempted Person may act in its best interests or in the best interests of any other Exempted Person and (ii) no Exempted Person shall be obligated to (y) reveal to the Corporation or any of its Affiliates or Subsidiaries confidential information belonging to or relating to the business of any Exempted Person or (z) recommend or take any action in its capacity as stockholder, director or officer, as the case may be, that prefers the interests of the Corporation or any of its Affiliates or Subsidiaries over the interest of any Exempted Person.

(4) The Company hereby acknowledges and agrees that, an Exempted Person may have access to information about the Company that will enhance that Person's knowledge and understanding of the industries in which the Company operates and that, to the fullest extent permitted by applicable law, there is no restriction on that Exempted Person from using that knowledge and understanding in connection with (i) any Corporate Opportunity, (ii) any business activities or lines of business, including those lines of business deemed to be competing with the Corporation or any of its direct or indirect Subsidiaries, or (iii) otherwise making investment, voting, monitoring, governance or other decisions relating to other entities or securities.

B. Deemed Notice. Any Person purchasing or otherwise acquiring any interest in any shares of the capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article VII.

C. Amendment. Neither the alteration, amendment or repeal of this Article VII nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article VII, would accrue or arise, prior to that alteration, amendment, repeal or adoption. Following the repeal of this Article VII, any contract, agreement, arrangement or transaction involving a Corporate



Opportunity shall not by reason thereof result in any breach of any fiduciary duty or duty of loyalty or failure to act in good faith or in the best interests of the Corporation or derivation of any improper benefit or personal economic gain, but shall be governed by the other provisions of this Certificate of Incorporation, the Bylaws, the General Corporation Law and other applicable law.

D. Definitions.

(1) "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person.

(2) "Corporate Opportunity" means (i) an investment or business opportunity or activity, including without limitation those that might be considered the same as or similar to the Corporation's business or the business of any Affiliate or Subsidiary of the Corporation, including those deemed to be competing with the Corporation or any Affiliate or Subsidiary of the Corporation, or (ii) a prospective economic or competitive advantage in which the Corporation or any Affiliate or Subsidiary of the Corporation could have an interest or expectancy. In addition to and notwithstanding the foregoing, a Corporate Opportunity shall not be deemed to be a potential opportunity for the Corporation or any Affiliates or Subsidiary if it is a business opportunity that (i) the Corporation, Affiliate or Subsidiary, as applicable, is not financially able or contractually permitted or legally able to undertake, (ii) from its nature, is not in the line of the Corporation's, Affiliate's or Subsidiary's, as applicable, business or is of no practical advantage to it or (iii) is one in which the Corporation, Affiliate or Subsidiary, as applicable, has no interest or reasonable expectancy.

(3) "Exempted Person" means each of Crest Investments Group, LLC, RNS Toca LLC and their respective Affiliates.

(4) "Person" means any individual, corporation, partnership, unincorporated association or other entity.

(5) "Stockholders Agreement" means the Stockholders Agreement by and among the Corporation and the stockholders party thereto, as amended from time to time.

(6) "Subsidiary" with respect to any Person means: (i) a corporation, a majority of whose capital stock with voting power, under ordinary circumstances, to elect directors is at the time, directly or indirectly owned by that Person, by a Subsidiary of that Person, or by that Person and one or more Subsidiaries of that Person, without regard to whether the voting of that capital stock is subject to a voting agreement or similar restriction, (ii) a partnership or limited liability company in which that Person or a Subsidiary of that Person is, at the date of determination, (y) in the case of a partnership, a general partner of that partnership with the power affirmatively to direct the policies and management of that partnership or (z) in the case of a limited liability company, the managing member or, in the absence of a managing member, a member with the power affirmatively to direct the policies and management of that limited liability company or

(iii) any other Person (other than a corporation) in which that Person, a Subsidiary of that Person or that Person and one or more Subsidiaries of that Person, directly or indirectly, at the date of determination thereof, has (y) the power to elect or direct the election of a majority of the members of the governing body of that Person (whether or not that power is subject to a voting agreement or similar restriction) or (z) in the absence of that a governing body, a majority ownership interest.

#### ARTICLE VIII

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

#### ARTICLE IX

A. Amendment to Certificate of Incorporation. The Corporation, by vote or consent of stockholders as required by the General Corporation Law, 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.

B. Amendment to Bylaws. Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws.

#### ARTICLE X

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action or proceeding asserting a claim against the Corporation arising pursuant to any provision of the General Corporation Law, this Certificate of Incorporation or the Bylaws, or (iv) any action or proceeding asserting a claim governed by the internal affairs doctrine, in each case subject to the Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Incorporation this 20<sup>th</sup> day of May, 2016.

/s/ Laurie Biegel  
Laurie Biegel, Incorporator