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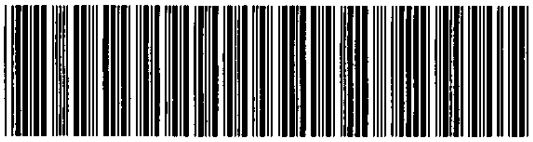

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2008 MAY 21 AM 11:57
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

cl 5-22

COVER LETTER

Department of State
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

SUBJECT: NexCold, Inc.
(PROPOSED CORPORATE NAME – MUST INCLUDE SUFFIX)

Enclosed are an original and one (1) copy of the articles of incorporation and a check for:

☐ $70.00 Filing Fee	☐ $78.75 Filing Fee & Certificate of Status	☑ $78.75 Filing Fee & Certified Copy	☐ $87.50 Filing Fee, Certified Copy & Certificate of Status

ADDITIONAL COPY REQUIRED

FROM: Ray I. Sheppard
Name (Printed or typed)

8715 SW 57th Street
Address

Fort Lauderdale, Florida 33328
City, State & Zip

954-680-8715
Daytime Telephone number

NOTE: Please provide the original and one copy of the articles.

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2008 MAY 21 AM 11:57

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION

NEXCOLD, INC.

The undersigned, a natural person competent to contract, does hereby make, subscribe and file these Articles of Incorporation for the purpose of organizing a corporation under the laws of the State of Florida. These Articles of Incorporation shall become effective May 18, 2008.

ARTICLE I
CORPORATE NAME

The name of this Corporation shall be:

NexCold, Inc.

ARTICLE II
PRINCIPAL OFFICE AND MAILING ADDRESS

The principal office and mailing address of the Corporation is 10869 NW 46th Drive, Coral Springs, Florida 33076.

ARTICLE III
NATURE OF CORPORATE BUSINESS AND POWERS

The general nature of the business to be transacted by this Corporation shall be to engage in any and all lawful business permitted under the laws of the United States and the State of Florida.

ARTICLE IV
CAPITAL STOCK

The maximum number of shares that this Corporation shall be authorized to issue and have outstanding at any one time shall be Twelve Million (12,000,000) of which Ten Million Five Hundred Thousand (10,500,000) shall be shares of Common Stock, par value $0.0001 per share, One Million Two Hundred Fifty Thousand (1,250,000) shall be shares of Series A Preferred Stock, par value $0.0001 per share (as described later in this Article) and Two Hundred Fifty Thousand (250,000) shall be shares of blank check Preferred Stock, par value $0.0001 per share, with the designations, preferences and rights to be determined by the board of directors of the Corporation.

DESIGNATIONS, PREFERENCES AND RIGHTS TO
SERIES A PREFERRED STOCK

1. Designation, Amounts and Par Value. The designation of this series of preferred stock, which consists of One Million Two Hundred Fifty Thousand (1,250,000) shares, is the Series A Preferred Stock (the "Series A Preferred Stock"). The Series A Preferred Stock shall have a "Stated Value" of Two Dollars ($2.00) per share and a par value of $0.0001 per share.

2. Dividends. Within thirty (30) days following any fiscal quarter in which the Corporation's unrestricted cash and cash equivalents, excluding any cash provided by financing activities or used to pay common stock dividends, increases from the beginning to the end of any fiscal quarter ("Quarterly Cash Increase"), the holders of Series A Preferred Stock shall receive a dividend equal to twenty-five percent (25%) of such Quarterly Cash Increase. This dividend shall be divided among the holders of Series A Preferred Stock based on their percentage ownership of the Series A Preferred Stock.

The aforementioned dividend may be paid in cash or Common Stock at the Corporation's discretion with the price per share calculated as follows:

(a) If the Corporation's Common Stock are publicly traded, then the average of the bid and ask prices at the close of trading for the last ten (10) trading days of the fiscal quarter for which the dividend is being paid, or

(b) If the Corporation is privately held, then the price per share offered by the Corporation in its most recent offering.

Notwithstanding the foregoing, the cumulative amount of dividends paid at twenty-five percent (25%) of Quarterly Cash Increases shall be capped at the aggregate purchase price of the Series A Preferred Stock. Thereafter, the holders of Series A Preferred Stock shall be entitled to receive the same dividend per share, if any, paid to holders of the Corporation's Common Stock

3. Rank and Liquidation.

(a) The Series A Preferred Stock shall rank prior to any other class or series of Common Stock of the Corporation hereinafter designated, in each case as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation.

(b) Upon the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled to receive before any payment or distribution shall be made on any class of Common Stock ("Junior Stock"), out of the assets of the Corporation available for distribution to stockholders, the Stated Value per share of Series A Preferred Stock. Upon the payment in full of all amounts due to holders of the Series A Preferred Stock and any class of securities not designated as Junior Stock, the holders of the Common Stock of the Corporation shall receive all remaining assets of the Corporation legally available for distribution. If the assets of the Corporation available for distribution to the holders of the Series A Preferred Stock, or any class of capital stock parri passu with that of the Series A Preferred Stock, shall be insufficient to permit payment in full of the amounts payable as aforesaid to the holders of Series A Preferred Stock upon such liquidation, dissolution or winding up, whether voluntary or involuntary, then all such assets of the Corporation shall be distributed to the exclusion of the holders of shares of Junior Stock ratably among the holders of the Series A Preferred Stock and any class of capital stock parri passu with that of the Series A Preferred Stock.

(c) The purchase or the redemption by the Corporation of shares of any class of stock, the merger or consolidation of the Corporation with or into any other corporation or entity in which the Corporation is the survivor, or the sale or transfer by the Corporation of substantially all of its assets shall be deemed to be a liquidation, dissolution or winding-up of the Corporation for the purposes of this paragraph 3.

4. Conversion into Common Stock. The Series A Preferred Stock shall have the following conversion rights and obligations:

(a) Subject to the further provisions of this paragraph 4, each holder of shares of Series A Preferred Stock shall have the right, at any time commencing after the issuance to the holder of Series A Preferred Stock, to convert up to all of their shares of Series A Preferred Stock, on one or more occasions into fully paid and non-assessable shares of Common Stock of the Corporation determined in accordance with the conversion price provided in paragraph 4(b) below (the "Conversion Price"). However, in the event the Corporation has an initial public offering or is merged with or acquired by another entity (the "Events"), the Corporation shall have the right to require holders of the Series A Preferred Stock to convert all their shares of Series A Preferred Stock into shares of the Corporation's Common Stock.

(b) Each share of Series A Preferred Stock shall be convertible by its holder at any time into One (1) share of the Corporation's Common Stock.

(c) A holder will give notice of its decision to exercise its right to convert the Series A Preferred Stock or part thereof by sending an executed and completed Notice of Conversion (a form of which is annexed as Exhibit A) to the Corporation via confirmed telecopier transmission, email or mail. The holder will not be required to surrender the Series A Preferred Stock certificate until the Series A Preferred Stock has been fully converted. Each date on which a Notice of Conversion is received by the Corporation in accordance with the provisions hereof shall be deemed a Conversion Date. The Corporation will itself, or will cause the Corporation's Transfer Agent to, transmit the Corporation's Common Stock certificates representing the Common Stock issuable upon conversion of the Series A Preferred Stock to the holder via express courier for receipt by such holder within five (5) business days after receipt by the Corporation of the Notice of Conversion (the "Delivery Date"). In the event the Common Stock is electronically transferable, then delivery of the Common Stock must be made by electronic transfer provided request for such electronic transfer has been made by the holder. A Series A Preferred Stock certificate representing the balance of the Series A Preferred Stock not so converted will be provided by the Corporation to the holder if requested by holder, provided the holder has delivered the original Series A Preferred Stock certificate to the Corporation. To the extent that a holder elects not to surrender Series A Preferred Stock for reissuance upon partial payment or conversion, the holder hereby indemnifies the Corporation against any and all loss or damage attributable to a third-party claim in an amount in excess of the actual amount of the Stated Value of the Series A Preferred Stock then owned by the holder.

In the case of the exercise of the conversion rights set forth in paragraph 4(a), the conversion privilege shall be deemed to have been exercised and the shares of Common Stock issuable upon such conversion shall be deemed to have been issued upon the date of receipt by the Corporation of the Notice of Conversion. The person or entity entitled to receive Common Stock issuable upon such conversion shall, on the date such conversion privilege is deemed to have been exercised and thereafter, be treated for all purposes as the record holder of such Common Stock and shall on the same date cease to be treated for any purpose as the record holder of such shares of Series A Preferred Stock so converted.

Upon the conversion of any shares of Series A Preferred Stock, no adjustment or payment shall be made with respect to such converted shares on account of any dividend on the Common Stock.

The Corporation shall not be required, in connection with any conversion of Series A Preferred Stock to issue a fraction of a share of its Common Stock and shall instead deliver a stock certificate representing the nearest whole number and may issue a fraction of a share of Series A Preferred Stock.

(d) The Conversion Price determined pursuant to Paragraph 4(b) shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time (A) declare any dividend or distribution on its Common Stock or other securities of the Corporation other than the Series A Preferred Stock, (B) split or subdivide the outstanding Common Stock, (C) combine the outstanding Common Stock into a smaller number of shares, or (D) issue by reclassification of its Common Stock any shares or other securities of the Corporation, then in each such event the Conversion Price shall be adjusted proportionately so that the holders of Series A Preferred Stock shall be entitled to receive the kind and number of shares or other securities of the Corporation which such holders would have owned or have been entitled to receive after the happening of any of the events described above had such shares of Series A Preferred Stock been converted immediately prior to the happening of such event (or any record date with respect thereto). Such adjustment shall be made whenever any of the events listed above shall occur. An adjustment made to the Conversion Price pursuant to this paragraph 4(d) (i) shall become effective immediately after the effective date of the event.

(ii) For so long as Series A Preferred Stock is outstanding, the holder is granted the anti-dilution and price protection rights set forth herein.

(e) In case of any merger of the Corporation with or into any other corporation or entity (other than a merger in which the Corporation is the surviving or continuing corporation and which does not result in any reclassification, conversion, or change of the outstanding shares of Common Stock) then unless the right to convert shares of Series A Preferred Stock shall have terminated as part of such merger, lawful provision shall be made so that holders of Series A Preferred Stock shall thereafter have the right to convert each share of Series A Preferred Stock into the kind and amount of

shares of stock and/or other securities or property receivable upon such merger by a holder of the number of shares of Common Stock into which such shares of Series A Preferred Stock might have been converted immediately prior to such consolidation or merger. Such provision shall also provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in sub-paragraph (d) of this paragraph 4. The foregoing provisions of this paragraph 4(e) shall similarly apply to successive mergers.

(f) In case of any sale or conveyance to another person or entity of the property of the Corporation as an entirety, or substantially as an entirety, in connection with which shares or other securities or cash or other property shall be issuable, distributable, payable, or deliverable for outstanding shares of Common Stock, then, unless the right to convert such shares shall have terminated, lawful provision shall be made so that the holders of Series A Preferred Stock shall thereafter have the right to convert each share of the Series A Preferred Stock into the kind and amount of shares of stock or other securities or property that shall be issuable, distributable, payable, or deliverable upon such sale or conveyance with respect to each share of Common Stock immediately prior to such conveyance.

(g) Whenever the number of shares to be issued upon conversion of the Series A Preferred Stock is required to be adjusted as provided in this paragraph 4, the Corporation shall forthwith compute the adjusted number of shares to be so issued and prepare a certificate setting forth such adjusted conversion amount and the facts upon which such adjustment is based, and such certificate shall forthwith be filed with the Transfer Agent for the Series A Preferred Stock and the Common Stock; and the Corporation shall mail to each holder of record of Series A Preferred Stock notice of such adjusted conversion price.

(h) In case at any time the Corporation shall propose:

(i) to pay any dividend or distribution payable in shares upon its Common Stock or make any distribution (other than cash dividends) to the holders of its Common Stock; or

(ii) to offer for subscription to the holders of its Common Stock any additional shares of any class or any other rights; or

(iii) any capital reorganization or reclassification of its shares or the merger of the Corporation with another corporation or entity (other than a merger in which the Corporation is the surviving or continuing corporation and which does not result in any reclassification, conversion, or change of the outstanding shares of Common Stock); or

(iv) the voluntary dissolution, liquidation or winding-up of the Corporation; then, and in any one or more of said cases, the Corporation shall cause at least fifteen (15) days prior notice of the date on which (A) the books of the Corporation shall close or a record be taken for such stock dividend, distribution, or subscription rights, or (B) such capital reorganization, reclassification, merger, dissolution, liquidation or winding-up shall take place, as the case may be, to be mailed to the Transfer Agent for the Series A Preferred Stock and for the Common Stock and to the holders of record of the Series A Preferred Stock.

(i) So long as any shares of Series A Preferred Stock or any obligation amount shall remain outstanding and the holders thereof shall have the right to convert the same in accordance with provisions of this paragraph 4, the Corporation shall use its best efforts to reserve sufficient shares of its authorized and unissued Common Stock that would be necessary to allow conversion of the Series A Preferred Stock, and if it determines that its authorized and unissued shares of Common Stock are not sufficient to allow such conversion, it will amend its Articles of Incorporation and make appropriate filings with the Securities and Exchange Commission in order to increase its authorized capitalization.

(j) The term "Common Stock" as used in this Articles of Amendment shall mean the $.001 par value Common Stock of the Corporation as such stock is constituted at the date of issuance thereof or as it may from time to time be changed, or shares of stock of any class or other securities and/or property into which the shares of Series A Preferred Stock shall at any time become convertible pursuant to the provisions of this paragraph 4.

(k) The Corporation shall pay the amount of any and all issue taxes (but not income taxes) which may be imposed in respect of any issue or delivery of stock upon the conversion of any shares of Series A Preferred Stock, but all transfer taxes and income taxes that may be payable in respect of any change of ownership of Series A

Preferred Stock or any rights represented thereby or of stock receivable upon conversion thereof, shall be paid by the person or persons surrendering such stock for conversion.

(l) In the event a holder shall elect to convert any shares of Series A Preferred Stock as provided herein, the Corporation may not refuse conversion based on any claim that such holder or any one associated or affiliated with such holder has been engaged in any violation of law, or for any other reason unless, an injunction from a court, on notice, restraining and or enjoining conversion of all or part of said shares of Series A Preferred Stock shall have been issued and the Corporation posts a surety bond for the benefit of such holder in the obligation amount sought to be converted, which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the dispute and the proceeds of which shall be payable to such holder in the event it obtains judgment.

5. Voting Rights. The holder of shares of Series A Preferred Stock shall not have voting rights except as described in Section 6 hereof.

6. Restrictions and Limitations.

(a) Amendments to Charter. The Corporation shall not amend its Articles of Incorporation without the approval by the holders of at least 70% of the then outstanding shares of Series A Preferred Stock if such amendment would:

(i) reduce the amount payable to the holders of Series A Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(ii) cancel or modify the conversion rights of the holders of Series A Preferred Stock provided for in Section 4 herein; or

(iii) cancel or modify the rights of the holders of the Series A Preferred Stock provided for in this Section 6.

7. Redemption. holders of the Series A Preferred Stock shall have no right to have the Corporation redeem the Series A Preferred Stock. The Corporation shall have no right to redeem the Series A Preferred Stock.

8. Status of Converted or Redeemed Stock. In case any shares of Series A Preferred Stock shall be converted or otherwise repurchased or reacquired, the shares so converted, or reacquired shall resume the status of authorized but unissued shares of Preferred Stock and shall no longer be designated as Series A Preferred Stock.

EXHIBIT A
NOTICE OF CONVERSION

(To Be Executed By the Registered Holder in Order to Convert the Series A Convertible Preferred Stock of NexCold, Inc.)

The undersigned hereby irrevocably elects to convert $_____ of the Stated Value of the above Series A Convertible Preferred Stock into shares of Common Stock of NexCold, Inc. according to the conditions hereof, as of the date written below.

Date of Conversion:_____

Applicable Conversion Price Per Share:_____

Number of Common Shares Issuable Upon this Conversion:_____

Select one:

☐ A Series A Convertible Preferred Stock certificate is being delivered herewith. The unconverted portion of such certificate should be reissued and delivered to the undersigned.

☐ A Series A Convertible Preferred Stock certificate is not being delivered herewith.

Signature: X_____
Printed Name: _____
Address: _____
_____

Deliveries Pursuant to this Notice of Conversion Should Be Made to:

_____
_____
_____

ARTICLE V

TERM OF EXISTENCE

This Corporation shall have perpetual existence.

ARTICLE VI

REGISTERED AGENT AND

INITIAL REGISTERED OFFICE IN FLORIDA

The Registered Agent and the street address of the initial Registered Office of this Corporation in the State of Florida shall be:

Ray I. Sheppard
8715 SW 57th Street
Fort Lauderdale, Florida 33328-5929

ARTICLE VII

BOARD OF DIRECTORS AND OFFICERS

This corporation shall have no less than one Director who initially shall be Ray I. Sheppard. The officers of the Corporation are as follows:

Ray I. Sheppard
Chief Executive Officer and Secretary
8715 SW 57th Street
Fort Lauderdale, Florida 33328-5929

Louis M. Fischler, CFA
President, Chief Financial Officer and Treasurer
7341 Amberly Lane, #404
Delray Beach, Florida 33446

Brian K. Sheppard, Ph.D.
Chief Technology Officer
10869 NW 46th Drive
Coral Springs, Florida 33076

ARTICLE VIII

INCORPORATOR

The name and address of the person signing these Articles of Incorporation as the Incorporator is:

Ray I. Sheppard
8715 SW 57th Street
Fort Lauderdale, Florida 33328-5929

ARTICLE IX

INDEMNIFICATION

To the fullest extent permitted by the Florida Business Corporation Act, the Corporation shall indemnify, or advance expenses to, any person made, or threatened to be made, a party to any action, suit or proceeding by reason of the fact that such person (i) is or was a director of the Corporation; (ii) is or was serving at the request of the Corporation as a director of another corporation, provided that such person is or was at the time a director of the Corporation; or (iv) is or was serving at the request of the Corporation as an officer of another Corporation, provided that such person is or was at the time a director of the corporation or a director of such other corporation, serving at the request of the Corporation. Unless otherwise expressly prohibited by the Florida Business Corporation Act, and except as otherwise provided in the previous sentence, the Board of Directors of the Corporation shall have the sole and exclusive discretion, on such terms and conditions as it shall determine, to indemnify, or advance expenses to, any person made, or threatened to be made, a party to any action, suit, or proceeding by reason of the fact such person is or was an officer, employee or agent of the Corporation as an officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. No person falling within the purview of this paragraph may apply for indemnification or advancement of expenses to any court of competent jurisdiction.

ARTICLE X

AFFILIATED TRANSACTIONS

This Corporation expressly elects not to be governed by Section 607.0901 of the Florida Business Corporation Act, as amended from time to time, relating to affiliated transactions.

ARTICLE XI

CONTROL SHARE ACQUISITIONS

This Corporation expressly elects to be governed by Section 607.0902 of the Florida Business Corporation Act, as amended from time to time, relating to control share acquisitions.

IN WITNESS WHEREOF, the undersigned Incorporator has executed the foregoing Articles of Incorporation on the 18th day of May, 2008.

RAY L. SHEPPARD, Incorporator

CERTIFICATE DESIGNATING REGISTERED AGENT AND OFFICE FOR SERVICE FOR PROCESS

NEXCOLD, INC., a corporation existing under the laws of the State of Florida with its principal office and mailing address at 10869 NW 46th Drive, Coral Springs, Florida 33076 has named Ray I. Sheppard whose address is 8715 SW 57th Street, Fort Lauderdale, Florida 33328-5929 as its agent to accept service of process within the State of Florida.

ACCEPTANCE:

Having been named to accept service of process for the above-named Corporation, at the place designated in this Certificate, I hereby accept the appointment as Registered Agent, and agree to comply with all applicable provisions of law. In addition, I hereby am familiar with and accept the duties and responsibilities as Registered Agent for said Corporation.

Ray I. Sheppard

RAY I. SHEPPARD

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2000 MAY 21 AM 11:57
SECRETARY OF STATE
TALLAHASSEE, FLORIDA