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January 26, 2017

FLORIDA DEPARTMENT OF STATE

Division of Corporations

BISCAYNE NEUROTHERAPEUTICS, INC.

1951 NW 7TH AVENUE
ROOM 13140 - 3RD FL
MIAMI, FL 33136US

SUBJECT: BISCAYNE NEUROTHERAPEUTICS, INC.
REF: P11000098851

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

The registered agent listed in the document is different from the registered agent acceptance.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Irene Albritton
Regulatory Specialist II

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Letter Number: 417A00001631

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DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

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January 23, 2017

FLORIDA DEPARTMENT OF STATE

Division of Corporations

BISCAYNE NEUROTHERAPEUTICS, INC.
1951 NW 7TH AVENUE
ROOM 13140 - 3RD FL
MIAMI, FL 33136US

SUBJECT: BISCAYNE NEUROTHERAPEUTICS, INC.
REF: P11000098851

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

We have no record of a 2nd amended and restated articles filed on 6/29/2015. However, there was a merger filed on that date, please correct the document to read Second Amended and Restated Articles.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Irene Albritton
Regulatory Specialist II

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TALLAHASSEE, FLORIDA

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TALLAHASSEE, FLORIDA

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BISCAYNE NEUROTHERAPEUTICS, INC.**

1. The name of this corporation is Biscayne Neurotherapeutics, Inc. (the "*Corporation*").
2. The Corporation's Articles of Incorporation were originally filed with the Florida Department of State on November 15, 2011.
3. The Corporation's Amended and Restated Articles of Incorporation were filed with the Florida Department of State on December 6, 2011.
4. These Second Amended and Restated Articles of Incorporation have been duly adopted and approved by the shareholders of the Corporation by written consent dated December 12, 2016 and the board of directors of the Corporation by unanimous written consent dated December 12, 2016, in each case in accordance with the applicable provisions of the Florida Business Corporation Act.
5. The Corporation's Amended and Restated Articles of Incorporation are hereby amended and restated in their entirety as follows:

**ARTICLE I.
NAME AND ADDRESS**

The name of this corporation is Biscayne Neurotherapeutics, Inc. (the "*Corporation*"). The address of the principal office and the mailing address of the Corporation is 4770 Biscayne Boulevard, Suite 660, Miami, FL 33137.

**ARTICLE II.
PURPOSE**

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the Florida Business Corporation Act (the "*Act*").

**ARTICLE III.
CAPITAL STOCK**

3.1. Authorized Shares. The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 15,000,000 shares of Common Stock, \$0.01 par value per share (the "Common Stock"), and (ii) 8,300,000 shares of Preferred Stock, \$0.01 par value per share, of which 2,344,500 shares shall be designated "Series A Preferred Stock," and 5,800,000 shall be designated "Series B Preferred Stock."

3.2. Increase/Decrease of Common Stock. Pursuant to the provisions of the Act, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares then outstanding plus the number of shares of Common Stock reserved or required to be reserved by the Corporation from time to time) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation, voting as a single class, and, to the extent required under Section 3.10(a), the prior consent of the Required Preferred Holders.

3.3. Dividends.

(a) Common Stock. Subject to the other provisions of this Section 3.3 and Section 3.10, dividends may be paid on the Common Stock out of the funds legally available therefor as, if and when declared by the Board. No dividend on the Common Stock shall be declared or paid unless either an adjustment to the Applicable Conversion Price will occur pursuant to Section 3.8 or there shall simultaneously be declared and paid dividends to all holders of Preferred Stock in an amount and of a type which such holders would have received had all shares of Preferred Stock been converted (on the date for determination of stockholders entitled to such dividend) into Common Stock, at the Applicable Conversion Price then in effect.

(b) Series B Preferred Stock. From and after the Series B Original Issue Date, dividends shall accrue on a daily basis on each outstanding share of Series B Preferred Stock at a rate per annum equal to six percent (6%) of the Series B Original Issue then in effect; provided that dividends on outstanding shares of Series B Preferred Stock issued after the Series B Original Issue Date shall accrue from and after the date such shares of Series B Preferred Stock are issued. Dividends on the outstanding shares of Series B Preferred Stock shall, with respect to periods from and after the Series B Original Issue Date accrue from day to day on the basis of twelve 30-day months and a 360-day year, whether or not earned or declared and whether or not there are profits, surplus or other assets of the Corporation legally available for the payment of dividends, and shall be cumulative.

(c) Holders of outstanding shares of the Corporation shall receive payment of dividends with respect to such shares only if, as and when such payment is declared by the Board out of the assets of the Corporation legally available therefor. No dividends shall be declared or paid on any shares of Common Stock, except for any dividend on the Common Stock payable solely in shares of Common Stock, in accordance with Section 3.3(a), until all dividends accrued and unpaid on the Series B Preferred Stock in respect of the period from and after the Series B Original Issue Date have been paid in full. No dividends shall be declared or paid on any shares of Series A Preferred Stock until all dividends accrued and unpaid on the Series B Preferred Stock in respect of the period from and after the Series B Original Issue Date, have been paid in full.

3.4. Liquidation Rights.

(a) Liquidation Preference. Upon any Deemed Liquidation Event:

(i) Each holder of outstanding shares of Series B Preferred Stock shall be entitled to be paid out of the assets available for distribution to its stockholders, before any

payment shall be made to the holders of any other shares of capital stock of the Corporation by reason of their ownership thereof, an amount per share of Series B Preferred Stock equal to (x) the accrued but unpaid dividends on such share of Series B Preferred Stock in respect of the period from and after the Series B Original Issue Date *plus* an amount equal to the Series B Original Issue Price. If upon any such Deemed Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series B Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3.4(a)(i), then the entire assets of the Corporation legally available for such distribution shall be distributed ratably among the holders of Series B Preferred Stock in proportion to the number of outstanding shares of Series B Preferred Stock owned by such stockholders.

(ii) After the payment of all amounts required to be paid to the holders of shares of Series B Preferred Stock pursuant to Section 3.4(a)(i), the holders of outstanding shares of Series A Preferred Stock shall be entitled to be paid out of the assets available for distribution to its stockholders, before any payment shall be made to the holders of any other shares of capital stock of the Corporation by reason of their ownership thereof (other than payments to the holders of Series B Preferred Stock pursuant to Section 3.4(a)(i)), an amount per share of Series A Preferred Stock equal to the Series A Original Issue Price. If upon any such Deemed Liquidation Event, the remaining assets of the Corporation legally available for distribution to the holders of the Series A Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3.4(a)(ii), then the entire remaining assets of the Corporation legally available for such distribution shall be distributed ratably among the holders of Series A Preferred Stock in proportion to the number of outstanding shares of Series A Preferred Stock owned by such stockholders.

(iii) After the payment to the holders of Preferred Stock of the full amounts specified in Section 3.4(a)(i) and Section 3.4(a)(ii), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of Series B Preferred Stock, Series A Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Articles of Incorporation immediately prior to such liquidation, dissolution or winding up of the Corporation.

(b) Sale Events. Each of the following events shall be deemed to be a "**Sale Event**" (and therefore a Deemed Liquidation Event), unless the Required Holders elect to the contrary by giving written notice thereof to the Corporation prior to the effective date of any such event:

(i) the merger or consolidation of the Corporation into or with another Person (other than (x) a wholly-owned subsidiary of the Corporation in a merger in which the Corporation is the surviving Person and the Articles of Incorporation of the Corporation remains unchanged or (y) an acquisition by merger, reorganization or consolidation, in which the Corporation is substantively the surviving Person and operates as a going concern, of another Person that is engaged in a business similar or related to or complementary with the business of the Corporation and which does not involve a recapitalization or reorganization of the Preferred

Stock or Common Stock and does not involve (in a single transaction or series of related transactions) a transfer of more than 50% of the capital stock of the Corporation);

(ii) the direct or indirect sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation and/or any of its subsidiaries of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation; or

(iii) any other transaction or series of transactions, the result of which causes a Person or group of affiliated Persons to acquire or hold the capital stock of the Corporation constituting in excess of 50% of the capital stock of the Corporation or any successor entity thereof or acquire or hold in excess of 50% of the assets of the Corporation or any successor entity thereof.

(c) Effecting a Deemed Liquidation Event.

(i) Unless the terms of such Deemed Liquidation Event provide that (x) the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.4(a) and (y) holders of shares of Preferred Stock will receive their share of the consideration within 30 days after the effective date of such Deemed Liquidation Event, then, in addition to any approval required under Section 3.10(a), the Corporation shall not have the power to effect such Deemed Liquidation Event without the approval of the Required Holders.

(ii) The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any Deemed Liquidation Event shall be, if paid or distributed in cash, the cash or, if the amount is not paid or distributed in cash, the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring Person, firm or other entity. The value of such property, rights or securities shall be valued at the fair value thereof at the time of such issue, as determined in good faith by the Board, including the Required Preferred Directors, or, if no agreement can be reached by the Board, then an independent appraiser that is mutually acceptable to the Board and one of the Series B Directors (as defined in the Voting Agreement).

(iii) If any portion of the consideration payable to the stockholders of the Corporation upon any Deemed Liquidation Event is payable only upon satisfaction of contingencies (the "*Additional Consideration*"), the agreements effecting such Deemed Liquidation Event shall provide that (x) the portion of such consideration that is not *Additional Consideration* (such portion, the "*Initial Consideration*") shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.4(a) as if the *Initial Consideration* were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any *Additional Consideration* which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.4(a) after taking into account the previous payment of the *Initial Consideration* as part of the same transaction. For the purposes of this Section 4.4(c)(iii), consideration placed into escrow or retained as holdback to be available for

satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Events shall be deemed to be Initial Consideration.

3.5. Optional Conversion. The holders of the Series A Preferred Stock and Series B Preferred Stock shall have conversion rights as follows:

(a) Right to Convert into Common Stock. Each share of Series A Preferred Stock and Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such shares, at the office of the Corporation or any transfer agent for such shares, into such number of fully paid and nonassessable shares of Common Stock as follows:

(i) In the case of a Series A Preferred Stock, by dividing the Series A Original Issue Price (as may be adjusted herein) by the Series A Conversion Price.

(ii) In the case of a Series B Preferred Stock, by dividing the Series B Original Issue Price (as may be adjusted herein) by the Series B Conversion Price.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(c) Mechanics of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall (x) provide written notice to the Corporation's transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder's shares of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b), if such holder's shares are certificated, surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder's name or the names of the nominees in which such holder wishes the shares of Common Stock to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the "*Conversion Time*"), and the shares

of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (x) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and may, upon written request, issue and deliver a certificate for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and, may, if applicable and upon written request, issue and deliver a certificate for the number (if any) of the shares of Preferred Stock represented by any surrendered certificate that were not converted into Common Stock, (y) pay in cash such amount as provided in Section 3.5(b) in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (z) pay all accrued but unpaid dividends on the shares of Preferred Stock so converted either, at the Corporation's election, in cash or in shares of Common Stock at the fair market value of a share of Common Stock, as determined in good faith by the Board with the affirmative vote of the GHSF Designee (as defined in the Voting Agreement); *provided, however*, that, if immediately after the Conversion Time any shares of Series B Preferred Stock remain outstanding, the Corporation shall be required to elect to pay all accrued but unpaid dividends on any shares of Series A Preferred Stock so converted in shares of Common Stock.

3.6. Automatic Conversion.

(a) Automatic Conversion of Series A Preferred Stock.

(i) Each share of Series A Preferred Stock shall automatically be converted into fully paid and non-assessable shares of Common Stock at the then-effective Series A Conversion Price immediately upon the first to occur of: (x) the closing of the sale of shares of Common Stock to the public at a price of at least \$5.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act resulting in at least \$40,000,000 of proceeds to the Corporation (a "*Qualified IPO*") or (y) the date and time, or the occurrence of an event, specified by vote or written consent of the Required Series A Holders (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "*Series A Mandatory Conversion Time*").

(ii) All holders of record of shares of Series A Preferred Stock shall be sent written notice of the Series A Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 3.6(a). Such notice need not be sent in advance of the occurrence of the Series A Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series A Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the

Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series A Preferred Stock converted pursuant to this Section 3.6(a) including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Series A Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 3.6(a). As soon as practicable after the Series A Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock, the Corporation shall (x) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and (y) pay cash as provided in Section 3.5(b) in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion. Such converted Series A Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

(iii) Upon conversion of any shares of Series A Preferred Stock into Common Stock, the Corporation shall pay all accrued but unpaid dividends on the shares of Series A Preferred Stock so converted either, at the Corporation's election, in cash or in shares of Common Stock at the fair market value of a share of Common Stock, as determined in good faith by the Board.

(b) Automatic Conversion of Series B Preferred Stock.

(i) Each share of Series B Preferred Stock shall automatically be converted into fully paid and non-assessable shares of Common Stock at the then-effective Series B Conversion Price immediately upon the first to occur of: (A) the closing of a Qualified IPO or (B) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least 67% of the outstanding shares of Series B Preferred Stock (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "*Series B Mandatory Conversion Time*").

(ii) All holders of record of shares of Series B Preferred Stock shall be sent written notice of the Series B Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series B Preferred Stock pursuant to this Section 3.6(b). Such notice need not be sent in advance of the occurrence of the Series B Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series B Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the

Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series B Preferred Stock converted pursuant to this Section 3.6(b) including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Series B Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 3.6(b). As soon as practicable after the Series B Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Series B Preferred Stock, the Corporation shall (x) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and (y) pay cash as provided in Section 3.5(b) in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion. Such converted Series B Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series B Preferred Stock accordingly.

(iii) Upon conversion of any shares of Series B Preferred Stock into Common Stock, the Corporation shall pay all accrued but unpaid dividends on the shares of Series B Preferred Stock so converted either, at the Corporation's election, in cash or in shares of Common Stock at the fair market value of a share of Common Stock, as determined in good faith by the Board with the affirmative vote of the GHSF Designee (as defined in the Voting Agreement).

3.7. Additional Provisions Relating to Conversion of Preferred Stock.

(a) Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Articles of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price or Series B Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Series A Conversion Price or Series B Conversion Price, as applicable.

(b) Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 3.5(b) and to receive payment of any accrued but unpaid dividends thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(c) Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to Section 3.5 or Section 3.6. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Closing of Books. The Corporation shall at no time close its transfer books against the transfer of any shares of Preferred Stock or Common Stock issued or issuable upon the conversion of any Preferred Stock in any manner which interferes with the timely conversion or transfer of such Preferred Stock or Common Stock.

(e) Validity of Shares. The Corporation agrees that it will from time to time take all such actions as may be required to assure that all shares of Common Stock which may be issued upon conversion of any Preferred Stock will, upon issuance, be legally and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof.

(f) No Reissuance of Preferred Stock. No Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

3.8. Adjustments to Applicable Conversion Price for Certain Diluting Issues.

(a) Special Definition. For purposes of this Section 3.8, "*Additional Shares of Common Stock*" shall mean all shares of Common Stock issued (or, pursuant to Section 3.8(c), deemed to be issued) by the Corporation after the Series B Original Issue Date, other than:

(i) securities issued pursuant to stock splits, stock dividends or similar transactions;

(ii) Options exercisable for up to 356,080 shares of Common Stock granted after the Series B Original Issue Date to officers, employees or directors of, or consultants to, the Corporation pursuant to a plan, agreement or arrangement approved by the Board (the "*Option Plan*"); provided, however, that such number of shares may be adjusted upward by the affirmative vote of the Board, including the Required Preferred Directors;

(iii) securities issued upon conversion, exchange or exercise of (x) Options outstanding as of the Series B Original Issue Date and (y) Options granted pursuant to the Option Plan;

(iv) securities issued upon conversion of the Series B Preferred Stock or Series A Preferred Stock in accordance with the terms hereof;

(v) securities issued in connection with adjustment of the Series A Conversion Price or the Series B Conversion Price pursuant to Section 3.8(d);

(vi) securities issued in connection with a Qualified IPO;

(vii) securities issued in connection with sponsored research, collaboration, license, development, or other similar agreements or strategic partnerships approved by the Board, including the Required Preferred Directors.

(b) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Applicable Conversion Price for Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per each Additional Share of Common Stock (as determined pursuant to Section 3.8(e)) issued or deemed to be issued by the Corporation is less than the Conversion Price for such Preferred Stock in effect on the date of, and immediately prior to such issuance.

(c) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time, or from time to time, after the Series B Original Issue Date shall issue or sell any Options or Convertible Securities (other than those excluded from the definition of Additional Shares of Common Stock in Section 3.8(a)(i) to Section 3.8(a)(vii)) or shall fix a record date for the determination of holders of any class of Common Stock or Preferred Stock then entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date; provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(i) no further adjustments in Applicable Conversion Price shall be made upon the subsequent issue of Convertible Securities or Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; *provided, however*, that no such adjustment of the Applicable Conversion Price shall affect Common Stock previously issued upon conversion of the Preferred Stock;

(iii) upon the expiration or repurchase by the Corporation of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall upon such expiration, be recomputed as if:

(A) in the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(B) in the case of Options for Convertible Securities only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 3.8(e)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(iv) no readjustment pursuant to Section 3.8(c)(ii) or (iii) above shall have the effect of increasing the Applicable Conversion Price to an amount which exceeds the lower of (x) the Applicable Conversion Price on the original adjustment date or (y) the Applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(d) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation, at any time after the Series B Original Issue Date, shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3.8(c)) without consideration or for a consideration per share less than the Applicable Conversion Price with respect to any series of

Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the Applicable Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(i) "CP₂" shall mean the Applicable Conversion Price in effect immediately after such issue of Additional Shares of Common Stock

(ii) "CP₁" shall mean the Applicable Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(iii) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(iv) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP₁ (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP₁); and

(v) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(e) Determination of Consideration. For purposes of this Section 3.8, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board with the affirmative vote of the GHSF Designee (as defined in the Voting Agreement); and

(C) in the event Additional Shares of Common Stock are issued together with other shares of Common Stock or Preferred Stock or securities or other assets of the Corporation for consideration which covers both, be the proportion of such

consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board with the affirmative vote of the GHSF Designee (as defined in the Voting Agreement).

(ii) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3.8(c), relating to Options and Convertible Securities shall be determined by dividing:

(A) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(f) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Applicable Conversion Price pursuant to the terms of Section 3.8, then, upon the final such issuance, the Applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(g) Adjustments to Applicable Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the Corporation at any time or from time to time after the Series B Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock solely payable in Common Stock, as applicable, or otherwise distribute any Common Stock or rights to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise, other than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Applicable Conversion Price, each as in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock, as applicable, in an amount of

shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(h) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or series of stock or other securities or property, whether by capital reorganization, reclassification, recapitalization or otherwise (other than a subdivision or combination of stock or stock dividends provided for herein, or a merger, consolidation, or sale of assets provided for herein), then and in each such event the holder of any Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of stock and other securities and property receivable upon such reorganization, reclassification, recapitalization or other change by the holder of a number of shares of Common Stock into which such Preferred Stock might have been converted immediately prior to such reorganization, reclassification, recapitalization or change, all subject to further adjustment as provided herein.

(i) Adjustments for Merger, Consolidation or Sale of Assets. In the event that at any time or from time to time after the Series B Original Issue Date the Corporation shall merge or consolidate with or into another entity or sell all or substantially all of its assets, and such consolidation, merger or sale is not a Sale Event, each share of Preferred Stock shall thereafter be convertible into the kind and amount of stock or other securities or property to which a holder of the number of shares of Common Stock deliverable upon conversion of such Preferred Stock would have been entitled to receive upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board with the affirmative vote of the GHSF Designee (as defined in the Voting Agreement)) shall be made in the application of the provisions set forth in Section 3.8 with respect to the rights and interest thereafter of the holders of Preferred Stock, to the end that the provisions set forth in Section 3.8 (including provisions with respect to changes in and other adjustments of the Applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any stock or other securities or property thereafter deliverable upon the conversion of such Preferred Stock. The provisions of this Section 3.8(i) shall be in addition, and not an alternative, to the obligations of the Corporation described in Section 3.3 hereof.

(j) Waiver of Anti-dilution Protection. To the extent that the provisions of Section 3.8 apply to the issuance of any securities by the Corporation, such provisions may be waived by the written consent of the Required Holders. For the purposes of this Section 3.8(j), a waiver on one occasion shall not constitute a waiver on any further occasion.

(k) No Impairment. The Corporation will not, through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3.8 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

(l) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Applicable Conversion Price pursuant to this Section 3.8, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock subject to adjustment, a certificate executed by the Corporation's President or CFO/Treasurer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Applicable Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Preferred Stock.

(m) Notices of Record Date. In the event that the Corporation shall propose at any time: (w) to declare any dividend or distribution upon its Common Stock, whether in cash, property, Common Stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (x) to offer for subscription pro rata to the holders of any class or series of its Common Stock or Preferred Stock any additional shares of any such class or series or other rights; (y) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (z) to merge or consolidate with or into any other Corporation or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up (including any merger, consolidation or sale of assets which may be deemed to be a Sale Event) then in connection with each such event, the Corporation shall send to the holders of Preferred Stock: (A) at least 15 Business Days prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription or for determining the rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and (B) in the case of the matters referred to in (y) and (z) above, at least 15 Business Days prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event). In the case of (B), such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of the Preferred Stock, Common Stock upon consummation of the proposed action and the proposed date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give each holder of Preferred Stock written notice of such material change. Any holder of outstanding Preferred Stock may waive any such notice required by this Section 3.8(m) by a written document indicating such waiver. The Required Series A Holders may waive any such notice on behalf of all the holders of Series A Preferred Stock by a written document indicating such waiver. The Required Series B Holders may waive any such notice on behalf of all the holders of Series B Preferred Stock by a written document indicating such waiver.

3.9. Voting Rights.

(a) General. 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 outstanding shares of 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 Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Second Amended and Restated Articles of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) Election of Directors.

(i) The Required Series B Holders, exclusively and as a separate class, shall be entitled to elect two directors of the Corporation (the "*Series B Directors*"). The Required Series A Holders, exclusively and as a separate class, shall be entitled to elect two directors of the Corporation (the "*Series A Directors*" and, together with the Series B Directors, the "*Preferred Directors*"). The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to one director of the Corporation.

(ii) Any director elected as provided in Section 3.9(b) may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Series B Preferred Stock, Series A Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to Section 3.9(b), then any directorship not so filled shall remain vacant until such time as the holders of the Series B Preferred Stock, Series A Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class.

(iii) The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation.

(iv) At any meeting held for the purpose of electing a director, the presence in person or by proxy of the a sufficient number of outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in Section 3.9(b), a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to Section 3.9(b).

3.10. Preferred Stock Protective Provisions.

(a) For so long as at least 500,000 shares of Series B Preferred Stock remain outstanding (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock),

the Corporation shall not, either directly or indirectly, by amendment, merger, consolidation or otherwise, do, or agree to do, any of the following without (in addition to any other vote required by law or the Articles of Incorporation) the written consent or affirmative vote of the Required Series B Holders, voting together as a single class on an as-converted basis, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(i) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;

(ii) amend, alter or repeal any provision of the Articles of Incorporation or Bylaws of the Corporation;

(iii) create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of Preferred Stock or increase the authorized number of shares of any additional class or series of capital stock unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

(iv) pay or declare any dividend on any shares of capital stock of the Corporation or purchase or redeem or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (w) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (x) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (y) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof;

(v) unless approved by the Board including one of the Series B Directors (as defined in the Voting Agreement), create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security;

(vi) unless approved by the Board including one of the Series B Directors (as defined in the Voting Agreement), create or amend any employee stock or option plan;

(vii) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license

or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;

(viii) increase or decrease the authorized number of directors constituting the Board;

(ix) make, or permit any subsidiary to make, any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Corporation;

(x) make, or permit any subsidiary to make, any loan or advance to any Person, including, without limitation, any employee or director of the Corporation or any subsidiary, except advances and similar expenditures in the ordinary course of business or under the terms of an employee stock or option plan approved by the Board including one of the Series B Directors (as defined in the Voting Agreement);

(xi) guarantee, directly or indirectly, or permit any subsidiary to guarantee, directly or indirectly, any indebtedness except for trade accounts of the Corporation or any subsidiary arising in the ordinary course of business;

(xii) approve, adopt, or amend any investment policy, or make any investment inconsistent with any such investment policy if so approved or adopted;

(xiii) incur any aggregate indebtedness in excess of \$100,000 that is not already included in a budget approved by the Board including one of the Series B Directors (as defined in the Voting Agreement), other than trade credit incurred in the ordinary course of business;

(xiv) incur any expenditure that (1) is in excess of \$100,000, and (2) would exceed by greater than 10% any budget approved by the Board including one of the Series B Directors (as defined in the Voting Agreement);

(xv) otherwise enter into or be a party to any transaction with any director, officer, or employee of the Corporation or any "associate" (as defined in Rule 12b-2 promulgated under the Exchange Act) of any such Person, except for transactions contemplated by the Investor Rights Agreement and the Purchase Agreement, transactions resulting in payments to or by the Corporation in an aggregate amount less than \$50,000 per year; or transactions made in the ordinary course of business and pursuant to reasonable requirements of the Corporation's business and upon fair and reasonable terms that are approved by a majority of the Board;

(xvi) hire, terminate, or change the compensation of the executive officers, including approving any option grants or stock awards to executive officers;

(xvii) change the principal business of the Corporation, enter new lines of business, or exit current lines of business;

(xviii) prior to the Corporation beginning operations in any fiscal quarter, approve or amend any quarterly or annual budget, business plan and operating plan or the Corporation's annual accounts (including any capital expenditure budget, operating budget and financing plan); unless already approved by the Board including one of the Series B Directors (as defined in the Voting Agreement);

(xix) sell, assign, license, pledge, or encumber material technology or intellectual property of the Corporation, other than licenses granted in the ordinary course of business; or

(xx) enter into any corporate strategic relationship that is material to the Corporation as a whole;

(xxi) change the accounting methods or policies of the Corporation or change the Corporation's auditors; or

(xxii) permit any subsidiary of the Corporation to take, or agree to take, any of the actions set forth in the foregoing subparagraphs (i) through (xxi) inclusive.

(b) The Corporation shall not, either directly or indirectly, by amendment, merger, consolidation or otherwise, do, or agree to do, any of the following without (in addition to any other vote required by law or the Articles of Incorporation) the written consent or affirmative vote of the Required Series B Holders, separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(i) alter, change or waive any of the powers, preferences, or special rights of the shares of the Series B Preferred Stock; or

(ii) (x) reclassify, alter or amend any existing security of the Corporation that is *pari passu* with the Series B Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series B Preferred Stock in respect of any such right, preference, or privilege or (y) reclassify, alter or amend any existing security of the Corporation that is junior to the Series B Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or *pari passu* with the Series B Preferred Stock in respect of any such right, preference or privilege.

(c) The Corporation shall not, either directly or indirectly, by amendment, merger, consolidation or otherwise, do, or agree to do, any of the following without (in addition to any other vote required by law or the Articles of Incorporation) the written consent or affirmative vote of the Required Series A Holders, separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(i) alter, change or waive any of the powers, preferences, or special rights of the shares of the Series A Preferred Stock; or

(ii) (x) reclassify, alter or amend any existing security of the Corporation that is *pari passu* with the Series A Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series A Preferred Stock in respect of any such right, preference, or privilege or (y) reclassify, alter or amend any existing security of the Corporation that is junior to the Series A Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or *pari passu* with the Series A Preferred Stock in respect of any such right, preference or privilege.

ARTICLE IV.

4.1. Waiver.

(a) Waiver.

(i) Any of the rights, powers, preferences and other terms of the Series B Preferred Stock set forth herein may be waived on behalf of all holders of Series B Preferred Stock by the affirmative written consent or vote of the Required Series B Holders.

(ii) Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the affirmative written consent or vote of the Required Series A Holders.

(b) Notices. Any notice required or permitted by the provisions of this Second Amended and Restated Articles of Incorporation to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the Act, and shall be deemed sent upon such mailing or electronic transmission.

ARTICLE V. REGISTERED OFFICE AND AGENT

The street address of the Corporation's registered office is 1200 South Pine Island Road, Plantation, Florida, 33324, and the name of its registered agent at such office is CT Corporation System.

ARTICLE VI. BOARD OF DIRECTORS

The Board of Directors of the Corporation shall consist of at least one director, with the exact number to be fixed from time to time in the manner provided in the Corporation's Bylaws.

ARTICLE VII.

BYLAWS

Subject to any additional vote required by these Articles of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation in any manner not inconsistent with the Act and these Second Amended and Restated Articles of Incorporation.

ARTICLE VIII. ACTION BY WRITTEN CONSENT

The stockholders of the Corporation may not take action in any manner, including by written consent pursuant to Section 607.0704 of the Act.

ARTICLE IX. LIMITATIONS ON LIABILITY

To the fullest extent permitted by 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 or for any action taken in his or her capacity as a director, or any failure to take such action in his or her capacity as a director. It is the intent that this provision be interpreted to provide the maximum protection against liability afforded to directors under the Act in existence now or hereafter. If the Act or any other law of the State of Florida is hereafter amended to authorize corporate action 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 Act, as so amended. Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE X. INDEMNIFICATION

To the fullest extent permitted by applicable law, the Corporation shall indemnify any director, officer, employee or agent of the Corporation, and may reimburse any of the foregoing for reasonable expenses actually incurred, or authorize advancement of expenses, in cases involving an administrative proceeding or civil action, in accordance with and to the fullest extent permitted or required by the laws of the State of Florida, including but not limited to, the Act; provided that, notwithstanding anything to the contrary in these Articles of Incorporation, the Corporation is authorized to provide such indemnification through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by the Act.

ARTICLE XI. CORPORATE OPPORTUNITIES

Subject to this Article XI, any Stockholder (other than any Stockholder that is an officer or employee of the Corporation or any of its subsidiaries) and any of its Affiliates may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Corporation or any subsidiary thereof, and the Corporation, any subsidiary of the Corporation, the directors, the directors of any subsidiary of the Corporation and the other stockholders shall have no rights in and to such ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Corporation or any subsidiary thereof, shall not be deemed wrongful or improper. To the fullest extent permitted by applicable law or regulation, no Stockholder (other than any Stockholder that is an officer or employee of the Corporation or any of its subsidiaries) and any of its directors, principals, officers, members, stockholders, limited or general partners, employees and/or other representatives (the "*Stockholder Equityholders*") and its or their Affiliates or director designees, shall be obligated to refer or present any particular business opportunity to the Corporation or any subsidiary thereof even if such opportunity is of a character that, if referred or presented to the Corporation or any subsidiary thereof, could be taken by the Corporation or any subsidiary thereof, and any such Stockholder, Stockholder Equityholder or any of its or their Affiliates, respectively, shall have the right to take for its own account (individually or as a partner, stockholder, member, participant or fiduciary) or to recommend to others such particular opportunity.

Except as otherwise provided by law, no act or omission by any Stockholder, Stockholder Equityholder or its or their Affiliates or director designees shall be considered contrary to (i) any fiduciary duty that such Stockholder, Stockholder Equityholder or its or their Affiliates or director designees may owe to the Corporation, its subsidiaries or any of its or their Affiliates or to any stockholder or by reason of such Stockholder, Stockholder Equityholder or its or their Affiliates or director designees being a stockholder of the Corporation, or (ii) any fiduciary duty of any director of the Corporation, its subsidiaries or any of its or their Affiliates who is also a director, officer or employee of a Stockholder, Stockholder Equityholder or its or their Affiliates to the Corporation, subsidiaries or any of its or their Affiliates, or to any stockholder thereof. Any person purchasing or otherwise acquiring any shares of capital stock of the Corporation, its subsidiaries or any of its or their Affiliates, or any interest therein, shall be deemed to have notice of and to have consented to the provisions of this Article XI

For purposes of this Article XI, "Affiliate" means, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by or under common control with such person or entity; provided that no stockholder of the Corporation shall be deemed, solely by reason of any investment in the Corporation or any rights related to such investment, (i) an Affiliate of any other stockholder or (ii) an Affiliate of the Corporation or any of its subsidiaries.

ARTICLE XII.

The following terms shall have the following respective meanings herein:

"Affiliate" of any Person means any other Person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlling," "controlled by" and

“under common control with”) as used with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“**Applicable Conversion Price**” means the Series A Conversion Price with respect to any share of Series A Preferred Stock or the Series B Conversion Price with respect to any share of Series B Preferred Stock.

“**Applicable Original Issue Price**” means the Series A Original Issue Price with respect to any share of Series A Preferred Stock or the Series B Original Issue Price with respect to any share of Series B Preferred Stock.

“**Automatic Conversion Event**” means: (a) with respect to the Series A Preferred Stock, the automatic conversion thereof pursuant to Section 3.6(a) and (b) with respect to the shares of Series B Preferred Stock, the automatic conversion thereof pursuant to Section 3.6(b).

“**Business Day**” means any day that is not a Saturday or Sunday or a day on which banks are required or permitted to be closed in the State of Florida.

“**Convertible Securities**” means any evidences of indebtedness or securities convertible into or exchangeable or exercisable for, directly or indirectly, Common Stock.

“**Deemed Liquidation Event**” means (a) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or (b) any Sale Event.

“**Investor Rights Agreement**” means that certain Investor Rights Agreement entered into between the Corporation and the holders of Preferred Stock on or about January 20, 2017.

“**Options**” means rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

“**Person**” means an individual, corporation, partnership, limited liability company, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

“**Preferred Stock**” means the Series A Preferred Stock and the Series B Preferred Stock.

“**Purchase Agreement**” means that certain Series B Preferred Stock Purchase Agreement entered into between the Corporation and the holders of shares of Series B Preferred Stock on or about January 20, 2017.

“**Required Preferred Directors**” means at least one of the Series A Directors and at least one of the Series B Directors (as that term is defined in the Voting Agreement).

“**Required Holders**” means the holders of at least sixty five percent (65%) of the outstanding shares of Preferred Stock.

“Required Series A Holders” means the holders of at least a majority of the outstanding shares of Series A Preferred Stock.

“Required Series B Holders” means the holders of at least a majority of the outstanding shares of Series B Preferred Stock which must include the GHSF Group (as that term is defined in the Voting Agreement) unless such shareholder or group of shareholders holds less than 500,000 shares of Series B Preferred Stock.

“Securities Act” means the Securities Act of 1933, as amended.

“Series A Conversion Price” means \$4.00 per share for the Series A Preferred Stock, subject to adjustment thereof in accordance with Section 3.8.

“Series A Original Issue Price” means \$4.00 per share for the Series A Preferred Stock (as adjusted for stock splits, reverse splits and similar actions with respect to the Series A Preferred Stock).

“Series B Conversion Price” means 0.546493 per share for the Series B Preferred Stock, subject to adjustment thereof in accordance with Section 3.8.

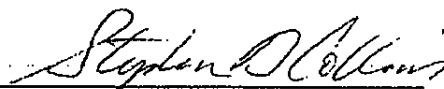
“Series B Original Issue Date” means January 20, 2017.

“Series B Original Issue Price” means \$0.546493 per share for the Series B Preferred Stock (as adjusted for stock splits, reverse splits and similar actions with respect to the Series B Preferred Stock).

“Voting Agreement” means that certain Voting Agreement entered into between the Corporation and its shareholders on or about January 20, 2017.

IN WITNESS WHEREOF, the undersigned have executed these Articles of Incorporation on January 17, 2017.

BISCAYNE NEUROTHERAPEUTICS, INC.

By: 

Name: Stephen D. Collins

Title: Chief Executive Officer

The undersigned registered agent hereby accepts the appointment as registered agent and agrees to act in this capacity. The undersigned registered agent further agrees to comply with the provisions of all statutes relative to the proper and complete performance of its duties, and it is familiar with and accepts the obligation of the position as registered agent.

REGISTERED AGENT:

CT CORPORATION SYSTEM

By: 
Name: **Kristin Bolden**
Title: **Assistant Secretary**