

P13000025816

Florida Department of State

Division of Corporations  
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**COR AMND/RESTATE/CORRECT OR O/D RESIGN  
FRESH START BEVERAGE COMPANY**

Certificate of Status	0
Certified Copy	1
Page Count	15
Estimated Charge	\$43.75

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NOV 12 2020

850-617-6381

11/9/2020 11:25:08 AM PAGE 1/001 Fax Server



November 9, 2020

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

FRESH START BEVERAGE COMPANY  
11380 PROSPERITY FARMS RD #221E  
PALM BEACH GARDENS, FL 33410

SUBJECT: FRESH START BEVERAGE COMPANY  
REF: P13000025816

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

The document must contain written acceptance by the registered agent, (i.e. "I hereby am familiar with and accept the duties and responsibilities as registered agent for said corporation/limited liability company"); and the registered agent's signature.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

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

Terri J Schroeder  
Regulatory Specialist III

FAX Aud. #: H20000385843  
Letter Number: 020A00022386

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**AMENDED AND RESTATED ARTICLES OF INCORPORATION OF  
FRESH START BEVERAGE COMPANY**

Pursuant to Section 607.1003  
of the Florida Business Corporation Act

Fresh Start Beverage Company, a corporation organized and existing under the laws of the State of Florida (the "Corporation"), does hereby certify as follows:

- A. The name of the Corporation is Fresh Start Beverage Company.
- B. The Articles of Incorporation of the Corporation were filed with the office of the Secretary of State of the State of Florida on March 19, 2013 under Document Number P13000025816. Amended and Restated Articles of Incorporation were filed with the office of the Secretary of State of the State of Florida on May 1, 2015 (the "Amended Articles"). The Amended Articles were then amended by the filing of the Articles of Amendment to the Amended and Restated Articles of Incorporation of the Corporation with the office of the Secretary of State of the State of Florida on November 13, 2015.
- C. The Shareholders of the Corporation approved Amended and Restated Articles of Incorporation by written consent in lieu of a special meeting dated July 17, 2018 (the "Second Amendment"). The Second Amendment was never filed with the office of the Secretary of State of the State of Florida.
- D. These Amended and Restated Articles of Incorporation (the "Amended and Restated Articles") were approved by the Board of Directors pursuant to Written Consent of the Directors of Fresh Start Beverage Company in Lieu of a Special Meeting dated September 21, 2020. The number of affirmative votes cast in favor of these Amended and Restated Articles were sufficient for approval by the Board of Directors.
- E. These Amended and Restated Articles were approved by the requisite vote of the shareholders of the Corporation by a Written Consent of the Shareholders of Fresh Start Beverage Company in Lieu of a Special Meeting dated September 21, 2020. The number of affirmative votes cast in favor of these Amended and Restated Articles were sufficient for approval by the holders of a majority of Common A Shares and Common B Shares, voting as one class.

**FIRST: Name.** The name of the corporation shall be:

FRESH START BEVERAGE COMPANY

**SECOND: Principal Office.** The principal place of business of the Corporation is 4001 N. Ocean Blvd., Suite B301, Boca Raton, Florida 33431.

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**THIRD: Purpose.** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the laws of the State of Florida.

**FOURTH: Authorized Capital Stock.** The total number of shares of capital stock that the Corporation shall have authority to issue is Two Hundred Seventy Million (270,000,000) shares, of which (i) Two Hundred Fifty Million (250,000,000) shares will be Common Stock ("Common Stock"), par value \$0.001 per share, consisting of Two Hundred Thirty Million (230,000,000) shares of Class A Voting Common Stock ("Class A Common Stock") and Twenty Million (20,000,000) shares of Class B Voting Common Stock ("Class B Common Stock"). Twenty Million (20,000,000) shares will be Preferred Stock, par value \$0.001 per share ("Preferred Stock"), consisting of Ten Million (10,000,000) shares of Series A Preferred Stock ("Series A Preferred Stock") and Ten Million (10,000,000) shares of Series B Preferred Stock ("Series B Preferred Stock").

**FIFTH: Rights and Preferences of Series A Preferred Stock and Common Stock.** The terms and provisions of the Common Stock and Series A Preferred Stock are as follows:

(a) **Definitions.** For purposes of this Article, the following definitions will apply:

1. **"Distribution"** will mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, and (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation pursuant to rights of first refusal contained in agreements providing for such right.

2. **"Dividend Rate"** will mean an annual rate of \$1.3218 per share for the Series A Preferred Stock, compounded monthly (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

3. **"Equity Security"** will mean (i) any Common Stock or Preferred Stock of the Corporation, (ii) any security convertible into or exercisable or exchangeable for, with or without consideration, any Common Stock, Preferred Stock or other security (including any option to purchase such a convertible security); (iii) any security carrying a warrant or right to subscribe to or purchase any Common Stock, Preferred Stock or other security; or (iv) any warrant or right.

4. **"Liquidation Preference"** will mean \$22.03 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

5. **"Original Issue Price"** will mean \$22.03 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

6. **"Sale"** will mean a deemed liquidation event pursuant to Section (d)(3) of this Article.

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7. "Recapitalization" will mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

(b) Dividends.

1. Series A Preferred Stock. Dividends on shares of Series A Preferred Stock will begin to accrue on a daily basis at the prorated Dividend Rate from the date on which the Corporation issues such shares of Series A Preferred Stock and will be cumulative. The cumulative dividends will be due and payable quarterly (based on the Corporation's fiscal calendar) in arrears or as otherwise specifically provided for in these Amended and Restated Articles. The Corporation will, upon the written request of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a certificate setting forth the accrued dividends with respect to that holder's Series A Preferred Stock and the basis for calculating the accrued dividends. Payment of any dividends to the holders of Series A Preferred Stock will be on a pro rata basis. No Distribution will be made with respect to the Common Stock until all declared or accrued but unpaid dividends on the Series A Preferred Stock have been paid or set aside for payment to the Series A Preferred Stockholders.

2. Common Stock. Dividends may be paid on the Common Stock when as and if declared by the Board of Directors, subject to the prior dividend rights of the Series A Preferred Stock.

(c) Participation Rights.

1. Subsequent Offerings. Subject to applicable securities laws, each holder of Series A Preferred Stockholder will have the right to purchase its pro rata share of all Equity Securities that the Corporation may, from time to time, propose to sell and issue, other than the Equity Securities excluded by Section (c)(5) below. Each holder of Series A Preferred Stock's pro rata share is equal to the ratio of (i) the number of shares of the Corporation's Common Stock (including all shares of Common Stock issuable or issued upon conversion of Common Stock or upon the exercise of outstanding warrants or options) of which such holder of Series A Preferred Stock is deemed to be a holder immediately prior to the issuance of such Equity Securities to (ii) the total number of shares of the Corporation's outstanding Common Stock (including all shares of Common Stock issued or issuable upon conversion of Common Stock or upon the exercise of any outstanding warrants or options) immediately prior to the issuance of the Equity Securities.

2. Exercise Rights. If the Corporation proposes to issue any Equity Securities, it shall give each holder of Series A Preferred Stock written notice of its intention, describing the Equity Securities, the price and the terms and conditions upon which the Corporation proposes to issue the same. Each holder of Series A Preferred Stock will have fifteen (15) days from the giving of such notice to agree to purchase its pro rata share of the Equity Securities for the price and upon the terms and conditions specified in the notice, by giving written notice to the Corporation and stating therein the quantity of Equity Securities to be purchased (each holder of Series A Preferred Stock giving such notice, an "Exercising Preferred Stockholder"). The Corporation will give written notice to each Exercising Preferred Stockholder of any Equity Securities not subscribed for by the other holders of Series A Preferred Stock (the "Unsubscribed Shares"), and each Exercising Preferred Stockholder will

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have five (5) days from the giving of such notice to agree to purchase that number of Unsubscribed Shares such Exercising Preferred Stockholder desires to purchase. If the Exercising Preferred Stockholders desire to purchase more than the number of Unsubscribed Shares, then the number of Unsubscribed Shares each Exercising Preferred Stockholder may purchase will be reduced ratably. Notwithstanding the foregoing, the Corporation will not be required to offer or sell such Equity Securities to any holder of Series A Preferred Stock who would cause the Corporation to be in violation of applicable federal securities laws by virtue of such offer or sale.

3. Issuance of Equity Securities to Other Persons. The Corporation will have ninety (90) days following the expiration of the notice provided pursuant to Section (c)(2) above to sell the Equity Securities in respect of which the holders of Series A Preferred Stock's rights were not exercised, at a price not lower and upon the general terms and conditions not materially more favorable to the purchasers thereof than specified in the Corporation's notice to the holders of Series A Preferred Stock pursuant to Section (c)(2) above. If the Corporation has not sold each Equity Security within such ninety (90) days, then the Corporation will not thereafter issue or sell any Equity Securities without first offering such Equity Securities to the holders of Series A Preferred Stock in the manner provide in this Section(c).

4. Termination and Waiver of Rights. The participation rights established by this Section (c) will not apply to and will terminate upon the earlier of (i) the effective date of the registration statement pertaining to the Corporation's initial public offering or (ii) a Sale of the Corporation.

5. Excluded Securities. The participation rights established by this Section (c) will not apply to the following Equity Securities:

(i) shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights issued or to be issued to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary, pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors;

(ii) stock issued or issuable pursuant to any rights or agreements, options, warrants, or convertible securities outstanding as of the date of the filing of these Amended and Restated Articles; and stock issued pursuant to any such rights or agreements granted after the filing of the Amended and Restated Articles, so long as the rights established by this Section (c) were complied with, waived or were inapplicable pursuant to any provision of this Section (c)(5) with respect to the initial sale or grant by the Corporation of such right or agreements;

(iii) any Equity Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by the Board of Directors;

(iv) any Equity Securities issued in connection with any stock split, stock dividend or recapitalization by the Corporation;

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(v) any Equity Securities issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement, or debt financing from a bank or similar financial or lending institution approved by the Board of Directors;

(vi) any Equity Securities that are issued by the Corporation pursuant to a registration statement filed under the Securities Act; and

(vii) any Equity Securities issued in connection with strategic transactions involving the Corporation and other entities, including, without limitation (A) joint ventures, manufacturing, marketing or distribution arrangements; or (B) technology transfer or development arrangements in each case approved by the Board of Directors.

(d) Liquidation Rights.

1. Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred Stock will be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series A Preferred Stock and (ii) all accrued but unpaid dividends (if any) on such share of Series A Preferred Stock (the "Liquidation Amount"), or such greater amount per share as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock immediately prior to such liquidation, dissolution, or winding up of the Corporation. If upon the liquidation, dissolution or winding up of the Corporation, the 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 (d), then the entire assets of the Corporation legally available for distribution will be distributed with equal priority and pro rata among the holders of the Series A Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section (d).

2. Remaining Assets. After the payment or setting aside for payment to the holders of Series A Preferred Stock of the full amounts specified in this Section (d), the entire remaining assets of the Corporation legally available for distribution will be distributed pro rata to holders of the Common Stock of the Corporation in proportion to the number of shares of Common Stock held by them.

3. Liquidation Event. For purposes of this Section (d), a liquidation, dissolution or winding up of the Corporation will be deemed to be occasioned by, or to include, (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of related transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, as a result of shares in the Corporation held by such holders prior to such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding

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voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent); (ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation by means of any transaction or series of related transactions, except where such sale, lease or other disposition is to a wholly-owned subsidiary of the Corporation; or (iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

(e) Conversion. The Holders of the Series A Preferred Stock will have conversion rights as follows:

1. Right to Convert. Each share of Series A Preferred Stock will be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series A Preferred Stock, into 1,000 fully-paid, nonassessable shares of Class A Common Stock (subject to adjustment for Recapitalizations).

2. Automatic Conversion. Each share of Series A Preferred Stock will automatically be converted into 1,000 fully-paid, non-assessable shares of Class A Common Stock (subject to adjustment for Recapitalizations) (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of the Corporation's Common Stock, (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of a majority of the Series A Preferred Stock then outstanding, (iii) upon election by the Corporation, provided that, at or prior to the time of conversion, the holder has received from the Corporation through the payment of dividends or distributions or otherwise, the full per share Liquidation Amount for the shares held, or (iv) at such time as the holder has received dividends or distributions from the Corporation equal to the full per share Liquidation Amount for the shares held (each of the events referred to in (i), (ii), (iii) and (iv) are referred to herein as an "Automatic Conversion Event").

3. Mechanics of Conversion. No fractional shares of Common Stock will be issued upon conversion of Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation will pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Series A Preferred Stock held by each holder of Series A Preferred Stock will be aggregated, and any resulting fractional share of Common Stock will be paid in cash. Before any holder of Series A Preferred Stock will be entitled to convert the same into full shares of Common Stock the holder will either (i) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock; or (ii) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and will give written notice to the Corporation at such office that the holder elects to convert the same; provided, however, that on the date of an Automatic Conversion Event, the outstanding shares of Series A Preferred Stock will be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its



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transfer agent; provided further, however, that the Corporation will not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Series A Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Series A Preferred Stock will be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Series A Preferred Stock will not have been surrendered at the office of the Corporation, that notice from the Corporation will not have been received by any holder of record of shares of Series A Preferred Stock, or that the certificates evidencing such shares of Common Stock will not then be actually delivered to such holder.

4. Reservation of Stock Issuable Upon Conversion. The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as will from time to time be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock will not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its legal counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as will be sufficient for such purpose.

(f) Voting.

1. Class Voting. Except as otherwise expressly provided herein or as required by law, the holders of Series A Preferred Stock and the holders of Common Stock will vote together and not as separate classes.

2. Series A Preferred Stock. Each holder of Series A Preferred Stock will be entitled to the number of votes equal to the number of shares of Class A Common Stock into which the shares of Series A Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Series A Preferred Stock will be entitled to vote on all matters on which the Common Stock will be entitled to vote. Holders of Series A Preferred Stock will be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Corporation. Fractional votes will not, however, be permitted, and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) will be disregarded.

3. Election of Directors. The Board of Directors will consist of five (5) members. The holders of Class A Common Stock, voting as a separate class, will be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors. The holders of Class B Common Stock, voting as a separate class, will be entitled to elect three (3) members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's

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shareholders for the election of directors. Any additional members of the Corporation's Board of Directors will be elected by the holders of Common Stock and Series A Preferred Stock, voting together as a single class. If a vacancy on the Board of Directors is to be filled by the Board of Directors, only directors elected by the same class or classes of shareholders as those who would be entitled to vote to fill such vacancy will vote to fill such vacancy.

4. Class A Common Stock. Each holder of record of shares of Common Stock designated Class A Common Stock by the Board of Directors and their assigns and successors will have the right to one (1) vote for each share of Class A Common Stock registered in their name on the books of the Corporation on all matters submitted to a vote of shareholders except as the right to exercise such vote may be limited by the provisions of these Amended and Restated Articles or of any class or series of Preferred Stock established hereunder.

5. Class B Common Stock. Each holder of record of shares of Common Stock designated Class B Common Stock by the Board of Directors and their assigns and successors will have the right to one (1) vote for each share of Class B Common Stock registered in their name on the books of the Corporation on all matters submitted to a vote of shareholders except as the right to exercise such vote may be limited by the provisions of these Amended and Restated Articles or of any class or series of Preferred Stock established hereunder.

(g) Amendments and Changes. So long as any shares of the Series A Preferred Stock are outstanding, the Corporation will not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of at least a majority of the outstanding shares of the Series A Preferred Stock, in addition to any other vote required by law:

1. create or authorize the creation of any class or series of, or issue any shares of, the capital stock of the Corporation or any other security convertible into or exercisable for any shares of the capital stock of the Corporation, in each case, that has/have rights to dividends or distributions senior to or pari passu to those of Series A Preferred Stock;

2. reclassify, alter or amend the terms of any class or series of the capital stock that is junior to Series A Preferred Stock in rights to dividends or distributions, if such reclassification, alteration or amendment would render such other class or series senior to or pari passu with the Series A Preferred Stock with respect thereto;

3. purchase or redeem, or declare or pay any Distribution on, any share of the capital stock of the Corporation prior to the Series A Preferred Stock, other than shares of capital stock repurchased from former employees, officer, directors or consultants in connection with the cessation of their employment/services at the lower of fair market value or cost; or

4. enter into any agreement or engage in any transaction between the Corporation and/or a subsidiary, on the one hand, and any director, officer, shareholder, employee, or affiliate of the Corporation, on the other hand, unless such agreement or transaction is on commercially reasonable terms as determined in good faith by the Corporation's Board of Directors.

(h) Reissuance of Preferred Stock. In the event that any shares of Series A Preferred Stock will be converted pursuant to Section (e) hereof or otherwise repurchased by the

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Corporation, the shares so converted or repurchased will be cancelled and will not be issuable by this Corporation.

(i) Notices. Any notice required by the provisions of these Amended and Restated Articles to be given to the holders of Series A Preferred Stock will be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

**SIXTH: Registered Office and Agent.** The address of the Corporation's registered office in the State of Florida is 225 NE Mizner Blvd., Suite 510, Boca Raton, Florida 33432. The name of its registered agent at such address is Tobin & Reyes, P.A.

**SEVENTH: Limitation of Liability.** No director of the Corporation shall be personally liable to the Corporation or its stockholders for any monetary damages for breaches of fiduciary duty as a director, provided that this provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 607.0831 of The Florida Business Corporation Act; or (iv) for any transaction from which the director derived an improper personal benefit. No repeal or amendment of this Article shall adversely affect any rights of any person pursuant to this Article which existed at the time of such repeal or amendment with respect to acts or omissions occurring prior to such repeal or amendment.

**EIGHTH: Indemnification.**

(a) Mandatory Indemnification. The Corporation shall, to the fullest extent permitted by applicable law, indemnify its directors and officers who were or are a party or are threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (whether or not such action, suit or proceeding arises or arose by or in the right of the Corporation or other entity) by reason of the fact that such director or officer is or was a director or officer of the Corporation that is or was serving at the request of the Corporation as a director, officer, employee, general partner, agent or fiduciary of another corporation, partnership, joint venture, trust or other enterprise (including service with respect to employee benefit plans), against expenses (including, but not limited to, attorneys' fees and costs), judgments, fines (including excise taxes assessed on a person with respect to any employee benefit plan) and amounts paid in settlement actually and reasonably incurred by such director or officer in connection with such action, suit or proceeding, except as otherwise provided in Section (c) hereof. A director or officer of the Corporation entitled to indemnification under this Section (a) is hereafter called a "covered person."

(b) Expenses. Expenses incurred by a covered person in defending a threatened, pending or completed civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation, except as otherwise provided in Section (c).

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(c) Exceptions. No indemnification under Section (a) or advancement or reimbursement of expenses under Section (b) shall be provided to a covered person (i) with respect to expenses or the payment of profits arising from the purchase or sale of securities of the Corporation in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended; (ii) if a final unappealable judgment or award establishes that such director or officer engaged in intentional misconduct or a transaction from which the member, director or officer derived an improper personal benefit; (iii) for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, and amounts paid in settlement) which have been paid directly to, or for the benefit of, such person by an insurance carrier under a policy of officers' and directors' liability insurance paid for or maintained by the Corporation or other person or entity; or (iv) for amounts paid in settlement of any threatened, pending or completed action, suit or proceeding without the written consent of the Board of Directors of the Corporation, which written consent shall not be unreasonably withheld. The Board of Directors of the Corporation is hereby authorized, at any time by resolution and without stockholder approval, to add to the above list of exceptions from the right of indemnification under Section (a) hereof or advancement or reimbursement of expenses under Section (b) hereof, but any such additional exception shall not apply with respect to any event, act or omission which has occurred prior to the date that the Board of Directors in fact adopts such resolution. Any such additional exception may, at any time after its adoption, be amended, supplemented, waived or terminated by further resolution of the Board of Directors of the Corporation.

(d) Continuation of Rights. The indemnification and advancement or reimbursement of expenses provided by, or granted pursuant to, this Article shall continue as to a person who has ceased to be a director or officer of the Corporation, and shall inure to the benefit of the heirs, executors and administrators of such person.

(e) General Provisions.

1. The term "to the fullest extent permitted by applicable law," as used in this Article, shall mean the maximum extent permitted by public policy, common law or statute. Any covered person may, to the fullest extent permitted by applicable law, elect to have the right to indemnification or to advancement or reimbursement of expenses, interpreted, at such covered person's option, (i) on the basis of the applicable law on the date this Article was approved by the stockholders, (ii) on the basis of the applicable law in effect at the time of the occurrence of the event, act or omission giving rise to the action, suit or proceeding, or (iii) on the basis of the applicable law in effect at the time indemnification is sought.

2. The right of a covered person to be indemnified or to receive an advancement or reimbursement of expenses pursuant to this Article: (A) may also be enforced as a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof were set forth in a separate written contract between the Corporation and such person, (B) to the fullest extent permitted by applicable law, is intended to be retroactive and shall be available with respect to events, acts or omissions occurring prior to the adoption hereof, and (C) shall continue to exist after the rescission or restrictive modification (as determined by such covered person) of this Article with respect to events, acts or omissions occurring before such rescission or restrictive modification is adopted.

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3. If a request for indemnification or for the advancement or reimbursement of expenses pursuant hereto is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation together with all supporting information reasonably requested by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim (plus interest at the prime rate announced from time to time by the Corporation's primary lender, or if there is no such lender as published by the Wall Street Journal) and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses (including, but not limited to, attorney's fees and costs) of prosecuting such claim. Neither the failure of the Corporation (including its Board of Directors or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of or the advancement or reimbursement of expenses to the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Directors or independent legal counsel) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

4. The indemnification and advancement or reimbursement of expenses provided by, or granted pursuant to, this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement or reimbursement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

5. Nothing contained in this Article shall be construed to limit the rights and powers the Corporation possesses under applicable provisions of the Florida Business Corporation Act, or otherwise, including, but not limited to, the powers to purchase and maintain insurance, create funds to secure or insure its indemnification obligations, and any other rights or powers the Corporation may otherwise have under applicable law.

6. The provisions of this Article may, at any time (and whether before or after there is any basis for a claim for indemnification or for the advancement or reimbursement of expenses pursuant hereto), be amended, supplemented, waived or terminated, in whole or in part, with respect to any covered person covered by a written agreement signed by the Corporation and such person.

7. The Corporation shall have the right to appoint the attorney for a covered person, provided such appointment is not unreasonable under the circumstances.

(f) Optional Indemnification. The Corporation may, to the fullest extent permitted by applicable law, indemnify, and advance or reimburse expenses for, persons in all situations other than that covered by this Article subject to the unanimous consent of the Board of Directors.

**NINTH: Amendments to Certification of Incorporation.** The Corporation reserves the right to increase or decrease its authorized capital stock, or any class or series thereof, and to reclassify the same, and to amend, alter, change or repeal any provision contained in these Amended and Restated Articles under which the Corporation is organized or in any amendment thereto, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders in these Amended and Restated Articles or any amendment thereto are granted subject to the aforementioned reservation.

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**TENTH: Amendments to By-laws.** The Board of Directors shall have the power at any time, and from time to time, to adopt, amend and repeal any and all bylaws of the Corporation. Any amendment to, or repeal of, any provision of the bylaws of the Corporation which has not previously received the approval of the Board of Directors shall require for adoption the affirmative vote of the holders of at least a majority of the voting power of all the then outstanding shares of capital stock of the Corporation entitled to vote at any duly convened annual or special meeting of the stockholders, voting together in as a single class, in addition to any other approval which is required by law, these Amended and Restated Articles of the Corporation, the bylaws of the Corporation, or otherwise.

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**IN WITNESS WHEREOF**, the undersigned Chief Executive Officer of the Corporation has executed these Amended and Restated Articles of Incorporation as of the 5<sup>th</sup> day of November 2020.

**FRESH START BEVERAGE COMPANY**

By 

Steven Gelerman, Chief Executive Officer

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**CERTIFICATE OF REGISTERED AGENT  
OF  
FRESH START BEVERAGE COMPANY**

That Fresh Start Beverage Company, with its principal office located at 4001 N. Ocean Blvd., Suite B301, Boca Raton, Florida 33431, has named Tobin & Reyes, P.A., 225 N.E. Mizner Boulevard, Suite 510, Boca Raton, Florida 33432, as its agent to accept service of process within the State of Florida.

**ACKNOWLEDGMENT**

Having been named as registered agent and to accept service of process for the above-stated corporation, at the place designated in this Certificate, the undersigned hereby accepts the appointment as registered agent and agrees to act in this capacity and further agrees to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and the undersigned is familiar with and accepts the obligations of my position as registered agent as provided for in Chapter 607, F.S.

Dated this 10th day of November, 2020.

**Tobin & Reyes, P.A.**

By:



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Michael De Biase, Esq., Partner

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