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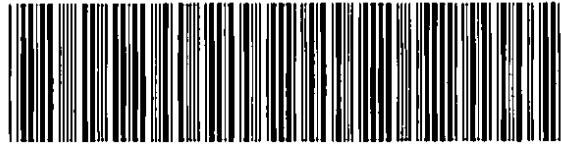
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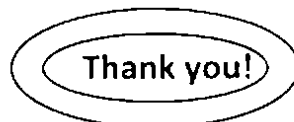
Name:	BASE CULTURE, INC.
Document #:	
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Amount: \$ 43.75



**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
BASE CULTURE, INC.**

The following shall reflect the Amended and Restated Articles of Incorporation of Base Culture, Inc., a Florida profit corporation organized and existing pursuant to Chapters 607 and 621 of the Florida Statutes (as applicable, the "**Florida Statutes**"), originally incorporated pursuant to the Florida Statutes on May 13, 2020:

**FIRST:** The name of this corporation is Base Culture, Inc., a Florida profit corporation (the "**Corporation**"). The Corporation is the successor in interest by means of the conversion of Base Culture, LLC, a Florida limited liability company, into the Corporation, which conversion was effectuated on May 13, 2020.

**SECOND:** The principal address and mailing address of the Corporation is 5160 140th Avenue North, Clearwater, Florida 33760.

**THIRD:** The nature of the business or purposes to be continued to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the Florida Statutes.

**FOURTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 50,000,000 shares of Common Stock, \$0.00001 par value per share ("**Common Stock**"), and (ii) 34,354,165 shares of Preferred Stock, \$0.00001 par value per share ("**Preferred Stock**").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation. Capitalized terms not defined when initially used will have the meanings given to them elsewhere in these Amended and Restated Articles of Incorporation (these "**Articles of Incorporation**").

**A. COMMON STOCK**

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to these Articles of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to these Articles of Incorporation or pursuant to the Florida Statutes. There shall be no cumulative voting. Subject to compliance with the voting and approval rights set forth herein, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in

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addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of these Articles of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, with any Preferred Stock which is convertible into Common Stock being calculated on an as-converted-to-Common Stock basis.

## **B. PREFERRED STOCK**

The Preferred Stock shall initially be divided into eight series. 3,300,695 shares of the authorized Preferred Stock of the Corporation are hereby designated as Series C Preferred Stock (the "**Series C Preferred Stock**"). 4,359,871 shares of the authorized Preferred Stock of the Corporation are hereby designated as Series B-1 Preferred Stock (the "**Series B-1 Preferred Stock**"). 965,928 shares of the authorized Preferred Stock of the Corporation are hereby designated as Series B-2 Preferred Stock (the "**Series B-2 Preferred Stock**"), and together with the Series B-1 Preferred Stock, the "**Series B Preferred Stock**"). 10,530,026 shares of the authorized Preferred Stock of the Corporation are hereby designated as Series A-1 Preferred Stock (the "**Series A-1 Preferred Stock**"). 10,770,595 shares of the authorized Preferred Stock of the Corporation are hereby designated as Series A-2 Preferred Stock (the "**Series A-2 Preferred Stock**"). 268,703 shares of the authorized Preferred Stock of the Corporation are hereby designated as Series A-3 Preferred Stock (the "**Series A-3 Preferred Stock**"); and together with the Series A-1 Preferred Stock and the Series A-2 Preferred Stock, the "**Series A Preferred Stock**"). 3,000,000 shares of the authorized Preferred Stock of the Corporation are hereby designated as Series Seed-1 Preferred Stock (the "**Series Seed-1 Preferred Stock**"). 1,158,347 shares of the authorized Preferred Stock of the Corporation are hereby designated as Series Seed-2 Preferred Stock (the "**Series Seed-2 Preferred Stock**"). The rights, preferences, powers, privileges and restrictions, qualifications and limitations attaching to the Series C Preferred Stock, Series B-1 Preferred Stock, Series B-2 Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series Seed-1 Preferred Stock and Series Seed-2 Preferred Stock will be as set forth in this Part B of this Article Fourth. Unless otherwise indicated, references to "Sections" or "Subsections" in this Part B of this Article Fourth refer to sections and subsections of Part B of this Article Fourth.

The "**Series C Original Issue Price**" shall mean \$0.9089 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock. The "**Series B-1 Original Issue Price**" shall mean \$0.6631 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B-1 Preferred Stock. The "**Series B-2 Original Issue Price**" shall mean \$0.5304 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B-2 Preferred Stock. The "**Series A-1 Original Issue Price**" shall mean \$0.6614 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A-1 Preferred Stock. The "**Series A-2 Original Issue Price**" shall mean \$0.5291 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A-2 Preferred Stock. The "**Series A-3 Original Issue Price**" shall mean \$0.5622 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A-3

Preferred Stock. The "**Series Seed-1 Original Issue Price**" shall mean \$1.386 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Seed-1 Preferred Stock. The "**Series Seed-2 Original Issue Price**" shall mean \$0.43165 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Seed-2 Preferred Stock. The Series C Original Issue Price, the Series B-1 Original Issue Price, the Series B-2 Original Issue Price, the Series A-1 Original Issue Price, the Series A-2 Original Issue Price, the Series A-3 Original Issue Price, the Series Seed-1 Original Issue Price, and the Series Seed-2 Original Issue Price are each sometimes generically referred to herein as the applicable "**Original Issue Price**".

1. Dividends. Calculated from and after the date of the issuance of any shares of Series C Preferred Stock (in each case, the "**Series C Original Issue Date**"), dividends at the rate per annum of 6% of the Series C Original Issue Price shall accrue on such shares of Series C Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock) (the "**Series C Accruing Dividends**"). Calculated from and after the date of the issuance of any shares of Series B Preferred Stock (in each case, the "**Series B Original Issue Date**"), dividends at the rate per annum of 6% of the Series B-1 Original Issue Price or Series B-2 Original Issue Price (as applicable) shall accrue on such shares of Series B Preferred Stock (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 "**Series B Accruing Dividends**"). Calculated from and after the date of the issuance of any shares of Series A Preferred Stock, or, if applicable, any Series A Preferred Units of Base Culture, I.I.C. predecessor entity to the Corporation (in each case, the "**Series A Original Issue Date**"; the Series C Original Issue Date, the Series B Original Issue Date or Series A Original Issue Date, as applicable, is sometimes referred to herein as the "**Applicable Original Issue Date**"), dividends at the rate per annum of 6% of the Series A-1 Original Issue Price, Series A-2 Original Issue Price or Series A-3 Original Issue Price (as applicable) shall accrue on such shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock) (the "**Series A Accruing Dividends**"; collectively with the Series C Accruing Dividends and the Series B Accruing Dividends, the "**Accruing Dividends**"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative and, in the case of the Series A Accruing Dividends, compounded annually; provided however, that except as set forth in the following sentence of this Section 1 or in Subsection 2.1 (i.e., in connection with a voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as hereinafter defined)), such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors of the Corporation, and the Corporation shall be under no obligation to pay such Accruing Dividends until such time. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in these Articles of Incorporation):

1.1 first, the holders of the Series C Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series C Preferred Stock in an amount at least equal to the greater of (i) the amount of the aggregate Series

C Accruing Dividends then accrued on such share of Series C Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series C Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series C Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series C Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the applicable Series C Original Issue Price; provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series C Preferred Stock pursuant to this Section 1.1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series C Preferred Stock dividend; provided, further, in the event of a payment in full of all then-accrued Series C Accruing Dividends on each outstanding share of Series C Preferred Stock pursuant to clauses (i) or (ii) of this Section 1.1, all Series C Accruing Dividends as of such date shall be deemed in all respects paid in full, provided (for the avoidance of doubt), that Series C Accruing Dividends shall continue to accrue after such date so long as Series C Preferred Stock remains outstanding;

1.2 second, after payment in full of all Series C Accruing Dividends as of such date pursuant to Section 1.1, the holders of the Series B Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series B Preferred Stock in an amount at least equal to the greater of (i) the amount of the aggregate Series B Accruing Dividends then accrued on such share of Series B Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series B Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series B Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series B Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the applicable Series B Original Issue Price; provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series B Preferred Stock pursuant to this Section 1.2 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series B Preferred Stock dividend; provided, further, in the event of a payment in full of all then-accrued Series B Accruing Dividends on each outstanding share of Series B Preferred

Stock pursuant to clauses (i) or (ii) of this Section 1.2, all Series B Accruing Dividends as of such date shall be deemed in all respects paid in full, provided (for the avoidance of doubt), that Series B Accruing Dividends shall continue to accrue after such date so long as Series B Preferred Stock remains outstanding; and

1.3 third, after payment in full of all Series C Accruing Dividends and Series B Accruing Dividends as of such date pursuant to Sections 1.1 and 1.2, the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to the greater of (i) the amount of the aggregate Series A Accruing Dividends then accrued on such share of Series A Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series A Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the applicable Series A Original Issue Price; provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series A Preferred Stock pursuant to this Section 1.3 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series A Preferred Stock dividend; provided, further, in the event of a payment in full of all then-accrued Series A Accruing Dividends on each outstanding share of Series A Preferred Stock pursuant to clauses (i) or (ii) of this Section 1.3, all Series A Accruing Dividends as of such date shall be deemed in all respects paid in full, provided (for the avoidance of doubt), that Series A Accruing Dividends shall continue to accrue after such date so long as Series A Preferred Stock remains outstanding.

For the avoidance of doubt, the Series Seed-1 Preferred Stock and Series Seed-2 Preferred Stock shall not be entitled to any accruing dividends, and the liquidation preferences attached thereto shall be fixed in all respects, as more fully set forth in Subsection 2.1.

## 2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Preferential Payments to Holders of Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be distributed in the following order:

2.1.1 First, to the holders of shares of Series C Preferred Stock, pro rata, before any payment is made to the holders of Series B Preferred Stock, Series A-1

Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Seed-1 Preferred Stock, Series Seed-2 Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to the applicable Original Issue Price, plus any Series C Accruing Dividends accrued but unpaid thereon (such amount (as subject to adjustment as provided immediately below), the “**Series C Liquidation Amount**”); provided, however, if the amount per share of Series C Preferred Stock would have been greater had (i) all shares of Convertible Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event, and (ii) the Applicable Series Seed Preference Amounts (as hereinafter defined) were not paid to the holders of Series Seed-1 Preferred Stock or Series Seed-2 Preferred Stock pursuant to Subsection 2.1.4 (i.e., the Applicable Series Seed Preference Amounts shall be disregarded for purposes of calculating the amount the holders of Series C Preferred Stock would receive for their shares on an as-converted-to-Common-Stock basis), then, such greater amount per share shall instead constitute the “**Series C Liquidation Amount**” distributable with respect to such shares of Series C Preferred Stock; provided, further, however, if upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series C Preferred Stock the full Series C Liquidation Amount to which they shall be entitled under this Subsection 2.1.1, the holders of shares of Series C Preferred Stock shall share ratably in the distribution of such assets in proportion to the Series C Liquidation Amount owing to them if the same were paid in full (i.e., based on the total proceeds that would be payable in respect thereof had such assets been sufficient);

2.1.2 Second, to the holders of shares of Series B Preferred Stock, pro rata, after payment of the Series C Liquidation Amount pursuant to Subsection 2.1.1, but before any payment is made to the holders of Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Seed-1 Preferred Stock, Series Seed-2 Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to the applicable Original Issue Price, plus any Series B Accruing Dividends accrued but unpaid thereon (such amount (as subject to adjustment as provided immediately below), the “**Series B Liquidation Amount**”); provided, however, if the amount per share of Series B Preferred Stock would have been greater had (i) all shares of Convertible Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event, and (ii) the Applicable Series Seed Preference Amounts (as hereinafter defined) were not paid to the holders of Series Seed-1 Preferred Stock or Series Seed-2 Preferred Stock pursuant to Subsection 2.1.4 (i.e., the Applicable Series Seed Preference Amounts shall be disregarded for purposes of calculating the amount the holders of Series B Preferred Stock would receive for their shares on an as-converted-to-Common-Stock basis), then, such greater amount per share shall instead constitute the “**Series B Liquidation Amount**” distributable with respect to such shares of Series B Preferred Stock; provided, further, however, if upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series B Preferred Stock the full Series B Liquidation Amount to which they shall be entitled under this Subsection 2.1.2, the holders of shares of Series B Preferred Stock shall share ratably in the distribution of such assets in proportion to the Series B Liquidation Amount owing to them if the same were paid in full (i.e., based on the total proceeds that would be payable in respect thereof had such assets been sufficient);



2.1.3 Third, to the holders of shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, on a *pari passu* basis, after payment of the Series C Liquidation Amount pursuant to Subsection 2.1.1 and the Series B Liquidation Amount pursuant to Subsection 2.1.2, but before any payment is made to the holders of Series Seed-1 Preferred Stock, Series Seed-2 Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to the applicable Original Issue Price, plus any Series A Accruing Dividends accrued but unpaid thereon (as to each share of each such class of Series A Preferred Stock (as subject to adjustment as provided immediately below), the “**Applicable Series A Liquidation Amount**”); provided, however, if the amount per share of Series A-1 Preferred Stock, Series A-2 Preferred Stock and/or Series A-3 Preferred Stock, as applicable, would have been greater had (i) all shares of Convertible Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event, and (ii) the Applicable Series Seed Preference Amounts (as hereinafter defined) were not paid to the holders of Series Seed-1 Preferred Stock or Series Seed-2 Preferred Stock pursuant to Subsection 2.1.4 (i.e., the Applicable Series Seed Preference Amounts shall also be disregarded for purposes of calculating the amount the holders of Series A Preferred Stock would receive for their shares on an as-converted-to-Common-Stock basis), then, such greater amount per share shall instead constitute the “**Applicable Series A Liquidation Amount**” distributable with respect to such shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and/or Series A-3 Preferred Stock, as applicable; provided, further, however, if upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock the full Applicable Series A Liquidation Amounts to which they shall be entitled under this Subsection 2.1.3, the holders of shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock shall share ratably in the distribution of such assets in proportion to the Applicable Series A Liquidation Amounts owing to them if the same were paid in full (i.e., based on the total proceeds that would be payable in respect thereof had such assets been sufficient);

2.1.4 Fourth, to the holders of shares of Series Seed-1 Preferred Stock and Series Seed-2 Preferred Stock, on a *pari passu* basis, after payment of the Series C Liquidation Amount pursuant to Subsection 2.1.1, the Series B Liquidation Amount pursuant to Subsection 2.1.2 and the Applicable Series A Liquidation Amounts pursuant to Subsection 2.1.3, but before any payment is made to the holders of Common Stock pursuant to Subsection 2.1.5, an amount per share equal to the applicable Original Issue Price (as to each such class of Series Seed Preferred Stock, the “**Applicable Series Seed Preference Amount**”); provided, however, if upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series Seed-1 Preferred Stock and Series Seed-2 Preferred Stock the full Applicable Series Seed Preference Amounts to which they shall be entitled under this Subsection 2.1.4, the holders of shares of Series Seed-1 Preferred Stock and Series Seed-2 Preferred Stock shall share ratably in the distribution of such remaining assets in proportion to the Applicable Series Seed Liquidation Amounts owing to them if the same were paid in full (i.e., based on the total proceeds that would be payable in respect thereof had such assets been sufficient); and

2.1.5 Fifth, to the holders of shares of Series Seed-1 Preferred Stock, Series Seed-2 Preferred Stock and/or Common Stock (but not the holders of Series C Preferred Stock, Series B Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock or Series A-3 Preferred Stock), pro rata based on the number of shares held by each such holder of Series Seed-1 Preferred Stock, Series Seed-2 Preferred Stock and/or Common Stock.

For the avoidance of doubt, the Series C Preferred Stock, the Series B Preferred Stock and the Series A Preferred Stock shall be non-participating Preferred Stock (i.e., the distribution of the assets of the Corporation in respect of the Series C Preferred Stock shall be governed only by the terms of Subsection 2.1.1, the distribution of the assets of the Corporation in respect of the Series B Preferred Stock shall be governed only by the terms of Subsection 2.1.2, and the distribution of the assets of the Corporation in respect of the Series A Preferred Stock shall be governed only by the terms of Subsection 2.1.3), while the Series Seed Preferred Stock shall be participating Preferred Stock (i.e., the distribution of the assets of the Corporation in respect of the Series Seed Preferred Stock shall be governed by the terms of Subsection 2.1.4 and this Subsection 2.1.5, as applicable). For the avoidance of doubt, the holders of Series C Preferred Stock, Series B Preferred Stock and/or Series A Preferred Stock shall be entitled to optionally convert their shares into Common Stock pursuant to the conversion provisions of these Articles of Incorporation.

2.2 Reserved.

2.3 Deemed Liquidation Events.

2.3.1 Definition. Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of (a) at least a majority, by voting power, of the then outstanding shares of Series C Preferred Stock, voting as a separate class, (b) at least a majority, by voting power, of the then outstanding shares of Series B Preferred Stock, voting as a separate class, and (c) at least a majority, by voting power, of the then outstanding shares of Series A Preferred Stock, voting as a separate class (the holders under the foregoing clauses (a), (b) and (c), collectively, the “**Required Holders**”), voting as a consolidated class, i.e., with all shares of Series C Preferred Stock, Series B Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock voting together (such classes of Preferred Stock are sometimes collectively referred to herein as the “**Convertible Preferred Stock**”), elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

- (a) a merger or consolidation in which
  - (i) the Corporation is a constituent party or
  - (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock

that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole or the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

### 2.3.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be paid to the holders of capital stock of the Corporation in accordance with Subsection 2.1.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the Florida Statutes within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Convertible Preferred Stock no later than the ninetieth (90<sup>th</sup>) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the redemption of such shares of Convertible Preferred Stock, and (iii) if the holders of at least a majority, by voting power, of the then outstanding shares of Convertible Preferred Stock, so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Florida law governing distributions to stockholders (the “**Available Proceeds**”), on the one hundred fiftieth (150<sup>th</sup>) day after such Deemed Liquidation Event, to redeem all outstanding shares of Convertible Preferred Stock at a purchase price per share equal to the Series C Liquidation Amount, the Series B Liquidation Amount and Applicable Series A Liquidation Amount, as applicable. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Convertible Preferred Stock at a purchase price per share equal to the Series C Liquidation Amount, the Series B Liquidation Amount and Applicable Series A Liquidation Amount, as applicable, the Corporation shall, first, ratably redeem the Series C Preferred Stock to the fullest extent of such Available Proceeds, and, second, ratably redeem the Series B Preferred Stock to the fullest extent of such

Available Proceeds, and, third, ratably redeem the Series A Preferred Stock to the fullest extent of such Available Proceeds, and, fourth, redeem the remaining shares as soon as it may lawfully do so under Florida law governing distributions to stockholders. Prior to the distribution or redemption provided for in this Subsection 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

2.3.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders pursuant to such Deemed Liquidation Event. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

2.3.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Subsection 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the Merger Agreement shall provide that (a) 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 Subsection 2.1 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 Subsection 2.1 after taking into account the previous payment of the Initial Consideration as part of the same transaction, and after taking into account any indemnification and other liabilities required to be satisfied from such Additional Consideration. For the purposes of this Subsection 2.3.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

### 3. Voting.

3.1 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 Convertible Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Convertible Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter, and each holder of Series Seed Preferred Stock shall be entitled to cast the number of votes equal to the number of shares of Series Seed Preferred Stock held by such holder. Except as provided by law or by the other provisions of these Articles of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a consolidated class, with all shares of Series C Preferred Stock, Series B Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series Seed-1 Preferred Stock, Series Seed-2 Preferred Stock and Common Stock voting together, and with all shares of Convertible Preferred Stock calculated on an as-converted-to-Common-Stock basis. For the avoidance of doubt, the

Series Seed Preferred Stock shall not be convertible into Common Stock pursuant to Section 4, and therefore the holders thereof shall only vote based on the number of shares of Series Seed Preferred Stock held by them at the time such vote is taken.

3.2 Election of Directors. The holders of record of the shares of Series B Preferred Stock and Series C Preferred Stock, voting together as a single class, shall be entitled to elect one (1) director of the Corporation (the "**Series B/C Director**"). the holders of record of the shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, voting together as a consolidated class, shall be entitled to elect one (1) director of the Corporation (the "**Series A Director**"); together with the Series B/C Director, the "**Convertible Preferred Directors**"). the holders of record of the shares of Series Seed-1 Preferred Stock, voting separately as a single class, shall be entitled to elect one (1) director of the Corporation, and the holders of record of the shares of Common Stock, voting separately as a single class, shall be entitled to elect two (2) directors of the Corporation. Any director elected as provided in the preceding sentence 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, Series Seed-1 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 pursuant to the first sentence of this Subsection 3.2, 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, Series Seed-1 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. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class(es) or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class(es) or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class(es) or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2. The rights of the holders of the Series B Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date on which there are less than fifty percent (50%) of the shares of Series B Preferred Stock issued and outstanding as of the date of these Articles of Incorporation (subject to adjustment for any stock split, reverse stock split or combination or other similar pro rata recapitalization event affecting the stock of the Corporation). The rights of the holders of the Series A Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date on which there are less than fifty percent (50%) of the shares of Series A Preferred Stock issued and outstanding as of the date of these Articles of Incorporation (subject to adjustment for any stock split, reverse stock split or combination or other similar pro rata recapitalization event affecting the stock of the Corporation). The rights of the holders of the Series Seed-1 Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date on which there are less than twenty-five percent (25%) of the shares of Series Seed-1 Preferred Stock issued and outstanding as of the date of these Articles of Incorporation. The rights of the holders of the Common Stock under the first sentence of this Subsection 3.2 shall terminate on the first date on which there are less than twenty-five percent (25%) of the shares of Common Stock issued and

outstanding as of the date of these Articles of Incorporation. The voting of capital stock in respect of the appointment and removal of directors may be subject to the terms of one or more agreements made by and among the stockholders of the Corporation, including, without limitation, that certain Amended and Restated Stockholders' Agreement executed on or about the date of these Articles of Incorporation (as the same may be further amended or restated from time to time).

3.3 Convertible Preferred Stock Protective Provisions. At any time when at least fifty percent (50%) of the shares of Convertible Preferred Stock which are issued and outstanding as of the date of the final closing taking place under that certain Series C Preferred Stock Purchase Agreement, executed on or about the date of these Articles of Incorporation, but which may have multiple closing dates as contemplated therein (the "**Series C Purchase Agreement**"), remain outstanding (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Convertible Preferred Stock), the Corporation shall not (and shall cause any of its subsidiaries not to), either directly or indirectly by amendment, merger, consolidation or otherwise, enact, effectuate or otherwise take any of the following actions without (in addition to any other vote required by law or these Articles of Incorporation) the written consent or affirmative vote of the holders of at least a majority, by voting power, of the then outstanding shares of Convertible Preferred Stock, voting together as a consolidated class on an as-converted-to-Common-Stock basis, at a meeting or via written consent, 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:

3.3.1 any amendment of these Articles of Incorporation or the Bylaws of the Corporation in a manner that would: (A) adversely affect the powers, preferences or rights expressly granted to holders of Convertible Preferred Stock; (B) discriminate against holders of Convertible Preferred Stock (i.e., that would apply to holders of Convertible Preferred Stock and not all stockholders generally, or the application of which would disproportionately affect holders of Convertible Preferred Stock); or (C) impose any new (or increase any existing) obligations on the holders of Convertible Preferred Stock, including, without limitation, payment, performance or indemnification obligations, or the requirement to submit to any personal liability; provided, however, if any such amendment would only apply with respect to one or two, but not all three classes of Convertible Preferred Stock (i.e., the Series C Preferred Stock, the Series B Preferred Stock and the Series A Preferred Stock) in the same manner, then, only the vote of the holders of at least a majority, by voting power, of the then outstanding shares of such affected class(es), voting separately as a single class or classes, as applicable, on an as-converted-to-Common-Stock basis, shall be required (e.g., (x) if any such amendment would only apply with respect to the Series C Preferred Stock and not the Series B Preferred Stock and the Series A Preferred Stock, then, only the vote of the holders of at least a majority of the Series C Preferred Stock shall be required and (y) if any such amendment would only apply with respect to the Series C Preferred Stock and the Series A Preferred Stock and not the Series B Preferred Stock, then, only the vote of the holders of at least a majority of the Series C Preferred Stock and the Series A Preferred Stock shall be required);

3.3.2 any increase in the shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock authorized under these Articles of Incorporation, or any authorization or issuance of securities of any class having rights or preferences superior to or on a parity with the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock

as to dividend rights, liquidation preferences or redemption rights, unless such issuance has been approved by the vote or written consent of the Board of Directors of the Corporation, including the affirmative vote or written consent of at least one Convertible Preferred Director;

3.3.3 consummating any Deemed Liquidation Event, merger, reorganization, consolidation or division of the Corporation with or into one or more other entities (other than solely for the purpose of changing the Corporation's domicile to Delaware) at any time prior to May 13, 2023, or consenting to any of the foregoing;

3.3.4 creating or holding any capital stock or membership interest in any subsidiary that is not wholly owned by the Corporation or any of its subsidiaries, or effectuating a sale, transfer or other disposition of any such non-wholly-owned subsidiary;

3.3.5 making any declaration or payment of any dividend, or purchasing, repurchasing or redeeming any shares of capital stock, other than repurchases made in connection with a cessation of service to the Corporation, subject to the terms of the grant documentation applicable thereto;

3.3.6 making any loan or advance to, guarantees for the benefit of, or investments in, any entity, company, partnership, business or other person, at any time (other than the advancement of employee expenses in the ordinary course of business in an amount not to exceed \$50,000 at any time outstanding in respect of any individual employee and \$150,000 at any time outstanding in the aggregate among all employees);

3.3.7 consummating any acquisition of another enterprise for a purchase price greater than \$250,000;

3.3.8 consummating any initial public offering of the Corporation;

3.3.9 incurring any unsecured indebtedness (other than trade debt incurred in the ordinary course of business) in an aggregate amount in excess of \$5,000,000 outstanding at any time;

3.3.10 incurring any secured indebtedness other than (A) secured indebtedness existing as of the date of these Articles of Incorporation, (B) secured indebtedness issued by banks and/or other reputable financial institutions, or (C) secured indebtedness incurred by the Corporation in connection with equipment or assets financed pursuant to capital leases and/or purchase money security interests, in each case of clause (B) and (C), unless such secured indebtedness has been approved by the vote or written consent of the Board of Directors of the Corporation, including the affirmative vote or written consent of at least one Convertible Preferred Director (in which event the separate approval of the holders of Convertible Preferred Stock shall not be required);

3.3.11 consummating any transaction with any affiliate of the Corporation, any stockholder, or any affiliate of any stockholder, other than a transaction which is made on fair and reasonable terms as favorable to the Corporation (or any subsidiary) as would be obtained by the Corporation (or such subsidiary) in a comparable arm's length transaction with a person other than an affiliate, stockholder or affiliate of a stockholder, and the existence and

principal terms of which transaction are disclosed in writing to all members of the Board of Directors prior to consummation of such transaction:

3.3.12 changing the name of the Corporation's primary brand to something other than "Base Culture", materially changing the nature of the Corporation's business, or entering into the ownership, active management or operation of any line of business which is materially different from the line of business engaged in by the Corporation as of the date of these Articles of Corporation;

3.3.13 produce, manufacture, market or sell any products containing cannabidiol;

3.3.14 sell, assign, license, pledge, or encumber material technology or intellectual property of the Corporation, other than licenses granted in the ordinary course of business, including, without limitation, in connection with the manufacture, distribution, sale and marketing of the Corporation's products;

3.3.15 (A) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock in respect of liquidation preference, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock in respect of any such right, preference, or privilege or (B) reclassify, alter or amend any existing security of the Corporation that is junior to the Series A Preferred Stock in respect of liquidation preference, 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 C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock in respect of any such right, preference or privilege, in each case of clause (A) and (B), unless such reclassification, alteration or amendment has been approved by the vote or written consent of the Board of Directors of the Corporation, including the affirmative vote or written consent of at least one Convertible Preferred Director (in which event the separate approval of the holders of Convertible Preferred Stock shall not be required);

3.3.16 adopt or make material modifications to the Corporation's annual budget, in either case, without the vote or written consent of the Board of Directors of the Corporation, including the affirmative vote or written consent of at least one Convertible Preferred Director (in which event the separate approval of the holders of Convertible Preferred Stock shall not be required); or

3.3.17 increase the number of shares of Common Stock reserved for issuance pursuant to the Corporation's Stock Option and Grant Plan, unless such increase has been approved by the vote or written consent of the Board of Directors of the Corporation, including the vote of at least one Convertible Preferred Director (in which event the separate approval of the holders of Convertible Preferred Stock shall not be required).

#### 4. Optional Conversion.



The holders of Convertible Preferred Stock shall have conversion rights as follows (the **"Convertible Preferred Conversion Rights"**):

4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable Conversion Price (as hereinafter defined) in effect at the time of conversion. The **"Series C Conversion Price"** shall initially be equal to \$0.9089. The **"Series B-1 Conversion Price"** shall initially be equal to \$0.6631. The **"Series B-2 Conversion Price"** shall initially be equal to \$0.5304. The **"Series A-1 Conversion Price"** shall initially be equal to \$0.6614. The **"Series A-2 Conversion Price"** shall initially be equal to \$0.5291. The **"Series A-3 Conversion Price"** shall initially be equal to \$0.5622. The Series C Conversion Price, the Series B-1 Conversion Price, the Series B-2 Conversion Price, the Series A-1 Conversion Price, the Series A-2 Conversion Price and the Series A-3 Conversion Price are sometimes generically referred to herein as the applicable **"Conversion Price"**. Such initial applicable Conversion Price, and the rate at which shares of Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. For the avoidance of doubt, the Series Seed Preferred Stock shall not be subject to conversion.

4.1.2 Termination of Convertible Preferred Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Convertible Preferred Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Convertible Preferred Stock.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Convertible 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 of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Convertible 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.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Convertible Preferred Stock to voluntarily convert shares of Convertible Preferred Stock into shares of Common Stock, such holder shall (a) provide written notice to the Corporation's transfer agent at the office of the transfer agent for the Convertible 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 Convertible 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 Convertible 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 Convertible 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 "**Convertible Preferred Stock 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 Convertible Preferred Stock Conversion Time (i) issue and deliver to such holder of Convertible Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Convertible Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Convertible Preferred Stock converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Convertible 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 Convertible 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 Convertible 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 Convertible 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 these Articles of Incorporation. Before taking any action which would cause an adjustment reducing the applicable Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the applicable series of Convertible 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 applicable Conversion Price.

4.3.3 Effect of Conversion. All shares of Convertible 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 Convertible Preferred Stock 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 Subsection 4.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Convertible 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 Convertible Preferred Stock accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the applicable Conversion Price shall be made for any declared but unpaid dividends on the Convertible Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5 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 Convertible Preferred Stock pursuant to this Section 4. 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 Convertible 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.

#### 4.4 Adjustments to Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

(a) “**Option**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(b) “**Convertible Securities**” shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(c) “**Additional Shares of Common Stock**” shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Applicable Original Issue Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, “**Exempted Securities**”):

- (i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Convertible Preferred Stock;
- (ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other

distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;

- (iii) shares of Common Stock or Options issued to employees or directors of, or consultants, advisors or other service providers to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation;
- (iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;
- (v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including the approval of at least one Convertible Preferred Director;
- (vi) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of the Corporation, including the approval of at least one Convertible Preferred Director;
- (vii) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board of Directors of the

Corporation, including the approval of at least one Convertible Preferred Director; or

- (viii) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation, including the approval of at least one Convertible Preferred Director.

4.4.2 No Adjustment of Conversion Price. No adjustment in a Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority, by voting power, of the then outstanding shares of Convertible Preferred Stock, voting as a consolidated class, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Applicable Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities 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, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) 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.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to a Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the applicable Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in

effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing a Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the applicable Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to a Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the applicable Conversion Price then in effect, or because such Option or Convertible Security was issued before the Applicable Original Issue Date), are revised after the Applicable Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the applicable Conversion Price pursuant to the terms of Subsection 4.4.4, the applicable Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to a Conversion Price provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to a Conversion Price that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of

consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the applicable Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Applicable Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than any Conversion Price in effect immediately prior to such issue, then the applicable Conversion Price 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:

(a) "CP<sub>2</sub>" shall mean the applicable Conversion Price in effect immediately after such issue of Additional Shares of Common Stock

(b) "CP<sub>1</sub>" shall mean the applicable Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) "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 Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "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 CP<sub>1</sub> (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP<sub>1</sub>); and

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

4.4.5 Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

(i) 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;

- (ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and
- (iii) in the event Additional Shares of Common Stock are issued together with other shares 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 (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) 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 Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

- (i) 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 for a subsequent adjustment of such consideration) 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
- (ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable 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.

4.4.6 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 a Conversion Price pursuant to the terms of Subsection 4.4.4, 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).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Applicable Original Issue Date effect a subdivision of the outstanding Common Stock, each Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Applicable Original Issue Date combine the outstanding shares of Common Stock, each Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Applicable Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event each Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, each Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) no such adjustment shall be made if the holders of Convertible Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Convertible Preferred Stock had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the applicable Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Convertible Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Convertible Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Convertible Preferred Stock) are converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Convertible Preferred Stock shall thereafter be convertible, in lieu of the Common Stock into which it was convertible prior to such event, into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Convertible Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Convertible Preferred Stock, to the end that the provisions set forth in this Section 4 (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 securities or other property thereafter deliverable upon the conversion of the Convertible Preferred Stock. For the avoidance of doubt, nothing in this Subsection 4.8 shall be construed as preventing the holders of Convertible Preferred Stock from seeking any appraisal rights to which they are otherwise entitled under the Florida Statutes in connection with a merger triggering an adjustment hereunder, nor shall this Subsection 4.8 be deemed conclusive evidence of the fair value of the shares of Convertible Preferred Stock in any such appraisal proceeding.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of a Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Convertible Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Convertible Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Convertible Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the applicable Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Convertible Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Convertible Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Convertible Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Convertible Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Convertible Preferred Stock and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

## 5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock, at a purchase price of at least three (3) times the Series B-1 Original Issue Price, to the public in a firm-commitment underwritten public offering pursuant to an effective

registration statement under the Securities Act of 1933, as amended, or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least a majority, by voting power, of the then outstanding shares of Convertible Preferred Stock, voting as a consolidated class (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 "**Mandatory Convertible Preferred Stock Conversion Time**"). then (i) all outstanding shares of Convertible Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective applicable conversion rate as calculated pursuant to Subsection 4.1.1, and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Convertible Preferred Stock shall be sent written notice of the Mandatory Convertible Preferred Stock Conversion Time and the place designated for mandatory conversion of all such shares of Convertible Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Convertible Preferred Stock Conversion Time. Upon receipt of such notice, each holder of shares of Convertible 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 Convertible Preferred Stock converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Convertible Preferred Stock 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 Subsection 5.2. As soon as practicable after the Mandatory Convertible Preferred Stock Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Convertible Preferred Stock, the Corporation shall (a) 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 (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Convertible Preferred Stock converted. Such converted Convertible 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 Convertible Preferred Stock accordingly.

6. Reserved.

7. Redeemed or Otherwise Acquired Shares. Any shares of Convertible Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its

subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Convertible Preferred Stock following redemption.

8. Waiver. Any of the rights, powers, preferences and other terms of the Series C Preferred Stock set forth herein may be waived on behalf of all holders of Series C Preferred Stock by the affirmative written consent or vote of the holders of at least a majority, by voting power, of the shares of Series C Preferred Stock then outstanding, voting as a separate class. 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 holders of at least a majority, by voting power, of the shares of Series B Preferred Stock then outstanding, voting as a separate class. 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 holders of at least a majority, by voting power, of the shares of Series A Preferred Stock then outstanding, voting as a consolidated class (i.e., with all shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock voting together). Any of the rights, powers, preferences and other terms of the Series Seed-1 Preferred Stock set forth herein may be waived on behalf of all holders of Series Seed-1 Preferred Stock by the affirmative written consent or vote of the holders of at least a majority, by voting power, of the shares of Series Seed-1 Preferred Stock then outstanding, voting as a separate class. Any of the rights, powers, preferences and other terms of the Series Seed-2 Preferred Stock set forth herein may be waived on behalf of all holders of Series Seed-2 Preferred Stock by the affirmative written consent or vote of the holders of at least a majority, by voting power, of the shares of Series Seed-2 Preferred Stock then outstanding, voting as a separate class. Any of the rights, powers, preferences and other terms of the Common Stock set forth herein may be waived on behalf of all holders of Common Stock by the affirmative written consent or vote of the holders of at least a majority, by voting power, of the shares of Common Stock then outstanding, voting as a separate class.

9. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of capital stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication (with receipt of confirmation) in compliance with the provisions of the Florida Statutes, and shall be deemed sent upon such mailing or receipt of electronic transmission.

### **C. PREEMPTIVE RIGHTS**

Each holder of Preferred Stock and Common Stock shall have the right, but not the obligation, to purchase up to holder's pro rata share of all shares of capital stock and securities convertible into shares of capital stock (e.g., convertible promissory notes) that the Board of Directors of the Corporation may, from time to time, propose to sell and issue after the date of these Articles of Incorporation (in each case, a "**New Issuance**"). Each such holder's pro rata share of any New Issuance shall equal the product of (i) the number of shares of capital stock proposed to be sold pursuant to such New Issuance (or, in the case of convertible debt, the dollar amount of convertible debt being sold), multiplied by (ii) such holder's then-current pro-rata ownership percentage of the Corporation, with such pro-rata ownership percentage of the Corporation being calculated based on the number of shares of Preferred Stock and/or Common

Stock held by such holder (with any shares of Convertible Preferred Stock held by such holder being calculated on an as-converted-to-Common-Stock basis), and the total number of shares of Preferred Stock and Common Stock then-issued and outstanding (with all shares of Convertible Preferred Stock being calculated on an as-converted-to-Common-Stock basis).

If the Board of Directors wishes to make any New Issuance, it shall give each holder of Preferred Stock and Common Stock written notice of its intention, which describes the price and other material terms and conditions applicable to such New Issuance. Such notice may be given before, during or after the commencement of such New Issuance, so long as a sufficient amount of such New Issuance is reserved for holders of Preferred Stock and Common Stock who may wish to participate. Such notice may also be delivered via electronic means. Each holder of Preferred Stock and Common Stock shall have at least ten (10) days from the giving of such notice to purchase up to its pro rata share of such New Issuance for the price and upon the terms and conditions specified in the notice. Notwithstanding anything to the contrary herein, the defined term "**New Issuance**" shall not include, and the preemptive rights set forth in this Section C shall not apply to, any shares of capital stock issued or issuable:

- (i) pursuant to a transaction, including with respect to any equity financing of the Corporation, involving the Corporation and any Strategic Investor (as hereinafter defined), or any other third party whom the Board of Directors of the Corporation, including the affirmative vote or written consent of at least one Convertible Preferred Director, reasonably determines will be a value-add institutional partner to the Corporation;

- (ii) pursuant to an acquisition of another entity by the Corporation by merger, consolidation or similar business combination, or acquisition of all or substantially all of the equity or assets of such entity, which is approved by the Board of Directors of the Corporation and, if applicable, the holders of Convertible Preferred Stock pursuant to Subsection 3.3.7;

- (iii) to equipment lessors, banks, or similar institutional credit financing sources pursuant to plans or arrangements approved the Board of Directors of the Corporation, including the affirmative vote or written consent of at least one Convertible Preferred Director;

- (iv) to the public pursuant to an initial public offering or an offering made pursuant to Regulation A of the Securities Act of 1933, as amended; or

- (v) to any stockholder in respect of any stock split, reverse stock split, combination, recapitalization, reclassification, merger, consolidation or otherwise.

For purposes hereof, a "**Strategic Investor**" shall mean and include (i) any company operating in the food and beverage industry generally (for example, The Coca-Cola Company, PepsiCo, Dr. Pepper Snapple Group, General Mills, Frito Lay, Nestle, etc.), together with their affiliated entities, and (ii) any private equity fund, family office or similar investment group with significant experience in the food and beverage industry. Whether or not a third party qualifies as a Strategic

Investor shall be decided by the Board of Directors of the Corporation (including the consent of at least one of the Convertible Preferred Directors) in its reasonable discretion.

Notwithstanding anything to the contrary in these Articles of Incorporation, the preemptive rights set forth in this Section C may be waived with the affirmative vote or written consent of (i) the holders of a majority of the issued and outstanding Common Stock, voting separately as a single class, and (ii) for so long as at least fifty percent (50%) of the shares of Series C Preferred Stock issued and sold pursuant to the Series C Purchase Agreement remain outstanding, the holders of a majority of the issued and outstanding Series C Preferred Stock, voting separately as a single class, and (iii) for so long as at least fifty percent (50%) of the shares of Series B Preferred Stock issued and outstanding as of the date of these Articles of Incorporation remain outstanding, the holders of a majority of the issued and outstanding Series B Preferred Stock, voting separately as a single class, and (iv) for so long as at least fifty percent (50%) of the shares of Series A Preferred Stock issued and outstanding as of the date of these Articles of Incorporation remain outstanding, the holders of a majority of the issued and outstanding Series A Preferred Stock, voting separately as a consolidated class (i.e., with all shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock voting together), and (v) for so long as at least fifty percent (50%) of the shares of Series Seed-2 Preferred Stock issued and outstanding as of the date of these Articles of Incorporation remain outstanding, the holders of a majority of the issued and outstanding Series Seed-2 Preferred Stock, voting separately as a single class.

**FIFTH:** The names and addresses for the directors and officers of the Corporation shall be maintained internally at the Corporation's principal office.

**SIXTH:** The name and address of the initial registered agent of the Corporation is Jordann Windschauer, 5160 140th Avenue North, Clearwater, Florida 33760.

**SEVENTH:** The name and address of the Incorporator of the Corporation is Jordann Windschauer, 5160 140th Avenue North, Clearwater, Florida 33760.

**EIGHTH:** Subject to any additional vote required by these Articles of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

**NINTH:** Subject to any additional vote required by these Articles of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

**TENTH:** Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

**ELEVENTH:** Meetings of stockholders may be held within or without the State of Florida, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Florida at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

**TWELFTH:** 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. If the Florida Statutes or any other law of the State of Florida is amended after approval by the stockholders of this Article Twelfth 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 Florida Statutes as so amended. Any repeal or modification of the foregoing provisions of this Article Twelfth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, 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.

**THIRTEENTH:** To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which Florida Statutes permits the Corporation to provide 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 Florida Statutes. Any amendment, repeal or modification of the foregoing provisions of this Article Thirteenth shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

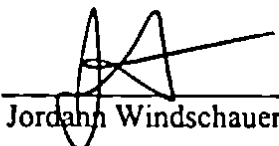
**FOURTEENTH:** The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "**Excluded Opportunity**" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Convertible Preferred Stock or any partner, member, director, stockholder, employee, affiliate or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "**Covered Persons**"). unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

**FIFTEENTH:** For purposes of Section 500 of the California Corporations Code (if and to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under these Articles of Incorporation from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under these Articles of Incorporation), such repurchase may be made without regard to any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined therein) shall be deemed to be zero (0).

\* \* \*




Having been named as registered agent to accept service of process for the above stated Corporation at the place designated in these Amended and Restated Articles of Incorporation, I am familiar with and accept the appointment as registered agent and agree to act in this capacity.

Signature:  \_\_\_\_\_  
Jordann Windschauer, Registered Agent

Date: January 13, 2021

I submit this document and affirm that the facts stated herein are true. I am aware that any false information submitted in a document to the Florida Department of State constitutes a third-degree felony as provided for in Section 817.155 of the Florida Statutes.

Signature:  \_\_\_\_\_  
Jordann Windschauer, Incorporator

Date: January 13, 2021