

P21000097792

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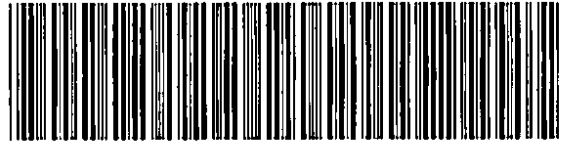
(Business Entity Name)

(Document Number)

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*Amended & Restated
Articles*

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2022 NOV -1 PM 3:50

A. RAMSEY

NOV 04 2022

* 02250, 00524, 00671 01092



FLORIDA DEPARTMENT OF STATE
Division of Corporations

November 2, 2022

FLORIDA CAPITAL COURIER SERVICES, INC.

TALLAHASSEE, FL 32309

SUBJECT: NXTCRE CORP.
Ref. Number: P21000097792

We have received your document for NXTCRE CORP. and the authorization to debit your account in the amount of \$43.75. However, the document has not been filed and is being returned for the following:

The current name of the entity is as referenced above. Please correct your document accordingly.

Please include a statement that the amended and restated articles were adopted by the board of directors and does not contain any amendments requiring shareholder approval OR if the amended and restated articles contain an amendment requiring shareholder approval please include the date of adoption by the shareholders. Please see Article V paragraph C. There is a black box blocking some of the wording.

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

If you have any questions concerning the filing of your document, please call (850) 245-6823.

Annette Ramsey
OPS

Letter Number: 322A00024559

RECEIVED

2022 NOV -3 PM 12:32

FLORIDA
TALLAHASSEE, FLORIDA

FLORIDA CAPITAL COURIER SERVICES, INC.
2330 CLARE DRIVE
TALLAHASSEE, FL 32309
(850) 524-5437
(850) 524-624

PLEASE USE FUNDS FROM THIS ACCOUNT: I20210000160 AMOUNT: \$43.75

AUTHORIZATION SIGNATURE: James Kelly

nextCRE Corp. P21000097792

BUSINESS (Name)

Document #

☐ Walk in

☐ Pick up time

☐ Mail out

☐ Will wait

☐ Photocopy

☐ Certified Copy of Organization (please stamp each page)

☒ Certificate of Status

NEW FILINGS

☐ Profit

☐ Not for Profit

☐ Limited Liability

☐ Domestication

☐ Other

☐ CORP

AMMENDMENTS

☒ Amendment

☐ Resignation of R.A. Officer/Director

☐ Change of Registered Agent

☐ Dissolution/Withdrawal

☐ Merger

☐ Conversion

OTHER FILINGS

☐ Annual Report

☐ Fictitious Name

☐ APOSTIL()

Country

☐ Other

REGISTRATION/QUALIFICATIONS

☐ Foreign filing

☐ Limited Partnership

☐ Reinstatement

☐ Statement of Authority

EXAMINER'S INITIALS: _____

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: nxtCRE Corp.

DOCUMENT NUMBER: P21000097792

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Scott E. Tuckman

Name of Contact Person

Lavin Law Group, P.A.

Firm/ Company

2670 NE 215 street

Address

Miami, Florida 33180

City/ State and Zip Code

stuckman@lavinlawyers.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Scott Tuckman at (561) 866-4909
Name of Contact Person Area Code & Daytime Telephone Number

Enclosed is a check for the following amount made payable to the Florida Department of State:

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> \$35 Filing Fee | <input checked="" type="checkbox"/> \$43.75 Filing Fee & Certificate of Status | <input type="checkbox"/> \$43.75 Filing Fee & Certified Copy (Additional copy is enclosed) | <input type="checkbox"/> \$52.50 Filing Fee Certificate of Status Certified Copy (Additional Copy is enclosed) |
|--|---|---|--|

Mailing Address
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address
Amendment Section
Division of Corporations
The Centre of Tallahassee
2415 N. Monroe Street, Suite 810
Tallahassee, FL 32303

FILED
2022 NOV -3 AM 9:09

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF
NXTCRE, INC.
a Florida Corporation

Pursuant to the provisions of the Florida Business Corporation Act (the "*Act*"), the following Amended and Restated Articles of Incorporation are hereby submitted for filing: to replace and supersede all prior filed Articles of Incorporation of NxtCRE, Inc.

ARTICLE I.

The name of the corporation is NxtCRE, Inc. (the "*Corporation*").

ARTICLE II.

The period of duration of the Corporation is perpetual. The purpose of the Corporation is to engage in any business, the conduct of which is not forbidden to corporations by the Constitution, statutes or common law of the state of Florida, including but not limited to, the Act. The address of the registered office of the Corporation is 2670 NE 215th Street, Miami, FL 33180, and the name of the registered agent at such address is Andrew T. Lavin.

ARTICLE III.

A. Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 13,500,000 shares, 12,500,000 shares of which shall be Common Stock (the "*Common Stock*") and 1,000,000 shares of which shall be Preferred Stock (the "*Preferred Stock*"). The Preferred Stock shall have no par value per share and the Common Stock shall have no par value per share.

B. Common Stock. Except to the extent rights, preferences, privileges or restrictions are granted to the Preferred Stock, or as provided below, the Common Stock has unlimited voting rights and is entitled to receive the net assets of the Corporation upon dissolution. Except to the extent rights, preferences, privileges or restrictions are granted to the Preferred Stock, or as provided below, the relative rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock and the holders thereof are as follows:

1. Dividend Rights. The holders of record of outstanding shares of Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation (the "*Board*"), out of any funds of the Corporation legally available therefor, such cash and other dividends as may be declared from time to time by the Board subject, however, to any preferential rights granted to any series of the Preferred Stock to first receive such assets and funds.

2. Liquidation Rights. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary (each, a "*Liquidation Event*"), the holders of issued and outstanding shares of Common Stock shall be entitled to receive ratably, based on the total number of shares of Common Stock held by each, all the assets and funds of the Corporation available for distribution to its shareholders, whether from capital or surplus, subject, however, to any preferential rights granted to any series of the Preferred Stock to first receive such assets and funds.

3. Voting Rights. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held.

4. Changes in the Authorized Number of Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then-outstanding) by the affirmative vote of the holders of a majority of the capital stock of the Corporation entitled to vote, voting together as a single class on an as-converted basis, and the Common Stock shall not be entitled to any separate class vote in connection with any such increase or decrease.

C. Designation of Rights and Preferences of Preferred Stock. All of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "*Series A Preferred*"). Except as otherwise provided or authorized in these Articles, all shares of Series A Preferred shall be identical and shall entitle the holders thereof to the same rights and privileges.

D. Preferred Stock. The rights, preferences, privileges and restrictions granted to or imposed upon the Series A Preferred and the holders thereof are as follows:

1. DIVIDEND RIGHTS.

(a) Holders of the Series A Preferred, in preference to the holders of Common Stock and on a pari passu basis among the holders of Series A Preferred, shall be entitled to receive, regardless of any declaration by the Board, but only out of funds that are legally available therefor, aggregate cash dividends equal to the Preference Amount, where the "Preference Amount" is three hundred percent (300%) of the Original Issue Price (as defined below). The balance due of any Preference Amount, to the extent unpaid in full prior to a Liquidation Event, Acquisition, or Asset Transfer (each as defined below) shall be payable upon a Liquidation Event, Acquisition or Asset Transfer, only to the extent that such transaction generates cash, after payment of all expenses of the transaction, to Corporation in an amount sufficient to pay the balance of the Preference Amount.

(b) The "*Original Issue Price*" shall be \$0.505 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares of Series A Preferred which occurs after the filing date hereof).

(c) So long as any Preference Amount remains unpaid on outstanding shares of Series A Preferred, the Corporation shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until the entire Preference Amount has been paid, except for:

(i) distributions from which the entire Preference Amount is paid;

(ii) acquisitions of Common Stock by the Corporation pursuant to agreements approved by the Board which permit the Corporation to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Corporation;

(iii) acquisitions of Common Stock in exercise of the Corporation's right of first refusal to repurchase such shares pursuant to agreements approved by the Board; or

(iv) distributions to holders of Common Stock in accordance with Sections 3 and 4.

(d) The provisions of Section 1(c) shall not apply to a dividend payable solely in Common Stock to which the provisions of Section 5(f) hereof are applicable. In addition, the provisions of Sections 1(c) shall not apply to any repurchase of any outstanding securities of the Corporation that is approved by the Board and the Requisite Holders (as defined below), including any distribution in

redemption or cancellation of shares of the Common Stock or rights to acquire shares of the Common Stock held by a former employee or consultant of the Corporation.

(c) **Non-Cash Distributions.** Whenever a dividend or distribution provided for in this Section 1 shall be payable in property other than cash, the value of such dividend or distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board.

2. VOTING RIGHTS.

(a) **General Rights.** Each holder of shares of Series A Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series A Preferred could be converted at the time of the vote (pursuant to Section 5 hereof) and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Corporation. Except as otherwise provided herein or as required by law, the Series A Preferred shall vote together with the Common Stock at any annual or special meeting of the shareholders and not as a separate class and may act by written consent in the same manner as the Common Stock.

(b) **Separate Vote of Series A Preferred.** For so long as at least 250,000 shares of Series A Preferred (subject to adjustment for any stock dividends, combinations, splits, recapitalizations or other similar event affecting the number of outstanding Series A Preferred shares after the filing date hereof), in addition to any other vote or consent required herein or by law, the vote or written consent of the Requisite Holders (as defined below) shall be necessary for effecting or validating the following actions (whether by amendment, merger, recapitalization or otherwise):

(i) Any amendment, alteration, waiver or repeal of any provision of these Articles or the Bylaws that (A) alters or changes the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series A Preferred; (B) reduces or eliminates the right of the holders of the Series A Preferred to elect a director to the Board, or (C) alters or changes Section 2(c), Section 5(k)(i)(a) or the definition of "Requisite Holders" in these Articles. To avoid any doubt, this provision does not apply to Corporation's authority or action to increase the number of authorized shares of any class of stock, or to issue any additional classes of stock, so the vote of the Requisite Holders is not required to effect or to validate any such actions.

(ii) Any agreement by the Corporation or its shareholders regarding an Asset Transfer or an Acquisition (each as defined in Section 4 hereof) or any sale or exclusive license of all or substantially all of the Corporation's assets or intellectual property;

(iii) Any action which would result in the taxation of the holders of the Series A Preferred pursuant to Section 305 of the Internal Revenue Code;

(iv) Any material change in the Corporation's business; and

(v) Any voluntary dissolution or liquidation of the Corporation.

For purposes of these Articles, "*Requisite Holders*" means the holders of at least 51% of the then outstanding shares of Series A Preferred voting together as a separate class.

(c) Election of Board of Directors.

(i) For so long as at least 250,000 shares of Series A Preferred (subject to adjustment for any stock dividends, combinations, splits, recapitalizations or other similar event affecting the number of outstanding Series A Preferred shares after the filing date hereof) remain outstanding, the holders of the Series A Preferred, voting as a separate class, shall be entitled to elect one member of the Board (the "*Preferred Director*") at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(ii) The holders of Common Stock and Series A Preferred, voting together as a single class on an as-if-converted to Common Stock basis, shall be entitled to elect all remaining members of the Board, if any, at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

3. LIQUIDATION RIGHTS.

(a) Upon any Liquidation Event, before any distribution or payment shall be made to the holders of any Common Stock, the holders of Series A Preferred shall each be entitled to be paid out of the assets of the Corporation legally available for distribution, an amount per share equal to any unpaid portion of the Preference Amount. If, upon any such Liquidation Event, the assets of the Corporation are insufficient to pay in full to holders of Series A Preferred the unpaid portion of the Preference Amount, then such assets (or consideration) shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full Preference Amount, the remaining assets of the Corporation legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock.

(c) Subject to Section 4(d) below, shares of Series A Preferred shall not be entitled to be converted into shares of Common Stock to participate in any distribution, or series of distributions, as shares of Common Stock, without first foregoing participation in the distribution, or series of distributions, as shares of Series A Preferred.

(d) For purposes of determining the amount each holder of shares of Series A Preferred is entitled to receive with respect to a Liquidation Event, each such holder of shares of Series A Preferred shall be deemed to have converted such holder's shares of Series A Preferred into shares of Common Stock immediately prior to the Liquidation Event if, as a result of a conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder under Section 4(a) above if such holder did not convert such Series A Preferred into shares of Common Stock. If any such holder shall be deemed to have converted shares of Series A Preferred into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Series A Preferred that have not converted into shares of Common Stock.

4. ASSET TRANSFER OR ACQUISITION RIGHTS.

(a) If the Corporation is a party to an Acquisition or Asset Transfer (as hereinafter defined), then holders of Series A Preferred shall be entitled to receive, out of the proceeds of such

Acquisition or Asset Transfer, any unpaid portion of the Preference Amount, after which the Series A Preferred shall be automatically converted to Common Stock, as described in Section 5 below.

(b) For the purposes of these Articles, (i) "*Acquisition*" shall mean (A) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shareholders of the Corporation immediately prior to such consolidation, merger or reorganization, continue to hold a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent); or (B) any transaction or series of related transactions to which the Corporation is a party in which in excess of a majority of the Corporation's voting power is transferred; provided that an Acquisition shall not include any transaction or series of transactions principally for bona fide capital raising purposes (including but not limited to any transaction or series of related transactions in which cash is received by the Corporation or any successor or indebtedness of the Corporation is cancelled or converted or a combination thereof); and (ii) "*Asset Transfer*" shall mean, in one transaction or a series of related transactions, a sale, lease, exclusive license or other disposition of all or substantially all of the assets or intellectual property of the Corporation and any of its subsidiaries, on a consolidated basis; provided, however, that each of the foregoing events shall not be considered an "*Acquisition*" or "*Asset Transfer*" if the Requisite Holders elect not to treat such event as an "*Acquisition*" or "*Asset Transfer*" by written notice sent to the Corporation at least five days prior to the effective date thereof.

(c) In any Acquisition or Asset Transfer, if the consideration to be received by the Corporation or its successor is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board on the date such determination is made; provided, that any securities shall be valued as follows (unless the definitive agreement in connection with such Acquisition or Asset Transfer sets forth a valuation methodology, in which case the methodology set forth in such definitive agreement shall control):

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by (ii) below: (A) If traded on a securities exchange including, but not limited to, the Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty day period ending three days prior to the closing; (B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty day period ending three days prior to the closing; and (C) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board in good faith.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in subsections (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined by the Board in good faith.

(d) In the event of an Acquisition or Asset Transfer, if any portion of the consideration payable to the shareholders of the Corporation is placed into escrow or is otherwise subject to contingencies, including, but not limited to, any earn-out or holdback, and withheld from the Corporation or its shareholders, the merger agreement or other relevant agreement shall provide that (i) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "*Initial Consideration*") shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3 as if the Initial Consideration were the only consideration payable in connection with such Acquisition or Asset Transfer and (ii) any additional consideration which becomes payable to the

shareholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

5. CONVERSION RIGHTS. The holders of the Series A Preferred shall have the following rights with respect to the conversion of the Series A Preferred into shares of Common Stock (the "*Conversion Rights*"):

(a) **Optional Conversion to New Classes or Series.** If the Corporation issues any new class or series of stock (other than Common Stock or Series A Preferred) (any such class or series a "New Series"), then each holder of Series A Preferred, for a period of thirty (30) days after receiving written notice from the Corporation of such issuance, may convert any share of Series A Preferred to a number of shares of the New Series equal to the quotient obtained by dividing the Original Issue Price by the lowest price at which a share of the New Series is issued by the Corporation.

(b) **Optional Conversion to Common Stock.** Subject to and in compliance with the provisions of this Section 5, any shares of Series A Preferred may, at the option of the holder, be converted at any time into fully paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Conversion Rate" then in effect for such series of Series A Preferred (determined as provided in Section 5(c)) by the number of shares of such series of Series A Preferred being converted.

(c) **Conversion Rate for Conversion to Common Stock.** The conversion rate in effect at any time for conversion of the Series A Preferred into Common Stock (the "*Conversion Rate*") shall be the quotient obtained by dividing the applicable Original Issue Price of the Series A Preferred by the applicable Conversion Price of the Series A Preferred, calculated as provided in Section 5(d).

(d) **Conversion Price.** The conversion price for each series of Series A Preferred shall initially be the Original Issue Price for the Series A Preferred (in each case, the "*Conversion Price*"). Such initial Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Conversion Price herein shall thereafter mean the Conversion Price as so adjusted.

(i) If, within twelve (12) months after the Effective Time, the Corporation issues shares of Common Stock or Preferred Stock at a price lower than the Conversion Price, then the Conversion Price shall automatically be reduced to such lower price.

(ii) If the Corporation does not achieve break-even cash flow by March 31, 2023 (as measured monthly using generally accepted accounting principles), the Conversion Price shall be reduced to eighty three and one-third percent (83-1/3%) of the then-prevailing Conversion Price.

(iii) If the Corporation does not achieve break-even cash flow by June 30, 2023 (as measured by generally accepted accounting principles), the Conversion Price shall be reduced to eighty percent (80%) of the then-prevailing Conversion Price. For clarity, if break-even cash flow is not achieved by June 30, 2023, there shall be an 83-1/3% reduction in the Conversion Price on March 31, 2023, and an additional 80% reduction in the Conversion Price on June 30, 2023.

(iv) If the Corporation does not achieve break-even cash flow by December 31, 2023 (as measured by generally accepted accounting principles), the Conversion Price shall be reduced to seventy five percent (75%) of the then-prevailing Conversion Price. For clarity, if break-even cash flow is not achieved by December 31, 2023, there shall be an 83-1/3% reduction in the Conversion

Price on March 31, 2023, an 80% reduction in the Conversion Price on June 30, 2023, and a 75% reduction in the Conversion Price on December 31, 2023.

(e) Mechanics of Conversion. Each holder of Series A Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series A Preferred and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number and series of shares of Series A Preferred being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value as determined by the Board as of the date of such conversion), any declared and unpaid dividends (but not accrued and undeclared dividends) on the shares of Series A Preferred being converted and (ii) in cash (at the Common Stock's fair market value as determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series A Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series A Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(f) Adjustment for Stock Splits and Combinations. If at any time or from time to time on or after issuance of the Series A Preferred (the "*Effective Time*") the Corporation effects a subdivision of the outstanding Common Stock without a corresponding subdivision of Series A Preferred, the Conversion Price for such Series A Preferred 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. Conversely, if at any time or from time to time after the Effective Time the Corporation combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of Series A Preferred, the Conversion Price for the Series A Preferred 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 Section 5(f) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation. If at any time or from time to time on or after the Effective Time the Common Stock issuable upon the conversion of a series of Series A Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or Asset Transfer as defined in Section 4 or a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 5), in any such event each holder of Series A Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of such series of Series A Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Conversion Price of the Series A Preferred

then in effect and the number of shares issuable upon conversion of the Series A Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(h) Sale of Shares Below Conversion Price.

(i) If at any time or from time to time on or after the Effective Time the Corporation issues or sells, or is deemed by the express provisions of this Section 5(h) to have issued or sold Additional Shares of Common Stock (as defined below), other than as provided in Section 5(f) or 5(g), for an Effective Price (as defined below) less than the then effective Conversion Price for the Series A Preferred Stock (a "*Qualifying Dilutive Issuance*"), then and in each such case, the then existing Conversion Price for the Series A Preferred shall be reduced to a price determined by multiplying the Conversion Price for the Series A Preferred in effect immediately prior to such issuance or sale by a fraction: (A) the numerator of which shall be the number of shares of Common Stock deemed to be outstanding (as determined below) immediately prior to such issuance or sale, plus the number of shares of Common Stock which the Aggregate Consideration (as defined below) received or deemed received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then-existing Conversion Price of the Series A Preferred, and (B) the denominator of which shall be the number of shares of Common Stock deemed to be outstanding (as determined below) immediately prior to such issuance or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of clauses (A) and (B) above, the "number of shares of Common Stock deemed to be outstanding" (the "*Outstanding Shares*") shall be the sum of (x) the number of shares of Common Stock outstanding, (y) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred could be converted if fully converted on the day immediately preceding the given date, and (z) the number of shares of Common Stock which are issuable upon the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date whether or not vested or exercisable as of such date.

(ii) For the purpose of making any adjustment required under this Section 5(h), the aggregate consideration received by the Corporation for any issuance or sale of securities (the "*Aggregate Consideration*") shall be computed as: (A) to the extent it consists of cash, the gross amount of cash received by the Corporation before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issuance or sale and without deduction of any expenses payable by the Corporation; (B) to the extent it consists of property other than cash, the fair value of that property as determined in good faith by the Board; and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 5(h), if the Corporation issues or sells (x) stock, options, warrants, purchase rights or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "*Convertible Securities*") or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price (as defined below) of such Additional Shares of Common Stock is less than the Conversion Price for the Series A Preferred, in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or

Convertible Securities plus: **(A)** in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options; and **(B)** in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); **(C)** If the minimum amount of consideration per share payable to the Corporation upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration per share is reduced; *provided further*, that if the minimum amount of consideration per share payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities. **(D)** No further adjustment of the Conversion Price shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Conversion Price for Series A Preferred as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Conversion Price that would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities.

(iv) For the purpose of making any adjustment to the Conversion Price of Series A Preferred required under this Section 5(h), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 5(h) (including shares of Common Stock subsequently reacquired or retired by the Corporation), other than: **(A)** shares of Common Stock issued upon conversion of the Series A Preferred; **(B)** shares of Common Stock, Convertible Securities or other Common Stock purchase rights and the Common Stock issued pursuant to such Convertible Securities or Common Stock purchase rights issued after the Effective Time to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary pursuant to stock purchase or stock option plans or other arrangements (including any amendments thereto) that are approved by the Board, including the Preferred Director; **(C)** shares of Common Stock issued pursuant to the exercise of Convertible Securities outstanding as of the Effective Time (including such Convertible Securities that were amended after the Effective Time); **(D)** shares of Common Stock or Convertible Securities issued pursuant to any stock splits, dividends, recapitalizations and the like after the Effective Time; **(E)** any Common Stock or Convertible Securities issued in connection with strategic transactions involving the Corporation and other entities, including (i) strategic alliances, OEM, collaborations, joint ventures, manufacturing, licensing, marketing or distribution arrangements or (ii) technology transfer or development arrangements; *provided* that the issuance of shares therein has been approved by the Requisite Holders; **(F)** shares of Common Stock or Convertible Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Requisite Holders; **(G)** shares of Common Stock or Convertible Securities issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board, including all of the Preferred Directors; and **(H)** any

Convertible Security exercisable for (but only for) or convertible into (but only into) any of the foregoing. References to Common Stock in the subsections of this clause (iv) above shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 5(h). The "*Effective Price*" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold or deemed to have been issued or sold by the Corporation under this Section 5(h), into the Aggregate Consideration received, or deemed to have been received by the Corporation for such issue under this Section 5(h), for such Additional Shares of Common Stock. In the event that the number of shares of Additional Shares of Common Stock or the Effective Price cannot be ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the Effective Price, as applicable, ascertainable.

(i) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price of Series A Preferred or the number of shares of Common Stock or other securities issuable upon conversion of Series A Preferred, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and shall prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series A Preferred so requesting at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Conversion Price for the Series A Preferred at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred. Failure to request or provide such notice shall have no effect on any such adjustment.

(j) Notices of Record Date. Upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition or other capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series A Preferred at least ten days prior to (x) the record date, if any, specified therein; or (y) if no record date is specified, the date upon which such action is to take effect (or, in either case, such shorter period approved by the Requisite Holders) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(k) Automatic Conversion. (i) Each share of Series A Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Conversion Price for the Series A Preferred, (A) at any time upon the affirmative election of the holders of at least 80% of the then outstanding shares of Series A Preferred, voting as a separate class, or (B) immediately prior to the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock in which (i) the per share price is at least three times the Original Issue Price (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), and (ii) the gross cash proceeds to the Corporation (before

underwriting discounts, commissions and fees) are at least \$50,000,000 (a "*Qualified IPO*"). Upon such automatic conversion, any declared and unpaid dividends (but not accrued and undeclared dividends) shall be paid in accordance with the provisions of Section 5(e). For purposes of clarity, any declared or accrued and unpaid dividends shall not be paid or converted into shares of Common Stock upon an automatic or optional conversion of the Series A Preferred. (ii) Upon the occurrence of either of the events specified in Section 5(k)(i) above, the outstanding shares of Series A Preferred shall be converted automatically without any further action by the holders of such shares.

(l) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one share of Common Stock (as determined by the Board) on the date of conversion.

(m) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred. 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 Series A Preferred, the Corporation will 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 purpose.

(n) Notices. Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address or electronic mail address of such holder appearing on the books of the Corporation.

(o) No Impairment. Without the consent of the Requisite Holders, the Corporation will not, by amendment of these Articles, or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed pursuant to this Section 5 by the Corporation, but will at all times in good faith assist in the carrying out of all of the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series A Preferred against impairment.

ARTICLE IV

A. No Cumulative Voting. Shareholders of the Corporation shall not have the right to cumulate votes for the election of directors.

B. No Preemptive Rights. No shareholder of the Corporation shall have, solely by reason of being a shareholder, any preemptive or preferential right or subscription right to any stock of the Corporation or

to any obligations convertible into stock of the Corporation, or to any warrant or option for the purchase thereof.

C. Quorum for Meeting of Shareholders. A quorum shall exist at any meeting of shareholders if a majority of the votes entitled to be cast is represented in person or by proxy.

D. Execution of Consent by Less Than Unanimous Consent of Shareholders. To the extent permitted by the Act, the taking of action by shareholders without a meeting by less than unanimous written consent of all shareholders entitled to vote on the action shall be permitted. Written notice of the taking of such action shall be given to those shareholders entitled to vote on the action who have not consented in writing (and, if the Act would otherwise require that notice of a meeting of shareholders to consider the action be given to nonvoting shareholders, to all nonvoting shareholders), describing with reasonable clarity the general nature of the action, and accompanied by the same material that, under the Act, would have been required to be sent to nonconsenting (or nonvoting) shareholders in a notice of meeting at which the action would have been submitted for shareholder action. Such notice shall be either (i) for persons residing within the United States, by deposit in the U.S. mail, with first-class postage thereon prepaid, correctly addressed to each shareholder entitled thereto at the shareholder's address as it appears on the current record of shareholders of the Corporation; or (ii) by personal delivery, courier service, wire or wireless equipment, telegraphic or other facsimile transmission, or any other electronic means which transmits a facsimile of such communication correctly addressed to each shareholder entitled thereto at the shareholder's physical address, electronic mail address, or facsimile number, as it appears on the current record shareholders of the Corporation. Notice shall be given promptly following the effectiveness of the action taken by written consent.

ARTICLE V.

A. Number of Directors. The number of directors of the Corporation shall be determined in the manner provided in the bylaws of the Corporation, as amended from time to time (the "Bylaws") and may be increased or decreased from time to time in the manner provided therein.

B. Authority of Board of Directors to Amend Bylaws. Subject to the limitation(s) in the Act, and subject to the power of the shareholders of the Corporation to change or repeal the Bylaws, the Board is expressly authorized to make, amend or repeal the Bylaws of the Corporation unless the shareholders in amending or repealing a particular bylaw provide expressly that the Board may not amend or repeal that bylaw.

C. Contracts with Interested Directors. Subject to the limitations set forth in the Act, the Corporation may enter into contracts and otherwise transact business as vendor, purchaser, lender, borrower or otherwise with its directors and with corporations, associations, firms, and entities in which they are or may be or become interested as directors, officers, shareholders, members or otherwise. Any such contract or transaction shall not be affected or invalidated or give rise to liability by reason of the director's having an interest in the contract or transaction.

D. Indemnification of Directors, Officers, Employees and Agents. The capitalized terms in this Section D shall have the meanings set forth in the Act.

1. The Corporation shall (i) indemnify and hold harmless each individual who is or was serving as a Director or officer of the Corporation or who, while serving as a Director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee

benefit plan, or other enterprise, against any and all Liability incurred with respect to any Proceeding to which the individual is or is threatened to be made a Party because of such service, and (ii) make advances of reasonable Expenses with respect to such Proceeding, each to the fullest extent permitted by law, without regard to the limitations in the Act.

2. The Corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the Corporation or, who, while a director, officer, employee, or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise against Liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the Corporation would have power to indemnify the individual against such liability under the Act.

3. If, after the effective date of this Section D, the Act is amended to authorize further indemnification of Directors or officers, then Directors and officers of the Corporation shall be indemnified to the fullest extent permitted by the Act.

4. To the extent permitted by law, the rights to indemnification and advance of reasonable Expenses conferred in this Section D shall not be exclusive of any other right which any individual may have or hereafter acquire under any statute, provision of the Bylaws, agreement, vote of shareholders or disinterested directors, or otherwise. The right to indemnification conferred in this Section D shall be a contract right upon which each Director or officer shall be presumed to have relied in determining to serve or to continue to serve as such. Any amendment to or repeal of this Section D shall not adversely affect any right or protection of a Director or officer of the Corporation for or with respect to any acts or omissions of such Director or officer occurring prior to such amendment or repeal.

5. If any provision of this Section D.5 or any application thereof shall be invalid, unenforceable, or contrary to applicable law, the remainder of this Section D, and the application of such provisions to individuals or circumstances other than those as to which it is held invalid, unenforceable, or contrary to applicable law, shall not be affected thereby.

E. Limitation of Directors' Liability. To the fullest extent permitted by the Act, as it exists on the date hereof or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for conduct as a director. Any amendment to or repeal of this Section E shall not adversely affect a director of the Corporation with respect to any conduct of such director occurring prior to such amendment or repeal.

ARTICLE VI.

A. Amendments to Articles of Incorporation. Except as otherwise provided in these Articles, as amended from time to time, the Corporation reserves the right to amend, alter, change, or repeal any provisions contained in these Articles in any manner now or hereafter prescribed or permitted by statute. All rights of shareholders of the Corporation are subject to this reservation. A shareholder of the Corporation does not have a vested property right resulting from any provision of these Articles.

B. Correction of Clerical Errors. Upon approval of the Board, the Corporation shall have authority to correct clerical errors in any documents filed with the Secretary of State of Florida, including these Articles or any amendments hereto, without the necessity of special shareholder approval of such corrections.

C. **Approval of Board of Directors.** The foregoing Amended and Restated Articles of Incorporation of nxtCRE, Inc. was adopted on November 1, 2022 by the Board of Directors of the Corporation, pursuant to Article 3.4(f) of the Corporation's Shareholder Agreement, without shareholder action. Shareholder action is not required and the Amended and Restated Articles of Incorporation of nxtCRE, Inc. does not contain any amendments requiring shareholder approval

nxtCRE CORP.,
a Florida corporation

By: adam sharif
Adam Sharif, a/k/a Fareuk Adam Sharif
Chief Executive Officer