

P94000032193

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Requester's Name

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2002 JUN 18 PM 2:58
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. Archibald Bros. Fine Beverages Inc P94000032193
(Corporation Name) (Document #)

2. _____
(Corporation Name) (Document #)

3. _____
(Corporation Name) (Document #)

4. _____
(Corporation Name) (Document #)

☐ Walk in ☐ Pick up time ☒ Certified Copy
☐ Mail out ☐ Will wait ☐ Photocopy ☐ Certificate of Status

NEW FILINGS

☐ Profit
☐ Not for Profit
☐ Limited Liability
☐ Domestication
☐ Other

AMENDMENTS

☒ Amendment
☐ Resignation of R.A., Officer/Director
☐ Change of Registered Agent
☐ Dissolution/Withdrawal
☐ Merger

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*****54.75 *****54.75

OTHER FILINGS

☐ Annual Report
☐ Fictitious Name

REGISTRATION/QUALIFICATION

☐ Foreign
☐ Limited Partnership
☐ Reinstatement
☐ Trademark
☐ Other

C. Coulter JUN 18 2002

Examiner's Initials

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
ARCHIBALD BROS. FINE BEVERAGES, INC.

ARTICLE I - Name

The name of this Corporation shall be:

Archibald Bros. Fine Beverages, Inc.

ARTICLE II - Principal Office

The address of the principal office and the mailing address of the Corporation is
126 N. Woodland Boulevard, Suite B, DeLand, Florida 32720.

ARTICLE III - Business and Activities

This Corporation may, and is authorized to, engage in any activity or business
permitted under the laws of the United States and of the State of Florida.

ARTICLE IV - Capital Stock

This corporation is authorized to issue the following shares of capital stock:

(A) **Common Stock.** The aggregate number of shares of Common Stock which the Corporation shall have authority to issue is 100,000,000, with par value of \$0.0001 per share. The consideration to be paid for each share shall be fixed by the Board of Directors and may be paid in whole or in part in cash or other property, tangible or intangible, or in labor or services actually performed or to be performed for the Corporation, with a value, in the judgment of the directors, equivalent to or greater than the full value of the shares. Except as otherwise provided in these articles or by the laws of the State of Florida, the holders of record of Common Stock shall share ratably in all dividends, payable in cash, stock or otherwise, and other distributions, whether in respect of liquidation or dissolution (voluntary or involuntary) or otherwise.

(B) **Preferred Stock.** The aggregate number of shares of Preferred Stock which the corporation shall have authority to issue is 5,164,799, with par value of \$0.0001 per share. The Preferred Stock shall be divided into series. Of the authorized shares of Preferred Stock, 3,823,961 shares are hereby designated "Series A Convertible Preferred Stock," (hereinafter "Series A Preferred Stock") and 1,340,838 shares are hereby designated "Series A-1 Non-Voting Preferred Stock," (hereinafter "Series A-1 Preferred Stock") with the rights, preferences, privileges and restrictions as set forth in the succeeding provisions of this Article III.

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The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred Stock and the Series A-1 Preferred Stock are as follows:

1. Certain Definitions. Unless the context otherwise requires, the terms defined in this paragraph 1 shall have, for all purposes of this Article III, the meanings herein specified.

"Affiliate" means, with respect to any Person, any other Person that controls, is controlled by or is under common control with such Person. For the purposes of this definition, "control" (including, with its correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Common Stock" means all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Original Issue Date, which has the right (subject always to prior rights of any class or series of preferred stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

"Conversion Date" shall have the meaning set forth in subparagraph 4(d) below.

"Conversion Price" means the price per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the Series A Preferred Stock, which price shall initially be \$1.06 per share, subject to adjustment in accordance with the provisions of paragraph below.

"Convertible Securities" means any evidence of indebtedness, shares of stock (other than Junior Stock and Series A Preferred Stock), or other securities convertible into or exchangeable for Common Stock.

"Current Market Price" at any date, means (in each case as adjusted for any stock dividend, split, combination or reclassification that took effect during the Measurement Period);

(a) if the Common Stock is publicly traded on any national securities exchange, the average of the daily closing prices per share of Common Stock during the Measurement Period on the principal national securities exchange (as reported, absent manifest error, in The Wall Street Journal);

(b) if the Common Stock is not publicly traded on any national, securities exchange, but trade over-the-counter, the average of the daily closing reported bid and asked prices of the Common Stock during the Measurement Period, as reported by Nasdaq or any comparable system (or if not so reported by Nasdaq or any comparable system, as furnished by two members of the National Association of Securities Dealers, Inc. selected from time to time by the Corporation for that purpose);

(c) if the Common Stock is not traded in such manner that the quotations referred to above are available for the Measurement Period, Current Market

Price shall be deemed to be the fair market value as determined in good faith by the Board of Directors.

"Excluded Stock" means (a) shares of Common Stock issued by the Corporation (i) as a stock dividend payable on shares of Common Stock (provided there is an adjustment for that dividend in Section 4(f)(ii)), (ii) upon any subdivision, split-up, or recapitalization of the outstanding shares of Common Stock (provided there is an adjustment for that subdivision, split-up or recapitalization in Section 4(f)(ii)), or (iii) upon conversion of shares of Preferred Stock, (b) up to 960,000 shares of Common Stock (or options, warrants or other rights to purchase such Common Stock) issued or issuable to employees, consultants, officers or directors of the Corporation pursuant to a stock option plan or restricted stock plan and any other equity incentive plan or agreement approved by the Board of Directors (including the Series A Directors, as hereinafter defined), whether issued or issuable before or after the Original Issue Date, net of any such shares of Common Stock repurchased by the Corporation and any such options, warrants, or other rights to purchase such Common Stock that expire unexercised, and subject to appropriate adjustment for stock splits, stock dividends, combinations or other recapitalizations with respect to such shares, (c) securities issued in connection with corporate partnering transactions, or in connection with bona fide acquisitions of businesses (whether pursuant to a merger, asset acquisition or otherwise) approved by the Board of Directors, including the vote of all Series A Directors (d) up to 250,000 shares of Common Stock (subject to applicable adjustment for stock splits, stock dividends, combinations or other recapitalizations) issued or issuable upon the exercise of certain currently outstanding Options, (e) securities issued to vendors or customers or to other Persons in similar commercial situations with the Corporation if such issuance is approved by the Board of Directors, including the vote of all Series A Directors, (f) securities issued in connection with obtaining lease financing, whether issued to a lessor, guarantor or other Person if such issuance is approved by the Board of Directors, including the vote of all Series A Directors, and (g) shares of Common Stock issued or issuable (i) in a public offering in connection with all outstanding shares of Preferred Stock will be converted to Common Stock, or (ii) upon exercise of warrants or rights granted to underwriters in connection with such a public offering.

"Junior Stock" means the Common Stock and any other class or series of stock of the Corporation ranking junior to the Series A Preferred Stock as to liquidation or the payment of dividends or distribution of assets. Except for Permitted Repurchases, Junior Stock shall not be redeemable.

"Liquidation Preference" means (a) with respect to the Series A Preferred Stock, on any date, \$2.55 per share of Series A Preferred Stock, and (b) with respect to the Series A-1 Preferred Stock, on any date, the sum of (i) \$1.00 per share and (ii) all accrued and unpaid dividends thereon through such date (whether or not declared).

"Measurement Period" means, as of any date, the fifteen (15) consecutive trading days ending five (5) trading days before such date.

"Options" means rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

"Original Issue Date" means (a) with respect to the Series A Preferred Stock, the date that shares of Series A Preferred Stock are first issued by the Corporation and (b) with respect to the Series A-1 Preferred Stock, the date that shares of Series A-1 Preferred Stock are first issued by the Corporation.

"Original Issue Price" means (a) \$1.06 per share of Series A Preferred Stock and (b) \$1.00 per share of Series A-1 Preferred Stock.

"Permitted Repurchases" means (a) the repurchase by the Corporation of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Corporation or any Subsidiary that are subject to restricted stock purchase agreements or stock option exercise agreements under which the Corporation has the option to repurchase such shares: (i) at cost, upon the occurrence of certain events, such as the termination of employment or services, or (ii) subject to the approval of all Series A Directors, at any price upon the occurrence of certain events or pursuant to the Corporation's exercise of a right of first refusal to repurchase such shares, or (b) the redemption of the Series A-1 Preferred Stock pursuant to paragraph 5 below.

"Person" means an individual, partnership, corporation, limited liability company or partnership, trust, unincorporated organization, joint venture, government (or agency or political subdivision thereof) or any other entity of any kind.

"Sale of the Corporation" means the sale of the Corporation (whether by merger, consolidation, recapitalization, reorganization, sale of securities, sale of assets or otherwise) in one transaction or a series of related transactions to a Person and its Affiliates, not directly or indirectly an Affiliate of the Required Holders (as hereinafter defined), pursuant to which such Person and its Affiliates acquires (i) securities representing at least a majority of the voting power of all securities of the Corporation, assuming the conversion, exchange or exercise of all securities convertible, exchangeable or exercisable for or into voting securities, or (ii) all or substantially all of the Corporation's assets, whether by sale, lease, license, transfer or other disposition. The foregoing notwithstanding, a sale of the Corporation shall not include a transaction in which holders of Voting Stock of the Corporation prior to such transaction own after such transaction Voting Stock that can elect a majority of the surviving Person's or its parent entity's board of directors (or persons performing similar functions).

"Series A Director" shall have the meaning set forth in paragraph 6 below.

"Subsidiary" means (a) a corporation more than 50% of the combined voting power of the outstanding Voting Stock of which is owned, directly or indirectly, by the Corporation, or by one or more Subsidiaries, or by the Corporation and one or more Subsidiaries, (b) a partnership of which the Corporation, or one or more other Subsidiaries, or the Corporation and one or more Subsidiaries, directly or indirectly, is the general partner and has the power to direct the policies management and affairs or (c) any other person (other than a corporation) in which the Corporation, or one or more Subsidiaries, or the Corporation and one or more Subsidiaries, directly or indirectly, has at least a majority ownership interest and power to direct the policies, management and affairs thereof.

"Voting Stock" means, with respect to any Person, capital stock of such Person that ordinarily has voting power for the election of directors (or persons performing similar functions) of such Person, whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.

2. Dividends.

(a) The holders of Series A Preferred Stock shall be entitled to receive, out of funds legally available for that purpose, cash dividends payable only when, as, and if declared by the Board of Directors. Such dividends shall be noncumulative. Except as otherwise provided herein with respect to the Series A Preferred Stock, no right shall accrue to holders of Series A Preferred Stock by reason of the fact that dividends on said shares are not declared in any year. Dividends that are not declared shall not accrue, nor shall any undeclared or unpaid dividend bear or accrue any interest.

(b) The holders of Series A-1 Preferred Stock shall be entitled to receive, out of funds legally available for that purpose, cash dividends at the rate of 8% of the Original Issue Price per share of Series A-1 Preferred Stock per annum (the "Series A-1 Preferred Stock Dividend Rate"). Such dividends shall be payable only when, as, and if declared by the Board of Directors and shall be cumulative from the date on which the share of Series A-1 Preferred Stock is issued.

(b) Except for Permitted Repurchases, no dividends or distributions shall be paid on any share of Junior Stock or Series A-1 Preferred Stock, without the vote, written consent, or agreement of holders of at least 66 2/3% of the then outstanding shares of Series A Preferred Stock voting as a class.

3. Distributions Upon Liquidation, Dissolution or Winding Up.

(a) Upon any voluntary or involuntary liquidation, dissolution or other winding up of the affairs of the Corporation (a "Liquidating Event"), the holders of Series A Preferred Stock shall, at their option, either (i) exercise their rights under the Optional Conversion privilege set forth in subparagraph (a) below; or (ii) be entitled to be paid, to the extent funds are available therefor, before any distribution or payment shall be made to the holders of Junior Stock, and on a pari passu basis with the holders of the Series A-1 Preferred Stock, the Liquidation Preference on the date of determination.

(b) Upon the occurrence of any Liquidating Event, the holders of Series A-1 Preferred Stock shall be entitled to be paid, to the extent funds are available therefor, before any distribution or payment shall be made to the holders of Junior Stock, and on a pari passu basis with the holders of the Series A Preferred Stock, the Liquidation Preference on the date of determination. The Series A and Series A-1 Preferred Stock shall rank on a parity as to the receipt of their respective Liquidation Preferences for each such series upon the occurrence of a Liquidating Event.

(c) If the Liquidation Preferences of the Series A Preferred Stock and the Series A-1 Preferred Stock have been paid in full to the holders of the Series A Preferred Stock and the Series A-1 Preferred Stock, the remaining assets and funds of the Corporation shall be distributed among the holders of Junior Stock, according to

their respective shares and priorities. If, upon any such liquidation, dissolution or other winding up of the affairs of the Corporation, the net assets of the Corporation available for distribution among the holders of all outstanding shares of the Series A Preferred Stock and Series A-1 Preferred Stock shall be insufficient to permit the payment in full to such holders of the preferential amounts to which they are entitled, then the entire net assets of the Corporation shall be distributed ratably among the holders of the Series A Preferred Stock and Series A-1 Preferred Stock in proportion to the Liquidation Preference each such holder is otherwise entitled to receive.

(d) For purposes of this paragraph 3, a "Liquidating Event" shall mean: (i) a consolidation or merger of the Corporation into or with any other entity or entities or other change of control transaction which results in the exchange of outstanding shares of the Corporation for securities or other consideration issued or paid or caused to be issued or paid by any such entity or affiliate thereof (other than a merger to reincorporate the Corporation in a different jurisdiction) in which the stockholders of the Corporation immediately prior to such transaction do not continue to hold a greater than 50% interest in the successor entity immediately following such transaction, or (ii) a transaction or series of transactions that results in the transfer of more than 50% of the voting power of the Corporation, or (iii) the sale, lease, license, transfer or other disposition by the Corporation of all or substantially all its assets (which shall include any effective transfer of such assets regardless of the structure of any such transaction as a license or otherwise), (iv) bankruptcy, dissolution or other winding up of the Corporation, or (v) with respect to the Series A Preferred Stock, the redemption of the Series A-1 Preferred Stock, at the election of the Corporation pursuant to paragraph 5(a), which Liquidating Event may be waived by vote or written consent or agreement of holders of a majority of the then outstanding shares of Series A Preferred Stock, or (vi) with respect to the Series A Preferred Stock, each redemption of not less than 130,000 shares of Series A-1 Preferred Stock at the election of the holders thereof pursuant to paragraph 5(b), which Liquidating Event may be waived by vote or written consent or agreement of holders of a majority of the then outstanding shares of Series A Preferred Stock. If clause (v) or (vi) of the preceding sentence is applicable by reason of the redemption of Series A-1 Preferred Stock, the Corporation shall promptly give written notice thereof to each holder of Series A Preferred Stock, and the holders of Series A Preferred Stock may exercise their waiver rights or decline to do so during the thirty day period following receipt of the notice from the Corporation. No redemption of Series A-1 Preferred Stock shall occur until that thirty-day period has elapsed.

4. Series A Preferred Stock Conversion Rights. The Series A Preferred Stock shall be convertible into Common Stock as follows:

(a) Optional Conversion. Subject to and upon compliance with the provisions of this paragraph 4, the holder of any shares of Series A Preferred Stock shall have the right at such holder's option, at any time or from time to time, to convert any of such shares of Series A Preferred Stock into fully paid and nonassessable shares of Common Stock at the Conversion Price in effect on the Conversion Date upon the terms hereinafter set forth.

(b) Automatic Conversion. Each outstanding share of Series A Preferred Stock shall automatically be converted, without any further act of the Corporation or its stockholders, into fully paid and nonassessable shares of Common

Stock at the Conversion Price then in effect upon the earlier of (i) the closing of a bona fide underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offering and sale of the Common Stock for the account of the Corporation in which the net proceeds received by the Corporation equals or exceeds \$15 million and in which the public offering price per share equals or exceeds \$3.00 (prior to underwriters' discounts and expenses) as adjusted to reflect any stock splits, stock dividends, combinations, or similar events (a "Qualified IPO"); or (ii) the date specified by vote or written consent or agreement of holders of at least 66 2/3% of the then outstanding shares of Series A Preferred Stock voting as a class.

(c) Conversion Price. Each share of Series A Preferred Stock shall be converted into a number of shares of Common Stock determined by dividing (i) the Original Issue Price by (ii) the Conversion Price in effect on the Conversion Date. Any accrued and unpaid dividends shall be due and payable on the Conversion Date.

(d) Mechanics of Conversion. The holder of any shares of Series A Preferred Stock may exercise the conversion right specified in subparagraph 4(a) by surrendering to the Corporation or any transfer agent of the Corporation the certificate or certificates for the shares to be converted, accompanied by written notice specifying the number of shares to be converted. Upon the occurrence of the event specified in subparagraph 4(b), the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, that the Corporation shall not be obligated to issue to any such holder certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing the shares of Series A Preferred Stock are either delivered to the Corporation or any transfer agent of the Corporation.

Conversion shall be deemed to have been effected (i) in the case of conversion pursuant to subparagraph (a), on the date when delivery of notice of an election to convert and certificates for shares is made, (ii) in the case of conversion pursuant to subparagraph (b), on the date of the occurrence of the Qualified IPO, or (iii) on the date specified by vote or written consent or agreement of the holders of the requisite number of shares of Series A Preferred Stock, as the case may be, and such date is referred to herein as the "Conversion Date." Subject to the provisions of subparagraph 4(f)(vi), as promptly as practicable thereafter (and after surrender of the certificate or certificates representing shares of Series A Preferred Stock to the Corporation or any transfer agent of the Corporation in the case of conversions pursuant to subparagraph 4(b)), the Corporation shall issue and deliver to or upon the written order of such holder a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled and a check or cash with respect to any fractional interest in a share of Common Stock as provided in subparagraph 4(e).

Subject to the provisions of subparagraph 4(f)(vi), the person in whose name the certificate or certificates for Common Stock are to be issued shall be deemed to have become a holder of record of such Common Stock on the applicable Conversion Date. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Series A Preferred Stock surrendered for conversion (in the case of conversion pursuant to subparagraph 4(a)), the Corporation shall issue and deliver to

or upon the written order of the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Series A Preferred Stock representing the unconverted portion of the certificate so surrendered.

(e) Fractional Shares. No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of Series A Preferred Stock. If more than one share of Series A Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Preferred Stock so surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Series A Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to that fractional interest of the then Current Market Price.

(f) Conversion Price Adjustments. The Conversion Price shall be subject to adjustment from time to time as follows:

(i) Common Stock Issued at Less than the Conversion Price. If the Corporation shall issue any Common Stock other than Excluded Stock without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance, during the two year period immediately following the Original Issue Date, the Conversion Price in effect immediately prior to each such issuance shall immediately (except as provided below) be reduced to the lowest consideration per share for which such shares of Common Stock are issued. If the Corporation shall issue any Common Stock other than Excluded Stock without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance, at any time after the two year period immediately following the Original Issue Date, the Conversion Price in effect immediately prior to each such issuance shall immediately (except as provided below) be reduced to the price determined by dividing (1) an amount equal to the sum of (A) the number of shares of Common Stock outstanding immediately prior to such issuance multiplied by the Conversion Price in effect immediately prior to such issuance and (B) the consideration, if any, received by the Corporation upon such issuance, by (2) the total number of shares of Common Stock outstanding immediately after such issuance. For purposes of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issuance shall be calculated on a fully diluted basis, as if all shares of Series A Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding Options had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date, but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Series A Preferred Stock, Convertible Securities, or outstanding Options solely as a result of the adjustment of the respective conversion prices (or other conversion ratios) resulting from the issuance of the Common Stock causing the adjustment in question.

For the purposes of any adjustment of the Conversion Price pursuant to clause (i), the following provisions shall be applicable:

(A) Cash. In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Corporation shall be deemed to be the amount of the cash proceeds received by the Corporation for such Common Stock before deducting therefrom any discounts, commissions, taxes or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(B) Consideration Other Than Cash. In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of capital stock or other securities of the Corporation) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors, irrespective of any accounting treatment; provided that such fair value as determined by the Board of Directors shall not exceed the aggregate Current Market Price of the shares of Common Stock being issued as of the date the Board of Directors authorizes the issuance of such shares.

(C) Options and Convertible Securities. In the case of the issuance of (i) Options (whether or not at the time exercisable), (ii) Convertible Securities (whether or not at the time convertible or exchangeable), or options, warrants or rights to purchase such Convertible Securities (whether or not at the time exercisable):

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such Options shall be deemed to have been issued at the time such Options were issued and for a consideration equal to the consideration (determined in the manner provided in subclauses (A) and (B) above), if any, received by the Corporation upon the issuance of such Options plus the minimum purchase price provided in such Options for the Common Stock covered thereby;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange for, any such Convertible Securities, or upon the exercise of options, warrants or other rights to purchase or acquire such Convertible Securities and the subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or such options, warrants or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such Convertible Securities and related options, warrants or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration (determined in the manner provided in subclauses (A) and (B) above), if any, to be received by the Corporation upon the conversion or exchange of such Convertible Securities, or upon the exercise of any related options, warrants or rights to purchase or acquire such Convertible Securities and the subsequent conversion or exchange thereof;

(3) on any change in the number of shares of Common Stock deliverable upon exercise of any such Options or conversion or exchange of such Convertible Securities or any change in the consideration to be received by the Corporation upon such exercise, conversion or exchange, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price as then

in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had an adjustment been made upon the issuance of such Options not exercised prior to such change, or of such Convertible Securities not converted or exchanged prior to such change, upon the basis of such change;

(4) on the expiration or cancellation of any such Options or the termination of the right to convert or exchange such Convertible Securities, if the Conversion Price shall have been adjusted upon the issuance thereof, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained had an adjustment been made upon the issuance of such Options or such Convertible Securities on the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities; and

(5) if the Conversion Price shall have been adjusted upon the issuance of any such Options or Convertible Securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common Stock upon the exercise, conversion or exchange thereof.

(ii) Stock Dividends Subdivisions, Reclassifications or Combinations. If the Corporation shall (A) declare a dividend or make a distribution on its Common Stock in shares of its Common Stock, (B) subdivide or reclassify the outstanding shares of Common Stock into a greater number of shares, or (C) combine or reclassify the outstanding Common Stock into a smaller number of shares, the Conversion Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the holder of any shares of Series A Preferred Stock surrendered for conversion after such date shall be entitled to receive the number of shares of Common Stock which he would have owned or been entitled to receive had such Series A Preferred Stock been converted immediately prior to such date. Successive adjustments in the Conversion Price shall be made whenever any event specified above shall occur.

(iii) Other Distributions. In case the Corporation shall fix a record date for making a distribution to all holders of shares of its Common Stock (A) of shares of any class other than its Common Stock or (B) of evidence of indebtedness of the Corporation or any Subsidiary or (C) of assets (excluding dividends or distributions referred to in subparagraph 4(f)(ii) above), or (D) of rights or warrants (excluding those referred to in subparagraph 4(f)(i) above), in each such case the Conversion Price in effect immediately prior thereto shall be reduced immediately thereafter to the price determined by dividing (1) an amount equal to the difference resulting from (A) the number of shares of Common Stock outstanding on such record date multiplied by the Conversion Price per share on such record date, less (B) the fair market value (as determined in good faith by the Board of Directors) of said shares or evidences of indebtedness or assets or rights or warrants to be so distributed, by (2) the number of shares of Common Stock outstanding on such record date. Such adjustment shall be made successively whenever such a record date is fixed. If such distribution is not so made, the Conversion Price then in effect shall be readjusted, effective as of the date when the Board of Directors determines not to distribute such shares, evidences of

indebtedness, assets, rights or warrants, as the case may be, to the Conversion Price which would then be in effect if such record date had not been fixed.

(iv) Consolidation, Merger, Sale, Lease or Conveyance. In case of any consolidation with or merger of the Corporation with or into another corporation, or in case of any sale, lease or conveyance to another corporation of the assets of the Corporation as an entirety or substantially as an entirety, each share of Series A Preferred Stock shall after the date of such consolidation, merger, sale, lease or conveyance be convertible into the number of shares of stock or other securities or property (including cash) to which the Common Stock issuable (at the time of such consolidation, merger, sale, lease or conveyance) upon conversion of such share of Series A Preferred Stock would have been entitled upon such consolidation, merger, sale, lease or conveyance; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the holders of the shares of Series A Preferred Stock shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to any shares of stock or other securities or property thereafter deliverable on the conversion of the shares of Series A Preferred Stock.

(v) Rounding of Calculations. All calculations under this subparagraph (f) shall be made to the nearest cent or to the nearest one hundredth (1/100th) of a share, as the case may be. Any provision of this paragraph 4 to the contrary notwithstanding, no adjustment in the Conversion Price shall be made if the amount of such adjustment would be less than \$0.005, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.005 or more.

(vi) Timing of Issuance of Additional Common Stock upon Certain Adjustments. In any case in which the provisions of this subparagraph (f) shall require that an adjustment shall become effective immediately after a record date for an event, the Corporation may defer until the occurrence of such event (A) issuing to the holder of any share of Series A Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such conversion before giving effect to such adjustment and (B) paying to such holder any amount of cash in lieu of a fractional share of Common Stock pursuant to subparagraph (e) of this paragraph 4; provided that the Corporation upon request shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment.

(g) Statement Regarding Adjustments. Whenever the Conversion Price shall be adjusted, the Corporation shall forthwith file, at the office of any transfer agent for the Preferred Stock and at the principal office of the Corporation, a statement showing in detail the facts requiring such adjustment and the Conversion Price that shall be in effect after such adjustment, and the Corporation shall also cause a copy of such statement to be sent by mail, first class postage prepaid, to each holder of shares of Series A Preferred Stock at its address appearing on the Corporation's records. The Corporation's chief financial officer shall sign each such statement. Where appropriate,

such copy may be given in advance and may be included as part of a notice required to be mailed under the provisions of subparagraph 4(h).

(h) Notice to Holders. If the Corporation shall propose to take any action of the type described in clause (i) (but only if the action of the type described in clause (i) would result in an adjustment in the Conversion Price), (iii), (iv) or (v) of subparagraph 4(f), the Corporation shall give notice to each holder of shares of Series A Preferred Stock, in the manner set forth in subparagraph 4(g), which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known on the date of such notice) on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable upon conversion of shares of Series A Preferred Stock. In the case of any action that would require the fixing of a record date, such notice shall be given at least ten (10) days prior to the date so fixed, and in case of all other action, such notice shall be given at least fifteen (15) days prior to taking such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(i) Treasury Stock. For the purposes of this paragraph 4, the sale or other disposition of any Common Stock theretofore held in the Corporation's treasury shall be deemed to be an issuance thereof.

(j) Costs. The Corporation shall pay all documentary, stamp, transfer or other transactional taxes attributable to the issuance or delivery of shares of Common Stock upon conversion of any shares of Series A Preferred Stock; provided that the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of Preferred Stock in respect of which such shares are being issued.

(k) Reservation of Shares. The Corporation shall reserve at all times so long as any shares of Series A Preferred Stock remain outstanding, free from preemptive rights, out of its treasury stock (if applicable) or its authorized but unissued shares of Common Stock, or both, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock, sufficient shares of Common Stock to provide for the conversion of all outstanding shares of Series A Preferred Stock.

(l) Approvals. If any shares of Common Stock to be reserved for the purpose of conversion of shares of Series A Preferred Stock require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued or delivered upon conversion, then the Corporation will in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be. If, and so long as, any Common Stock into which the shares of Series A Preferred Stock are then convertible is listed on any national securities exchange, the Corporation will, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion.

(m) Valid Issuance. All shares of Common Stock which may be issued upon conversion of the shares of Series A Preferred Stock will upon issuance by the Corporation be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof, and the Corporation shall take no action which will cause a contrary result (including without limitation, any action which would cause the Conversion Price to be less than the par value, if any, of the Common Stock).

5. Redemption of Series A-1 Preferred Stock.

(a) At Option of Corporation. The Corporation may redeem all of the outstanding shares of Series A-1 Preferred Stock at any time for a purchase price (the "Redemption Price") per share equal to the Original Issue Price plus all accumulated dividends on each share of Series A-1 Preferred Stock (whether or not declared) to and including the redemption date. Notice of the proposed redemption of Series A-1 Preferred Stock under this subparagraph 5(a) shall be sent by or on behalf of the Corporation to the holders of record of the Series A-1 Preferred Stock at their respective addresses as they shall appear on the records of the Corporation, not less than thirty (30) days prior to the date fixed for redemption (i) notifying such holders of the election of the Corporation to redeem such shares and of the redemption date, (ii) stating the place or places at which the shares called for redemption shall, upon presentation and surrender of the certificates evidencing such shares, be redeemed, and the Redemption Price therefore, and (iii) stating the name and address of the Corporation's transfer agent for the Series A-1 Preferred Stock if the transfer agent is not the Corporation. A copy of such notice shall simultaneously be sent by or on behalf of the Corporation to each holder of record of the Series A Preferred Stock. If notice of redemption shall have been given as hereinbefore provided, and the Corporation shall not default in the payment of the Redemption Price, then each holder of Series A-1 Preferred Stock shall be entitled to all preferences and relative and other rights accorded by this Article IV until but not including the redemption date. If the Corporation shall default in making payment of the Redemption Price on the redemption date, then each holder of the Series A-1 Preferred Stock shall be entitled to all preferences and relative and other rights accorded by this Article IV until but not including the date (the "Final Redemption Date") when the Corporation makes payment of the Redemption Price to the holders of the Series A-1 Preferred Stock. From and after the redemption date or, if the Corporation shall default in making payment as aforesaid, from and after the Final Redemption Date, the Series A-1 Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders of such shares shall cease and terminate, except the right of the holders of such shares, upon surrender of certificates therefor, to receive payment of the Redemption Price.

(b) At Option of Series A-1 Holder. At any time after the fourth annual anniversary of the Original Issue Date, upon the written request of a holder of Series A-1 Preferred Stock received by the Corporation at least ninety (90) days prior to the applicable redemption date (the "Redemption Election Notice"), to the extent the Corporation shall have funds legally available for such redemption, the Corporation must redeem all of the outstanding shares of Series A-1 Preferred Stock owned by such holder for a purchase price per share of Series A-1 Preferred equal to the Redemption Price. The Redemption Election Notice shall be sent by or on behalf of the holder of record of the Series A-1 Preferred Stock to the principal office of the Corporation not

less than ninety (90) days prior to the date fixed for redemption notifying the Corporation of the election of such holder to have its shares of Series A-1 Preferred Stock redeemed and of the date fixed for redemption. Upon receipt of the Redemption Election Notice the Corporation shall notify such holder of the place or places at which the shares called for redemption shall, upon presentation and surrender of the certificates evidencing such shares, be redeemed, the Redemption Price therefor, and the redemption date, which shall be not later than ninety (90) days after receipt by the Corporation of the Redemption Election Notice, and stating the name and address of the Corporation's transfer agent for the Series A-1 Preferred Stock if the transfer agent is not the Corporation. The Company shall also immediately send a copy of its notice together with the Redemption Election Notice(s) to each record holder of Series A Preferred Stock and shall advise such holders as to whether by reason of the Redemption Election Notice(s) the redemption is treated as a Liquidation Event pursuant to paragraph 3(d) unless waived by holders of a majority of the Series A Preferred Stock. If notice of redemption shall have been given as hereinbefore provided, and the Corporation shall not default in the payment of the Redemption Price, then such holder of Series A-1 Preferred Stock shall be entitled to all preferences and relative and other rights accorded by this Article IV until but not including the redemption date. If the Corporation shall default in making payment of the Redemption Price on the redemption date, then such holder of Series A-1 Preferred Stock shall be entitled to all preferences and relative and other rights accorded by this Article IV until but not including the date (the "Final Redemption Date") when the Corporation makes payment of the Redemption Price to such holders. From and after the redemption date or, if the Corporation shall default in making payment as aforesaid, from and after the Final Redemption Date, the Series A-1 Preferred Stock subject to the Redemption Election Notice shall no longer be deemed to be outstanding, and all rights of the holder of such shares shall cease and terminate, except the right of the holder of such shares, upon surrender of certificates therefore, to receive payment of the Redemption Price.

(c) Notwithstanding the calculation of the Redemption Price, on any redemption of Series A-1 Preferred Stock, the Corporation's capital shall be reduced by an amount equal to the Original Issue Price multiplied by the number of shares of Series A-1 Preferred Stock redeemed on such date. The provisions of this subparagraph 5(d) shall apply to all certificates representing Series A-1 Preferred Stock being redeemed whether or not all such certificates have been surrendered to the Corporation.

(d) If the redemption of the Series A-1 Preferred Stock results in a Liquidation Event for the Series A Preferred Stock, the Redemption Price payable on the Series A-1 Preferred Stock being redeemed and the Liquidation Preference on the Series A Preferred Stock shall be paid *pari passu*. If the funds of the Corporation available for such purpose are insufficient to permit the payment in full to the holders of the Series A Preferred Stock and Series A-1 Preferred Stock, then the Corporation shall pay the Liquidation Preference and the Redemption Price ratably among the holders of the Series A and Series A-1 Preferred Stock in proportion to the Redemption Price and Liquidation Preference each such holder is otherwise entitled to receive. All shares of Series A-1 Preferred Stock not redeemed and Series A Preferred Stock not liquidated shall remain outstanding.

6. Voting Rights.

(a) In addition to the special voting rights provided below and as required by applicable law, the holders of shares of Series A Preferred Stock shall be entitled to vote upon all matters upon which holders of the Common Stock have the right to vote, and shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which such shares of Series A Preferred Stock could be converted pursuant to the provisions of paragraph 4 hereof at the record date for the determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of capital stock having general voting powers and not separately as a class. In all cases where the holders of shares of Series A Preferred Stock have the right to vote separately as a class, such holders shall be entitled to one vote for each such share held by them respectively.

(b) Notwithstanding paragraph 6(a) above, the holders of then outstanding shares of Series A Preferred Stock voting as a separate class on an as converted basis, shall be entitled to elect two (2) directors of the Corporation (the "Series A Directors") and to fill any vacancies thereto, and the holders of then outstanding shares of Common Stock, voting as a separate class, shall be entitled to elect three (3) directors of the Corporation (the "Common Directors"), one of whom shall be independent of the Company, its employees and officers, have industry experience relevant to the Company's business, and be acceptable to the holders of a majority of the then outstanding shares of Series A Preferred Stock, which acceptance shall not be unreasonably withheld (the "Independent Director") and to fill any vacancies thereto. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the Series A Preferred Stock, on an as-converted basis, shall constitute a quorum of the Series A Preferred Stock for the election of directors to be elected solely by the holders of Series A Preferred Stock. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the Common Stock then outstanding shall constitute a quorum of the Common Stock for the election of the Common Directors (including the Independent Director). With respect to the Series A Directors and the Independent Director, the presence in person or by proxy of the holders of a majority of the Series A Preferred Stock then outstanding shall constitute a quorum of the Series A Preferred Stock for the election of the Series A Directors and the Independent Director.

(c) Except as otherwise agreed by the Board of Directors of the Corporation, including the vote of all Series A Directors, the Board of Directors of the Corporation shall establish a Compensation Committee consisting of two directors nominated by the Series A Directors and one director nominated by the Common Directors. The Board of Directors will only act on all compensation matters, including without limitation, the grant and pricing of stock options and the base salary and bonus arrangements for senior management, in accordance with the recommendations of the Compensation Committee.

(d) So long as at least seven hundred fifty thousand (750,000) shares of Series A Preferred Stock issued on the Original Issue Date are outstanding as

adjusted for stock splits, combinations and the like, without the consent of the holders of a majority of the shares of Series A Preferred Stock then outstanding, given in writing or by vote at a meeting of stockholders called for such purpose, the Corporation will not:

(i) amend, alter or repeal any provision of its Articles of Incorporation or Bylaws, except to authorize any Junior Stock;

(ii) authorize or issue, any class of the Company's capital stock having rights, preferences or privileges senior to or on parity with the Series A Preferred Stock;

(iii) Except for the redemption of the Series A-1 Preferred Stock pursuant to paragraph 5 hereof, redeem, repurchase or pay dividends or distributions on shares of any class of the Company's capital stock;

(iv) change the number of Directors of the Company from five (5);

(v) make a material change in the Company's business;

(vi) undertake any material debt financing or incur material capital expenditures not contemplated by the Company's annual budget approved by the Board of Directors; or

(vii) effect any Liquidating Event; provided, however, that with respect to any joint venture or other transaction with Nestec Ltd or its Affiliates constituting a Liquidating Event (a "Nestle Transaction"), which is not approved by the vote or written consent or agreement of holders of a majority of the then outstanding shares of Series A Preferred Stock, the Company shall have the right to consummate the Nestle Transaction if upon consummation of the Nestle Transaction, the Company pays the holders of Series A Preferred Stock an amount equal to the greater of: (A) (i) if the Nestle Transaction occurs on or before the eighteen (18) month anniversary of the Original Issue Date of the Series A Preferred Stock, two (2) times the Original Issue Price of the Series A Preferred Stock, or (ii) if the Nestle Transaction occurs after the eighteen (18) month anniversary of the Original Issue Date of the Series A Preferred Stock, the Liquidation Preference, or (B) the fair market of the shares of Series A Preferred Stock as determined by an investment banker mutually agreed upon by the Company and the holders of a majority of the outstanding shares of Series A Preferred Stock, without giving effect to discounts for illiquidity, or the Series A Preferred Stock's minority interest in the Company or management bonuses or other compensation related to the transaction But giving effect to the benefits, if any, of the Nestle Transaction ("Fair Market Value").

(e) If at any time after the expiration of four years from the Original Issue Date of the Series A Preferred Stock, the holders of at least 66 2/3% of the Series A Preferred Stock (being referred to jointly as the "Required Holders") desire to effect a Sale of the Corporation in a bona fide arm's-length transaction to a Person who is not an Affiliate of any Required Holder (a "Third Party"), then, upon the written request of the Required Holders (the date of such written request being hereinafter referred to as the "Request Date"), specifying the terms and conditions of such proposed Sale of the

Corporation, each stockholder shall be obligated to, and shall if so requested by the Required Holders, (i) sell, transfer, and deliver, or cause to be sold, transferred and delivered to such Third Party, all shares of capital stock of the Corporation (and any rights to acquire any such capital stock) owned by it or him on terms and conditions consistent with those applicable to the Required Holders, giving effect to the Liquidation Preferences of the Preferred Stock (unless converted), and (ii) if stockholder approval of the transaction is required, vote his or its shares of capital stock of the Corporation in favor thereof. In any such Sale of the Corporation, the price per share of Preferred Stock shall give effect to the Liquidation Preference of such Preferred Stock, and the price per share of Common Stock, whether converted from Series A Preferred Stock, or otherwise, shall be the same price per share for all shares of Common Stock. The forgoing notwithstanding, if on the Request Date the Corporation is using its best efforts to pursue diligently (A) a Sale of the Corporation, or (B) the purchase of the Series A Preferred Stock at the greater of its Liquidation Preference or Fair Market Value, the effective date of the Request Date shall be deferred until the earlier of ninety (90) days after the Request Date, or such time as the Sale of the Corporation or buyback efforts described in (A) and (B) above reasonably appear to be unsuccessful. If the Required Holders elect to exercise their drag-along rights pursuant to this paragraph 6(e), the Corporation may satisfy the obligations of the other stockholders under this paragraph 6(e) by purchasing all of the Series A Preferred Stock at the greater of its Liquidation Preference or Fair Market Value.

(f) Except as otherwise from time to time provided by law, the Series A-1 Preferred Stock shall have no voting rights.

7. Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series A Preferred Stock and Series A-1 Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth in this Article IV (as this Article IV may be amended from time to time) of the Corporation's Amended and Restated Articles of Incorporation.

8. Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

9. Severability of Provisions. If any right, preference or limitation of the Preferred Stock set forth in this Article IV (as this Article IV may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Article IV (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

10. Status of Reacquired Shares. Shares of Series A or A-1 Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Florida) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and, subject to the provisions hereof, may be redesignated and reissued.

ARTICLE V - Term of Existence

This Corporation shall exist perpetually unless dissolved according to law.

ARTICLE VI - Registered Agent and Street Address

The street address of the registered office of this Corporation is 125 N. Woodland Boulevard, Suite B, DeLand, Florida 32720, and the name of the registered agent of this Corporation at that address is Eric R. Miller.

ARTICLE VII – Limitation of Liability

To the fullest extent permitted by the Florida Business Corporation Act, as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. Any repeal or modification of this Article by the shareholders of the Corporation shall be prospective only and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VIII – Indemnification

Each person who is or was a director or officer of the Corporation, and each such person who is or was serving at the request of the Corporation as a director or officer of another corporation, or in a similar capacity of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans maintained or sponsored by the Corporation (including the heirs, executors, administrators and estate of such person) shall be indemnified by the Corporation, in accordance with the procedures specified in the bylaws of the Corporation, to the fullest extent permitted from time to time by the Florida Business Corporation Act. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the Corporation. Without limiting the generality of the foregoing, the Corporation may enter into one or more agreements with any person that provide for indemnification and advancement of expenses greater or different than that provided in this Article. No amendment or repeal of this Article shall adversely affect any right or protection existing or pursuant to this Article immediately before the amendment or repeal.

ARTICLE IX - Amendment to Articles

These Articles of Incorporation may be amended in the manner provided by law.

ARTICLE X - Bylaws

Subject to these Articles of Incorporation, the power to adopt, alter, amend or repeal Bylaws shall be vested in the Board of Directors. Any Bylaws adopted by the Board of Directors may be repealed, changed, or new Bylaws may be adopted by the

vote of a majority of the stock entitled to vote thereon, and the shareholders may prescribe in any Bylaw made by them that such Bylaw shall not be altered, amended or repealed by the Board of Directors.

IN WITNESS WHEREOF, these Articles of Restatement and Amended and Restated Articles of Incorporation have been executed this 18th day of June, 2002.

ARCHIBALD BROS. FINE BEVERAGES, INC.

By: 
Eric R. Miller, President