

PUBLIC

HCMO Notice of Material Change
Ambulnz Holdings, LLC d/b/a DocGo /
Hicuity Health, Inc.
Attachment No. 15

Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE RESTATED CERTIFICATE OF "HICUITY HEALTH, INC.",
FILED IN THIS OFFICE ON THE NINTH DAY OF JUNE, A.D. 2023, AT
11:30 O`CLOCK A.M.*



4090627 8100
SR# 20232715217

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

Authentication: 203519936
Date: 06-09-23

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF HICUITY HEALTH, INC.**

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Hicuity Health, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**General Corporation Law**”),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Hicuity Health, Inc., and that this corporation was originally incorporated as “Advanced ICU Care, Inc.” pursuant to the General Corporation Law on January 10, 2006.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Fifth Amended and Restated Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Fifth Amended and Restated Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

FIRST: The name of this corporation is Hicuity Health, Inc. (the “**Corporation**”).

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, 19801, County of New Castle. The name of the Corporation’s registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 45,000,000 shares of Common Stock, \$0.01 par value per share (“**Common Stock**”) and (ii) 31,504,026 shares of Preferred Stock, \$0.01 par value per share (“**Preferred Stock**”).

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

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

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); *provided, however*, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting.

B. PREFERRED STOCK

6,339,242 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated “Series A Convertible Preferred Stock” (the “**Series A Preferred Stock**”), 5,614,823 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated “Series B Convertible Preferred Stock” (the “**Series B Preferred Stock**”), 2,020,202 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated “Series C Convertible Preferred Stock” (the “**Series C Preferred Stock**”), 6,194,827 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated “Series D Convertible Preferred Stock” (the “**Series D Preferred Stock**”), 4,764,630 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated “Series E Convertible Preferred Stock” (the “**Series E Preferred Stock**”), and 6,570,302 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated “Series F Convertible Preferred Stock” (the “**Series F Preferred Stock**”), each with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. The Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, Series E Preferred Stock and the Series F Preferred Stock shall collectively be referred to herein as the “**Preferred Stock**”. As used herein, the applicable “**Original Issue Price**” shall mean (i) with respect to the Series A Preferred Stock, \$0.6925 per share (“**Series A Original Issue Price**”), (ii) with respect to the Series B Preferred Stock, \$0.8905 per share (“**Series B Original Issue Price**”), (iii) with respect to the Series C Preferred Stock, \$0.99 per share (“**Series C Original Issue Price**”), (iv) with respect to the Series D Preferred Stock, \$1.2914 per share (“**Series D Original Issue Price**”), (v) with respect to the Series E Preferred Stock, \$2.477 per share (“**Series E Original Issue Price**”), and (vi) with respect to the Series F Preferred Stock, \$3.044 per share (“**Series F Original Issue Price**”), in each case subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization. Unless otherwise indicated, references to “sections” or “subsections” in this Part B of this Article Fourth refer to sections and subsections of Part B of this Article Fourth.

1. Dividends.

1.1 When and as declared by the Board of Directors and to the extent permitted under the General Corporation Law, the Corporation shall pay preferential cumulative dividends to the holders of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock as provided in this Subsection 1.1. Except as otherwise provided herein and only until September 28, 2011 (the “**Dividend Accrual Termination Date**”), (i) dividends on each then-outstanding share of Series A Preferred Stock shall accrue on a daily basis at a rate of eight percent (8%) per annum on the Series A Original Issue Price from and including the date of issuance of such share of Series A Preferred Stock to and including the Dividend Accrual Termination Date, (ii) dividends on each outstanding share of Series B Preferred Stock shall accrue on a daily basis at a rate of eight percent

(8%) per annum on the Series B Original Issue Price from and including the date of issuance of such share of Series B Preferred Stock to and including the Dividend Accrual Termination Date, and (iii) dividends on each outstanding share of Series C Preferred Stock shall accrue on a daily basis at a rate of eight percent (8%) per annum on the Series C Original Issue Price from and including the date of issuance of such share of Series C Preferred Stock to and including the Dividend Accrual Termination Date (collectively, the “**Accrued Dividends**”). Such dividends shall be cumulative and accrue through the Dividend Accrual Termination Date whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Notwithstanding the foregoing, no Accrued Dividends shall accrue following the Dividend Accrual Termination Date. Any unpaid Accrued Dividends shall be paid only upon the earliest to occur of (i) the closing of the Corporation’s initial offering of its equity securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force (the “**IPO**”), (ii) in connection with any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), or (iii) at such other time as the Board of Directors may determine with the approval of the holders of at least a majority of the then outstanding shares of Preferred Stock (voting together as a single class on an as-converted to Common Stock basis) (such holders, “**Requisite Preferred Holders**”). The date on which the Corporation initially issues any share of Preferred Stock shall be deemed to be its “**date of issuance**” regardless of the number of times transfer of such share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such share.

1.2 Following the Dividend Accrual Termination Date (and, in the case of the Series F Preferred Stock, solely from and after the date of original issuance of the Series F Preferred Stock), the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, prior and in preference to any declaration or payment of any dividend (other than dividends on shares of Common Stock payable in shares of Common Stock) on the Corporation’s Common Stock, by reason of their ownership thereof shall each be entitled to receive, on a *pari passu* basis, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of (i) eight percent (8%) per annum on the Series A Original Issue Price of each outstanding share of Series A Preferred Stock, (ii) eight percent (8%) per annum on the Series B Original Issue Price of each outstanding share of Series B Preferred Stock, (iii) eight percent (8%) per annum on the Series C Original Issue Price of each outstanding share of Series C Preferred Stock, (iv) eight percent (8%) per annum on the Series D Original Issue Price of each outstanding share of Series D Preferred Stock, (v) eight percent (8%) per annum on the Series E Original Issue Price of each outstanding share of Series E Preferred Stock, and (vi) eight percent (8%) per annum on the Series F Original Issue Price of each outstanding share of Series F Preferred Stock. Such dividends shall be non-cumulative, shall not accrue, and shall be payable only when, as and if declared by the Board of Directors.

1.3 After the payment or setting aside for payment of any preferential dividends required to be paid as described in Subsections 1.1 and 1.2, any additional dividends on shares of any other class or series of capital stock of the Corporation declared or paid in any calendar year shall be declared or paid among the holders of the Preferred Stock and Common Stock then outstanding based on the number of shares of Common Stock held by each such holder (assuming full conversion of the Preferred Stock). Notwithstanding the foregoing, no dividend shall be declared or paid and no sum shall be set apart therefor on any shares of Common Stock unless and until all dividends payable on all series of Preferred Stock shall have been paid or a sum set apart for such payment.

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

2.1 Preferential Payments to Holders of Series F Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series F Preferred Stock then outstanding shall be entitled to be paid, out of assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event (as defined below), the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event or out of the Available Proceeds (as defined below), as applicable, and before any payment shall be made to the holders of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock (collectively, the “**Junior Preferred Stock**”) or Common Stock by reason of their ownership thereof, an amount per share equal to (a) in the event the liquidation, dissolution, winding up or Deemed Liquidation Event is consummated on or prior to the first anniversary of the date the first share of Series F Preferred Stock is issued by the Corporation (the “**Series F Original Issue Date**”), two times (2x) the Series F Original Issue Price, (b) in the event the liquidation, dissolution, winding up or Deemed Liquidation Event is consummated after the first anniversary of the Series F Original Issue Date but on or prior to the second anniversary of the Series F Original Issue Date, one and three-quarter times (1.75x) the Series F Original Issue Price, (c) in the event the liquidation, dissolution, winding up or Deemed Liquidation Event is consummated after the second anniversary of the Series F Original Issue Date but on or prior to the third anniversary of the Series F Original Issue Date, one and one-quarter times (1.25x) the Series F Original Issue Price, or (d) in the event the liquidation, dissolution, winding up or Deemed Liquidation Event is consummated after the third anniversary of the Series F Original Issue Date, the Series F Original Issue Price, in each case, plus any dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series F Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series F Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of each share of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock then outstanding shall be entitled to be paid, on a *pari passu* basis, out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event, the holders of shares of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock then outstanding shall be entitled to be paid, on a *pari passu* basis, out of the consideration payable to stockholders in such Deemed Liquidation Event or out of the Available Proceeds, as applicable, after the payment of all preferential amounts required to be paid to the holders of shares of Series F Preferred Stock under Subsection 2.1, and before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to (a) with respect to the Series E Preferred Stock, the Series E Original Issue Price, plus any dividends declared but unpaid thereon; (b) with respect to the Series D Preferred Stock, the Series D Original Issue Price, plus any dividends declared but unpaid thereon; (c) with respect to the Series C Preferred Stock, the Series C Original Issue Price, plus the Accrued Dividends thereon (whether or not declared) and any other dividends declared but unpaid thereon; (d) with respect to the Series B

Preferred Stock, the Series B Original Issue Price, plus the Accrued Dividends thereon (whether or not declared) and any other dividends declared but unpaid thereon; and (e) with respect to the Series A Preferred Stock, the Series A Original Issue Price, plus the Accrued Dividends thereon (whether or not declared) and any other dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock the full amounts to which they shall be entitled under this Subsection 2.2, the holders of shares of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if, after payment of the full amount payable to the holders of shares of Series F Preferred Stock pursuant to Subsection 2.1, all amounts payable on or with respect to such shares were paid in full.

2.3 Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment in full of all preferential amounts required to be paid to the holders of shares of Preferred Stock under Subsections 2.1 and 2.2 the remaining assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Preferred Stock pursuant to Subsections 2.1 and 2.2, or the remaining Available Proceeds, as the case may be, shall be distributed among the holders of the shares of Preferred Stock and Common Stock pari passu, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of this Amended and Restated Certificate of Incorporation immediately prior to such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event. The aggregate amount which a holder of a share of Preferred Stock is entitled to receive under Subsections 2.1, 2.2 and 2.3 is hereinafter referred to as the applicable **“Preferred Stock Liquidation Amount.”**

2.4 Deemed Liquidation Events.

2.4.1 Definition. Each of the following events shall be considered a **“Deemed Liquidation Event”** unless (x) if such event is consummated on or prior to the third anniversary of the Series F Original Issue Date, the Requisite Preferred Holders, including the holders of a majority of the then outstanding shares of Series F Preferred Stock, or (y) if such event is consummated after the third anniversary of the Series F Original Issue Date, the Requisite Preferred Holders, elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

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

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger, consolidation or

share exchange continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) (1) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

2.4.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.4.1(a)(i) unless the agreement or plan of merger, consolidation or share exchange for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be paid to the holders of capital stock of the Corporation in accordance with Subsections 2.1, 2.2 and 2.3.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.4.1(a)(ii) or 2.4.1(b) and subject to Subsections 2.1 and 2.2, if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the redemption of such shares of Preferred Stock, and (iii) if the Requisite Preferred Holders so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation, including the approval of a majority of the Preferred Directors), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the “**Available Proceeds**”), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the applicable Preferred Stock Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall ratably redeem a pro rata portion of each holder’s shares of Preferred Stock to the fullest extent of such Available Proceeds ratably in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or redemption provided for in this Subsection 2.4.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to

discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

2.4.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities to be paid or distributed to such holders pursuant to such Deemed Liquidation Event. For assets other than cash, the fair market value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation, except that any publicly-traded securities to be distributed to stockholders upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be valued as follows:

(a) if traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the 10 day period ending 3 days prior to the closing of such transaction;

(b) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 10 day period ending 3 days prior to the closing of such transaction.

2.4.4 Allocation of Escrow and Contingent Consideration. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, if any portion of the proceeds payable to the Corporation or stockholders of the Corporation is payable only upon satisfaction of contingencies (the “**Additional Consideration**”), then (a) the portion of such consideration that is not Additional Consideration (such portion, the “**Initial Consideration**”) shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1, 2.2 and 2.3 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1, 2.2 and 2.3 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 2.4.4, consideration placed into escrow or retained as a holdback to be available for satisfaction of indemnification or similar obligations, or milestone payments in connection with such voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event shall be deemed to be Additional Consideration. Any definitive agreement entered into by the Corporation or its stockholders with respect to a Deemed Liquidation Event that provides for any Additional Consideration shall also provide for the distribution of proceeds in accordance with the foregoing provisions of this Subsection 2.4.4.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Amended and Restated Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

3.2 Election of Directors. The holders of record of the shares of Series F Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the “**Series F Director**”), the holders of record of the shares of Junior Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the “**Junior Preferred Directors**” and together with the Series F Director, the “**Preferred Directors**”), and any remaining directors shall be elected by the holders of a majority of the then outstanding Common Stock and Preferred Stock, voting together as a single class on an as-converted to Common Stock basis. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Series F Preferred Stock or Junior Preferred Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, each voting exclusively and as separate classes, pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Series F Preferred Stock or Junior Preferred Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2.

3.3 Preferred Stock Protective Provisions. The Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the Requisite Preferred Holders, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.3.1 directly or indirectly declare or pay, or permit any of its subsidiaries to declare or pay, any dividends, or make or permit any of its subsidiaries to make, any distributions upon any of its equity securities other than in accordance with Section 1;

3.3.2 directly or indirectly redeem, purchase or otherwise acquire, or permit any of its subsidiaries to directly or indirectly redeem, purchase or otherwise acquire, any of the Corporation’s or any of its subsidiaries’ equity securities or interests, except for repurchases at cost (or the lower of cost and fair market value) of equity securities or interests from an employee, consultant or director of the Corporation or any of its subsidiaries upon termination of such person’s employment, consultancy or directorship with the Corporation or any of its subsidiaries pursuant to any agreement or plan approved by the Board of Directors;

3.3.3 authorize, issue, or enter into any agreement providing for the issuance (contingent or otherwise) of (x) any notes or debt securities containing equity features, including, but not limited to, any notes or debt securities convertible into or exchangeable for equity securities issued

in connection with the issuance of equity securities or containing profit participation features, (y) any equity securities (or any securities convertible into or exchangeable for any equity securities), except for (i) options or other rights to acquire up to an aggregate of 7,976,896 shares of Common Stock reserved for issuance as of the date hereof (as adjusted for stock dividends, splits, combinations and the like with respect to the Common Stock) (and the issuance of shares of Common Stock upon the exercise of such options and rights) which may be issued under the Corporation's 2006 Stock Option Plan and 2016 Stock Incentive Plan, (ii) shares of Common Stock issued in a Qualified Public Offering, (iii) shares of Common Stock issued on conversion of shares of Junior Preferred Stock outstanding on the Filing Date (as defined in Subsection 4.4), or shares of Series F Preferred Stock, and (iv) shares of Common Stock issued upon exercise of Convertible Securities (as defined in Subsection 4.4) outstanding as of the Filing Date, or (z) any capital appreciation or profit participation rights (other than bonus compensation paid to employees of the Corporation or any of its subsidiaries as approved by the Board of Directors);

3.3.4 merge or consolidate with any individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof (each, a "**Person**"), or permit any of its subsidiaries to merge or consolidate with any Person (other than, in the case of a wholly-owned subsidiary, with or into the Corporation or any other wholly-owned subsidiary);

3.3.5 purchase, acquire, sell, lease or otherwise dispose of, or permit any subsidiary to purchase, acquire, sell, lease or otherwise dispose of, assets in one or more transactions that represent ten percent (10%) or more of the Corporation's consolidated assets, on either a book value or Fair Market Value basis (other than sales, leases or other dispositions in the ordinary course of business), and "**Fair Market Value**" means the fair value of the Corporation's business as a whole, as determined jointly by the Corporation and the Requisite Holders;

3.3.6 enter into or modify, or permit any of its subsidiaries to enter into or modify, any exclusive license agreement pursuant which the Corporation or its subsidiary licenses its material assets on an exclusive basis to any third party;

3.3.7 liquidate, dissolve or effect a recapitalization or reorganization in any form of transaction or permit any of its subsidiaries to liquidate, dissolve or effect a recapitalization or reorganization in any form of transaction;

3.3.8 make any amendment to the Corporation's Certificate of Incorporation or any subsidiary's certificate or articles of incorporation or formation, whether by merger, consolidation or otherwise, or make any amendments to the Corporation's bylaws or other similar governing documents or any subsidiary's bylaws, operating agreement or other similar governing documents, whether by merger, consolidation or otherwise;

3.3.9 enter into (directly or indirectly), or permit any of its subsidiaries to enter into, any transaction with any of its or any of its subsidiaries' Affiliates, or any officer, director or stockholder of the Corporation or any of its subsidiaries, any of their respective Affiliates, or any entity in which such persons or their Affiliates may have an interest (excluding any interest of not more than 1% of the shares of stock of any public company having a class of equity securities actively traded on a recognized securities exchange or market), and "**Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common

control with such Person, including, without limitation, any general partner, managing member, officer, director or trustee of such Person, or any venture capital fund or registered investment company now or hereafter existing that is controlled by one (1) or more general partners, managing members or investment advisers of, or shares the same management company or investment adviser with, such Person;

3.3.10 enter into (directly or indirectly through a new subsidiary), or permit any of its subsidiaries to enter into, the ownership, management or operation of any business other than the business anticipated to be conducted by the Corporation and its subsidiaries as of the date of the Closing or any business directly related thereto;

3.3.11 create, incur, assume or suffer to exist, or permit the Corporation and its subsidiaries, taken as a whole, to create, incur, assume or suffer to exist, indebtedness for borrowed money in an aggregate amount exceeding \$100,000 at any time outstanding, other than purchase money obligations, equipment leases or financing and trade debt in the ordinary course of business;

3.3.12 make, or permit any subsidiary to make, in any fiscal year any capital expenditures exceeding \$100,000, in the aggregate, unless such expenditures are set forth in a budget approved by the Board of Directors;

3.3.13 voluntarily file any petition or application with any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any subsidiary of all or any substantial part of the assets of the Corporation or its subsidiaries, commence any proceeding (other than a proceeding for the voluntary liquidation and dissolution of any wholly-owned subsidiary) relating to the Corporation or any subsidiary under any bankruptcy reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, voluntarily file any such petition or application, make any assignment for the benefit of creditors of the Corporation or any subsidiary, or otherwise make any admission of the Corporation's or any subsidiary's inability to pay its debts generally as they become due;

3.3.14 settle or compromise any action, claim, suit or proceeding against the Corporation (other than actions or claims arising in the ordinary course of business or in which a party is seeking damages or other payment by the Corporation of less than \$100,000);

3.3.15 create or suffer to exist, or permit any of its subsidiaries to, create or suffer to exist any lien upon any of its respective properties or assets, now owned or hereafter acquired (other than liens created in connection with any indebtedness permitted to be incurred hereunder);

3.3.16 acquire or permit any of its subsidiaries to acquire, directly or indirectly, in any transaction or related series of transactions all or substantially all of the assets of any Person, or invest in or permit any of its subsidiaries to invest in, directly or indirectly, in any debt or equity securities of any Person or enter into any joint venture agreement with any Person;

3.3.17 increase the number of directors on the Board of Directors; or

3.3.18 amend this Subsection 3.3.

3.4 Series Protective Provisions. For so long as shares of any particular series of Preferred Stock remain outstanding, the Corporation shall not, either directly or indirectly by

amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the then outstanding shares of such series of Preferred Stock, voting as a separate class, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.4.1 amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of such series of Preferred Stock, except for such amendments or alterations that affect all then outstanding series of Preferred Stock in a similar and proportionate manner;

3.4.2 increase the number of authorized shares of such series of Preferred Stock;

3.4.3 (i) create, or authorize the creation of, any additional class or series of capital stock having rights, preferences or privileges senior to such series of Preferred Stock, unless the new class or series of capital stock is similarly senior to all previously existing series of Preferred Stock; (ii) create, or authorize the creation of, any additional class or series of capital stock having rights, preferences or privileges *pari passu* with such series of Preferred Stock, unless the new class or series of capital stock is similarly *pari passu* with all previously existing series of Preferred Stock; (iii) reclassify, alter or amend any existing security of the Corporation having rights, preferences or privileges *pari passu* with such series of Preferred Stock, if such reclassification, alteration or amendment would render such other security senior to such series of Preferred Stock in respect of any such right, preference or privilege, unless the reclassified, altered or amended class or series of capital stock is similarly senior to all previously existing series of Preferred Stock; or (iv) reclassify, alter or amend any existing security of the Corporation having rights preferences or privileges junior to such series of Preferred Stock, if such reclassification, alteration or amendment would render such other security senior to or *pari passu* with such series of Preferred Stock in respect of any such right, preference or privilege, unless the reclassified, altered or amended class or series of capital stock is similarly *pari passu* with all previously existing series of Preferred Stock; or

3.4.4 amend this Subsection 3.4.

4. Optional Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the “**Conversion Rights**”):

4.1 Right to Convert.

4.1.1 Conversion Rate. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable Conversion Price (as defined below) in effect at the time of conversion. The applicable “**Conversion Price**” shall initially be equal to (a) \$0.6925 with respect to the Series A Preferred Stock, (b) \$0.8905 with respect to the Series B Preferred Stock, (c) \$0.99 with respect to the Series C Preferred Stock, (d) \$1.2914 with respect to the Series D Preferred Stock, (e) \$2.477 with respect to the Series E Preferred Stock, and (f) \$3.044 with respect to the Series F Preferred Stock. Such applicable initial Conversion

Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock, subject to the provisions of Subsection 2.3.4 above; provided that the foregoing termination of Conversion Rights shall not affect the amount(s) otherwise paid or payable in accordance with Sections 2.1 and 2.2 to holders of Preferred Stock pursuant to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

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

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall (a) provide written notice to the Corporation's transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder's shares of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b) if such holder's shares are certificated, surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder's name or the names of the nominees in which such holder wishes the shares of Common Stock to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay (A) all declared but

unpaid dividends, and (B) only if such conversion occurs directly in connection with the IPO or a Deemed Liquidation Event, all Accrued Dividends, on the shares of Preferred Stock converted.

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

4.3.3 Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 4.2 and to receive payment of (i) any dividends declared but unpaid thereon and (ii) only if such conversion occurs directly in connection with the IPO or a Deemed Liquidation Event, all Accrued Dividends thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

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

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Applicable Conversion Price for Diluting Issues.

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

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

(b) **“Filing Date”** shall mean the date this Amended and Restated Certificate of Incorporation was filed with and accepted by the Secretary of State of the State of Delaware.

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

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

(i) shares of Common Stock issued upon conversion of Preferred Stock;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;

(iii) up to 7,976,896 shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to the Corporation’s 2006 Stock Option Plan, the Corporation’s 2016 Stock Incentive Plan, or any other plan, agreement or arrangement approved by the Board of Directors of the Corporation, including the approval of a majority of the Preferred Directors;

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options outstanding as of the Filing Date or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities outstanding as of the Filing Date, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the

Board of Directors of the Corporation, including the approval of a majority of the Preferred Directors (including shares underlying (directly or indirectly) any such Options or Convertible Securities);

(vi) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or joint venture agreement, provided that such issuances are approved by the Board of Directors of the Corporation, including the approval of a majority of the Preferred Directors (including shares underlying (directly or indirectly) any such Options or Convertible Securities); or

(vii) shares of Common Stock issued upon the closing of a Qualified IPO (as defined below).

4.4.2 No Adjustment of Conversion Price. No adjustment in the applicable Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the outstanding shares of the affected series of Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the applicable Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the applicable Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this

clause (b) shall have the effect of increasing the applicable Conversion Price to an amount which exceeds the lower of (i) such Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) such Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

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

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

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

4.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Filing Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the applicable Conversion Price in effect immediately prior to such issue, then the Conversion Price of each affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) + (A + C).$$

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

(a) “CP2” shall mean the applicable Conversion Price in effect immediately after such issue of Additional Shares of Common Stock

(b) “CP1” shall mean the applicable Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

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

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

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

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

(a) Cash and Property. Such consideration shall:

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

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

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

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the applicable Conversion Price pursuant to the terms of Subsection 4.4.4, and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Filing Date effect a subdivision of the outstanding Common Stock, the applicable Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Filing Date combine the outstanding shares of Common Stock, the applicable Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of

Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

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

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

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

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

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

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification,

consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Subsection 4.8 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock. For the avoidance of doubt, nothing in this Subsection 4.8 shall be construed as preventing the holders of Preferred Stock from seeking any appraisal rights to which they are otherwise entitled under the General Corporation Law in connection with a merger triggering an adjustment hereunder, nor shall this Subsection 4.8 be deemed conclusive evidence of the fair value of the shares of Preferred Stock in any such appraisal proceeding.

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

4.10 Notice of Record Date. In the event:

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

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

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

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which

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

5. Mandatory Conversion.

5.1 Trigger Events. Each share of Preferred Stock shall automatically be converted into shares of Common Stock, at the then applicable effective conversion rate as calculated pursuant to Subsection 4.1.1, upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least \$9.132 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$50,000,000 of gross proceeds to the Corporation (a “**Qualified IPO**”) or (b) (A) with regards to the Series F Preferred Stock, the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Series F Preferred Stock, voting as a separate class, which vote or written consent must include Concord Innovation Fund II, LP, and (B) with regards to the Junior Preferred Stock, the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Junior Preferred, voting together as a single class on an as-converted to Common Stock basis) (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the “**Mandatory Conversion Time**”). All shares Preferred Stock converted into shares of Common Stock pursuant to this Section 5.1 may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or

certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of (i) any declared but unpaid dividends and (ii) only if such conversion occurs directly in connection with the IPO or a Deemed Liquidation Event, all Accrued Dividends, on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following the acquisition of such Preferred Stock by the Corporation.

7. Waiver. Any of the rights, powers, preferences and other terms of the Preferred Stock set forth herein may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the Requisite Preferred Holders. Any of the rights, powers, preferences and other terms of any series of Preferred Stock set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares of such series of Preferred Stock then outstanding.

8. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

FIFTH: Subject to any additional vote required by this Amended and Restated Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: Subject to any additional vote required by this Amended and Restated Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

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

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

NINTH: To the fullest extent permitted by law, a director or officer of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of

fiduciary duty as a director or officer. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of, or increase the liability of any director or officer of the Corporation with respect to any acts or omissions of such director or officer occurring prior to, such repeal or modification.

TENTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article Tenth shall not (a) adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification or (b) increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

ELEVENTH: The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries and is a partner, member or employee of a Fund, or (ii) any Fund that is a holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, the persons referred to in clauses (i) and (ii) are “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person in such Covered Person’s capacity as a director or stockholder of the Corporation. A “**Fund**” is an entity that is a holder of only Preferred Stock and that is in the business of investing in other entities, or an entity that manages such an entity.

TWELFTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation’s certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there

is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Twelfth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Twelfth (including, without limitation, each portion of any sentence of this Article Twelfth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

THIRTEENTH: To the extent certain sections of the corporations code of any state set forth minimum requirements for the Corporation's retained earnings and/or assets that would otherwise be applicable to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, advisors, officers, directors or other service providers of the Corporation or any of the Corporation's subsidiaries at a price not greater than the amount paid by such person for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase or upon exercise of a right of first refusal, where such agreements were authorized by the Board of Directors of the Corporation, such distributions may be made without regard to any "preferential dividends arrears amount," "preferential rights amount," or similar concept.

* * * *

3. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

4. That this Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this Corporation's Fifth Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 9th day of June, 2023.

By: /s/Louis Silverman
Louis Silverman
Chief Executive Officer

**BY-LAWS
OF
ADVANCED ICU CARE, INC.**





















