

**FOURTH AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ADVANCED ICU CARE, INC.**

(Incorporated on January 10, 2006)

Advanced ICU Care, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Delaware Law"), does hereby certify:

I. That the Board of Directors of the Corporation, by a written consent executed in accordance with Section 141(f) of the Delaware Law, adopted a resolution setting forth the Fourth Amended and Restated Certificate of Incorporation set forth below, declaring it advisable and submitting it to the stockholders of the Corporation entitled to vote in respect thereof for their consideration of such Fourth Amended and Restated Certificate of incorporation.

II. That by written consent executed in accordance with Section 228(a) of the Delaware Law, the stockholders of the Corporation voted in favor of the adoption of the Fourth Amended and Restated Certificate of Incorporation set forth below.

III. That the Fourth Amended and Restated Certificate of Incorporation of the Corporation set forth below has been duly adopted in accordance with Sections 242 and 245 of the Delaware Law and shall read in its entirety as follows:

**FIRST:** The name of the corporation is Advanced ICU Care, Inc. (the "Corporation").

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

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "Delaware Law").

**FOURTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is 51,169,094, which are divided into two classes as follows:

(a) 20,169,094 shares of Preferred Stock, par value \$0.01 per share (the "Preferred Stock" and shares of Preferred Stock are herein sometimes referred to as the "Preferred Shares"), with the rights and preferences designated in PART A below, 6,339,242 shares of which shall be designated Series A Convertible Preferred Stock, par value \$0.01 per share (the "Series A Preferred" and shares of Series A Preferred are herein sometimes referred to as the "Series A Preferred Shares"), 5,614,823 shares of which shall be designated Series B Convertible Preferred Stock, par value \$0.01 per share (the "Series B Preferred" and shares of Series B Preferred are herein sometimes referred to as the "Series B Preferred Shares"), 2,020,202 shares of which shall be designated Series C Convertible Preferred Stock, par value \$0.01 per share (the "Series C Preferred" and shares of Series C Preferred are herein sometimes referred to as the "Series C Preferred Shares") and 6,194,827 shares of which shall be designated Series D Convertible Preferred Stock, par value

\$0.01 per share (the “Series D Preferred” and shares of Series D Preferred are herein sometimes referred to as the “Series D Preferred Shares”); and

(b) 31,000,000 shares of Common Stock, par value \$0.01 per share (the “Common Stock” and shares of Common Stock are sometimes reflected to herein as the “Common Shares”), with the rights and preferences designated in PART B below.

In addition to the capitalized terms defined elsewhere herein, certain capitalized terms used herein are defined in PART D hereof.

**PART A. Terms Applicable to the Preferred Stock.**

**Section 1. Liquidation.**

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, before any payment or distribution shall be made on any Junior Securities, each holder of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall be entitled to receive, respectively, *pari passu* (i) an amount in cash or, to the extent that cash is not available, property, out of the assets of the Corporation available for distribution to the stockholders, equal to the Series A Liquidation Value, plus all accrued and unpaid dividends (whether or not declared) to which such holder shall be entitled pursuant to Section 2 hereof for each share of Series A Preferred held by such holder, (ii) an amount in cash or, to the extent that cash is not available, property, out of the assets of the Corporation available for distribution to the stockholders, equal to the Series B Liquidation Value, plus all accrued and unpaid dividends (whether or not declared) to which such holder shall be entitled pursuant to Section 2 hereof for each share of Series B Preferred held by such holder, (iii) an amount in cash or, to the extent that cash is not available, property, out of the assets of the Corporation available for distribution to the stockholders, equal to the Series C Liquidation Value, plus all accrued and unpaid dividends (whether or not declared) to which such holder shall be entitled pursuant to Section 2 hereof for each share of Series C Preferred held by such holder and (iv) an amount in cash or, to the extent that cash is not available, property, out of the assets of the Corporation available for distribution to the stockholders, equal to the Series D Liquidation Value, plus all accrued and unpaid dividends (whether or not declared) to which such holder shall be entitled pursuant to Section 2 hereof for each share of Series D Preferred held by such holder. For purposes of this Section 1, unless waived by the holders of a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, voting together as a single class on an as-converted to Common Stock basis, the occurrence of a Fundamental Change shall be deemed to be a liquidation, dissolution or winding up of the Corporation.

(b) After the payment to the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred of the full preferential amounts provided for in Section 1(a), upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of the Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares and Common Shares in proportion to the number of Common Shares held by such holders or issuable upon conversion of the Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares held by such holders, and based upon the sum of the total number of Common

Shares outstanding and the total number of Common Shares issuable upon conversion of the Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares.

(c) If upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets of the Corporation available for distribution are insufficient to permit the payment to the holders of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred of the full preferential amount payable to the holders of Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares provided in Section 1(a), then all of the assets of the Corporation available for distribution shall be distributed ratably among the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred in proportion to the amounts that would be payable to such holders if the assets of the Corporation were sufficient to permit payment of the preferential amounts in full.

## Section 2. Dividends.

(a) When and as declared by the Board and to the extent permitted under the Delaware Law, the Corporation shall pay preferential cumulative dividends to the holders of Series A Preferred Shares, Series B Preferred Shares and Series C Preferred Shares as provided in this Section 2. Except as otherwise provided herein and only until the Closing, (i) dividends on each outstanding share of Series A Preferred shall accrue on a daily basis at a rate of eight percent (8%) per annum on the Series A Liquidation Value from and including the date of issuance of such share of Series A Preferred to and including the earliest of (A) the Closing, (B) the date on which the Series A Liquidation Value of such share of Series A Preferred plus all accrued and unpaid dividends thereon is paid or (C) the date on which such share of Series A Preferred is converted, (ii) dividends on each outstanding share of Series B Preferred shall accrue on a daily basis at a rate of eight percent (8%) per annum on the Series B Liquidation Value from and including the date of issuance of such share of Series B Preferred to and including the earliest of (A) the Closing, (B) the date on which the Series B Liquidation Value of such share of Series B Preferred plus all accrued and unpaid dividends thereon is paid or (C) the date on which such share of Series B Preferred may be converted, and (iii) dividends on each outstanding share of Series C Preferred shall accrue on a daily basis at a rate of eight percent (8%) per annum on the Series C Liquidation Value from and including the date of issuance of such share of Series C Preferred to and including the earliest of (A) the Closing, (B) the date on which the Series C Liquidation Value of such share of Series C Preferred plus all accrued and unpaid dividends thereon is paid or (C) the date on which such share of Series C Preferred may be converted (collectively, the "Accrued Dividends"). Such dividends shall be cumulative and accrue through the Closing 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 Closing. Any unpaid Accrued Dividends shall be paid only upon the earliest to occur of (i) the closing of the Corporation's initial Public Offering, (ii) in connection with a transaction described in Section 1 above, or (iii) at such other time as the Board may determine with the approval of the holders of a majority of the then outstanding Series D Preferred. 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.

(b) Following the Closing, the holders of Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, in preference to the holders of Junior Securities, shall each be entitled to receive, on a *pari passu* basis, when and as

declared by the Board, 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 Liquidation Value of each outstanding Series A Preferred Share, (ii) eight percent (8%) per annum on the Series B Liquidation Value of each outstanding Series B Preferred Share, (iii) eight percent (8%) per annum on the Series C Liquidation Value of each outstanding Series C Preferred Share, and (iv) eight percent (8%) per annum on the Series D Liquidation Value of each outstanding Series D Preferred Share. Such dividends shall be non-cumulative and shall be payable only when, as and if declared by the Board.

(c) In addition to the preferential dividend rights specified in Sections 2(a) and (b) above, the holders of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred, participating equally on an as if-converted basis, shall be entitled to receive dividends together with the holders of Common Stock in the manner set forth in this paragraph. The holder of each share of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall be entitled to receive when, as and if declared by the Board, out of funds legally available therefor, a portion of any dividends declared on shares of Common Stock, whether payable in cash or property, equal to the amount of the dividend that would have been payable in respect of the shares of Common Stock into which such share of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred, as the case may be, could have been converted on the date of the declaration of the dividend.

(d) No dividend shall be declared or paid and no sum shall be set apart therefor on any Junior Securities unless and until all dividends payable on the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall have been paid or a sum set apart for such payment.

Section 3. Voting Rights. The Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall have those voting rights set forth for the Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares in PART C below.

Section 4. Conversion.

4.1 Conversion Procedure.

(a) At any time and from time to time, any holder of Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares or Series D Preferred Shares may convert all or any portion of the Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares or Series D Preferred Shares (including any fraction of a share) held by such holder into the number of shares of Common Stock obtained by (A) multiplying the number of Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares or Series D Preferred Shares to be converted by the Series A Liquidation Value, Series B Liquidation Value, Series C Liquidation Value or Series D Liquidation Value, respectively, and (B) dividing the resulting product by the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, then in effect.

(b) Each conversion of Preferred Shares will be deemed to have been effected as of the close of business on the date on which the stockholder delivers written notice to the Corporation at its principal office of its desire to convert shares of Preferred Stock and surrenders the certificate or certificates representing the Preferred Shares to be converted. At such time as such

conversion has been effected, the rights of the holder of such Preferred Shares as such holder will cease and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby. All shares of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred tendered for conversion shall, from and after the date of conversion, be deemed to have been retired and cancelled and shall not be reissued as Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred and the Corporation may thereafter take such appropriate action as may be necessary to reduce accordingly the authorized number of shares of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred.

(c) As soon as possible after a conversion has been effected (but in any event within five (5) business days in the case of Sections 4.1(c)(i) and 4.1(c)(iii) below), the Corporation will deliver to the converting holder:

(i) a certificate or certificates representing the number of shares of Common Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(ii) payment of the amount payable under Section 4.1(f) below with respect to such conversion; and

(iii) a certificate representing any Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares or Series D Preferred Shares that were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(d) The issuance of certificates for shares of Common Stock upon conversion of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred will be made without charge to the holders of such Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of each Series A Preferred Share, Series B Preferred Share, Series C Preferred Share or Series D Preferred Share, the Corporation will take all such actions as are necessary in order to insure that the Common Stock issuable with respect to such conversion will be validly issued, fully paid and nonassessable.

(e) The Corporation will not close its books against the transfer of shares of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred or Common Stock issued or issuable upon conversion of shares of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred in any manner that interferes with the timely conversion of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred.

(f) If any fractional interest in a share of Common Stock would, except for the provisions of this Section 4.1(f), be deliverable upon any conversion of the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred, the Corporation, in lieu of delivering the fractional share therefor, may pay an amount to the holder thereof equal to the fair market value (as reasonably determined in good faith by the Board) of such fractional interest as of the date of conversion.

(g) The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, such number of Common Shares as would be issuable upon the conversion of all Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares then outstanding.

#### 4.2 Conversion Prices.

(a) Initial Conversion Price. The initial "Series A Conversion Price" will be \$0.6925, the initial "Series B Conversion Price" will be \$0.8905, the initial "Series C Conversion Price" will be \$0.99 and the initial "Series D Conversion Price" will be \$1.2914. In order to prevent dilution of the conversion rights granted to holders of Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares hereunder, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price will be subject to adjustment from time to time pursuant to this Section 4.2 and Sections 4.4 and 4.5 of this PART A. For purposes of this Section 4.2, the Corporation shall be deemed to have issued or sold Common Stock under the circumstances as set forth in Section 4.3 below.

(b) Adjustment for Dilutive Events. If and whenever on or after the original date of issuance of the Series D Preferred, the Corporation issues or sells, or in accordance with Section 4.3 below is deemed to have issued or sold, any shares of Common Stock (or any Options or Convertible Securities, in each case, as defined below) for consideration per share less than the applicable Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price in effect immediately prior to the time of such issue or sale (a "Dilutive Event"), then forthwith upon the occurrence of any such Dilutive Event, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price, as applicable, will be reduced (in order to increase the number of shares of Common Stock into which such Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares are convertible) to that price per share determined by dividing (i) the sum of (x) the product derived by multiplying the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, in effect immediately prior to such Dilutive Event, times the number of shares of Common Stock Deemed Outstanding immediately prior to the Dilutive Event plus (y) the aggregate consideration (if any) received by the Corporation for the total number of such shares of Common Stock so issued or sold, or deemed issued or sold, in such Dilutive Event by (ii) the number of shares of Common Stock Deemed Outstanding immediately after such Dilutive Event. Additional shares of Common Stock issued or sold (or deemed issued or sold) without consideration shall be deemed to have been sold for \$0.01 per share. Notwithstanding anything herein to the contrary, the issuance by the Corporation of (i) options or other rights to acquire up to an aggregate of 3,019,938 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 exercise thereof, issued pursuant to stock option plans, stock option grants or other similar arrangements to officers, directors, employees and consultants approved by the Board; (ii) shares of Common Stock issued pursuant to a transaction for which an appropriate Conversion Price adjustment is made pursuant to Section 4.4 or Section 4.5 below; (iii) shares of Common Stock issuable upon conversion of the shares of Series A Preferred Shares, Series B Preferred Shares and Series C Preferred Shares issued prior to the date hereof; (iv) the Series D Preferred Shares issued pursuant to the Series D Stock Purchase Agreement and shares of Common Stock issuable upon conversion of such Series D Preferred Shares; (v) shares of Common Stock issuable upon exercise of the Nidus Warrant, the Advisory Fee Warrant, the Comerica Warrant or the Bridge Loan Warrants; (vi) Series A Preferred

Shares issuable upon exercise of the Venture Warrants; (vii) shares of Common Stock issuable upon conversion of the Series A Preferred Shares issuable upon exercise of the Venture Warrants; (viii) securities issued pursuant to financing leases or similar arrangements approved by holders of not less than a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, voting together as a single class on an as-converted to Common Stock basis; (ix) securities issued other than for cash to strategic partners, lenders or lessors of the Corporation pursuant to strategic partnerships or other transactions approved by holders of not less than a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, voting together as a single class on an as-converted to Common Stock basis; (ix) Common Stock or securities convertible into or exercisable for Common Stock, approved by holders of not less than a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, voting together as a single class on an as-converted to Common Stock basis, as securities excluded from the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price adjustment provisions provided for herein, shall not constitute a Dilutive Event.

4.3 Common Stock Deemed Outstanding. For purposes of determining an adjusted Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, pursuant to Section 4.2(b) above, the issuances described in Sections 4.3(b) and (c) shall each be deemed to be an issuance and sale of Common Stock by the Corporation and the "Common Stock Deemed Outstanding" shall be the number of shares of Common Stock actually issued and outstanding plus (i) the number of shares of Common Stock that would be outstanding assuming the full exercise and conversion of all outstanding options, warrants, purchase rights, and convertible securities, exercisable or convertible for Common Stock (or any securities which are further exercisable for or convertible into Common Stock), including, but not limited to, the Common Stock that would be issuable upon conversion of the outstanding Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred; and (ii) the number of shares of Common Stock deemed issued or sold pursuant to Sections 4.3(a) and 4.3(b) below regardless of whether such Options or Convertible Securities are actually exercisable at such time (without duplication for any options, warrants, purchase rights, and convertible securities included under clause (i) immediately preceding).

(a) Issuance of Rights or Options. If (i) the Corporation in any manner grants any rights, warrants or options to subscribe for or to purchase shares of Common Stock or Convertible Securities (as defined below) (such rights or options referred to herein as "Options"), whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable and (ii) the Price Per Share of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, in effect immediately prior to the time of the granting of such Options, then (x) the total maximum number of shares of such Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum number of Convertible Securities issuable upon the exercise of such Options will be deemed to be Common Stock issued and sold by the Corporation, (y) the consideration received pursuant to the Dilutive Event will be deemed to be equal the Price Per Share times the number of shares of Common Stock so deemed issued and sold by the Corporation and (z) the number of shares of Common Stock so deemed issued and sold by the Corporation shall be included in the Common Stock Deemed Outstanding immediately after such Dilutive Event. For purposes of this Section 4.3(a), the "Price

Per Share" will be determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the grant or sale of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon exercise of all such Options, plus in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange of such Convertible Securities, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price will be made when Convertible Securities are actually issued upon the exercise of such Options or when Common Stock is actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities; provided, that, if such Options expire or lapse without being exercised and/or converted into Common Stock, then the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, will be readjusted to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price which would have been in effect had such expired or lapsed Options not been issued.

(b) Issuance of Convertible Securities. If (i) the Corporation in any manner issues or sells any securities convertible into or exchangeable for Common Stock ("Convertible Securities"), whether or not the right to convert or exchange any such Convertible Securities are immediately exercisable, and (ii) the Price Per Share of shares of Common Stock issuable upon such conversion or exchange is less than the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, in effect immediately prior to the time of such issue or sale, then (x) the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities will be deemed to be Common Stock issued and sold by the Corporation, (y) the consideration received pursuant to the Dilutive Event will be deemed to equal the Price Per Share times the number of shares of Common Stock so deemed issued and sold by the Corporation and (z) the number of shares of Common Stock so deemed issued and sold by the Corporation shall be included in the Common Stock Deemed Outstanding immediately after such Dilutive Event. For the purposes of this Section 4.3(b), the "Price Per Share" will be determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof (including for the avoidance of doubt, any amounts required by Section 4.3(e) below), by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price will be made when Common Stock is actually issued upon the conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustments to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price had been or are to be made pursuant to Section 4.3(a) above, no further adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price will be made by reason of such issue or sale; provided, that, if such Convertible Securities expire or lapse without being converted into or exchanged for Common Stock, then the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, will be readjusted to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price



or Series D Conversion Price which would have been in effect had such expired or lapsed Convertible Securities not been issued.

(c) Change in Option Price or Conversion Rate. If at any time there is a change in (i) the purchase price provided for in any Options, (ii) the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities, or (iii) the rate at which any Convertible Securities are convertible or exchangeable for Common Stock, then the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, in effect at the time of such change will be readjusted to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price which would have been in effect had those Options or Convertible Securities still outstanding at the time of such change provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time such Options or Convertible Securities were initially granted, issued or sold but only if as a result of such adjustment the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price then in effect hereunder would have been reduced, regardless of whether the applicable series of Preferred Stock was outstanding on the date such Options or Convertible Securities were initially granted, issued or sold; and on the termination of any such Option or any right to convert or exchange such Convertible Securities, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, then in effect hereunder shall forthwith be increased to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(d) Calculation of Consideration Received. If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor or the Price Per Share, as the case may be, will be deemed to be the net amount received or to be received by the Corporation therefor. In case any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation or the non-cash portion of the Price Per Share, as the case may be, will be the Fair Market Value of such consideration received or to be received, respectively, by the Corporation; except where such consideration consists of securities, in which case the amount of consideration received or to be received, respectively, by the Corporation will be the Market Price thereof as of the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor will be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving corporation as is attributable to such shares of Common Stock, Options or Convertible Securities, as the case may be.

(e) Integrated Transactions. In case any Option is issued in connection with the issuance or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties thereto, the Option will be deemed to have been issued for a consideration of \$0.01. In addition, for purposes of determining the adjustment pursuant to Section 4.2(b), the aggregate consideration received or receivable by the Corporation shall include both the purchase price paid or to be paid for such other security plus the consideration allocated to the Option pursuant to this Section 4.3(e), and such Option shall not be treated as a separate issuance.

(f) Treasury Shares. The number of shares of Common Stock Deemed Outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any shares so owned or held shall be considered an issuance or sale of Common Stock by the Corporation.

(g) Record Date. If the Corporation takes a record of the holders of Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (ii) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

4.4 Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price in effect immediately prior to such subdivision will be proportionately reduced so that the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall be increased in proportion to such increase of the aggregate number of shares of outstanding Common Stock. If the Corporation at any time combines (by reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price in effect immediately prior to such combination will be proportionately increased so that the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall be decreased in proportion to such decrease of the aggregate number of shares of outstanding Common Stock.

4.5 Organic Change. Upon the consummation of an Organic Change, the terms of the Preferred Stock shall be deemed modified, without payment of any additional consideration therefor, so as to provide that upon the conversion of the Preferred Shares following the consummation of such Organic Change, the holder of such Preferred Shares shall have the right to acquire and receive (in lieu of or in addition to the shares of Common Stock acquirable and receivable prior to the Organic Change) such shares of stock, securities or assets as such holder would have received if such holder had converted its Preferred Shares into Common Stock immediately prior to such Organic Change, in each case giving effect to any adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, made after the date of consummation of the Organic Change. All other terms of the Preferred Stock shall remain in full force and effect following such an Organic Change. The provisions of this Section 4.5 shall similarly apply to successive Organic Changes.

#### 4.6 Notices.

(a) Immediately upon any adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, the Corporation shall give written notice thereof to all holders of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred specifying the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price in effect thereafter.

(b) The Corporation shall give written notice to all holders of Preferred Stock at least twenty (20) days prior to the date on which the Corporation closes its books or takes a record for determining rights to vote with respect to any Organic Change, dissolution or liquidation.

4.7 Mandatory Conversion. If (i) the holders of a majority of the then outstanding Series D Preferred Shares and (ii) the holders of a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares and Series C Preferred Shares, voting together as a single class on an as-converted to Common Stock basis, shall so elect, by vote or written consent, all of the outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares shall automatically convert into shares of Common Stock upon such election, vote or consent and without any further action by the holders of such Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent.

4.8 Mandatory Conversion Upon Qualified Public Offering. If a firm commitment underwritten Public Offering of shares of Common Stock (a "Qualified Public Offering") is effected in which the aggregate net proceeds to the Corporation are at least \$50,000,000 (after underwriting discounts, commissions and fees), then all of the outstanding shares of Preferred Stock shall be automatically converted into shares of Common Stock immediately prior to and conditioned upon the closing of the sale of shares pursuant to such Qualified Public Offering, all without any further action by the holders of such Preferred Shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent. Upon the closing of a Qualified Public Offering, all accrued but unpaid dividends shall be paid in cash as provided under Section 2.

4.9 Certain Events. If any event similar to or of the type contemplated by the provisions of this Section 4, but not expressly provided for by such provisions, occurs, then the Board will make an appropriate and equitable adjustment in the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, so as to protect the rights of the holders of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred; provided, that no such adjustment will increase the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price as otherwise determined pursuant to this Section 4 or decrease the number of shares of Common Stock issuable upon conversion of each Series A Preferred Share, Series B Preferred Share, Series C Preferred Share and Series D Preferred Share.

4.10 Computations. All computations under this Section 4 shall be made to the nearest one-tenth (1/10) of a cent or to the nearest one hundredth (1/100) of a share, as the case may be.

## Section 5. Miscellaneous.

5.1 Registration of Transfer. The Corporation will keep at its principal office a register for the registration of Preferred Shares. Upon the surrender of any certificate representing Preferred Shares at such place, the Corporation will, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Preferred Shares represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent

such number of Preferred Shares as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate, and dividends will accrue on the Preferred Shares represented by such new certificate from the date to which dividends have been fully paid on such Preferred Shares represented by the surrendered certificate.

5.2 Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Preferred Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is an institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Preferred Shares of such class and series represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

5.3 Amendment and Waiver. No amendment, modification or waiver will be binding or effective with respect to any provision of this PART A without the prior affirmative vote or the written consent or waiver of holders of a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, voting together as a single class on an as-converted to Common Stock basis, at the time such action is taken; provided, however, that to the extent any provision of this PART A requires calls for a separate vote of a series of Preferred Stock, then any amendment to the voting requirement of such provision shall require the written consent or waiver of holders of a majority of the then outstanding shares of such series of Preferred Stock.

5.4 Notices. Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered personally or mailed, certified mail, return receipt requested, postage prepaid, or delivered by overnight courier service, and will be deemed to have been given upon delivery, if delivered personally, five days after mailing, if mailed, or one business day after delivery to the courier, if delivered by overnight courier service (a) to the Corporation, at its principal executive offices and (b) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated in writing by such holder).

## **PART B. Terms Applicable to Common Stock.**

Section 1. Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and after the payment of any preferential amounts to be distributed to the holders of the Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, the remaining assets of the Corporation available for distribution to the stockholders shall be distributed to the holders of Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares and Common Shares in accordance with Section 1(b) of PART A of this Article Fourth.

Section 2. Dividends. Whenever all declared or accrued and unpaid preferential dividends upon the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall have been paid or declared and set apart for payment, the Board may declare a dividend or distribution upon the Common Stock. Dividends or distributions so declared by the Board shall be paid to the holders of Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares and Common Shares in accordance with PART A, Section 2(b) of

this Article Fourth, and paid ratably in proportion to the number of shares of Common Stock held by each such holder (calculated on an as-converted to Common Stock basis with respect to holders of Preferred Stock) on the date as of which the holders of Common Stock of record entitled to receive such dividends or distribution were determined.

Section 3. Voting Rights. The Common Stock shall have those voting rights set forth for the Common Stock in PART C below.

**PART C. Voting Rights.**

Section 1. In General. Except as otherwise provided by the Delaware Law, this Fourth Amended and Restated Certificate of Incorporation and the Related Agreements, on all matters submitted to a vote of the stockholders of the Corporation, the Common Stock, Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall vote together as a single class. Each holder of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred, as applicable, shall have the number of votes equal to the number of shares of Common Stock which such holder would have been entitled to receive had such holder converted all of its Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares or Series D Preferred Shares, as the case may be, into Common Shares on the date as of which the holders of Common Stock of record entitled to vote were determined (assuming for this purpose only that Preferred Shares are convertible into fractional shares) and each holder of Common Stock shall have one vote per share of Common Stock held by such holder on the date as of which the holders of Common Stock of record entitled to vote were determined.

Section 2. Preferred Protective Provisions. For so long as any of the Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares or Series D Preferred Shares remain outstanding, the Corporation shall not undertake, without the prior written approval of holders of a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, voting together as a single class on an as-converted to Common Stock basis, any of the following actions (including by merger, reclassification or otherwise):

(a) Dividends. 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 2 of PART A hereof;

(b) Redemptions. 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;

(c) Issuances. 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 3,019,938 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 Option Plan (as defined in the Series D Stock Purchase Agreement), (ii) shares of Common Stock issued in a Qualified Public Offering, (iii) shares of Common Stock issued on conversion of Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, in each case, outstanding on the date hereof, or Series D Preferred Shares, (iv) shares of Common Stock issued upon exercise of the Nidus Warrant, the Advisory Fee Warrant, the Comerica Warrant or the Bridge Loan Warrants, (v) Series A Preferred Shares issuable upon exercise of the Venture Warrants, and (vi) shares of Common Stock issuable upon conversion of the Series A Preferred Shares issuable upon exercise of the Venture Warrants 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);

(d) Mergers. Merge or consolidate with any 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);

(e) Purchase or Sale of Assets. 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);

(f) Exclusive License. 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;

(g) Liquidations. 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;

(h) Charter Amendments. Make any amendment to the Corporation's Certificate 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 by-laws or any Subsidiary's operating agreement, whether by merger, consolidation or otherwise;

(i) Affiliate Transactions. 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);

(j) Other Business. 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;

(k) Indebtedness. 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 in an aggregate amount exceeding \$50,000 at any time outstanding, other than purchase money obligations, equipment leases or financing and trade debt in the ordinary course of business;

(l) Capital Expenditures. Make, or permit any Subsidiary to make, in any fiscal year any capital expenditures exceeding \$50,000, in the aggregate, unless such expenditures are set forth in the applicable Budget approved by the Board;

(m) Bankruptcy. 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;

(n) Settlement of Litigation. 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 \$50,000);

(o) Liens. 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);

(p) Acquisitions or Investments. 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; or

(q) Board Size. Increase the number of directors on the Board.

Section 3. Series Protective Provisions. For so long as shares of any particular series of Preferred Shares remain outstanding, the Corporation shall not undertake, without the prior written approval of holders of a majority of the then outstanding shares of such series, voting as a separate class, any of the following actions:

(a) Amendment. Amend, alter or repeal any provision of the Certificate in a manner that adversely affects the powers, preferences or rights of such series of Preferred Stock, except for such amendments or alterations that affects all then outstanding series of Preferred Stock in a similar and proportionate manner;

(b) Number of Shares. Increase the number of authorized shares of such series of Preferred Stock; or

(c) New Shares. (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.

Section 4. Election of Board of Directors. The Board shall consist of seven (7) directors to be elected as follows:

(a) The holders of the Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(b) The holders of the Series A Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(c) The holders of the Series B Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(d) The holders of the Series D Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(e) The holders of Common Stock, Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred, voting together as a single class on an as if converted to Common Stock basis, shall be entitled to elect the remaining two (2) members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election



of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

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 as provided above shall constitute a quorum for the purpose of electing such director.

Section 5. Cumulative Voting. The right of a holder of shares of the Corporation to cumulate its votes in elections of directors is hereby denied.

#### **PART D. Definitions.**

"Advisory Fee Warrant" has the meaning set forth in the Series D Stock Purchase Agreement.

"Board" means the Corporation's Board of Directors.

"Bridge Loan Warrants" has the meaning set forth in the Series D Stock Purchase Agreement.

"Comerica Warrant" has the meaning set forth in the Series D Stock Purchase Agreement.

"Closing" has the meaning set forth in the Series D Stock Purchase Agreement.

"Fair Market Value" means, with respect to the Corporation, the fair value of the Corporation's business as a whole, as determined jointly by the Corporation and the holders of a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, voting together as a single class on an as-converted to Common Stock basis. If such parties are unable to reach agreement within sixty (60) days of the date such fair value is to be determined, such fair value will be determined by an independent appraiser jointly selected by the Corporation and the holders of a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares, voting together as a single class on an as-converted to Common Stock basis. If the Corporation and the holders of a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares are unable to mutually agree upon an appraiser, each of the Corporation and the holders of a majority of the then outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares shall select an appraiser, and the two appraisers shall select a third appraiser to determine the Fair Market Value, which appraised fair value shall be binding on all parties. The fees and expenses of all appraisers shall be borne by the Corporation.

"Fundamental Change" means (a) a sale, transfer or other disposition of all or substantially all of the assets of the Corporation on a consolidated basis (computed on the basis of book value, determined in accordance with generally accepted accounting principles consistently applied, or fair market value, as determined by the Board) in its reasonable good faith judgment, in any transaction or series of related transactions (other than sales in the ordinary course of business), (b) any merger, consolidation or reorganization to which the Corporation is a party (except for a merger, consolidation or reorganization in which the Corporation is the surviving corporation and, after giving effect to such merger, consolidation or reorganization, the holders of the Corporation's

outstanding capital stock (on a fully-diluted basis) immediately prior to the merger, consolidation or reorganization will own immediately following the merger, consolidation or reorganization; greater than 50% of the Corporation's outstanding capital stock (on a fully diluted basis) in the same proportion and having the same rights, preferences and privileges as the capital stock held by such holders immediately prior to such merger, consolidation or reorganization), (c) any acquisition in any transaction or series of related transactions by a person or group of affiliated persons (other than an underwriter of the Corporation's securities) of greater than 50% of the Corporation's outstanding voting stock (except for a transaction principally for purposes of a bona fide equity financing in which cash is received by the Corporation or Indebtedness of the Corporation is cancelled, converted into equity securities or a combination thereof or a transaction the sole purpose of which is to create a holding company that will be owned in substantially the same proportions by the holders of the Corporation's securities immediately prior to such transaction), or (d) any license agreement pursuant to which the Corporation licenses all or substantially all of its properties or assets.

**"Junior Securities"** means any equity securities of the Corporation other than the Preferred Shares.

**"Market Price"** of any security means the average of the closing prices of such security's sales on all securities exchanges on which such security may at the time be listed, or, if there has been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on the primary exchange on which such security is listed at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, or, if on any day such security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of twenty (20) consecutive business days ending on the day prior to the day "Market Price" is being determined. The "Market Price" of a note or other obligation which is not listed on a securities exchange or quoted in the NASDAQ System or reported by the National Quotation Bureau, Incorporated, will equal the total consideration received by the Corporation (including interest), discounted at the corporate base rate of interest at Chase, Chicago, Illinois, in effect at the time the note or obligation is deemed to have been issued. If at any other time such security is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the "Market Price" will be the fair value thereof determined jointly by the Corporation and the holder or holders of a majority of the Common Stock that would be issuable upon conversion of each outstanding series of Preferred Shares for which the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, is being adjusted by the Dilutive Event, with each such series voting as a separate series. If such parties are unable to reach agreement within a reasonable period of time, such fair value will be determined by an independent appraiser jointly selected by the Corporation and the holder or holders of a majority of the Common Stock that would be issuable upon conversion of each outstanding series of Preferred Shares for which the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, is being adjusted by the Dilutive Event, with each such series voting as a separate series.

**"Nidus Warrant"** has the meaning set forth in the Series D Stock Purchase Agreement.

**"Organic Change"** means any capital reorganization or reclassification of the Corporation that is effected in such a way that holders of Common Stock are entitled to receive (either directly or

upon subsequent liquidation) stock, securities or assets with respect to or in exchange for shares of Common Stock.

**"Person"** means an 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.

**"Public Offering"** means any offering by the Corporation 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; provided, that for purposes of **PART A, Section 4.8**, a Public Offering will not include an offering made in connection with a business acquisition or an employee benefit plan.

**"Related Agreements"** has the meaning set forth in the Series D Stock Purchase Agreement.

**"Series A Liquidation Value"** of any share of Series A Preferred as of any particular date will be equal to \$0.6925 (adjusted appropriately in the event the shares of Series A Preferred are subdivided into a greater number, whether by stock split, stock dividend or otherwise, or combined into a lesser number, whether by reverse stock split or otherwise).

**"Series B Liquidation Value"** of any share of Series B Preferred as of any particular date will be equal to \$0.8905 (adjusted appropriately in the event the shares of Series B Preferred are subdivided into a greater number, whether by stock split, stock dividend or otherwise, or combined into a lesser number, whether by reverse stock split or otherwise).

**"Series C Liquidation Value"** of any share of Series C Preferred as of any particular date will be equal to \$0.99 (adjusted appropriately in the event the shares of Series C Preferred are subdivided into a greater number, whether by stock split, stock dividend or otherwise, or combined into a lesser number, whether by reverse stock split or otherwise).

**"Series D Liquidation Value"** of any share of Series D Preferred as of any particular date will be equal to \$1.2914 (adjusted appropriately in the event the shares of Series D Preferred are subdivided into a greater number, whether by stock split, stock dividend or otherwise, or combined into a lesser number, whether by reverse stock split or otherwise).

**"Series D Stock Purchase Agreement"** means the Series D Preferred Stock Purchase Agreement, to be entered into in September 2011, by and among the Corporation and certain other Persons named therein, as such agreement may be amended from time to time in accordance with its terms.

**"Subsidiary"** has the meaning set forth in the Series D Stock Purchase Agreement.

**"Venture Warrants"** has the meaning set forth in the Series D Stock Purchase Agreement.

**FIFTH:** In furtherance and not in limitation of the powers conferred by statute and unless otherwise provided herein, the Board is, by action of the full Board, expressly authorized to make, alter or repeal the By-Laws of the Corporation in whole or in part.

**SIXTH:** Meetings of stockholders may be held within or outside of the State of Delaware, as the By-Laws 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 or in the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws of the Corporation so provide.

**SEVENTH:** To the fullest extent permitted by the Delaware Law, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of his fiduciary duty as a director; provided, however, that this provision shall not eliminate or limit the liability of a director (1) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the Delaware Law, or (4) for any transaction from which the director derived an improper personal benefit.

**EIGHTH:** The Corporation shall have the authority to indemnify, in accordance with and to the full extent now or hereafter permitted by law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, but not limited to, an action by or in the right of the Corporation), by reason of his acting as a director or officer of the Corporation (and the Corporation, in the discretion of the Board, may so indemnify a person by reason of the fact that he is or was an employee of the Corporation or is or was serving at the request of the Corporation in any other capacity for or on behalf of the Corporation) against any liability or expense actually and reasonably incurred by such person in respect thereof. Such indemnification is not exclusive of any other right to indemnification provided by law or otherwise. The Corporation shall further have the authority to pay expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit, or proceeding, upon receipt of an undertaking by or on behalf of such officer or director to repay such amount if it shall ultimately be determined that such officer or director is not entitled to be indemnified therefor.

**NINTH:** No amendment to or repeal of Article Seventh or Eighth of this Certificate of Incorporation shall apply to or have any effect on the rights of any individual referred to in Article Seventh or Eighth for or with respect to acts or omissions of such individual occurring prior to such amendment or repeal.

**TENTH:** Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

**ELEVENTH:** Unless this Certificate of Incorporation is amended or repealed with respect to this Article Eleventh or unless the By-Laws of the Corporation designate otherwise, the Corporation expressly elects not to be governed by Section 203 of the Delaware Law.

**TWELFTH:** In the event that a member of the Board who is also a partner or employee of an entity that is a holder of Preferred Stock and that is in the business of investing and reinvesting in other entities, or an employee of an entity that manages such an entity (each, a "Fund") acquires knowledge of a potential transaction or other matter in such individual's capacity as a partner or employee of the Fund or the manager or general partner of the Fund (and other than directly in connection with such individual's service as a member of the Board) and that may be an opportunity of interest for both the Corporation and such Fund (a "Corporate Opportunity"), then the Corporation (i) renounces any expectancy that such director or Fund offer an opportunity to participate in such Corporate Opportunity to the Corporation and (ii) to the fullest extent permitted by law, waives any claim that such opportunity constituted a Corporate Opportunity that should have been presented by such director or Fund to the Corporation or any of its affiliates; provided, however, that such director acts in good faith.

**THIRTEENTH:** The Certificate of Incorporation of the Corporation, as herein amended, shall constitute a restatement of and shall supersede the Certificate of Incorporation of the Corporation.

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IN WITNESS WHEREOF, the Corporation has caused this Fourth Amended and Restated Certificate of Incorporation of Advanced ICU Care, Inc. to be signed on the date indicated below.

ADVANCED ICU CARE, INC.

Date: September 28 2011

By:   
Tobin Thomas, President