

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT7593475

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME
CONVEYING PARTY DATA	
Name	Execution Date
E-SCAPE BIO, INC.	09/11/2020
RECEIVING PARTY DATA	
Name:	ESCAPE BIO, INC.
Street Address:	4000 SHORELINE COURT, 4TH FLOOR
City:	SOUTH SAN FRANCISCO
State/Country:	CALIFORNIA
Postal Code:	94080
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	17084713
CORRESPONDENCE DATA	
Fax Number:	(858)314-1501
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
Phone:	858-314-1500
Email:	ipdocketingBOS@mintz.com, jmwatson@mintz.com, dlee@mintz.com
Correspondent Name:	MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
Address Line 1:	3580 CARMEL MOUNTAIN ROAD, SUITE 300
Address Line 2:	IP DOCKETING
Address Line 4:	SAN DIEGO, CALIFORNIA 92130
ATTORNEY DOCKET NUMBER:	060775-016001US
NAME OF SUBMITTER:	DORIS LEE
SIGNATURE:	/Doris Lee/
DATE SIGNED:	10/17/2022
Total Attachments: 23	
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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 "E-SCAPE BIO, INC.", CHANGING ITS NAME FROM "E-SCAPE BIO, INC." TO "ESCAPE BIO, INC.", FILED IN THIS OFFICE ON THE ELEVENTH DAY OF SEPTEMBER, A.D. 2020, AT 3:18 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

5770579 8100
SR# 20207233160

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

Authentication: 203641403
Date: 09-11-20

PATENT
REEL: 061686 FRAME: 0194

**FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
E-SCAPE BIO, INC.**

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

E-SCAPE Bio, 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:

FIRST: That the name of this corporation is E-SCAPE Bio, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on July 13, 2015 under the name E-scape Bio, Inc.

SECOND: That the Board of Directors of this corporation duly adopted resolutions proposing to amend and restate the 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 Certificate of Incorporation of this corporation be amended and restated in its entirety as follows:

ARTICLE I

The name of this corporation is ESCAPE Bio, Inc. (the "**Corporation**").

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 3500 South Dupont Highway, in the City of Dover, County of Kent, State of Delaware, 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

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.

ARTICLE IV

A. Authorization of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, common stock and preferred stock. The total number of

shares that the Corporation is authorized to issue is 350,848,888. The total number of shares of common stock authorized to be issued is 200,224,444, par value \$0.0001 per share (the "**Common Stock**"). The total number of shares of preferred stock authorized to be issued is 150,624,444, par value \$0.0001 per share (the "**Preferred Stock**"), 53,000,000 of which are designated as "**Series A Preferred Stock**," 31,073,263 of which are designated as "**Series B Preferred Stock**" and 66,551,181 of which are designated as "**Series C Preferred Stock**."

B. Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV, Section B.

1. Dividend Provisions.

(a) The holders of shares of Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the applicable Dividend Rate (as defined below), payable when, as and if declared by the Corporation's board of directors (the "**Board of Directors**"). Such dividends shall not be cumulative. For purposes of this Section 1(a), "**Dividend Rate**" shall be (i) \$0.08 per annum for each share of Series A Preferred Stock and Series B Preferred Stock, and (ii) \$0.08775 per annum for each share of Series C Preferred Stock, each as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like.

(b) After payment of dividends pursuant to Article IV, Section B.1(a), any additional dividends or distributions shall be distributed among all holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted to Common Stock at the then effective Conversion Rate.

(c) Whenever a dividend or distribution shall be payable in property other than cash, the value of such dividend or distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors, including the consent of a majority of the Preferred Directors (as defined below).

2. Liquidation Preference.

(a) **Preferred Stock Liquidation Preference.** In the event of any Liquidation Event (as defined below), the holders of then outstanding shares of each series of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the proceeds of such Liquidation Event to the holders of Common Stock, an amount per share equal to the sum of the applicable Original Issue Price (as defined below) for such series of Preferred Stock, plus any declared but unpaid dividends on each such share (the "**Liquidation Preference**"). If, upon the occurrence of such event, the proceeds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full Liquidation Preference, then the entire proceeds legally available for distribution shall be

distributed ratably among the holders of the Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section 2(a). For purposes of this Fourth Amended and Restated Certificate of Incorporation, "**Original Issue Price**" shall mean (i) \$1.00 per share for each share of Series A Preferred Stock and Series B Preferred Stock, and (ii) \$1.0969 per share for each share of Series C Preferred Stock, each as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock.

(b) **Remaining Assets.** Subject to the provisions of Article IV, Section B.2(c) below, upon completion of the distribution of the full Liquidation Preference, all of the remaining proceeds of the Liquidation Event shall be distributed among the holders of Common Stock and Preferred Stock pro rata and on an as converted to Common Stock basis at the then effective Conversion Rate for each series of Preferred Stock.

(c) (i) For purposes of this Section 2, a "**Liquidation Event**" shall mean:

(A) the closing of the sale, transfer, exclusive license or other disposition, in one transaction or a series of related transactions, of all or substantially all of the Corporation's and its subsidiaries' assets, taken as a whole,

(B) the consummation of the merger or consolidation of the Corporation with or into another entity, except any merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold a majority of the voting power of the capital stock of the Corporation or the surviving or acquiring entity (or, if the surviving or acquiring entity is a wholly owned subsidiary of another party immediately following such merger or consolidation, the parent entity of such surviving or acquiring entity),

(C) the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or entity, or group of affiliated persons or entities, of the Corporation's securities if, after such closing, such person, entity or group of affiliated persons or entities would hold 50% or more of the outstanding voting stock of the Corporation, or the surviving or acquiring entity; or

(D) a liquidation, voluntary or involuntary dissolution or winding up of the Corporation or a general assignment for the benefit of creditors;

provided, however, that a transaction or series of transactions shall not constitute a Liquidation Event if:

(1) its sole purpose is to change the state of the Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons and entities who held the Corporation's securities immediately prior to such transaction;

(2) it is solely a transfer of securities to an underwriter of the Corporation's securities in connection with an initial underwritten public

offering pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended (the "**Securities Act**");

(3) it is solely for bona fide preferred stock financing purposes in which cash is received by the Corporation, or indebtedness of the Corporation is cancelled or converted or a combination thereof, and which is not otherwise related to the sale or transfer or transfer of shares of capital stock of the Corporation by any stockholders of the Corporation; or

(4) each of (i) the holders in the aggregate of at least sixty-three percent (63%) of all then outstanding shares of Preferred Stock, voting together as a single class and not as separate series and on an as-converted to Common Stock basis (the "**Preferred Majority**"), and (ii) the holders in the aggregate of at least a majority of all then outstanding shares of Series C Preferred Stock, voting together as a single class on an as-converted to Common Stock basis (the "**Series C Majority**"), elect in writing that such transaction or series of transactions, as applicable, is not a Liquidation Event.

(ii) If proceeds from any Liquidation Event to be distributed to the Corporation or its stockholders is other than cash, the value of such proceeds will be deemed to be the fair market value of such proceeds. Any proceeds that are securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a U.S. national securities exchange, the value shall be deemed to be the average of the daily VWAPs (as defined below) of the securities on such exchange over the twenty (20) trading-day period ending three (3) trading days prior to the occurrence of the Liquidation Event;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the daily VWAPs (whichever is applicable) over the twenty (20) trading-day period ending three (3) trading days prior to the occurrence of the Liquidation Event; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the Preferred Majority.

For the purposes of this Section 2(c), "**trading day**" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "**daily VWAP**" shall be the per share volume-weighted average price of the applicable securities as displayed under the heading "Bloomberg VWAP" on Bloomberg page "[Ticker Symbol] <equity> AQR" (or any successor thereto if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day (or if such volume-weighted average price is unavailable on Bloomberg, the volume-weighted average trading price of one (1) share of such securities on such trading day, as determined in good faith by the Board of Directors using a reasonably similar method). The daily VWAP will be

determined without regard to afterhours trading or any other trading outside of the regular trading session trading hours.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of the Preferred Majority.

(C) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event shall, with the appropriate approval of the definitive agreements governing such Liquidation Event by the stockholders under the General Corporation Law and Article IV Section B.5(c) below, be superseded by the determination of such value set forth in the definitive agreements governing such Liquidation Event.

(iii) In the event the requirements of this Section 2 are not complied with, the Corporation shall forthwith either:

(A) cause the closing of such Liquidation Event to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iv) below.

(iv) The Corporation shall give each holder of record of Preferred Stock written notice of such impending Liquidation Event not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that subject to compliance with the General Corporation Law such periods may be shortened or waived upon the written consent of the Preferred Majority.

(d) In the event that in connection with a Liquidation Event any portion of the consideration payable to the Corporation or to the stockholders of the Corporation is placed into escrow and/or is payable to the Corporation or the stockholders of the Corporation subject to contingencies ("Contingent Consideration"), then (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2(a)

and 2(b) above as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event, and (b) any Contingent Consideration which becomes payable to the Corporation or to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2(a) and 2(b) above after taking into account payment of the Initial Consideration as part of the same transaction. Any definitive agreement for a Liquidation Event shall provide that all proceeds, including but not limited to the Contingent Consideration, are distributed in accordance with the provisions of this Article IV, Section B.2, including but not limited to this Section 2(d).

3. **Redemption**. The Preferred Stock is not redeemable at the option of the holder thereof.

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

(a) **Right to Convert**. Each share of Preferred Stock shall be convertible, at the option of the holder thereof (provided that such holder may waive such option to convert upon written notice to the Corporation, at any time and from time to time), at any time after the date of issuance of such share, and without the payment of additional consideration by the holder thereof, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price for a series of Preferred Stock by the applicable Conversion Price (as defined below) for such series (the conversion rate for a series of Preferred Stock into Common Stock is referred to herein as the "**Conversion Rate**" for such series), determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for each series of Preferred Stock shall be the Original Issue Price applicable to such series; provided, however, that the Conversion Price for the Preferred Stock shall be subject to adjustment as set forth in Section 4(e) below.

(b) **Automatic Conversion**. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Rate at the time in effect for such series of Preferred Stock immediately upon the earlier of (i) the closing of the Corporation's sale of its Common Stock (which shares are to be listed on the New York Stock Exchange or Nasdaq Global Market) in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 under the Securities Act, the public offering price per share is of not less than one and a half times (1.5x) the Original Issue Price of the Series C Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations and the like) and pursuant to which the Corporation receives gross proceeds of at least \$50,000,000, prior to deductions for underwriting discounts, commissions and expenses (a "**Qualified Public Offering**"), or (ii) the date, or the occurrence of an event, specified by vote or written consent or agreement of each of (x) the Preferred Majority and (y) the Series C Majority (each of the events referred to in (i) and (ii) in the preceding sentence of this Section 4(b) are referred to herein as the "**Automatic Conversion Event**").

(c) **Mechanics of Conversion**. Before any holder of Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock, such holder shall

surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, (i) issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, (ii) pay in cash such amount in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion, and (iii) pay all accrued or declared, but unpaid dividends on the shares Preferred Stock so converted, in either (1) shares of Common Stock based on the fair market value in effect at the time of the conversion, or (2) in cash, at the election of such holder of Preferred Stock, but only to the extent such dividends may lawfully be paid in cash by the Corporation. In the event any dividends may not lawfully be paid by the Corporation on the date of conversion, such dividends shall remain an obligation of the Corporation and shall be payable to holders of record of Preferred Stock whose shares were converted on the date of conversion as promptly as practicable following the date such obligation may lawfully be paid by the Corporation. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the persons or entities entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons or entities entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. If the conversion is in connection with the Automatic Conversion provisions of Section 4(b), clause (ii) above, such conversion shall be deemed to have been made on the conversion date described in the stockholder consent approving such conversion, and the persons or entities entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, on or after the date that this Fourth Amended and Restated Certificate of Incorporation is filed with the Secretary of State of Delaware (the "**Filing Date**"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price applicable to a series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price (calculated to the nearest one-tenth of a cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and the

denominator of which shall be the number of shares of Common Stock Outstanding immediately prior to such issuance plus the number of shares of such Additional Stock. For purposes of this subsection 4(e)(i)(A), the term "**Common Stock Outstanding**" shall mean and include the following: (1) outstanding Common Stock, (2) Common Stock issuable upon conversion of outstanding Preferred Stock, (3) Common Stock issuable upon exercise of outstanding stock options and (4) Common Stock issuable upon conversion, exercise or exchange of securities directly or indirectly convertible into, or exercisable or exchangeable for, Common Stock. Shares described in (1) through (4) above shall be included whether vested or unvested, whether contingent or non-contingent and whether convertible, exercisable, or exchangeable or not yet convertible, exercisable or exchangeable. In the event that the Corporation issues or sells, or is deemed to have issued or sold, shares of Additional Stock that results in an adjustment to a Conversion Price pursuant to the provisions of this Section 4(d) (the "**First Dilutive Issuance**"), and the Corporation then issues or sells, or is deemed to have issued or sold, shares of Additional Stock in a subsequent issuance other than the First Dilutive Issuance that would result in further adjustment to a Conversion Price within ninety (90) days of the First Dilutive Issuance (a "**Subsequent Dilutive Issuance**") pursuant to the same instruments as the First Dilutive Issuance, then and in each such case upon a Subsequent Dilutive Issuance the applicable Conversion Price for each series of Preferred Stock shall be reduced to the applicable Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance.

(B) No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one-tenth of one cent per share. Except to the limited extent provided for in Sections 4(d)(i)(E)(3) and (E)(4) below, no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefor:

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common

Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 4(d)(i)(C) and (d)(i)(D) above), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 4(d)(i)(C) and (d)(i)(D) above).

(3) In the event of any change in the number of shares of Common Stock deliverable or, in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Additional Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and above shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4) above.

(ii) **“Additional Stock”** shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E) above) by the Corporation on or after the Filing Date other than the following:

(A) shares Common Stock issued by the Corporation and/or options to purchase Common Stock issued by the Corporation, and the Common Stock issued pursuant to the exercise of such options, to employees, independent contractors, officers, or directors of the Corporation pursuant to stock purchase agreements, equity incentive plans or agreements, stock bonus awards, or other incentive stock arrangements if approved, in each instance, by the Board of Directors, including a majority of the Preferred Directors;

(B) shares of capital stock issued by the Corporation, and/or options or warrants issued by the Corporation for capital stock, and the underlying capital stock issued pursuant to exercise, and if applicable, subsequent conversion, thereof to leasing companies, equipment financing and other financial lending institutions, landlords, Corporation advisors, and other providers of goods and services to the Corporation, if approved, in each instance, by the Board of Directors, including a majority of the Preferred Directors;

(C) shares of capital stock issued by the Corporation, and/or options or warrants issued by the Corporation for capital stock, and the underlying capital stock issued pursuant to exercise, and if applicable, subsequent conversion, thereof to other entities in connection with bona fide joint ventures, development projects, acquisitions, or other strategic transactions, if approved, in each instance, by the Board of Directors, including a majority of the Preferred Directors;

(D) capital stock issued pursuant to subsection 4(d)(iii) below;

(E) Common Stock issued pursuant to a Qualified Public Offering;

(F) Common Stock actually issued upon conversion of the Preferred Stock;

(G) Common Stock issued or deemed issued pursuant to subsection 4(d)(i)(E) above as a result of a decrease in the Conversion Price of any series of Preferred Stock resulting from the operation of Section 4(e); or

(H) other capital stock and/or options or warrants therefore issued by the Corporation, in each instance, for which the exemption from the provisions of subsection 4(d)(i)(A) above has been agreed to in advance of such issuance in writing by each of the Preferred Majority and the Series C Majority.

Securities specified in subsection 4(d)(ii)(A) through (G) above shall be known herein as **“Exempted Securities”**.

(iii) In the event the Corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the

outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration, by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Preferred Stock shall be appropriately 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 of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E) above.

(iv) If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Preferred Stock shall be appropriately 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 outstanding shares.

(v) If the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise) into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. If the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(e) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other entities, evidences of indebtedness issued by the Corporation or other persons or entities, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii) above and the provisions of Section 1 do not apply to such a distribution, then, in each such case for the purpose of this Section 4(e), the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or different number of shares of any other class or classes of stock, whether by capital reorganization, recapitalization or otherwise (other than a subdivision, combination or merger or sale of assets

transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such reorganization or recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Preferred Stock after the reorganization or recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalently as may be practicable.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock and the aggregate number of shares of Common Stock to be issued to particular stockholders, shall be rounded down to the nearest whole share and the corporation shall pay in cash the fair market value of any fractional shares as of the time when entitlement to receive such fractions is determined. 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 number of shares of Common Stock issuable upon such conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Preferred Stock.

(h) Notice of Record Date. If the Corporation shall propose at any time (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus, (ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a Liquidation Event, the Corporation shall mail to each holder of Preferred Stock, at least ten (10) days prior to the date on which the record shall be taken for a dividend or distribution, in the case of clause (i), or for a stockholder vote on such matter, in the cases of clauses (ii) or (iii), a notice specifying the date on which any such record is to be taken, and the amount and character of such dividend or distribution, in the case of clause (i), or a brief description of the action(s) to be taken, in the cases of clauses (ii) or (iii). Notwithstanding the foregoing, such notice period may be shortened or eliminated upon the written consent of the Preferred Majority.

(i) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the 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, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, 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 Fourth Amended and Restated Certificate of Incorporation.

5. Voting Rights.

(a) **General Voting Rights.** The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and except as provided by law or in Section 5(b) below with respect to the election of directors by the separate class vote of the holders of Common Stock, shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted to Common Stock basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) **Voting for the Election of Directors.** As long as shares of Series B Preferred Stock are then outstanding, the holders of the then outstanding shares of Series B Preferred Stock shall be entitled to elect four (4) directors of the Corporation at any election of directors (each a "***Series B Director***" and collectively, the "**Series B Directors**"). As long as shares of Series C Preferred Stock are then outstanding, the holders of the Series C Majority shall be entitled to elect one (1) director of the Corporation at any election of directors (such director, the "***Series C Director***" and collectively with the Series B Directors, the "**Preferred Directors**"). The holders of outstanding Common Stock shall be entitled to elect two (2) directors of the Corporation at any election of directors. The holders of Preferred Stock and the holders of Common Stock, voting together as a single class and on an as converted to Common Stock basis, shall be entitled to elect any remaining directors of the Corporation.

Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Fourth Amended and Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director,

and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such vacancy occurs among the directors elected by the holders of a class or series of stock or different classes or series voting separately or together, the holders of shares of such class, series or different classes or series voting separately (or together, as the case may be), may override the Board of Directors' action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders, pursuant to the terms and conditions of that certain Amended and Restated Voting Agreement entered into as of or around the Filing Date by and among the Corporation and the Stockholders named therein, as such may be amended in accordance therewith from time to time (the "**Voting Agreement**"). Any director may be removed during his or her term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock (or the different classes or series voting separately, or together, as the case may be) 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, and any vacancy thereby created may be filled by the holders of that class or series of stock (or different classes or series voting separately, or together as the case may be) represented at the meeting or pursuant to written consent, pursuant to the terms of the Voting Agreement.

(c) **Class Protective Provisions.** So long as at least twenty-five percent (25%) of the total number of shares of Preferred Stock that are cumulatively (i) issued pursuant to the Series C Purchase Agreement and (ii) issued and outstanding as of the Filing Date remain outstanding, as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like, the Corporation shall not do any of the following, or permit or cause any of its subsidiaries to do any of the following, either directly or indirectly, by merger, amendment, recapitalization, reorganization, consolidation or otherwise, without (in addition to any other vote required by law or this Fourth Amended and Restated Certificate of Incorporation) first obtaining the prior approval, by vote or written consent, as provided by law, of the Preferred Majority, 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:

(i) amend, alter, repeal, waive or change the Fourth Amended and Restated Certificate of Incorporation, then in effect, or the Bylaws of this Corporation, then in effect;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized or designated shares of Common Stock or Preferred Stock, or any series thereof;

(iii) authorize, designate or issue, whether by reclassification or otherwise, any new class or series of capital stock ranking on parity with or senior to the then outstanding shares of Preferred Stock in right of redemption, liquidation preference, voting or dividends, or authorize, designate or issue any options, warrants, other rights or equity or debt securities exercisable, convertible and/or exchangeable for such capital stock, or once authorized, designated or issued, increase the amount of such authorized, designated or issued amounts;

(iv) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal, at no greater than the original purchase price thereof;

(v) authorize or enter into an agreement for, nor consummate any transaction or series of transactions, that involves the transfer (via sale, assignment, license, lease or otherwise) of an asset or group of assets material to the Corporation or its subsidiaries and is not in the ordinary course of the Corporation's or its subsidiaries' business, an exclusive license of the Corporation's and its subsidiaries' intellectual property rights (taken as a whole) not in the ordinary course of the Corporation's or its subsidiaries' business, the acquisition of all or substantially all of the equity of another entity or all or substantially all of the assets of another entity or the business unit of another entity, or a Liquidation Event;

(vi) increase or decrease the authorized number of directors of the Corporation;

(vii) pay or declare any dividend on any shares of Common Stock or Preferred Stock, except as provided for in Article IV, Section B.1(a);

(viii) authorize, enter into or consummate any transaction or series of related transactions pursuant to which the Corporation will issue or be obligated to issue more than \$250,000 of indebtedness, or any guaranty or provision of surety for the obligations of any third party in such amount, in each case unless approved by the Board of Directors;

(ix) authorize, enter into or consummate any transaction in which any of the Corporation's directors is interested, unless such transaction has been approved by the Board of Directors, including the approval of a majority of the directors who are not interested in such transaction or

(x) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or permit any subsidiary to create, or authorize the creation of, or issue or obligate itself to issue, any shares of any class or series of capital stock, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary.

6. **Series C Protective Provisions.** For so long as at least twenty-five percent (25%) of the shares of Series C Preferred Stock issued under the Series C Preferred Stock Purchase Agreement entered into as of or around the Filing Date by and among the Corporation and the purchasers named therein, as such may be amended in accordance therewith from time to time (the "**Series C Purchase Agreement**"), remain outstanding, as adjusted for any stock splits, stock

dividends, combinations, subdivisions, recapitalizations or the like, the Corporation shall not do any of the following, or permit or cause any of its subsidiaries to do any of the following, either directly or indirectly, by merger, amendment, recapitalization, reorganization, consolidation or otherwise, without first obtaining the prior approval, by vote or written consent, as provided by law, of the holders Series C Preferred Stock representing the Series C Majority, 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: (i) amend, alter, waive or repeal any provision of the Fourth Amended and Restated Certificate of Incorporation, then in effect, or the Bylaws of the Corporation, then in effect, that alters or changes the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series C Preferred Stock so as to affect the Series C Preferred Stock adversely and in a manner different than any other series of Preferred Stock (it being understood that a series of Preferred Stock shall not be considered to be affected differently as the result of the creation of new series of Preferred Stock with its own voting rights and other powers, preferences, or other special rights, privileges or restrictions, or because of the proportional differences in the amounts of respective issue prices and liquidation preferences that arise out of differences in the original issue price vis-a-vis other series of Preferred Stock), (ii) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any securities of the Company; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal, at no greater than the original purchase price thereof, (iii) pay or declare any dividend on any shares of Common Stock or Preferred Stock prior to the Series C Preferred Stock, or (iv) reclassify, alter or amend any series or class of the Corporation's capital stock that is junior to or *pari passu* with the Series C Preferred Stock in respect of the rights, preferences or privileges of the Series C Preferred Stock, if such reclassification, alteration or amendment would render such other security senior to or, in the case of any series or class of the Corporation's capital stock that is junior to the Series C Preferred Stock in respect of the rights, preferences or privileges of the Series C Preferred Stock, render such other security *pari passu* with the Series C Preferred Stock in respect of such right, preference or privilege.

7. **Series B Protective Provisions.** For so long as at least twenty-five percent (25%) of the shares of Series B Preferred Stock issued under the Series B Preferred Stock Purchase Agreement dated May 30, 2019 (the "**Series B Purchase Agreement**"), remain outstanding, as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like, the Corporation shall not, by merger, amendment, recapitalization, reorganization, consolidation or otherwise, without first obtaining the prior approval, by vote or written consent, as provided by law, of the holders in the aggregate of at least sixty percent (60%) of the shares of outstanding Series B Preferred Stock, amend, alter, or repeal any provision of the Fourth Amended and Restated Certificate of Incorporation, then in effect, or the Bylaws of the Corporation, then in effect, that alters or changes the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series B Preferred Stock so as to affect the Series B Preferred Stock adversely and in a manner different than any other series of Preferred Stock (it being understood that a series of Preferred Stock shall not be considered to be affected differently as the result of the creation of new series of Preferred Stock with its own voting rights and other powers, preferences, or other special rights, privileges or restrictions, or because of the proportional differences in the

amounts of respective issue prices and liquidation preferences that arise out of differences in the original issue price vis-a-vis other series of Preferred Stock).

8. Series A Protective Provisions. For so long as at least twenty-five percent (25%) of the shares of Series A Preferred Stock issued pursuant to the Series A Preferred Stock Purchase Agreement and the 2017 Series A Preferred Stock Purchase Agreement, dated August 19, 2015 and May 19, 2017, respectively (the "**Series A Purchase Agreements**"), remain outstanding, as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like, the Corporation shall not, by merger, amendment, recapitalization, reorganization, consolidation or otherwise, without first obtaining the prior approval, by vote or written consent, as provided by law, of the holders in the aggregate of at least sixty percent (60%) of the shares of outstanding Series A Preferred Stock amend, alter, or repeal any provision of the Fourth Amended and Restated Certificate of Incorporation, then in effect, or the Bylaws of the Corporation, then in effect, that alters or changes the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series A Preferred Stock so as to affect the Series A Preferred Stock adversely and in a manner different than any other series of Preferred Stock (it being understood that a series of Preferred Stock shall not be considered to be affected differently as the result of the creation of new series of Preferred Stock with its own voting rights and other powers, preferences, or other special rights, privileges or restrictions, or because of the proportional differences in the amounts of respective issue prices and liquidation preferences that arise out of differences in the original issue price vis-a-vis other series of Preferred Stock).

9. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Fourth Amended and Restated Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

10. Notices. Any notice required by the provisions of this Article IV(B) to be given to the holders of shares of Preferred Stock shall be deemed given (i) if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his, her or its address appearing on the books of the Corporation, or (ii) if such notice is provided in another manner then permitted by the General Corporation Law.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C) and are, in each case, subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, any dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B) hereof.

3. **Redemption.** The Common Stock is not redeemable at the option of the holder.

4. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law, 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 Fourth 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 Fourth Amended and Restated Certificate of Incorporation or pursuant to the General Corporation Law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Fourth Amended and Restated Certificate of Incorporation) the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

5. **Directors.** The holders of outstanding Common Stock shall be entitled to elect directors as provided in Section 5(b) of Article IV(B) above.

ARTICLE V

Except as otherwise provided in this Fourth Amended and Restated Certificate of Incorporation, 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.

ARTICLE VI

Subject to any additional vote required by this Fourth 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.

ARTICLE VII

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

ARTICLE VIII

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 (subject to

any provision contained in the statutes) 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.

ARTICLE IX

To the fullest extent permitted by the General Corporation Law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the state of Delaware is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

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

ARTICLE X

Subject to any additional vote required by this Fourth Amended and Restated Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Fourth Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE XI

The Corporation shall have the power to indemnify, to the extent permitted by the General Corporation Law, as it presently exists or may hereafter be amended from time to time, any person or entity 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 (a "**Proceeding**") by reason of the fact that he, she or it is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or entity in connection with any such Proceeding.

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

ARTICLE XII

The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, an Excluded Opportunity. An **“Excluded Opportunity”** is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of 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, **“Covered Persons”**), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation; provided, that nothing herein is intended to diminish the fiduciary duties of any director of the Corporation.

ARTICLE XIII

In connection with repurchases by the Corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, Section 500 of the California Corporations Code shall not apply in all or in part with respect to such repurchases. In the case of any such repurchases, distributions by the corporation may be made without regard to the “preferential dividends arrears amount” or any “preferential rights amount,” as such terms are defined in Section 500(b) of the California Corporations Code.

ARTICLE XIV

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 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 XIV 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 XIV (including, without limitation, each portion of any sentence of this Article XIV 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.

* * *

THIRD: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

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

[Signature page follows.]

IN WITNESS WHEREOF, this Fourth Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 11th day of September, 2020.

By: /s/ JULIE ANNE SMITH
Julie Anne Smith
President and Chief Executive Officer

Signature Page to ESCAPE Bio, Inc.
Amended and Restated Certificate of Incorporation