

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**  
Pursuant to Section 13 or 15(d)  
of The Securities Exchange Act of 1934

**Date of Report (Date of earliest event reported) May 22, 2020 (May 19, 2020)**

**ASSERTIO THERAPEUTICS, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation)

**001-13111**  
(Commission  
File Number)

**94-3229046**  
(IRS Employer  
Identification No.)

**100 South Sanders Rd., Suite 300,  
Lake Forest, IL 60045**  
(Address of principal executive offices, including zip code)

**(224) 419-7106**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

**Securities registered pursuant to Section 12(b) of the Act: none**

Title of each class:	Trading Symbol(s):	Name of each exchange on which registered:
Common Stock, \$0.0001 par value	ASRT	The NASDAQ Stock Market LLC

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## Explanatory Note

On March 17, 2020, Assertio Therapeutics, Inc. ("Assertio Therapeutics" or "Assertio") announced plans to merge with Zyla Life Sciences (the "Merger") and in connection with the Merger, to create a new public holding company, Assertio Holdings, Inc. ("Assertio Holdings"), by implementing a holding company reorganization (the "Assertio Reorganization"). As a result of the Assertio Reorganization, Assertio Holdings became the successor issuer to Assertio Therapeutics, Inc. Following the consummation of the Assertio Reorganization, shares of Assertio Holdings Common Stock are expected to continue to trade on Nasdaq on an uninterrupted basis under the symbol "ASRT" with new CUSIP number #04546C 106.

### **Item 1.01. Entry into a Material Definitive Agreement.**

#### ***Adoption of Agreement and Plan of Merger and Consummation of Holding Company Reorganization***

As contemplated in the Merger, on May 19, 2020, Assertio implemented the Assertio Reorganization pursuant to an Agreement and Plan of Merger (the "Reorganization Merger Agreement"), dated as of May 19, 2020, by and among Assertio, Assertio Holdings and a wholly-owned subsidiary formed to effectuate the Assertio Reorganization. As a result of the transactions contemplated in the Reorganization Merger Agreement, Assertio Therapeutics is a direct, wholly-owned subsidiary of Assertio Holdings, with Assertio Holdings assuming Assertio's listing on the Nasdaq Stock Market. Each issued and outstanding share of common stock, \$0.0001 par value per share, of Assertio Therapeutics ("Assertio Common Stock") immediately prior to the Assertio Reorganization automatically converted into an equivalent corresponding share of common stock, \$0.0001 par value per share, of Assertio Holdings ("Assertio Holdings Common Stock") having the same designations, rights, powers, preferences, qualifications, limitations and restrictions as the converted share of Assertio Common Stock. The stockholders of Assertio Therapeutics will not recognize gain or loss for U.S. federal income tax purposes upon the conversion of their shares in the Assertio Reorganization.

The Assertio Reorganization was conducted pursuant to Section 251(g) of the General Corporation Law of the State of Delaware (the "DGCL"), which provides for the formation of a holding company without a vote of the stockholders of the constituent corporation. The conversion of stock occurred automatically without an exchange of stock certificates. After the Assertio Reorganization, unless exchanged, stock certificates that previously represented shares of Assertio Common Stock now represent the same number of shares of Assertio Holdings Common Stock.

Following the consummation of the Assertio Reorganization, shares of Assertio Holdings Common Stock continue to trade on the Nasdaq Stock Market on an uninterrupted basis under the symbol "ASRT" with new CUSIP number #04546C 106. Immediately after consummation of the Assertio Reorganization, Assertio Holdings has, on a consolidated basis, the same assets, businesses and operations as Assertio Therapeutics had immediately prior to the consummation of the Assertio Reorganization.

As a result of the Assertio Reorganization, Assertio Holdings became the successor issuer to Assertio Therapeutics pursuant to 12g-3(a) of the Exchange Act and, as a result, the Assertio Holdings Common Stock shares are deemed registered under Section 12(b) of the Exchange Act and Assertio Holdings is subject to the informational requirements of the Exchange Act, and the rules and regulations promulgated thereunder.

The foregoing descriptions of the Assertio Reorganization and the Reorganization Merger Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Reorganization Merger Agreement, which is filed as Exhibit 2.1 and which is incorporated by reference herein.

### **Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

In connection with the Assertio Reorganization, Assertio notified NASDAQ that the Assertio Reorganization had been completed and requested that the listing for the Assertio Common Stock be transferred to Assertio Holdings. Following this transfer of the listing, which was effective as of May 20, 2020, Assertio Holdings' Common Stock trades under the symbol "ASRT".

Following the transfer of the listing, NASDAQ filed with the U.S. Securities and Exchange Commission an application on Form 25 to delist the Assertio shares from NASDAQ and deregister the Assertio shares under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Assertio intends to file a certificate on Form 15 requesting that Assertio shares be deregistered under the Exchange Act, and that Assertio's reporting obligations under Section 15(d) of the Exchange Act be suspended (except to the extent of the succession of Assertio Holdings to the Exchange Act Section 12(b) registration and reporting obligations of Assertio).

### **Item 3.03. Material Modification of Rights of Securityholders.**

Upon consummation of the Assertio Reorganization, each share of Assertio Therapeutics Common Stock issued and outstanding immediately prior to the Assertio Reorganization automatically converted into an equivalent corresponding share of Assertio Holdings Common Stock, having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the corresponding share of Assertio Therapeutics Common Stock being converted.

The information set forth in Item 1.01 and Item 5.03 is hereby incorporated by reference in this Item 3.03.

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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

**Directors**

Upon consummation of the Assertio Reorganization, the board of directors was reduced to three members. The following directors resigned from the board as of the effective time of the Assertio Reorganization: Arthur J. Higgins, Heather L. Mason, William T. McKee, Peter D. Staple, James L. Tyree, David E. Wheadon, Karen A. Dawes, James P. Fogarty and James J. Galeota, Jr.

The following persons were appointed the directors of Assertio as of the effective time of the Assertio Reorganization:

<b>Name</b>	<b>Age</b>	<b>Position with Assertio</b>
Todd N. Smith	51	President, Chief Executive Officer and Director
Daniel A. Peisert	45	Executive Vice President, Chief Financial Officer and Director
Thomas Allison	68	Independent Director

Thomas J. Allison III is a renowned expert in business stabilization/growth. Since May 2018, Mr. Allison has served as a Senior Advisor at Portage Point Partners, a corporate interim management and business advisory firm. He also serves on the board and Audit Committee chair of Monroe Capital, a position he has held since April 2013. From February to August 2014, Mr. Allison was Chairman of the Board and President of Forge Group, Inc. From 2006 until his retirement in 2012, Mr. Allison served as Executive Vice President and Senior Managing Director of Mesirow Financial Consulting, LLC, a full-service financial and operational advisory consulting firm headquartered in Chicago. At Mesirow, Mr. Allison managed complex turnaround situations and advised on major reorganizations and insolvencies. He also served as CEO, CFO or CRO for several clients. From 2002 to 2006, Mr. Allison served as National Practice Leader of the restructuring practice of Huron Consulting Group. From 1988 to 2002, he served in a variety of roles at Arthur Andersen, LLC, including Partner-in-Charge, Central Region Restructuring Practice. Earlier in his career, Mr. Allison served in various capacities at Coopers & Lybrand, First National Bank of Chicago and the Chicago Police Department. Mr. Allison has previously served as Chairman of the Association for Certified Turnaround Professionals, Chairman and Director of the Turnaround Management Association, is a Fellow in the American College of Bankruptcy and has taught as a guest lecturer at Northwestern University and DePaul University. Mr. Allison received his bachelor of science in commerce and his master of business administration from DePaul University.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

In connection with the consummation of the Assertio Reorganization, the Certificate of Incorporation of Assertio Therapeutics was amended to add a provision, as required by Section 251(g) of the DGCL, that provides that any act or transaction by or involving Assertio Therapeutics, other than the election or removal of directors, that requires for its adoption under the DGCL or the Certificate of Incorporation of Assertio Therapeutics, the approval of the stockholders of Assertio Therapeutics shall require the approval of the stockholders of Assertio Holdings by the same vote as is required by the DGCL and/or the Certificate of Incorporation of Assertio Therapeutics. The Bylaws of Assertio Therapeutics were amended to reduce the size of the board of directors of Assertio and to make certain other amendments appropriate for a wholly-owned subsidiary.

The foregoing descriptions of the amendments to the Certificate of Incorporation and the Amended and Restated Bylaws of Assertio Therapeutics do not purport to be complete and are qualified in their entirety by reference to the full text of the Certificate of Merger and the Bylaws, which are filed as Exhibit 3.2 and 3.3, and is incorporated by reference herein.

**Item 5.07 Submission of Matters to a Vote of Security Holders.**

The Company held its 2020 Annual Meeting on May 19, 2020 to consider and vote on the following proposals: (i) to approve the issuance of shares of Assertio Holdings Common Stock in connection with the Merger with Zyla (Proposal 1) (ii) the election of nine directors to hold office until the 2021 Annual Meeting of Stockholders (Proposal 2); (iii) to approve an increase in the number of shares available for issuance under Assertio's Amended and Restated 2014 Omnibus Incentive Plan (Proposal 3); (iv) to approve an increase in the number of shares available for issuance under Assertio's Amended and Restated 2004 Employee Stock Purchase Plan (Proposal 4); (v) to approve an amendment to Assertio's certificate of incorporation to effect a reverse stock split at a ratio of not less than 1-for-2 and not greater than 1-for-4 (Proposal 5); (vi) to approve, on an advisory basis, the compensation of Assertio's named executive officers (Proposal 6); (vii) to approve, on an advisory basis, Merger-related executive compensation arrangements (Proposal 7); and (viii) to ratify the appointment of Ernst & Young LLP as Assertio's independent registered public accounting firm for the fiscal year ended December 31, 2020 (Proposal 8).

A summary of the final voting results for each of the eight matters voted upon by the stockholders at the 2020 Annual Meeting is set forth below.

**Proposal 1:** The stockholders of the Company approved the issuance of shares of Assertio Holdings Common Stock in connection with the Merger with Zyla. The votes on Proposal 1 were as follows:

Votes For	44,392,753
Votes Against	4,320,284
Abstentions	2,418,396
Broker Non-Votes	17,483,188

**Proposal 2:** The stockholders of the Company elected each of the nine nominees to serve on the Board of Directors for a term to expire at the 2021 Annual Meeting of Stockholders and until their successors are elected and qualified, or until their earlier death, retirement, resignation or removal. The votes on Proposal 2 were as follows:

	<u>Shares Voted For</u>	<u>Shares Voted Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
James P. Fogarty	46,882,581	3,177,875	1,070,977	17,483,188
Karen A. Dawes	46,762,424	3,318,823	1,050,186	17,483,188
James J. Galeota, Jr.	46,916,892	3,055,823	1,158,716	17,483,188
Arthur J. Higgins	45,894,831	4,341,035	895,567	17,483,188
Heather L. Mason	47,108,557	2,937,674	1,085,202	17,483,188
William T. McKee	46,106,503	3,961,204	1,063,726	17,483,188
Peter D. Staple	48,957,007	1,105,170	1,069,256	17,483,188
James L. Tyree	46,942,077	3,142,904	1,046,452	17,483,188
David E. Wheadon	46,985,740	3,056,334	1,089,359	17,483,188

**Proposal 3:** The stockholders of the Company approved an increase in the number of shares available for issuance under Assertio's Amended and Restated 2014 Omnibus Incentive Plan. The votes on Proposal 3 were as follows:

Votes For	35,122,595
Votes Against	15,540,836
Abstentions	468,002
Broker Non-Votes	17,483,188

**Proposal 4:** The stockholders of the Company approved an increase in the number of shares available for issuance under Assertio's Amended and Restated 2004 Employee Stock Purchase Plan. The votes on Proposal 4 were as follows:

Votes For	45,321,763
Votes Against	5,320,260
Abstentions	489,410
Broker Non-Votes	17,483,188

**Proposal 5:** The stockholders of the Company approved an amendment to Assertio's certificate of incorporation to effect a reverse stock split at a ratio of not less than 1-for-2 and not greater than 1-for-4. The votes on Proposal 5 were as follows:

Votes For	51,993,213
Votes Against	12,071,919
Abstentions	4,549,489

**Proposal 6:** The stockholders of the Company failed to approve on an advisory basis, the compensation of Assertio's named executive officers. The votes on Proposal 6 were as follows:

Votes For	16,351,370
Votes Against	34,534,663
Abstentions	245,400
Broker Non-Votes	17,483,188

**Proposal 7:** The stockholders of the Company approved, on an advisory basis, the Merger-related executive compensation arrangements. The votes on Proposal 7 were as follows:

Votes For	41,866,067
Votes Against	8,902,629
Abstentions	362,737
Broker Non-Votes	17,483,188

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**Proposal 8:** The stockholders of the Company ratified the appointment of Ernst & Young LLP as Assertio's independent registered public accounting firm for the fiscal year ended December 31, 2020 . The votes on Proposal 8 were as follows:

Votes For	62,648,769
Votes Against	836,269
Abstentions	5,129,583

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

**Exhibit**

**No.**

**Description**

<a href="#">2.1</a>	<a href="#">Agreement and Plan of Merger, dated May 19, 2020, by and among Assertio Therapeutics, Inc., Assertio Holdings, Inc., and Alligator Merger Sub, Inc.</a>
<a href="#">2.2</a>	<a href="#">Certificate of Merger dated May 19, 2020</a>
<a href="#">3.1</a>	<a href="#">Amended and Restated By-laws of Assertio Therapeutics, Inc. dated May 19, 2020</a>

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: May 22, 2020

**ASSERTIO THERAPEUTICS, INC.**

/s/ Daniel A. Peisert

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Daniel A. Peisert  
Chief Financial Officer

**AGREEMENT AND PLAN OF MERGER**

This Agreement and Plan of Merger (this "Agreement"), dated as of May 19, 2020, by and among Assertio Therapeutics, Inc., a Delaware corporation ("Assertio"), Assertio Holdings, Inc., a Delaware corporation ("Parent") and a wholly owned subsidiary of Assertio, and Alligator Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub").

**RECITALS**

WHEREAS, as of the date hereof, Assertio had an authorized capitalization consisting of (a) 200,000,000 shares of common stock, par value \$0.0001 per share ("Assertio Common Stock"), of which 81,492,578 shares were issued and outstanding, and (b) 5,000,000 shares of preferred stock, par value \$0.0001 per share ("Assertio Preferred Stock"), of which no shares were issued and outstanding;

WHEREAS, immediately prior to the Effective Time (as defined below), Parent shall have an authorized capitalization consisting of (a) 200,000,000 shares of common stock, par value \$0.0001 per share ("Parent Common Stock"), of which 10,000 shares will be issued and outstanding and owned by Assertio, and (b) 5,000,000 shares of preferred stock, par value \$0.0001 per share ("Parent Preferred Stock"), of which no shares were issued and outstanding;

WHEREAS, immediately prior to the Effective Time, the authorized capital stock of Merger Sub consists of 100 shares of common stock, par value \$0.0001 per share ("Merger Sub Common Stock"), of which 100 shares are issued and outstanding and no shares are held in treasury, and Parent owns all the issued and outstanding Merger Sub Common Stock;

WHEREAS, the designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, of the Parent Common Stock and the Parent Preferred Stock are the same as those of the Assertio Common Stock and the Assertio Preferred Stock, respectively.

WHEREAS, the Board of Directors of Assertio has determined that it is advisable and in the best interests of Assertio and its stockholders to effect the formation of a holding company whereby Assertio will become a wholly owned subsidiary of Parent by merging with Merger Sub, with Assertio continuing as the surviving corporation (the "Merger");

WHEREAS, it is intended that the holding company structure be effected without a vote of Assertio stockholders pursuant to and in accordance with Section 251(g) of the Delaware General Corporation Law (the "DGCL") through a merger with a wholly owned subsidiary;

WHEREAS, the designations, rights, powers and preferences, and the qualifications, limitations and restrictions, of Parent Common Stock are the same as those of Assertio Common Stock, and the designations, rights, powers and preferences, and the qualifications, limitations and restrictions, of Parent Preferred Stock are the same as those of Assertio Preferred Stock;

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WHEREAS, the Certificate of Incorporation of Parent and the Bylaws of Parent in effect immediately following the Effective Time will contain provisions identical to the Second Amended and Restated Certificate of Incorporation of Assertio and the Bylaws of Assertio, respectively, in effect immediately prior to the Effective Time (other than as required or permitted by Section 251(g) of the DGCL);

WHEREAS, Parent and Merger Sub have been recently formed for purposes of effecting the formation of a holding company through the Merger;

WHEREAS, for Federal income tax purposes, it is intended that the Merger shall qualify as a tax-free reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and the rules and regulations promulgated thereunder, or otherwise as a tax-free transaction under the Code and applicable rules and regulations promulgated thereunder; and

WHEREAS, the respective Boards of Directors of Assertio, Parent and Merger Sub have approved the Merger and this Agreement.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I THE MERGER**

#### Section 1.1 The Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with Section 251(g) and other applicable provisions of the DGCL, Merger Sub shall be merged with and into Assertio at the Effective Time. Following the Effective Time, the separate corporate existence of Merger Sub shall cease and Assertio shall continue as the surviving corporation (the "Surviving Corporation") as a wholly owned subsidiary of Parent. The Surviving Corporation shall succeed to and assume all the rights and obligations of Assertio in accordance with the DGCL.

Section 1.2 Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of Assertio, Parent, Merger Sub or the stockholders of Assertio, Parent or Merger Sub:

(a) Each share of Assertio Common Stock (or fraction of a share of Assertio Common Stock, including shares held by Assertio, if any) issued and outstanding immediately prior to the Effective Time shall be converted into one share of Parent Common Stock (or fraction of a share of Parent Common Stock, as applicable), having the same designations, rights, powers, preferences, qualifications, limitations and restrictions as the converted share of Assertio Common Stock.

(b) Each share of Parent Common Stock outstanding immediately prior to the Effective Time shall, by virtue of the Merger, and without any action on the part of Assertio, Parent, Merger Sub or the holders of any securities of Assertio, Parent or Merger Sub, be cancelled and shall cease to exist without any consideration being payable in respect thereof.

(c) Each issued and outstanding share of Merger Sub Stock shall, by virtue of the Merger, and without any action on the part of Assertio, Parent, Merger Sub or the holders of any securities of Assertio, Parent or Merger Sub, be converted into one share of Common Stock of the Surviving Corporation.

Section 1.3 Effective Time. The parties shall file a Certificate of Merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware (the "Delaware Secretary of State") executed in accordance with the relevant provisions of the DGCL and shall make all other filings required under the DGCL to effectuate fully the Merger. The Merger shall become effective at 2:30 p.m. Eastern Standard Time on the date that the Certificate of Merger is duly filed with the Delaware Secretary of State (the time the Merger becomes effective being hereinafter referred to as the "Effective Time").

Section 1.4 Effects of the Merger.

(a) At the Effective Time, the Merger shall have the effects set forth in Section 259 of the DGCL.

(b) All contractual rights and obligations relating to (i) Assertio Common Stock immediately prior to the Merger, including, without limitation, any rights or obligations existing under (a) Assertio Therapeutics, Inc. Amended and Restated 2004 Employee Stock Purchase Plan and related agreements (the "Stock Plan"), (b) the Assertio Therapeutics, Inc. Second Amended and Restated 2004 Equity Incentive Plan and related agreements (the "Incentive Plan"), (c) the Assertio Therapeutics, Inc. Amended and Restated 2014 Omnibus Incentive Plan and related agreement (the "Omnibus Plan") and (d) inducement grants made pursuant to a notice of restricted stock unit grant and award agreement outside of the Omnibus Plan (the "Inducement Awards") and collectively with the Stock Plan, the Incentive Plan and the Omnibus Plan, the "Assertio Equity Agreements"), and (ii) Assertio director and executive compensation arrangements immediately prior to the Merger, including, without limitation, any rights or obligations existing under (v) the Transition Agreement by and among Assertio Therapeutics, Inc. and Arthur Higgins, dated as of March 16, 2020 (w) the Assertio Amended and Restated Annual Bonus Plan, (x) the Transition and Consulting Agreements by and between Assertio Therapeutics and the individuals named therein, (y) the Amended and Restated Management Continuity Agreement by and between Assertio Therapeutics and the individuals named therein, as amended by Amendment No. 1, (z) the Indemnification Agreements by and between Assertio Therapeutics, Inc. and the individuals named therein (and collectively, the "Assertio Compensation Agreements"), shall, as of the Effective Time, be assigned to and assumed by Parent and be deemed to apply to Parent Common Stock. The respective Boards of Directors of Assertio and Parent have approved the assignment to and the assumption by Parent of the Assertio Equity Agreements and the Assertio Compensation Agreements.

(c) For Federal income tax purposes, it is intended that the Merger shall qualify as a tax-free reorganization under the provisions of Section 368(a) of the Code (or otherwise as a tax-free transaction under the applicable provisions of the Code).

Section 1.5 Organizational Documents of Parent. From and after the Effective Time, the Certificate of Incorporation of Parent shall be amended, consistent with the requirements of Section 251(g) of the DGCL, so that it reads in its entirety as set forth in Exhibit A hereto, and, as so amended, shall be the Certificate of Incorporation of Parent until thereafter amended in accordance with its terms and as provided by applicable Law. From and after the Effective Time, the Bylaws of Parent shall be amended, consistent with the requirements of Section 251(g) of the DGCL, so that they read in their entirety as set forth in Exhibit B hereto, and, as so amended, shall be the Bylaws of Parent until thereafter amended in accordance with their terms and as provided by applicable Law.

Section 1.6 Organizational Documents of Surviving Corporation. From and after the Effective Time, the Certificate of Incorporation of Assertio shall be amended, as required by Section 251(g) of the DGCL, so that it reads in its entirety as set forth in Exhibit C hereto, and, as so amended, shall be the Certificate of Incorporation of Surviving Corporation until thereafter amended in accordance with its terms and as provided by applicable Law. From and after the Effective Time, the Bylaws of Surviving Corporation shall be amended, so that they read in their entirety as set forth in Exhibit D hereto, and, as so amended, shall be the Bylaws of the Surviving Corporation until thereafter amended in accordance with their terms and as provided by applicable Law.

Section 1.7 Directors of Parent. Each member of the Board of Directors of Assertio in office immediately prior to the Effective Time shall become a member of the Board of Directors of Parent, until the earlier of his or her resignation or removal or until his or her successor is duly appointed or elected and qualified in accordance with the Bylaws of Parent and applicable law.

Section 1.8 Officers of Parent. Each officer of Assertio in office immediately prior to the Effective Time shall become an officer of Parent holding the same office as held prior to the Effective Time, until the earlier of his or her resignation or removal or until his or her successor is duly appointed in accordance with the Bylaws of Parent and applicable law.

Section 1.9 Directors of Surviving Corporation. Each member of the Board of Directors of Assertio in office immediately prior to the Effective Time shall become a member of the Board of Directors of the Surviving Corporation, until the earlier of his or her resignation or removal or until his or her successor is duly appointed or elected and qualified in accordance with the Bylaws of the Surviving Corporation and applicable law.

Section 1.10 Officers of Surviving Corporation. Each officer of Assertio in office immediately prior to the Effective Time shall become an officer of the Surviving Corporation holding the same office as held prior to the Effective Time, until the earlier of his or her resignation or removal or until his or her successor is duly appointed in accordance with the Bylaws of the Surviving Corporation and applicable law.

Section 1.11 Stock Ledgers. At and after the Effective Time until thereafter surrendered for transfer or exchange in the ordinary course, each outstanding certificate which immediately prior thereto represented shares of Company Common Stock, shall be deemed for all purposes to evidence ownership of and to represent the shares of Parent Common Stock, into which the shares of Company Common Stock represented by such certificate have been converted as herein provided and shall be so registered on the books and records of Parent and its transfer agent. After the Effective Time, each of Assertio and Parent shall reflect in its stock ledger the number of shares of Assertio Common Stock and Parent Common Stock, respectively, to which its stockholders are entitled pursuant to the terms hereof.

Section 1.12 Securities Act. It is the intent of the parties hereto that Parent, as of the Effective Time, be deemed a “successor issuer” for purposes of continuing offerings under the Securities Act of 1933, as amended (the “Securities Act”). As soon as practicable following the Merger, Parent will, to the extent deemed appropriate, file post-effective amendments to any Assertio registration statements, adopting such registration statements as its own registration statements for all purposes of the Securities Act and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and setting forth any additional information necessary to reflect any material changes made in connection with or resulting from the succession, or necessary to keep any such registration statements from being misleading.

Section 1.13 Exchange Act. It is the intent of the parties hereto that the Merger will constitute a “succession” for purposes of Rule 12g-3(a) under the Exchange Act and, upon issuance of the Parent Common Stock in connection with the Merger, the Parent Common Stock will be deemed to be registered under Section 12(g) of the Exchange Act. It is the further intent of the parties hereto that Parent will be considered a “successor issuer” of the Assertio.

## **ARTICLE II COVENANTS**

Section 2.1 Compliance with Section 251(g) of the DGCL. The parties acknowledge and agree that, to the extent required by Section 251(g) of the DGCL, the Certificate of Incorporation and Bylaws of Parent contain provisions identical to the Second Amended and Restated Certificate of Incorporation and Bylaws of Assertio, each as amended, which shall not be amended prior to the Effective Time.

Section 2.2 Further Assurances. From time to time, as and when requested by another party hereto, each party hereto shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement.

Section 2.3 Consummation of the Transaction. Subject to the terms and conditions of this Agreement, each party shall use its commercially reasonable efforts to cause the Merger to occur upon the terms hereof.

Section 2.4 Plan of Reorganization. This Agreement is intended to constitute a “plan of reorganization” within the meaning of Treasury Regulation Sections 1.368-2(g) and 1.368-3(a). Each party hereto shall use its commercially reasonable efforts to cause the Merger to qualify, and will not knowingly take any actions or cause any actions to be taken which could reasonably be expected to prevent the Merger from qualifying, as a reorganization within the meaning of Section 368(a) of the Code.

### ARTICLE III GENERAL PROVISIONS

Section 3.1 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. The Exhibits attached hereto are hereby incorporated herein and made a part hereof for all purposes, as if fully set forth herein.

Section 3.2 Termination. This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Time by action of the Board of Directors of the Company or the Board of Directors of Merger Sub if such Board of Directors should determine that for any reason the completion of the transactions provided for herein would be inadvisable or not in the best interest of such corporation or its stockholders. In the event of such termination and abandonment, this Agreement shall become void and the Company, Parent and Merger Sub, and their respective stockholders, directors or officers, shall have no liability with respect to such termination and abandonment.

Section 3.3 Amendment. At any time prior to the Effective Time, this Agreement may, to the extent permitted by the DGCL, be supplemented, amended or modified by the mutual consent of the Boards of Directors of the parties to this Agreement.

Section 3.4 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 3.5 No Third-Party Beneficiaries. This Agreement (including the documents and instruments referred to herein) is not intended to confer upon any person other than the parties hereto any rights or remedies.

Section 3.6 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the applicable principles of conflicts of laws of such State that would apply any other law.

Section 3.7 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by duly authorized officers as of the date first written above.

**ASSERTIO THERAPEUTICS, INC.**

By: /s/ Dan A. Peisert

\_\_\_\_\_  
Name: Daniel A. Peisert

Title: SVP and CFO

**ASSERTIO HOLDINGS, INC.**

By: /s/ Dan A. Peisert

\_\_\_\_\_  
Name: Daniel A. Peisert

Title: SVP and CFO

**ALLIGATOR MERGER SUB, INC.**

By: /s/ Dan A. Peisert

\_\_\_\_\_  
Name: Daniel A. Peisert

Title: SVP and CFO

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**Delaware**  
The First State

**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 CERTIFICATE OF MERGER, WHICH MERGES:**

**"ALLIGATOR MERGER SUB, INC . " , A DELAWARE CORPORATION, WITH AND INTO "ASSERTIO THERAPEUTICS, INC . " UNDER THE NAME OF "ASSERTIO THERAPEUTICS, INC . " , A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE ON THE NINETEENTH DAY OF MAY, A . D . 2020, AT 8 : 25 O'CLOCK A.M.**

**AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE NINETEENTH DAY OF MAY, A.D. 2020 AT 2:30 O'CLOCK P.M.**

**\_\_\_\_\_  
/s/ Jeffrey W. Bullock  
Jeffrey W. Bullock, Secretary of State**



6980073 8100M  
SR# 20204126348

**Authentication: 202952293  
Date: 05-19-20**

**CERTIFICATE OF MERGER**

**of**

**ALLIGATOR MERGER SUB, INC.  
(a Delaware corporation)**

**with and into**

**ASSERTIO THERAPEUTICS, INC.  
(a Delaware corporation)**

Pursuant to Section 251 of the Delaware General Corporation Law (the "DGCL").

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The undersigned corporation does hereby certify that:

FIRST: The constituent corporations (the "Constituent Corporations") participating in the merger of Merger Sub with and into Assertio herein certified (the "Merger") are:

- (i) Alligator Merger Sub, Inc., which is incorporated under the laws of the State of Delaware ("Merger Sub"); and
- (ii) Assertio Therapeutics, Inc., which is incorporated under the laws of the State of Delaware ("Assertio").

SECOND: An Agreement and Plan of Merger, dated as of May 19, 2020, by and among Assertio Holdings, Inc., a Delaware corporation ("Holdings"), Merger Sub and Assertio (the "Agreement and Plan of Merger") has been approved, adopted, certified, executed and acknowledged by each of the parties thereto in accordance with the requirements of Section 251(g) (and, with respect to Merger Sub, Section 228) of the DGCL, and each of the requirements of Section 251(g) have been satisfied.

THIRD: Prior to the effectiveness of the merger herein certified, (i) Holdings is a direct wholly-owned subsidiary of Assertio and (ii) Merger Sub is a direct wholly-owned subsidiary of Holdings.

FOURTH: The Merger is to become effective at 2:30 p.m. ET on the date of the filing of this Certificate of Merger with the Secretary of State of the State of Delaware.

FIFTH: The name of the surviving corporation in the Merger is Assertio Therapeutics, Inc. (the "Surviving Corporation").

SIXTH: The Certificate of Incorporation of Assertio as in effect immediately prior to the merger shall be amended so as to read in its entirety as set forth in Exhibit A and, as so amended, shall be the Amended and Restated Certificate of Incorporation of the Surviving Corporation until amended in accordance with the provisions thereof and applicable law.

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SEVENTH: The executed Agreement and Plan of Merger is on file at an office of the Surviving Corporation, the address of which is as follows:

Assertio Therapeutics, Inc.  
100 South Sanders Rd., Suite 300,  
Lake Forest, IL 60045

EIGHT: A copy of the Agreement and Plan of Merger will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of the Constituent Corporations or Holdings.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned corporation has caused this Certificate of Merger to be duly executed by its authorized officer.

Dated: May 19, 2020

**ASSERTIO THERAPEUTICS, INC.**

By: /s/ Daniel Peisert

Name: Daniel Peisert

Title: Senior Vice President and Chief Financial Officer

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**Exhibit A**

Amended and Restated Certificate of Incorporation of Assertio Therapeutics, Inc.

See attached.

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**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**ASSERTIO THERAPEUTICS, INC.  
(a Delaware corporation)**

**ARTICLE I  
NAME**

The name of the corporation is Assertio Therapeutics, Inc. (the "Corporation").

**ARTICLE II  
AGENT**

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

**ARTICLE III  
PURPOSE**

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 "DGCL").

**ARTICLE IV  
STOCK**

Section 4.1 Authorized Stock. The total number of shares which the Corporation shall have authority to issue is 205,000,000 of which 200,000,000 shall be designated as Common Stock, par value \$0.0001 per share (the "Common Stock"), and 5,000,000 shall be designated as Preferred Stock, par value \$0.0001 per share (the "Preferred Stock").

Section 4.2 Common Stock.

(a) Each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; 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 Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), 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 Certificate of Incorporation (including any Preferred Stock Designation).

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(b) Dividends. Subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive dividends to the extent permitted by law when, as and if declared by the Board of Directors.

(c) Liquidation. Upon or following the dissolution, liquidation or winding up of the Corporation, subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

Section 4.3 Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. Subject to limitations prescribed by law and the provisions of this Article IV, the Board of Directors is hereby authorized to provide by resolution and by causing the filing of a Preferred Stock Designation for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designations, powers, preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions, if any, of the shares of each such series.

Section 4.4 No Class Vote on Changes in Authorized Number of Shares of Stock. Subject to the rights of the holders of any outstanding series of Preferred Stock, the number of authorized shares of any class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of at least a majority of the voting power of the stock entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL.

## **ARTICLE V STOCKHOLDER ACTIONS**

Section 5.1 Action by Written Consent. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), any action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote by consent in accordance with Section 228 of the DGCL.

Section 5.2 Ability of Stockholders to Call Special Meetings of Stockholders. Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), a special meeting of the stockholders of the Corporation may be called by the Board of Directors, the Chairman of the Board, the President, or the Secretary of the Corporation, and shall be called by the Chairman of the Board or the Secretary upon the written request of the holders that own (as defined in the Bylaws of the Corporation, as amended from time (the "Bylaws")) shares that as of the record date as fixed or determined in accordance with the Bylaws to determine who may deliver a written request to call the special meeting, represented not less than 10% of the voting power of the stock entitled to vote on the matters to be considered at the proposed special meeting. Stockholder-requested special meetings shall be subject to any conditions, procedures and requirements set forth in the Bylaws. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation) and this Article V, the stockholders of the Corporation shall not have the ability to call a special meeting of stockholders. Any action permitted by the Bylaws may be considered and voted upon at such stockholder-requested special meeting. For the avoidance of doubt, Preferred Stock Directors may be removed at stockholder-requested special meetings if the applicable Preferred Stock Designation so provides.

**ARTICLE VI  
BUSINESS COMBINATIONS WITH INTERESTED STOCKHOLDERS**

The Corporation hereby expressly elects that it shall not be bound or governed by, or otherwise subject to, Section 203 of the DGCL.

**ARTICLE VII  
EXISTENCE**

The Corporation shall have perpetual existence.

**ARTICLE VIII  
AMENDMENT**

Section 8.1 Amendment of Certificate of Incorporation. The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation (including any Preferred Stock Designation), and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all powers, preferences and rights of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Certificate of Incorporation (including any Preferred Stock Designation) in its present form or as hereafter amended are granted subject to this reservation.

Section 8.2 Amendment of Bylaws. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation. Except as otherwise required in this Certificate of Incorporation (including the terms of any Preferred Stock Designation that require an additional vote) or the Bylaws of the Corporation, and in addition to any requirements of law, the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal any provision of the Bylaws of the Corporation.

**ARTICLE IX  
LIABILITY OF DIRECTORS**

Section 9.1 No Personal Liability. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Section 9.2 Amendment or Repeal. Any amendment, alteration or repeal of this Article X that adversely affects any right of a director shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

**ARTICLE X**  
**HOLDING COMPANY APPROVAL**

Other than the election or removal of directors of the Corporation, any act or transaction by or involving the Corporation requiring for its adoption the approval of the stockholders of the Corporation under this Certificate of Incorporation or the DGCL shall, in accordance with Section 251(g) of the DGCL, require, in addition, the approval of the stockholders of Assertio Holdings, Inc. (or any successor thereto by merger), by the same vote as is required by the DGCL and/or this Certificate of Incorporation.

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## AMENDED AND RESTATED BYLAWS

OF

ASSERTIO THERAPEUTICS, INC.  
(a Delaware corporation)

## ARTICLE I

## CORPORATE OFFICES

Section 1.1 Registered Office. The registered office of the Corporation shall be fixed in the Certificate of Incorporation of the Corporation.

Section 1.2 Other Offices. The Corporation may also have an office or offices, and keep the books and records of the Corporation, except as otherwise required by law, at such other place or places, either within or without the State of Delaware, as the Corporation may from time to time determine or the business of the Corporation may require.

## ARTICLE II

## MEETINGS OF STOCKHOLDERS

Section 2.1 Annual Meeting. Unless directors are elected by written consent in lieu of an annual meeting, the annual meeting of stockholders, for the election of directors and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, either within or without the State of Delaware, on such date, and at such time as the Board of Directors shall fix. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2.2 Special Meeting. Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), a special meeting of the stockholders of the Corporation may be called at any time by the Board of Directors. Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), special meetings of the stockholders of the Corporation may not be called by any other person or persons. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled pursuant to this Section 2.2.

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Section 2.3 Notice of Stockholders' Meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, notice of the place, if any, date, and time of the meeting of stockholders, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting), the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting and, if the meeting is to be held solely by means of remote communications, the means for accessing the list of stockholders contemplated by Section 2.5 of these Bylaws, shall be given. The notice shall be given not less than 10 nor more than 60 days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws. In the case of a special meeting, the purpose or purposes for which the meeting is called also shall be set forth in the notice.

(b) Any notice to stockholders given by the Corporation may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of the Corporation and shall be given (i) if mailed, when the notice is deposited in the U.S. mail, postage prepaid, (ii) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address or (iii) if given by electronic mail, when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by Section 232(e) of the General Corporation Law of the State of Delaware (the "DGCL"). If notice is given by electronic mail, such notice shall comply with the applicable provisions of subsections (a) and (d) of Section 232 of the DGCL and must include a prominent legend that the communication is an important notice regarding the Corporation. If a notice given by electronic mail includes a file attached thereto or references information hyperlinked to a website, the electronic mail shall include the contact information of an agent or officer of the Corporation who is available to assist with accessing such files and information. If a notice given by electronic mail includes a file attached thereto or references information hyperlinked to a website, the electronic mail shall include the contact information of an agent or officer of the Corporation who is available to assist with accessing such files and information.

(c) Notice may be given by other forms of electronic transmission with the consent of a stockholder in the manner permitted by Section 232(b) of the DGCL, and shall be deemed given as provided therein.

(d) An affidavit that notice has been given, executed by the Secretary of the Corporation, Assistant Secretary or any transfer agent or other agent of the Corporation, shall be prima facie evidence of the facts stated in the notice in the absence of fraud. Notice shall be deemed to have been given to all stockholders who share an address if notice is given in accordance with Section 233 of the DGCL.

(e) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.6(a), and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.4 Organization.

(a) Unless otherwise determined by the Board of Directors, meetings of stockholders shall be presided over by the Chairman of the Board of Directors, if any, or in his or her absence, by the Chief Executive Officer or, in his or her absence, by another person designated by the Board of Directors. The Secretary of the Corporation, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

(b) The date and time of the opening and the closing of the polls for each matter upon which the stockholders shall vote at a meeting of stockholders shall be announced at the meeting. The Board of Directors may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the authority to adopt and enforce such rules and regulations for the conduct of any meeting of stockholders and the safety of those in attendance as, in the judgment of the chairman, are necessary, appropriate or convenient for the conduct of the meeting. Subject to any rules and regulations adopted by the Board of Directors, the chairman of the meeting may convene and, for any reason, from time to time, adjourn and/or recess any meeting of stockholders pursuant to Section 2.7.

Section 2.5 List of Stockholders. The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date.

Section 2.6 Quorum. Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, at any meeting of stockholders, a majority of the voting power of the stock outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. If a quorum is not present or represented at any meeting of stockholders, then the chairman of the meeting, or a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon, shall have power to adjourn or recess the meeting from time to time in accordance with Section 2.7, until a quorum is present or represented. Subject to applicable law, if a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment or recess, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment or recess may be transacted.

Section 2.7 Adjourned or Recessed Meeting. Any annual or special meeting of stockholders, whether or not a quorum is present, may be adjourned or recessed for any or no reason from time to time by the chairman of the meeting, subject to any rules and regulations adopted by the Board of Directors pursuant to Section 2.4(b). Any such meeting may be adjourned for any or no reason (and may be recessed if a quorum is not present or represented) from time to time by a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon. At any such adjourned or recessed meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.8 Voting.

(a) Except as otherwise required by law or the Certificate of Incorporation (including any Preferred Stock Designation), each holder of stock of the Corporation entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of such stock held of record by such holder that has voting power upon the subject matter in question.

(b) Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation), these Bylaws or any law, rule or regulation applicable to the Corporation or its securities, at each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the stockholders shall be authorized by the affirmative vote of at least a majority of the voting power of the stock present in person or represented by proxy and entitled to vote on the subject matter. Voting at meetings of stockholders need not be by written ballot.

Section 2.9 Proxies. Every stockholder entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more persons authorized to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or executed new proxy bearing a later date.

Section 2.10 Action by Written Consent. Except as otherwise provided pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote by consent in accordance with Section 228 of the DGCL.

Section 2.11 Meetings by Remote Communications. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the DGCL. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication: (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.12 Delivery to the Corporation. Whenever this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), the Corporation shall not be required to accept delivery of such document or information unless the document or information is in writing exclusively (and not in an electronic transmission) and delivered exclusively by hand (including, without limitation overnight courier service) or by certified or registered mail, return receipt requested.

### **ARTICLE III DIRECTORS**

Section 3.1 Powers. Except as otherwise required by the DGCL or as provided in the Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities these Bylaws expressly confer upon it, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws required to be exercised or done by the stockholders.

Section 3.2 Number, Term of Office and Election. Except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), the Board of Directors shall consist of three directors. The Board of Directors shall consist of the person or persons elected by the stockholders or designated in the Certificate of Incorporation.

Section 3.3 Vacancies and Newly Created Directorships. Unless otherwise required by law, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by the sole remaining director, and any director so chosen shall hold office until the next election of directors and until his or her successor shall have been duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 3.4 Resignations and Removal.

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors or the Secretary of the Corporation. Such resignation shall take effect upon delivery, unless the resignation specifies a later effective date or time or an effective date or time determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Any director, or the entire Board of Directors, may be removed, with or without cause, by the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon.

Section 3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, within or without the State of Delaware, on such date or dates and at such time or times, as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 3.6 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board of Directors, the Chief Executive Officer or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place, within or without the State of Delaware, date and time of such meetings. Notice of each such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business, at least five days before the day on which such meeting is to be held, or shall be sent to such director by electronic transmission, or be delivered personally or by telephone, in each case at least 24 hours prior to the time set for such meeting. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.7 Participation in Meetings by Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.8 Quorum and Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, a majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the Board of Directors. The chairman of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.9 Board of Directors Action by Written Consent Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting, provided that all members of the Board of Directors or committee, as the case may be, consent in writing or by electronic transmission to such action. After an action is taken, the consent or consents relating thereto shall be filed with the minutes or proceedings of the Board of Directors or committee in the same paper or electronic form as the minutes are maintained. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action shall be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 3.10 Chairman of the Board. The Chairman of the Board shall preside at meetings of stockholders (unless otherwise determined by the Board of Directors) and at meetings of directors, and shall perform such other duties as the Board of Directors may from time to time determine. If the Chairman of the Board is not present at a meeting of the Board of Directors, another director chosen by the Board of Directors shall preside.

Section 3.11 Rules and Regulations. The Board of Directors shall adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board of Directors shall deem proper.

Section 3.12 Fees and Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation, directors may receive such compensation, if any, for their services on the Board of Directors and its committees, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors.

Section 3.13 Emergency Bylaws. In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition, as a result of which a quorum of the Board of Directors or a standing committee of the Board of Directors cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate.

**ARTICLE IV  
COMMITTEES**

Section 4.1 Committees of the Board of Directors. The Board of Directors may designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval; or (b) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 4.2 Meetings and Action of Committees. Unless the Board of Directors provides otherwise by resolution, any committee of the Board of Directors may adopt, alter and repeal such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper. A majority of the directors then serving on a committee shall constitute a quorum for the transaction of business by the committee except as otherwise required by law, the Certificate of Incorporation or these Bylaws, and except as otherwise provided in a resolution of the Board of Directors; provided, however, that in no case shall a quorum be less than one-third of directors then serving on the committee. Unless the Certificate of Incorporation, these Bylaws or a resolution of the Board of Directors requires a greater number, the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee.

**ARTICLE V  
OFFICERS**

Section 5.1 Officers. The officers of the Corporation may consist of a Chief Executive Officer, a President, a Chief Financial Officer, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be elected by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly elected and qualified, or until such person's earlier death, disqualification, resignation or removal. Any number of offices may be held by the same person; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate of Incorporation or these Bylaws to be executed, acknowledged or verified by two or more officers. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 5.2 Compensation. The salaries of the officers of the Corporation and the manner and time of the payment of such salaries shall be fixed and determined by the Board of Directors and may be altered by the Board of Directors from time to time as it deems appropriate, subject to the rights, if any, of such officers under any contract of employment.

Section 5.3 Removal, Resignation and Vacancies. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors or by a duly authorized officer, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon notice given in writing or by electronic transmission to the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly elected and qualified.

Section 5.4 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Board of Directors. Unless otherwise provided in these Bylaws or determined by the Board of Directors, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders.

Section 5.5 President. The President shall be the chief operating officer of the Corporation, with general responsibility for the management and control of the operations of the Corporation. The President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine. Unless otherwise designated by the Board of Directors, the Chief Executive Officer shall also be the President.

Section 5.6 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer or the President may from time to time determine.

Section 5.7 Vice Presidents. Each Vice President shall have such powers and duties as shall be prescribed by his or her superior officer, the Chief Executive Officer or the President. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer, the President or another duly authorized officer may from time to time determine.

Section 5.8 Treasurer. The Treasurer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all moneys and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer, the President or the Chief Financial Officer may from time to time determine.

Section 5.9 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer or the President may from time to time determine.

Section 5.10 Additional Matters. The Chief Executive Officer and the Chief Financial Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 5.11 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority, to sign or endorse all checks, drafts, other orders for payment of money and notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

Section 5.12 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board of Directors may determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized, or within the power incident to a person's office or other position with the Corporation, no person shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.13 Signature Authority. Unless otherwise specifically determined by the Board of Directors or otherwise provided by law or these Bylaws, contracts, evidences of indebtedness and other instruments or documents of the Corporation may be executed, signed or endorsed: (i) by the Chief Executive Officer or the President; or (ii) by the Chief Financial Officer, any Vice President, Treasurer or Secretary, in each case only with regard to such instruments or documents that pertain to or relate to such person's duties or business functions.

Section 5.14 Action with Respect to Securities of Other Corporations or Entities. The Chief Executive Officer or any other officer of the Corporation authorized by the Board of Directors or the Chief Executive Officer is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares or other equity interests of any other corporation or entity or corporations or entities, standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

Section 5.15 Delegation. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding the foregoing provisions of this Article V.

## **ARTICLE VI INDEMNIFICATION AND ADVANCEMENT OF EXPENSES**

### Section 6.1 Right to Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative or legislative hearing, or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), or by reason of anything done or not done by him or her in any such capacity, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes, penalties and amounts paid in settlement by or on behalf of the indemnitee) actually and reasonably incurred by such indemnitee in connection therewith, all on the terms and conditions set forth in these Bylaws; provided, however, that, except as otherwise required by law or provided in Section 6.3 with respect to suits to enforce rights under this Article VI, the Corporation shall indemnify any such indemnitee in connection with a proceeding, or part thereof, voluntarily initiated by such indemnitee (including claims and counterclaims, whether such counterclaims are asserted by: (i) such indemnitee; or (ii) the Corporation in a proceeding initiated by such indemnitee) only if such proceeding, or part thereof, was authorized or ratified by the Board of Directors or the Board of Directors otherwise determines that indemnification or advancement of expenses is appropriate.

(b) To receive indemnification under this Section 6.1, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall include documentation or information that is necessary to determine the entitlement of the indemnitee to indemnification and that is reasonably available to the indemnitee. Upon receipt by the Secretary of the Corporation of such a written request, the entitlement of the indemnitee to indemnification shall be determined by the following person or persons who shall be empowered to make such determination, as selected by the Board of Directors (except with respect to clause (v) of this Section 6.1(b)): (i) the Board of Directors by a majority vote of the directors who are not parties to such proceeding, whether or not such majority constitutes a quorum; (ii) a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee; (iv) the stockholders of the Corporation; or (v) in the event that a change of control (as defined below) has occurred, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee. The determination of entitlement to indemnification shall be made and, unless a contrary determination is made, such indemnification shall be paid in full by the Corporation not later than 60 days after receipt by the Secretary of the Corporation of a written request for indemnification. For purposes of this Section 6.1(b), a “change of control” will be deemed to have occurred if, with respect to any particular 24-month period, the individuals who, at the beginning of such 24-month period, constituted the Board of Directors (the “incumbent board”) cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to the beginning of such 24-month period whose election, or nomination for election by the stockholders of the Corporation, was approved by a vote of at least a majority of the directors then comprising the incumbent board shall be considered as though such individual were a member of the incumbent board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors.

Section 6.2 Right to Advancement of Expenses.

(a) In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall, to the fullest extent permitted by law, also have the right to be paid by the Corporation the expenses (including attorneys’ fees) incurred in defending any proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Article VI or otherwise.

(b) To receive an advancement of expenses under this Section 6.2, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall reasonably evidence the expenses incurred by the indemnitee and shall include or be accompanied by the undertaking required by Section 6.2(a). Each such advancement of expenses shall be made within 20 days after the receipt by the Secretary of the Corporation of a written request for advancement of expenses.

Section 6.3 Right of Indemnitee to Bring Suit. In the event that: (a) a determination is made that the indemnitee is not entitled to indemnification, (b) payment is not timely made following a determination of entitlement to indemnification pursuant to Section 6.1(b) or (c) an advancement of expenses is not timely made under Section 6.2(b), then in each case, the indemnitee may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware seeking an adjudication of entitlement to such indemnification or advancement of expenses. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit to the fullest extent permitted by law. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL. Further, in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under applicable law, this Article VI or otherwise shall be on the Corporation.

Section 6.4 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or disinterested directors, provisions of a certificate of incorporation or bylaws, or otherwise.

Section 6.5 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.6 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent and in the manner permitted by law, and to the extent authorized from time to time, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation.

Section 6.7 Nature of Rights. The rights conferred upon indemnitees in this Article VI shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

Section 6.8 Settlement of Claims. Notwithstanding anything in this Article VI to the contrary, the Corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any proceeding effected without the Corporation's written consent, which consent shall not be unreasonably withheld.

Section 6.9 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee (excluding insurance obtained on the indemnitee's own behalf), and the indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

Section 6.10 Severability. If any provision or provisions of this Article VI 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: (a) the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent of the parties that the Corporation provide protection to the indemnitee to the fullest extent set forth in this Article VI.

## **ARTICLE VII CAPITAL STOCK**

Section 7.1 Certificates of Stock. The shares of the Corporation shall be represented by certificates; provided, however, that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation, including, without limitation, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, the Controller, the Secretary or an Assistant Treasurer or Assistant Secretary, of the Corporation certifying the number of shares owned by such holder in the Corporation. Any or all such signatures may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 7.2 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this Section 7.2 or Sections 151, 156, 202(a) or 218(a) of the DGCL or with respect to this Section 7.2 and Section 151 of the DGCL a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 7.3 Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary of the Corporation or a transfer agent for such stock, and if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer.

Section 7.4 Lost Certificates. The Corporation may issue a new share certificate or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the Corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.5 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7.6 Record Date for Determining Stockholders.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjourned meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjourned meeting; provided, however, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the Certificate of Incorporation (including any Preferred Stock Designation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action of the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken was delivered to the Corporation in accordance with Section 2.10. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 7.7 Regulations. To the extent permitted by applicable law, the Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

Section 7.8 Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL or the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, the Board of Directors or a committee of the Board of Directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

## **ARTICLE VIII GENERAL MATTERS**

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December of the same year, or shall extend for such other 12 consecutive months as the Board of Directors may designate.

Section 8.2 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary of the Corporation. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 8.3 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 8.4 Subject to Law and Certificate of Incorporation. All powers, duties and responsibilities provided for in these Bylaws, whether or not explicitly so qualified, are qualified by the Certificate of Incorporation (including any Preferred Stock Designation) and applicable law.

Section 8.5 Electronic Signatures, etc. Except as otherwise required by the Certificate of Incorporation (including as otherwise required by any Preferred Stock Designation) or these Bylaws (including, without limitation, as otherwise required by Section 2.12), any document, including, without limitation, any consent, agreement, certificate or instrument, required by the DGCL, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws to be executed by any officer, director, stockholder, employee or agent of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. All other contracts, agreements, certificates or instruments to be executed on behalf of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. The terms “electronic mail,” “electronic mail address,” “electronic signature” and “electronic transmission” as used herein shall have the meanings ascribed thereto in the DGCL.

#### **ARTICLE IX AMENDMENTS**

Section 9.1 Amendments. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal these Bylaws. The stockholders may make additional Bylaws and may alter and repeal any Bylaws whether adopted by them or otherwise.

The foregoing Bylaws were adopted by the Board of Directors on May 19, 2020.