

**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): August 16, 2021

AEYE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-39699
(Commission
File Number)

37-1827430
(IRS Employer
Identification No.)

One Park Place, Suite 200, Dublin, CA
(Address of principal executive offices)

94568
(Zip Code)

Registrant's telephone number, including area code: (925) 400-4366

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions:

- 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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	LIDR	The Nasdaq Stock Market LLC
Warrants to receive one share of Common Stock	LIDRW	The Nasdaq Stock Market LLC

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.

Introductory Note

On August 16, 2021 (the “Closing Date”), AEye, Inc., a Delaware corporation (f/k/a CF Finance Acquisition Corp. III (“CF III”)) (the “Company”), consummated the previously announced business combination (the “Business Combination”) pursuant to that certain Merger Agreement, dated as of February 17, 2021 (the “Original Merger Agreement”, as amended by that certain Merger Agreement Amendment, dated as of April 30, 2021 (the “Merger Agreement Amendment”, the Original Merger Agreement, as amended by the Merger Agreement Amendment, the “Merger Agreement”), by and among the Company, Meliora Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of the Company (“Merger Sub”), and AEye Technologies, Inc., a Delaware corporation (f/k/a AEye, Inc.) (“AEye Technologies”).

Pursuant to the terms of the Merger Agreement, the Business Combination between the Company and AEye Technologies was effected through the merger of Merger Sub with and into AEye Technologies, with AEye Technologies surviving the merger as a wholly-owned subsidiary of the Company (the “Merger” and the completion of the Merger, the “Closing”). At the effective time of the Merger (the “Effective Time”) all of the issued and outstanding shares of capital stock of AEye Technologies were converted into an aggregate of 122,509,667 shares (the “Merger Shares”) of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”).

In connection with the Merger Agreement, in a private placement of its securities, CF III entered into PIPE subscription agreements (the “PIPE Subscription Agreement”) with certain third-party investors (the “PIPE Investors”), pursuant to which the PIPE Investors agreed to purchase, and CF III agreed to sell to the PIPE Investors, an aggregate of up to 22,500,000 shares of Common Stock (the “PIPE Shares”), for a purchase price of \$10.00 per share and an aggregate purchase price of up to \$225 million (the “PIPE”). The PIPE Shares were issued concurrently with the Closing of the Merger on the Closing Date.

In connection with the Closing of the Business Combination, the Company changed its name from CF Finance Acquisition Corp. III to AEye, Inc. Unless the context requires otherwise, references herein to the Company following the Closing refer to AEye, Inc. together with its consolidated subsidiaries (including AEye Technologies).

The foregoing description of the Merger Agreement is a summary only and is qualified in its entirety by reference to the full text of the Original Merger Agreement and the Merger Agreement Amendment, copies of which are attached as Annex A-1 and Annex A-2, respectively, to the final proxy statement/prospectus the (“Final Proxy Statement/Prospectus”) filed with the Securities and Exchange Commission (the “SEC”) on July 21, 2021 by CF III under Rule 424(b)(3).

Item 2.01. Completion of Acquisition or Disposition of Assets.

The disclosure set forth in the “*Introductory Note*” above is incorporated into this Item 2.01 by reference. The material provisions of the Merger Agreement are described in the Final Proxy Statement/Prospectus in the section titled “*The Merger Agreement*”, which description is incorporated herein by reference.

As previously reported in the Current Report on Form 8-K filed with the SEC on August 16, 2021, CF III held a special meeting of its stockholders on August 12, 2021 (the “Special Meeting”). At the Special Meeting, the CF III stockholders considered and adopted, among other matters, the Merger Agreement. Prior to the Special Meeting, the holders of 19,355,365 shares of CF III’s common stock sold in its initial public offering (“Public Shares”) exercised their right to redeem those shares for cash at a price of \$10.10 per share, for an aggregate of approximately \$195.5 million. The per share redemption price of \$10.10 for holders of Public Shares electing redemption was paid out of CF III’s trust account, which after taking into account the redemptions, had a balance immediately prior to the Closing of approximately \$36.8 million.

On the Closing Date, the following transactions (collectively, the “Transactions”) were completed:

- Merger Sub merged with and into AEye Technologies, with AEye Technologies surviving as a wholly-owned subsidiary of the Company;
- each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time was automatically converted into an equal number of shares of common stock of validly issued, fully paid and nonassessable shares of common stock of AEye Technologies, which shares shall constitute the only outstanding shares of capital stock of AEye Technologies to be held by the Company;
- all issued and outstanding shares of AEye Technologies’ capital stock (other than shares held by the Company, Sponsor or held in treasury) converted into an aggregate of 122,509,667 shares of Common Stock.
- all shares of AEye Technologies’ capital stock held in treasury were canceled without any conversion thereof;
- all of the outstanding options of AEye Technologies to acquire AEye Technologies’ common stock were assumed by the Company and converted into options to acquire an aggregate of 29,415,292 shares of Common Stock;
- all of the outstanding restricted stock units (“RSUs”) of AEye Technologies to acquire AEye Technologies’ common stock were assumed by the Company and converted into RSUs to acquire an aggregate of 1,724,283 shares of Common Stock;
- all of the 5,750,000 outstanding shares of CF III’s Class B common stock, par value \$0.0001 per share, held by the Sponsor and the former independent directors of CF III converted into an aggregate of 5,750,000 shares of Common Stock;
- All of the 500,000 private placement units held by the Sponsor were separated, pursuant to their terms, into 500,000 share of Common Stock and 166,666 warrants;
- all of the remaining outstanding Company units were separated, pursuant to their terms, into one share of Common Stock and one-third (1/3) of one warrant (and CF III’s units ceased trading on the Nasdaq Stock Market (“NASDAQ”)); and
- the Company issued an aggregate of 22,000,000 shares of Common Stock to the PIPE Investors pursuant to the closing of the PIPE.

As a result of the foregoing Transactions and giving effect to the redemptions as described above, as of the Closing Date and immediately following the completion of the Merger and the PIPE, the Company had the following outstanding securities:

- 154,404,302 shares of Common Stock;
- options to acquire an aggregate of 29,415,292 shares of Common Stock; and
- 7,666,666 public warrants and 166,666 private placement warrants, each exercisable for one share of Common Stock at a price of \$11.50 per share.

On August 18, 2021, the Common Stock and the Company’s warrants were listed on NASDAQ under the new trading symbols “LIDR” and “LIDRW”, respectively. As of the Closing Date and after giving effect to the Transactions and the redemption, the Company’s directors and executive officers and affiliated entities beneficially owned approximately 15.2% of the Company’s outstanding shares of Common Stock, and the former securityholders of CF III beneficially owned approximately 6.4% of the outstanding shares of Common Stock.

FORM 10 INFORMATION

Prior to the Closing, the Company was a shell company (as defined in Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) with no operations, formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses. Upon Closing, the Company became a holding company whose only assets consist of equity interests in AEye Technologies.

Item 2.01(f) of Form 8-K states that if the predecessor registrant was a shell company, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10. Accordingly, the Company is providing the information below that would be included in a Form 10 if the Company were to file a Form 10. Please note that the information provided below relates to the Company after the consummation of the Business Combination, unless otherwise specifically indicated or the context otherwise requires.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements. Forward-looking statements provide the Company’s current expectations or forecasts of future events. Forward-looking statements include statements about the Company’s expectations, beliefs, plans, objectives, intentions, assumptions and other statements that are not historical facts. The words “anticipates,” “believe,” “continue,” “could,” “estimate,” “expect,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predicts,” “project,” “should,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Examples of forward-looking statements in this Current Report on Form 8-K include, but are not limited to, statements regarding the Company’s disclosure concerning the Company’s operations, cash flows, financial position and dividend policy. The risks and uncertainties include, but are not limited to:

- the financial and business performance of the Company, including financial projections and business metrics and any underlying assumptions thereunder;
- changes in the Company’s strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects and plans;
- the Company’s product development timeline and expected start of production;
- the implementation, market acceptance and success of the Company’s business model;
- the Company’s ability to scale in a cost-effective manner;
- developments and projections relating to the Company’s competitors and industry;
- the impact of health epidemics, including the COVID-19 pandemic, on AEye Technologies’ business and the actions the Company may take in response thereto;
- the Company’s expectations regarding its ability to obtain and maintain intellectual property protection and not infringe on the rights of others;
- expectations regarding the time during which the Company will be an emerging growth company under the JOBS Act;
- the Company’s future capital requirements and sources and uses of cash;

- the Company’s ability to obtain funding for its operations;
- the Company’s business, expansion plans and opportunities; and
- the outcome of any known and unknown litigation and regulatory proceedings.

Forward-looking statements are subject to known and unknown risks and uncertainties and are based on potentially inaccurate assumptions that could cause actual results to differ materially from those expected or implied by the forward-looking statements. Actual results could differ materially from those anticipated in forward-looking statements for many reasons, including the risk factors incorporated by reference into this Current Report on Form 8-K as described in “Risk Factors” below. Accordingly, you should not rely on these forward-looking statements, which speak only as of the date of this Current Report on Form 8-K. The Company undertakes no obligation to publicly revise any forward-looking statement to reflect circumstances or events after the date of this Current Report on Form 8-K or to reflect the occurrence of unanticipated events. You should, however, review the factors and risks that the Company describes in the reports it will file from time to time with the SEC after the date of this Current Report on Form 8-K.

In addition, statements that “the Company believes” and similar statements reflect the Company’s beliefs and opinions on the relevant subject. These statements are based on information available to the Company as of the date of this Current Report on Form 8-K. And while the Company believes that information provides a reasonable basis for these statements, that information may be limited or incomplete. The Company’s statements should not be read to indicate that it has conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and you are cautioned not to unduly rely on these statements.

Although the Company believes the expectations reflected in the forward-looking statements were reasonable at the time made, it cannot guarantee future results, level of activity, performance or achievements. Moreover, neither the Company nor any other person assumes responsibility for the accuracy or completeness of any of these forward-looking statements. You should carefully consider the cautionary statements contained or referred to in this section in connection with the forward looking statements contained in this Current Report on Form 8-K and any subsequent written or oral forward-looking statements that may be issued by the Company or persons acting on the Company’s behalf.

Business

The business of the Company is described in the Final Proxy Statement/Prospectus in the section titled “*Information About AEye*”, which description is incorporated herein by reference.

Risk Factors

The risks associated with the Company and AEye Technologies’ business are described in the Final Proxy Statement/Prospectus in the section titled “*Risk Factors*”, which description is incorporated herein by reference.

Financial Information

Selected Historical Financial Information

The selected historical financial information of the Company as of and for the three months ended March 31, 2021 and for the years ended December 31, 2020 and 2019 is included in the Final Proxy Statement/Prospectus in the section titled “*Selected Historical Financial Information of CF III*”, and is incorporated herein by reference. Following consummation of the Business Combination, the Company intends to appoint Deloitte & Touche LLP as its independent registered public accounting firm, assuming successful completion of independence and other engagement procedures.

Unaudited Pro Forma Combined Financial Information

The unaudited pro forma combined financial information of the Company for the year ended December 31, 2020 and for the six months ended June 30, 2021 is set forth in Exhibit 99.1 hereto and is incorporated herein by reference.

Unaudited Financial Statements

The unaudited consolidated financial statements as of and for the six months ended June 30, 2021 of AEye Technologies set forth in Exhibit 99.2 hereto have been prepared in accordance with U.S. generally accepted accounting principles and pursuant to the regulations of the SEC. The unaudited financial information reflects, in the opinion of management, all adjustments, consisting of normal recurring adjustments, considered necessary for a fair statement of AEye Technologies' financial position, results of operations and cash flows for the periods indicated. The results reported for the interim period presented are not necessarily indicative of results that may be expected for the full year.

These unaudited consolidated financial statements should be read in conjunction with the historical audited consolidated financial statements of AEye Technologies as of and for the year ended December 31, 2020 and the related notes included in the Final Proxy Statement/Prospectus, the section entitled "*Management's Discussion and Analysis of Financial Condition and Results of Operations of AEye*" and the section entitled "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" included herein.

Management's Discussion and Analysis of Financial Condition and Results of Operations

The management's discussion and analysis of financial condition and results of operations of the Company as of and for the six months ended June 30, 2021 and for the years ended December 31, 2020 and 2019 is included in the Form 10-Q filed by the Company with the SEC on August 10, 2021 under the section titled "*CF III's Management's Discussion and Analysis of Financial Condition and Results of Operations*", which is incorporated herein by reference.

The management's discussion and analysis of the financial condition and results of operation of AEye Technologies prior to the Business Combination is included in the Final Proxy Statement/Prospectus in the section entitled "*Management's Discussion and Analysis of Financial Condition and Results of Operations of AEye*", which is incorporated herein by reference.

The management's discussion and analysis of the financial condition and results of operation of AEye Technologies as of and for the six months ended June 30, 2021 is set forth below.

The following discussion and analysis provides information which the Company's management believes is relevant to an assessment and understanding of the Company's consolidated results of operations and financial condition. The discussion should be read together with the financial statements and related notes and unaudited pro forma condensed financial information that are included as Exhibits 99.1 and 99.2 to this Current Report on Form 8-K. The discussion and analysis should also be read together with the AEye Technologies' financial statements and notes thereto and other financial information included in the Final Proxy Statement/Prospectus.

AEYE TECHNOLOGIES' MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This discussion contains forward-looking statements that are based on current expectations, estimates, assumptions and projections about our industry, business and future financial results. Our actual results and the timing of events may differ materially from those described in or implied by these forward-looking statements due to a number of factors, including those discussed below and those set forth under "Risk Factors" herein and other filings we make with the SEC from time to time. Unless the context otherwise requires, references in this "AEye Technologies' Management's Discussion and Analysis of Financial Condition and Results of Operations" to "we", "our", "us", and "AEye" refer to the business and operations of AEye Technologies, Inc. (which prior to the consummation of the Business Combination was named AEye, Inc.).

Overview

AEye is a provider of high-performance, adaptive lidar systems for vehicle autonomy, ADAS, and robotic vision applications. With a sophisticated workforce of leaders and researchers, AEye has developed an artificial intelligence technology that enables active "intelligent sensing", differentiating AEye in the marketplace from competition. AEye's software-definable iDAR™ ("Intelligent Detection and Ranging") platform combines adaptive lidar, an optionally fused camera, and integrated deterministic artificial intelligence to capture more intelligent information with less data, enabling faster, more accurate, and more reliable perception.

AEye was founded in 2013 by Luis Dussan, AEye's President and Chief Technology Officer. His goal was to create a deterministic AI-driven sensing system that performs better than the human eye and visual cortex. From its inception, AEye's culture drew from esteemed scientists and electro-optics engineers from the National Aeronautics and Space Administration ("NASA"), Lockheed Martin Corporation, Northrop Grumman Corporation, the U.S. Air Force, and the Defense Advanced Research Projects Agency ("DARPA") to create the highest performing sensing and perception system for the most challenging situations, ensuring the highest levels of safety for autonomous driving.

Our adaptive iDAR is designed to enable higher levels of autonomy and functionality - SAE Levels 2 through 5 - with the goal of optimizing performance, power and reducing price. Our iDAR platform is software-definable, network-optimized, and leverages deterministic artificial intelligence at the edge. We have substantial investments in our R&D processes and deliver value to our customers through a combination of sales and direct channels. We perform the majority of our R&D activities in our 56,549 square foot corporate headquarters in

Dublin, California, along with working with technology developers on a world-wide basis to develop new technology. We are partnering with leading Tier 1 suppliers to integrate AEye proprietary technology and design, ultimately meeting the specifications of OEMs while building reliable, trusted business relationships.

We expect to enable accelerated adoption of lidar across many markets and have partnered with leading Tier 1 automobile suppliers to achieve this mission. The main markets for lidar, including Industrial, Automotive, and Mobility are projected to see significant growth, allowing for greater market share as well as specialization opportunities like highway autonomous driving applications that benefit from our product. We believe that lidar will be a required sensing solution across many end markets and we intend to be the leading solutions provider in this space.

Business Combination and Public Company Costs

On August 16, 2021, AEye consummated the Business Combination contemplated by the Merger Agreement. The Business Combination was effected through the Merger of Merger Sub with and into AEye. As a result of the Merger, and the consummation of the Business Combination and the other transactions contemplated by the Merger Agreement, AEye became a wholly owned subsidiary of the Company with the AEye stockholders becoming stockholders of the Company. In connection with the Closing of the Business Combination, the Company changed its name from CF Finance Acquisition Corp. III to “AEye, Inc.”

The Business Combination is intended to be accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with GAAP. Under this method of accounting, CF III will be treated as the “acquired” company for financial reporting purposes. This determination is primarily based on AEye stockholders comprising a relative majority of the voting power of the combined entity and having the ability to nominate the majority of the governing body of the combined entity, AEye’s senior management comprising the senior management of the combined entity and AEye’s operations comprising the ongoing operations of the combined entity. Accordingly, for accounting purposes, the financial statements of the combined entity will represent a continuation of the financial statements of AEye and the Business Combination will be treated as the equivalent of AEye issuing stock for the net assets of CF III, accompanied by a recapitalization. The net assets of CF III will be stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the Business Combination will be those of AEye in future reports of the combined entity.

As a consequence of the Business Combination, AEye became an SEC-registered, NASDAQ-listed company, which will require AEye to hire additional personnel and implement procedures and processes to address public company regulatory requirements and customary practices. AEye expects to incur additional annual expenses as a public company for, among other things, directors’ and officers’ liability insurance, director fees and additional internal and external accounting and legal and administrative resources, including increased audit and legal fees.

AEye’s historical operations and statements of assets and liabilities may not be comparable to the operations and statements of assets and liabilities of the combined company as a result of the Business Combination.

COVID-19 Impact

The extensive impact of the pandemic caused by COVID-19 has resulted and will likely continue to result in significant disruptions to the global economy, as well as businesses and capital markets around the world. The ongoing COVID-19 pandemic has disrupted and affected AEye’s business operations, which has led to business and supply chain disruptions, as well as broad changes in its supply and demand. For example, AEye’s offices and R&D and manufacturing locations have been, and continue to be, impacted due to national and regional government declarations requiring closures, quarantines and travel restrictions.

To mitigate the impact of the pandemic, AEye took several steps during 2020 and 2021 to ensure its viability into the future. We significantly reduced internal discretionary costs, reduced senior leadership salaries, furloughed and laid off a portion of the employees, and obtained a loan and rent deferral for a period of six months in 2020. We also applied for and were granted a Paycheck Protection Program, or PPP, loan of \$2.3 million with SVB as part of the U.S. Small Business Administration program. This loan enabled us to bring back a portion of the furloughed employees.

The continued impact of the COVID-19 pandemic on AEye's operational and financial performance will depend on various future developments, including the duration and spread of the outbreak and impact on its customers, suppliers, and employees, all of which is uncertain at this time. We expect the COVID-19 pandemic to adversely impact revenue and results of operations, but are unable to predict at this time the size and duration of this adverse impact. At the same time, we have seen some signs of positive effects for our long-term business prospects and partnerships as a result of the pandemic. We believe automakers perceive the incorporation of lidar solutions in new models as a long-term strategic initiative that will be necessary for future growth and which are therefore beyond the direct impact of the COVID-19 pandemic. For more information on our operations and risks related to epidemics, including COVID-19, please see the section entitled "Risk Factors" set forth in the Proxy Statement/Prospectus, which is incorporated herein by reference.

Key Factors Affecting AEye's Operating Results

AEye believes that its future performance and success depends to a substantial extent on its ability to capitalize on the following opportunities, which in turn is subject to significant risks and challenges, including those discussed below and the risk factors described in the "Form 10 Information—Risk Factors" section of this Current Report.

We are subject to those risks common in the technology industry and also those risks common to early stage companies including, but not limited to, the possibility of not being able to successfully develop or commercialize its products, attract new customers and retain existing customers, develop and protect intellectual property, comply with existing and new or modified laws and regulations applicable to its business, maintain and enhance the value of its reputation and brand, hire, integrate and retain talented people at all levels of its organization, develop and protect intellectual property, and successfully develop new solutions to enhance the experience of customers.

Market Trends and Uncertainties

AEye anticipates growing demand for its iDAR perception platform across three major markets, including the Automotive, Industrial and Mobility markets. AEye anticipates the total addressable market for lidar-based perception technology to grow to \$42 billion by 2030. Within those markets, AEye is targeting attractive segments including ADAS, autonomous driving, commercial trucking, robo-taxis and various Industrial market segments such as mining, aviation, railway and traffic systems. This provides AEye with multiple opportunities for sustained growth by enabling new applications and product features across these market segments. However, as our customers continue R&D projects to commercialize solutions that rely on lidar technology, it is difficult to estimate the timing of ultimate end market and customer adoption. In the Automotive market for example, AEye's growth and financial performance will be influenced by its ability to successfully integrate into OEM programs that require years of development, testing, and validation. Because of the size and complexity of these OEM programs, AEye sees its existing Tier 1 partnerships as a substantial competitive advantage given their large scale, mass-production

capabilities, and existing OEM customer relationships. AEye's primary focus in Automotive is on ADAS for passenger and commercial vehicle autonomy, particularly highway autonomy applications. We believe that growth in that market is driven by both more stringent safety regulations and consumer demand for vehicles offering increased safety. AEye will need to anticipate and adapt to any changes in the regulatory environment, as well as changes in consumer demand in order to take advantage of this opportunity.

Additionally, AEye intends to increase its investments in international operations and partnerships that will position the company to expand globally and meet growing demand in the international markets. This is an important part of AEye's core strategy and may expose AEye to additional factors such as foreign currency risk, additional operating costs, and other risks and challenges that may impact the ability to meet projected sales and margins.

Partnerships and Commercialization

AEye's technology is designed to be a key enabler of autonomous solutions for Automotive, Industrial and Mobility applications. Because our technology must be integrated into a broader solution by our customers, it is critical that AEye achieves design wins with these customers. Achieving these design wins varies based on the market and application. The design win cycle in the Automotive market tends to be substantially longer and more difficult than in other markets. Achieving a design win with an OEM within the Automotive market may take considerably longer than a design win with customers in the Industrial or Mobility markets. AEye considers design wins to be critical to its future success, although the revenue generated by each design win and the time necessary to achieve such a win can vary significantly, making it difficult to predict AEye's financial performance.

AEye's revenue and profitability will be dependent upon our success in licensing our technology to Tier 1 automotive suppliers, such as Continental, that intend to use our technology in volume production of lidar sensors for OEMs. Delays of autonomy programs from OEMs that AEye is currently or will be working with through our Tier 1 partners could result in AEye being unable to achieve its revenue targets and profitability in the time frame we anticipate. Our revenue and profitability will be further dependent upon both our success in selling our lidar solutions to customers in the Industrial and Mobility markets.

Gross Margin Improvement

Our gross margins will depend on numerous factors, including among others the average selling price of our products, pricing of our development contracts with customers, royalty rates on licenses we grant to our customers, unit volumes, product mix, component costs, personnel costs, contract manufacturing costs, overhead costs and product features. In the future, we expect to generate attractive gross margins from licensing our lidar technology and software to our Tier 1 partners in Automotive, and we expect those licenses will begin generating revenue for AEye in 2024. We also sell our own lidar solutions to customers in the Industrial and Mobility markets utilizing low-cost components that are sourced from the Tier 2 automotive supply chain. If our Tier 1 partners in Automotive do not achieve the volumes that we expect, then the cost of the components we use to address the Industrial and Mobility markets may be higher than we currently anticipate and may impact our gross margins and our ability to achieve profitability.

To date, our revenue has been generated through development and/or collaboration arrangements with OEMs and Tier 1 suppliers to the OEMs, as well as unit sales of our products. The development contracts primarily focus on customization of our proprietary iDAR capabilities to the customers' applications, typically involving software implementation to assist with sensor connection and control, customization of scan patterns, and

enhancement of particular perception capabilities to meet specific customer needs. In general, development and/or collaboration arrangements that require more complex configurations have higher prices and higher gross margins. We expect development contracts to represent a smaller share of our total revenue over time, as we increase our focus on technology licensing and product sales. We expect our gross margins from the sale of products to improve over time as we outsource volume production of our lidar sensors to contract manufacturers, which will both increase unit volumes and reduce the cost per unit. In September 2021, we expect to commence our transition process to contract manufacturers.

Investment and Innovation

Our proprietary active-sensing, intelligent lidar technology delivers industry-leading performance that helps to solve the most difficult challenges in delivering partial or full autonomy. While traditional sensing systems passively collect data, AEye's active iDAR leverages principles from automated targeting systems and biomimicry to scan its environment, while intelligently focusing on what matters in order to enable safer, smarter and faster decisions in complex scenarios.

We believe our financial performance is significantly dependent on our ability to maintain the leadership position. This is further dependent on the investments we make in R&D. It is essential that we continually identify and respond to rapidly evolving customer requirements, develop and introduce innovative new products, enhance and service existing products and generate active market demand for our products. If we fail to do this, our leading market position and revenue may be adversely affected, and our investments in that area will not be recovered.

Components of Results of Operations

Total Revenues

We categorize our revenue as (1) prototype sales and (2) development contracts.

Prototype sales includes the sale of our 4Sight products. In 2020 and during the first two quarters of 2021, our prototype revenue primarily related to unit sales of the company's 4Sight M product. Revenue from prototype sales is typically recognized at a point in time when the control of goods is transferred to the customer, generally upon delivery or shipment to the customer.

Development contracts represented the majority of our total revenues in 2020 and during the first two quarters of 2021, which are earned from R&D and/or collaboration arrangements with OEMs and Tier 1 suppliers to the OEMs. These contracts primarily focus on customization of our proprietary iDAR capabilities to the customers' applications, typically involving software implementation to assist with sensor connection and control, customization of scan patterns, and enhancement of perception capabilities to meet specific customer needs. Revenue from development contracts is recognized when we satisfy performance obligations in the contract, which can result in recognition at either a point in time or over time. This assessment is made at the outset of the arrangement for each performance obligation.

Cost of Revenue

Cost of Revenue includes the cost of component inventory used in the production of prototypes, direct and indirect labor costs associated with the units, as well as direct labor associated with development contracts.

Operating Expenses

Research and Development

Our R&D efforts are focused primarily on hardware, software, and system engineering related to the design and development of our advanced lidar solutions. R&D expenses include:

- personnel-related expenses, including salaries, benefits, bonuses, and stock-based compensation expense;
- third-party engineering and contractor costs;
- new hardware and software expenses; and
- allocated overhead expenses.

R&D costs are expensed as they are incurred. Our investment in R&D will continue to grow because we believe that investment is essential to maintain our position as a provider of one of the most advanced lidar solutions available.

Sales and Marketing

Our sales and marketing expenses consist primarily of personnel-related costs, including salaries, benefits, bonuses, and stock-based compensation, for all personnel directly involved in business development and customer account management, trade shows expenses, advertising and promotions expenses for press releases, other public relations services, and allocated overhead expenses. We expect our sales and marketing expense to grow over time as we continue to expand our sales and marketing efforts to support the anticipated growth of our business.

General and Administrative

Our general and administrative expenses consist primarily of personnel-related costs, including salaries, benefits, bonuses, and stock-based compensation, for executive, finance, legal, human resources, technical support, and other administrative personnel. Other significant expenses include consulting, accounting and professional fees, insurance premiums, software and computer equipment costs, general office expenses, and allocated overhead expenses. We expect our general and administrative expenses to increase for the foreseeable future as we increase our headcount to support the growth of our business, and as a result of operating as a public company, including additional costs and expenses associated with compliance with the rules and regulations of the SEC, legal, audit, insurance, investor relations, and other administrative and professional services.

Change in Fair Value of Embedded Derivative and Warrants

Change in fair value of embedded derivatives is the result of the change in fair value at each reporting date of redemption features associated with our convertible notes. The carrying amounts of these embedded derivatives are recorded at fair value at issuance, marked-to-market as of each balance sheet date, and changes in fair value are reported as either income or expense during the period. Change in fair value of warrants are related to the revaluation of our outstanding convertible preferred stock warrant liabilities.

Interest Income and Interest Expense

Interest income consists primarily of interest earned on our cash and cash equivalents. These amounts will vary based on our cash and cash equivalents balances and market rates. Interest expense consists primarily of interest on our borrowings and convertible notes and amortization of debt issuance costs and discount.

Results of Operations

Comparison of the Years ended December 31, 2020 and 2019

The results of operations presented below should be reviewed in conjunction with the consolidated financial statements and notes included elsewhere in this proxy statement/prospectus. The following table sets forth our consolidated results of operations data for the periods ended December 31, 2020 and 2019:

(in thousands, except percentages)	Years Ended December 31,		Variance	
	2020	2019	\$	%
Prototype sales	\$ 365	\$ 291	\$ 74	25.4%
Development contracts	1,214	1,175	39	3.3%
Total revenues	1,579	1,466	113	7.7%
Cost of revenue	808	253	555	219.4%
Gross profit	771	1,213	(442)	(36.4)%
Research and development	17,130	18,661	(1,531)	(8.2)%
Sales and marketing	3,408	4,244	(836)	(19.7)%
General and administrative	6,715	7,129	(414)	(5.8)%
Total operating expenses	27,253	30,034	(2,781)	(9.3)%
Loss from operations	(26,482)	(28,821)	(2,339)	(8.1)%
Change in fair value of embedded derivative liability and warrant liability	1,410	—	1,410	N/A
Interest income	23	266	(243)	(91.4)%
Interest expense	(1,502)	(96)	(1,406)	1,464.6%
Total other income/(expense), net	(69)	170	(239)	(140.6)%
Net loss	<u>\$ (26,551)</u>	<u>\$ (28,651)</u>	<u>\$ (2,100)</u>	<u>(7.3)%</u>

Revenue

Prototype Sales

Prototype sales increased by \$74 thousand, or 25.4%, to \$365 thousand for the year ended December 31, 2020 from \$291 thousand for the year ended December 31, 2019. This increase was primarily due to an increase in units being sold in 2020 compared to 2019 as a result of the release of our 4Sight M product line in July of 2020.

Development Contracts

Development contracts increased by \$39 thousand, or 3.3%, to \$1.2 million for the year ended December 31, 2020 from \$1.2 million for the year ended December 31, 2019. The increase in development contract revenue was due to an increase in performance obligations satisfied year-over-year as well as an increase in the number of development contracts, in progress in 2020.

Cost of Revenue

Cost of revenue increased by \$555 thousand, or 219.4%, to \$808 thousand for the year ended December 31, 2020 from \$253 thousand for the year ended December 31, 2019. This increase was primarily due to the cost associated with the increase in units sold as well as costs incurred on units provided at no cost to certain customers.

Operating Expenses

Research and Development

R&D expenses decreased by \$1.5 million, or 8.2%, to \$17.1 million for the year ended December 31, 2020 from \$18.7 million for the year ended December 31, 2019. This decrease was primarily driven by COVID-19 related impacts as a result of personnel reductions, reduced general operating costs related to engineering expenses of \$609 thousand associated with certain cost management initiatives and the impact of renegotiation of certain third-party vendor agreements. The decrease was partially offset by a net increase in engineering and contract development expenses, as well as increased stock-based compensation expense.

Sales and Marketing

Total sales and marketing expenses decreased by \$836 thousand, or 19.7%, to \$3.4 million for the year ended December 31, 2020 from \$4.2 million for the year ended December 31, 2019. This decrease was primarily due to marketing program spend reduction of \$700 thousand, given less live events occurred during 2020 due to the COVID-19 pandemic.

General and Administrative

Total general and administrative expenses decreased by \$414 thousand, or 5.8%, to \$6.7 million for the year ended December 31, 2020 from \$7.1 million for the year ended December 31, 2019. This decrease was primarily due to COVID-19 related impacts necessitating a reduction of personnel, decreased expenses related to travel, expenses associated with employees being present in the office, and other cost management initiatives, as well as prototype costs in the prior year. This decrease was partially offset by an increase in rent expense associated with our new Dublin facility.

Change in Fair Value of Embedded Derivatives and Warrants

Change in fair value of embedded derivatives and warrants was a gain of \$1.4 million for the year ended December 31, 2020, primarily due to a \$1.5 million decrease in the fair value of liabilities associated with embedded derivatives, offset by a \$93 thousand loss associated with a change in the fair value of our liability classified warrants.

Interest Income

Interest income decreased by \$243 thousand, or 91.4%, to \$23 thousand for the year ended December 31, 2020 from \$266 thousand for the year ended December 31, 2019. This decrease was primarily due to lower cash and cash equivalents balance held in 2020 relative to 2019.

Interest Expense

Interest expense increased by \$1.4 million, or 1,464.6%, to \$1.5 million for the year ended December 31, 2020 from \$96 thousand for the year ended December 31, 2019. This increase was primarily due to interest on convertible notes, term loan, and the PPP loan, as well as amortization of debt discounts.

Net Loss

Net loss decreased by \$2.1 million, or 7.3%, to \$26.6 million for the year ended December 31, 2020 from \$28.7 million for the year ended December 31, 2019. This decrease was primarily due to a headcount reduction as a result of COVID-19 related impacts along with increases in prototype and development contract revenue.

Comparison of the Six Months ended June 30, 2021 and 2020

The results of operations presented below should be reviewed in conjunction with the consolidated financial statements and notes included elsewhere in this proxy statement/prospectus. The following table sets forth our consolidated results of operations data for the six months ended June 30, 2021 and 2020:

(in thousands, except percentages)	Six Months Ended June 30,		Variance	
	2021	2020	\$	%
Prototype sales	\$ 461	\$ 63	\$ 398	631.7%
Development contracts	615	100	515	515.0%
Total revenues	1,076	163	913	560.1%
Cost of revenue	1,071	147	924	628.6%
Gross Profit	5	16	(11)	(68.8)%
Research and development	11,562	7,960	3,602	45.3%
Sales and marketing	3,498	1,938	1,560	80.5%
General and administrative	7,760	3,212	4,548	141.6%
Total operating expenses	22,820	13,110	9,710	74.1%
Loss from operations	(22,815)	(13,094)	(9,721)	74.2%
Change in fair value of embedded derivative liability and warrant liability	(119)	(82)	(37)	45.1%
PPP loan forgiveness	2,297	—	2,297	100.0%
Interest income	5	13	(8)	(61.5)%
Interest expense	(1,952)	(554)	(1,398)	252.3%
Total other income/(expense), net	231	(623)	854	(137.1)%
Net loss	<u>\$ (22,584)</u>	<u>\$ (13,717)</u>	<u>\$ (8,867)</u>	<u>64.6%</u>

Revenue

Prototype Sales

Prototype sales increased by \$398 thousand, or 631.7%, to \$461 thousand for the six months ended June 30, 2021 from \$63 thousand for the six months ended June 30, 2020. This increase was primarily due to an increase in 4Sight M unit sales.

Development Contracts

Development contracts increased by \$515 thousand, or 515.0%, to \$615 thousand for the six months ended June 30, 2021 from \$100 thousand for the six months ended June 30, 2020. This increase was due to having more development contracts as of June 30, 2021 compared to June 30, 2020.

Cost of Revenue

Cost of revenue increased by \$924 thousand, or 628.6%, to \$1.1 million for the six months ended June 30, 2021 from \$147 thousand for the six months ended June 30, 2020. This increase was primarily due to increased sales as well as price variances and inventory adjustments.

Operating Expenses

Research and Development

R&D expenses increased by \$3.6 million, or 45.3%, to \$11.6 million for the six months ended June 30, 2021 from \$8.0 million for the six months ended June 30, 2020. This increase was primarily due to an increase in contract development and other R&D fees, as well as an increase in stock-based compensation.

Sales and Marketing

Total sales and marketing expenses increased by \$1.6 million, or 80.5%, to \$3.5 million for the six months ended June 30, 2021 from \$1.9 million for the six months ended June 30, 2020. This increase was primarily due to an increase in stock-based compensation, personnel costs and marketing program spend.

General and Administrative

Total general and administrative expenses increase by \$4.5 million, or 141.6%, to \$7.8 million for the six months ended June 30, 2021 from \$3.2 million for the six months ended June 30, 2020. This increase was primarily due to an increase in stock-based compensation, personnel costs, and professional fees.

Change in fair value of embedded derivatives and warrants

The loss from the change in fair value of embedded derivatives and warrants increased by \$37 thousand, or 45.1%, to \$119 thousand for the six months ended June 30, 2021 from \$82 thousand for the six months ended June 30, 2020 primarily due to the valuation performed at June 30, 2021.

PPP loan forgiveness

PPP loan forgiveness increased by \$2.3 million, or 100.0%, to \$2.3 million for the six months ended June 30, 2021 from \$0 for the six months ended June 30, 2020. This increase was primarily due to the gain from the forgiveness of the PPP loan.

Interest Income

Interest income decreased by \$8 thousand, or 61.5%, to \$5 thousand for the six months ended June 30, 2021 from \$13 thousand for the six months ended June 30, 2020. This decrease was primarily due to an interest rate decline during this period.

Interest Expense

Interest expense increased by \$1.4 million, or 252.3%, to \$2.0 million, for the six months ended June 30, 2021 from \$554 thousand for the six months ended June 30, 2020. This increase was primarily related to the interest on the SVB term loan, convertible notes and debt issuance costs.

Net Loss

Net loss increased by \$8.9 million, or 64.6%, to \$22.6 million for the six months ended June 30, 2021 from \$13.7 million for the six months ended June 30, 2020. This increase was due to an increase in cost of revenue, engineering expenses, contract development expenses, stock-based compensation, personnel expenses, professional fees and interest expense.

Liquidity and Capital Resources

As of June 30, 2021 and 2020, we had a net loss of \$22.6 million and \$13.7 million, respectively. We anticipate that we will continue to incur losses for at least the next several years. We expect that our R&D expenses and selling, general and administrative expenses will continue to be significant and, as a result, we may need additional capital resources to fund our operations. We believe that the net proceeds from the Business Combination, together with our existing cash and cash equivalents, will enable us to fund our operating expenses, capital expenditure requirements and debt service payments for a period of at least twelve months from the date of this proxy statement/prospectus. As of August 21, 2021, the Company has received approximately \$256.8 million, before expenses, from the transaction, which alleviates the uncertainty in obtaining financing to meet the Company's needs.

Cash Flow Summary

	Six months ended June 30,	
	2021	2020
	(in thousands)	
Net cash provided by (used in):		
Operating activities	\$(18,339)	\$(10,005)
Investing activities	\$ (245)	\$ (3,914)
Financing activities	\$ 15,463	\$ 12,229

Operating Activities

For the six months ended June 30, 2021, net cash used in operating activities was \$18.3 million. Factors affecting our operating cash flows during this period were net loss of \$22.6 million and gain on PPP loan forgiveness of \$2.3 million, offset by stock-based compensation of \$4.2 million, amortization of issuance costs of \$437 thousand, and depreciation and amortization of \$498 thousand. Net changes in operating assets and liabilities was \$526 thousand driven by accounts payable of \$1.5 million and accrued expenses and other current liabilities of \$2.0 million, offset by inventory of \$1.8 million.

For the six months ended June 30, 2020, net cash used in operating activities was \$10.0 million. Factors affecting our operating cash flows during this period were net loss of \$13.7 million and change in fair value of embedded derivative liability of \$82 thousand, offset by stock-based compensation of \$543 thousand. Net changes in operating assets and liabilities was \$2.4 million driven prepaids and other current assets of \$3.0 million, offset by inventory of \$754 thousand.

Investing Activities

For six months ended June 30, 2021, net cash used in investing activities was \$245 thousand, which included the purchase of lab and testing equipment, test vehicles, and computer and related equipment with growth of our employee base.

For six months ended June 30, 2020, net cash used in investing activities was \$3.9 million. The primary factors affecting our investing cash flows during this period was the purchase of property and equipment of \$3.9 million associated with the construction allowance for the new headquarters.

Financing Activities

For the six months ended June 30, 2021, net cash provided by financing activities was \$15.5 million. The primary factors affecting our financing cash flows during this period were the proceeds from the issuance of AEye 2020 Notes of \$8.0 million, proceeds from a financing facility of \$10.0 million, and principal payments on the credit facility of \$667 thousand and payments of \$1.3 million of deferred financing costs.

For the six months ended June 30, 2020, net cash provided by financing activities was \$12.2 million. The primary factors affecting our financing cash flows during this period were the proceeds from the issuance of AEye Convertible Equity Instruments of \$10.4 million, proceeds from PPP loan of \$2.3 million, and the principal payments on a credit facility of \$445 thousand.

Capital Resources

On August 16, 2019, we entered into a loan and security agreement with SVB (the "Loan Agreement"), which provided for a revolving credit line and growth capital term loans. The revolving credit line provided us with \$3.0 million and accrued interest at a floating per annum rate equal to the greater of the prime rate or 5.5%. The revolving line of credit matured on August 16, 2020 and there were no amounts outstanding under the revolving line of credit as of December 31, 2020 and 2019. The growth capital term loan facility had an initial loan amount of \$4.0 million, which was drawn in December 2019. The second tranche of \$1.0 million was not drawn and has expired. Repayment for this term loan began on January 1, 2020. The term loan will be paid in equal monthly payments of principal, plus accrued interest. The interest rate on the term loan is the greater of the prime rate plus 0.75% or 5.5%. As of December 31, 2020 and 2019, the rate on the term loan was 5.5%.

On April 20, 2020, AEye entered into a deferral agreement related to the Loan Agreement (the “**Deferral Agreement**”). The payment dates for all monthly principal payments falling due after the Deferral Agreement’s effective date were extended by six months. Therefore, we did not make any principal payments for any term loans until December 2020.

On April 23, 2020, we received \$2.3 million in aggregate loan proceeds pursuant to the **PPP** established under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the “**CARES Act**”). The loan has a two-year maturity. There is a deferral of payment of principal and interest until July 22, 2021 as part of the Paycheck Protection Program Flexibility Act of 2020. On June 19, 2021, the Company received notice of the Paycheck Protection Program (PPP) forgiveness payment made to SVB by the Small Business Administration to the amount of \$2.3 million in principal and \$27 thousand in interest.

In March 2019, we extended the AEye Series B Preferred Stock Purchase Agreement to offer additional shares to existing and new investors at a purchase price of \$6.19 per share. Upon the execution of the agreement, we issued 484,471 shares of AEye Series B Preferred Stock for cash proceeds of \$3.0 million in 2019. No additional convertible preferred stocks were issued in 2020.

In 2020, the AEye Board authorized and issued AEye Convertible Equity Instruments, referred to as convertible notes in our financial statements, for an aggregate principal amount of approximately \$40.0 million. The AEye Convertible Equity Instruments bear an interest and dividend rate of 3% compounded annually with a maturity of date, extended in July 2021, of October 31, 2021. During 2020, the Company received \$30.0 million in proceeds related to the AEye Convertible Equity Instruments. For the six months ended June 30, 2021, the Company received proceeds of \$8.0 million from the sale of additional AEye Convertible Equity Instruments.

If the AEye Convertible Equity Instruments are not repaid or converted prior to maturity, AEye will pay the principal amount and the accrued dividends to the holders of the AEye Convertible Equity Instruments. The AEye Convertible Equity Instruments are convertible into AEye Preferred Stock in the following ways under the following situations: (i) automatic, upon the closing of a financing in which AEye receives gross cash proceeds of at least \$7.5 million (a “**Qualified Financing**”), (ii) automatic, upon a change of control event (a non-existing stockholder becomes the beneficial owner of more than 50% of outstanding voting securities, sale, reorganization, merger, consolidation, or any event that constitutes a “Deemed Liquidation Event” under AEye’s Amended and Restated Certificate of Incorporation) or a dissolution event (a termination of the operations of the company, liquidation, dissolution, or general assignment for the creditors’ benefit) prior to a Qualified Financing, and (iii) optional, upon the closing of a financing in which AEye receives gross cash proceeds of less than \$7.5 million. Additional information related to the AEye Convertible Equity Instruments is disclosed in Note 9 to the unaudited interim consolidated financial statements appearing at the end of this proxy statement/prospectus.

The AEye Convertible Equity Instruments contain embedded derivatives that meet the requirements for separate accounting. AEye recorded the derivative instruments as derivative liabilities at the date of issuance and then it is re-valued at each reporting date, with changes in fair value reported in the consolidated statements of operations. As of December 31, 2020, the derivative liability was reported together within the *AEye Convertible Notes - Current* item on the consolidated balance sheet and the Change in Fair Value of Embedded Derivatives and Warrants in other income (expense) within the consolidated statements of operations and comprehensive loss of \$1.4 million.

On April 26, 2021, AEye entered into a Loan and Security Agreement (“SVB Agreement”) with SVB Innovation Credit Fund VIII, L.P. (the “Lender”). Subject to the terms and conditions of the SVB Agreement and upon the Company’s request, the Lender shall make a term loan advance to the Company for \$4.0 million. Subject to the Lender receiving satisfactory evidence confirming the filing of the Final Proxy Statement/Prospectus with the SEC in connection with the Business Combination, among other terms and conditions, the Lender shall make a second term loan advance to the Company, upon the company’s request, for \$6.0 million.

The principal amount outstanding under the term loan advances accrues interest at 8% per annum, payable monthly in arrears. The outstanding and unpaid principal and interest, in addition to a “final payment” (defined as a payment equal to the original aggregate principal amount of the term loan advances extended by the Lender multiplied by 5%), is due at maturity, which was the earlier of closing of the Business Combination (which closed on August 16, 2021), or August 1, 2021. Upon entering into the SVB Agreement, the first term loan advance of \$4.0 million was extended to AEye by the Lender. On May 13, 2021, the additional \$6.0 million was drawn.

Funding Requirements

At the time of issuance of our financial statements for the six months ended June 30, 2021, we concluded that there was substantial doubt about the Company’s ability to continue as a going concern for a period of twelve months. For the six months ended June 30, 2021, we had an accumulated deficit of \$109.4 million and negative operating cash flows of \$18.3 million. We expect our expenses to increase substantially in connection with our ongoing activities, particularly developing new technology, as well as enhancing the capabilities and performance of our lidar system. We believe that the net proceeds from the Business Combination, together with our existing cash and cash equivalents, will enable us to fund our operating expenses, capital expenditure requirements and debt service payments for a period of at least twelve months from the date of this proxy statement/prospectus. As of August 21, 2021, the Company has received approximately \$256.8 million, before expenses, from the transaction, which alleviates the uncertainty in obtaining financing to meet the Company’s needs.

Contractual Obligations and Commitments

In the normal course of business, we enter into obligations and commitments that require future contractual payments. The commitments result primarily from lease for office space and leased equipment. The following table summarizes our contractual obligations and commercial commitments (in thousands) as of June 30, 2021:

	<u>Less than 1 year</u>	<u>1 to 3 years</u>	<u>3 to 5 years</u>	<u>More than 5 years</u>
Rental Payments	\$ 2,317	\$ 4,703	\$ 4,969	\$ 1,063
Convertible Notes	\$37,759	—	—	—
Borrowings - net of issuance costs	\$11,334	\$ 1,242	—	—
Total	<u>\$51,410</u>	<u>\$ 5,945</u>	<u>\$ 4,969</u>	<u>\$ 1,063</u>

Off-Balance Sheet Arrangements

As of the balance sheet date of June 30, 2021 we have not engaged in any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates.

We do not believe that inflation has had a material effect on our business, results of operations or financial condition. Nonetheless, if our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs. Our inability or failure to do so could harm our business, results of operations or financial condition.

Interest Rate Risk

As of June 30, 2021, we had cash and cash equivalents of \$11.2 million, which consisted primarily of deposits in our bank accounts, which carries a degree of interest rate risk, as well as borrowings accumulated of \$12.6 million which carry a degree of interest rate risk. A hypothetical 10% change in interest rates would not have a material impact on our financial condition or results of operations due to the short-term nature of our investment portfolio and borrowings.

Credit Risk

Our concentration of credit risk is determined by evaluating each customer and each vendor that accounts for more than 10% of our accounts receivable and accounts payable, respectively. For the six months ended June 30, 2021, there were two customers each accounting for 10% or more of our accounts receivable and two vendors each accounting for 10% or more of our accounts payable.

We perform credit evaluations as needed and generally do not require collateral for our customers. We analyze accounts receivable, historical percentages of uncollectible accounts, and changes in payment history when evaluating the adequacy of the allowance for doubtful accounts for potential credit losses on customers' accounts. At June 30, 2021 and 2020, we did not have write-offs and did not record an allowance for doubtful accounts on the consolidated balance sheet.

Critical Accounting Policies and Estimates

Our consolidated financial statements are in accordance with GAAP. We are required to make estimates and assumptions that affect the reported amounts of assets and liabilities as of the date of the consolidated financial statements, the reported amounts of revenues and expenses during the reporting periods, fair value measures and the related disclosures in the consolidated financial statements. We believe that the following accounting policies described in Note 1 *Organization and Summary of Significant Accounting Policies* in the audited consolidated financial statements for the year ended December 31, 2020 included elsewhere in this proxy statement/prospectus, are critical because they involve a higher degree of judgment and uncertainty. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. The results of our analysis form the basis for making assumptions about the carrying values of assets and liabilities and fair value measures that are not readily apparent from other sources. As a result, these accounting policies could materially affect our financial statements.

On an ongoing basis, we evaluate these estimates and judgments based on historical experiences and various other factors that are believed to reflect the current circumstances. While we believe our estimates,

assumptions and judgments are reasonable, they are based on information presently available. Actual results may differ significantly from these estimates due to changes in judgments, assumptions and conditions as a result of unforeseen events or otherwise, which could have a material impact on our financial position and results of operations.

Revenue

We recognize revenues from the sale of prototype systems and from R&D and collaboration and development arrangements with OEMs and suppliers to the OEMs. Revenue represents the amount of expected consideration we are entitled to receive upon the transfer of promised goods or services in the ordinary course of our activities and is recorded net of sales taxes. We recognize revenue when performance obligations are satisfied by transferring control of a promised good or service to a customer. For performance obligations that are satisfied at a point in time, we also consider the following indicators to assess whether control of a promised good or service is transferred to the customer: (i) right to payment; (ii) legal title; (iii) physical possession; (iv) significant risks and rewards of ownership; and (v) acceptance of the good or service. For performance obligations satisfied over time, we recognize revenue over time by measuring the progress toward complete satisfaction of a performance obligation.

The application of various accounting principles related to the measurement and recognition of revenue requires us to make judgments and estimates. Specifically, complex arrangements with nonstandard terms and conditions may require relevant contract interpretation to determine the appropriate accounting treatment, including whether the promised goods and services specified in a multiple element arrangement should be treated as separate performance obligations. When a contract involves multiple performance obligations, the Company accounts for individual products and services separately if the customer can benefit from the product or service on its own or with other resources that are readily available to the customer and the product or service is separately identifiable from other promises in the arrangement. For multiple element obligations, the transaction price is allocated to each performance obligation using the relative stand-alone selling price.

Convertible Notes and Embedded Derivatives

The convertible notes issued during 2020 contain certain embedded features that meet the requirements for separate accounting, which we account for as a derivative instrument. We recognize the derivative instrument as a derivative liability and report it together within the Convertible notes — Current on the consolidated balance sheet and remeasure such embedded derivatives at fair value at each balance sheet date, with changes in fair value recognized in the consolidated statements of operations and comprehensive loss. We determine the fair value of the derivative instrument using an option pricing Monte Carlo simulation model, which takes into account the probability of a change in control occurring and potential repayment amounts and timing of such payments.

Stock-Based Compensation

We recognize stock-based awards granted to our employees and directors based on the estimated grant-date fair value of the awards. Compensation expense is recognized on a straight-line basis over the requisite service period, which is generally the vesting period of the respective award. We estimate the fair value of options using the Black-Scholes option-pricing model, which requires objective and subjective assumptions such as the option's expected term, fair value of our ordinary shares, risk-free interest rate, expected dividend yield, expected term and expected volatility of our ordinary shares. Our assumptions may differ from those used in prior periods. Changes to the estimates we make from time to time may have a significant impact on our stock-based compensation expense and could materially impact our results of operations.

Determination of the Fair Value of Common Stock

The fair value of the AEye Common Stock underlying our stock-based payment awards is determined by the AEye Board, with reviews and input from third-party valuations to determine the fair value of stock awards and option grants and perform the fair value calculations with the Black-Scholes option-pricing model. We believe that the AEye Board has the relevant experience and expertise to determine the fair value of our AEye Common Stock. If stock-based payment awards were granted a short period of time prior to the date of a valuation report, we retrospectively assessed the fair value used for financial reporting purposes after considering the fair value reflected in the subsequent valuation report and other facts and circumstances on the date of grant as discussed below. Given the absence of a public trading market for our AEye Common Stock, the valuations of AEye Common Stock were determined in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately-Held-Company Equity Securities Issued as Compensation, and the AEye Board exercised reasonable judgment and considered numerous and subjective factors to determine the best estimate of fair value of our AEye Common Stock, including the following factors:

- the results of contemporaneous valuations performed at periodic intervals by an independent valuation firm;
- the prices, rights, preferences, and privileges of our convertible preferred stock relative to those of our AEye Common Stock;
- the prices of our convertible preferred stock and AEye Common Stock sold to investors in arms-length transactions or offered to investors through a tender offer;
- our actual operating and financial performance and estimated trends and prospects for our future performance;
- our stage of development;
- the likelihood of achieving a liquidity event, such as an initial public offering, merger with a SPAC, direct listing, or sale of our company, given prevailing market conditions;
- the lack of marketability involving securities in a private company;
- the market performance of comparable publicly traded companies; and
- U.S. and global capital market conditions and overall economic conditions.

In valuing our AEye Common Stock for 2019, the AEye Board determined the equity value of our business generally using a weighting of the income and market approach valuation methods. The income approach estimates value based on the expectation of future cash flows that a company will generate. These future cash flows are discounted to their present values using a discount rate based on our weighted-average cost of capital and are adjusted to reflect the risks inherent in our cash flows. The market approach estimates value based on a comparison of the subject company to comparable public companies in a similar line of business. From the comparable companies, a representative market value multiple is determined and then applied to the subject company's financial forecasts to estimate the value of the subject company.

For 2020 valuations, where AEye did not have a recent or expected arm's length preferred equity financing, we have used a hybrid method utilizing a combination of the OPM and the probability-weighted expected return method, or PWERM, in estimating the value of our AEye Common Stock. Using the PWERM, the value of our AEye Common Stock is estimated based upon a probability-weighted analysis of varying values for our common

stock assuming possible future events for our company, including a scenario of an initial public offering or a direct listing of our Class A common stock on an exchange and a scenario assuming continued operation as a private entity. When AEye had a recent or expected arm's length preferred equity financing, the results from the PWERM analysis were not inconsistent with the overall weighted value considering the terms and pricing of the preferred round of financing.

Application of these approaches involves the use of estimates, judgment, and assumptions that are highly complex and subjective, such as those regarding our expected future revenue, expenses, and future cash flows, discount rates, market multiples, the selection of comparable companies, and the probability of possible future events. Changes in any or all of these estimates and assumptions or the relationships between those assumptions impact our valuations as of each valuation date and may have a material impact on the valuation of our AEye Common Stock.

The AEye Board's assessments of the fair value of our AEye Common Stock for grant dates between the dates of an available third-party valuation report were based in part on the current available financial and operational information and the common stock value provided in the most recent available third-party valuation report as compared to the timing of each grant. For financial reporting purposes we use straight-line interpolation as appropriate between valuation date and the grant date of our stock options. This determination includes an evaluation of whether the subsequent valuation report indicates that any significant change in valuation had occurred between the previous valuation and the grant date.

Emerging Growth Company Status

Section 102(b)(1) of the Jumpstart Our Business Startups Act of 2012 ("**JOBS Act**") exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can choose not to take advantage of the extended transition period and comply with the requirements that apply to non-emerging growth companies, and any such election to not take advantage of the extended transition period is irrevocable.

After the completion of the Business Combination AEye expects to be an "emerging growth company" as defined in Section 2(a) of the Securities Act upon completion of the Business Combination and has elected to take advantage of the benefits of the extended transition period for new or revised financial accounting standards. Following the consummation of the Business Combination, the Combined Entity will remain an emerging growth company until the earliest of (i) the last day of the fiscal year in which the market value of Common Stock that is held by non-affiliates exceeds \$700 million as of the end of that year's second fiscal quarter, (ii) the last day of the fiscal year in which the Combined Entity has total annual gross revenue of \$1.07 billion or more during such fiscal year (as indexed for inflation), (iii) the date on which the Combined Entity has issued more than \$1.0 billion in non-convertible debt in the prior three-year period or (iv) December 31, 2024, and the Combined Entity expects to continue to take advantage of the benefits of the extended transition period, although it may decide to early adopt such new or revised accounting standards to the extent permitted by such standards. This may make it difficult or impossible to compare the Combined Entity's financial results with the financial results of another public company that is either not an emerging growth company or is an emerging growth company that has chosen not to take advantage of the extended transition period exemptions because of the potential differences in accounting standards used.

Recent Accounting Pronouncements

A description of recently issued accounting pronouncements that may potentially impact our financial position and results of operations is disclosed in Note 1 to the audited consolidated financial statements appearing at the end of this proxy statement/prospectus.

Properties

The facilities of the Company are described in the Final Proxy Statement/Prospectus in the section titled “*Information About AEye - Facilities*” and is incorporated herein by reference.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information regarding the beneficial ownership of shares of the Common Stock as of August 16, 2021, after giving effect to the Transactions, by:

- each person known by the Company to be the beneficial owner of more than five percent (5%) of the outstanding shares of the Company’s Common Stock;
- each current executive officer and director of the Company; and
- all current executive officers and directors of the Company, as a group.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within sixty (60) days.

Unless otherwise indicated, the Company believes that all persons named in the table have sole voting and investment power with respect to all shares of Common Stock of the Company beneficially owned by them.

Name and Address of Beneficial Owner	Number of Shares	% of Class
Directors and Executive Officers⁽¹⁾		
Blair LaCorte ⁽²⁾	4,482,511	2.8%
Luis Dussan ⁽³⁾	18,324,105	11.8%
Robert Brown ⁽⁴⁾	821,884	*
Thomas R. Tewell	—	*
Andrew S. Hughes	—	*
Wen Hsieh	—	*
Prof. Dr. Bernd Gottschalk ⁽⁵⁾	37,208	*
Dr. Karl-Thomas Neumann ⁽⁶⁾	2,478	*
Timothy J. Dunn ⁽⁷⁾	17,052	*
Carol DiBattiste ⁽⁸⁾	9,302	*
All directors and officers as a group (10 individuals)	23,694,540	15.2%
5% Shareholders		
KPCB Holdings, Inc. ⁽⁹⁾	16,300,697	10.5%
General Motors Ventures LLC ⁽¹⁰⁾	13,864,191	8.9%

* Less than one percent.

- (1) Unless otherwise noted, the business address of each of the following individuals or entities is c/o AEye, Inc., 1 Park Place, Suite 200, Dublin, CA 94568.
- (2) Interests shown consist of (a) 1,405,484 shares of Common Stock and (b) options to purchase 3,077,027 shares of Common Stock that are exercisable within 60 days of August 16, 2021.
- (3) Interests shown consist of (a) 18,316,664 shares of Common Stock and (b) options to purchase 7,441 shares of Common Stock that are exercisable within 60 days of August 16, 2021.

- (4) Interests shown consist of options to purchase 821,884 shares of Common Stock that are exercisable within 60 days of August 16, 2021.
- (5) Interests shown consist of options to purchase 37,208 shares of Common Stock that are exercisable within 60 days of August 16, 2021.
- (6) Interests shown consist of options to purchase 2,478 shares of Common Stock that are exercisable within 60 days of August 16, 2021.
- (7) Interests shown consist of options to purchase 17,052 shares of Common Stock that are exercisable within 60 days of August 16, 2021.
- (8) Interests shown consist of options to purchase 9,302 shares of Common Stock that are exercisable within 60 days of August 16, 2021.
- (9) Consists of (a) 13,405,167 shares of our common stock held by Kleiner Perkins Caufield & Byers XVI, LLC (“KPCB XVI”), 458,898 shares held by KPCB XVI Founders Fund, LLC (“XVI Founders”), 2,362,303 shares held by Kleiner Perkins Caufield & Byers XIX, LLC (“KPCB XIX”), 22,179 shares held by Kleiner Perkins XIX Friends, LLC (“XIX Friends”) and 52,150 shares held by KPCB XIX Founders Fund, LLC (“XIX Founders”). All shares are held for convenience in the name of “KPCB Holdings, Inc., as nominee” for the accounts of such individuals and entities. The managing member of KPCB XVI and XVI Founders is KPCB XVI Associates, LLC (“KPCB XVI Associates”). L. John Doerr, Beth Seidenberg, Randy Komisar, Theodore E. Schlein and Wen Hsieh, the managing members of KPCB XVI Associates, exercise shared voting and dispositive control over the shares held by KPCB XVI and XVI Founders. Such managing members disclaim beneficial ownership of all shares held by KPCB XVI and XVI Founders except to the extent of their pecuniary interest therein. The managing member of KPCB XIX, XIX Friends and XIX Founders is KPCB XIX Associates, LLC (“KPCB XIX Associates”). Ilya Fushman, Mamoon Hamid and Wen Hsieh, the managing members of KPCB XIX Associates, exercise shared voting and dispositive control over the shares held by KPCB XIX, XIX Friends and XIX Founders. Such managing members disclaim beneficial ownership of all shares held by KPCB XIX, XIX Friends and XIX Founders except to the extent of their pecuniary interest therein. The principal business address for all entities and individuals affiliated with Kleiner Perkins Caufield & Byers is c/o Kleiner Perkins Caufield & Byers, LLC, 2750 Sand Hill Road, Menlo Park, CA 94025.
- (10) The business address of General Motors Ventures LLC is MC 482-C37-D99, 300 Renaissance Center, Detroit, MI 48265.

Directors and Executive Officers

Information with respect to the Company’s directors and executive officers immediately after the Closing is set forth in the Final Proxy Statement/Prospectus in the section titled “*Management of the Combined Entity Following the Business Combination*”, which description is incorporated herein by reference.

Executive Compensation

Information about the executive compensation of the Company’s executive officers and directors is described in the Final Proxy Statement/Prospectus in the section titled “*Management of the Combined Entity Following the Business Combination — Combined Entity’s Executive Officer and Director Compensation Following the Business Combination — Executive Compensation*” and is incorporated herein by reference.

Certain Relationships and Related Transactions

Information relating to certain relationships and related party transactions of the Company are described in the Final Proxy Statement/Prospectus in the section titled “*Certain Relationships and Related Person Transactions*”, which description is incorporated herein by reference. Director independence is described in the Final Proxy Statement/Prospectus in the section titled “*Management of the Combined Entity Following the Business Combination — Director Independence*” and is incorporated herein by reference.

Legal Proceedings

The Company's legal proceedings are described in the Final Proxy Statement/Prospectus in the sections titled "Information About AEye — Legal Proceedings", which is incorporated herein by reference.

Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

On November 13, 2020 CF III's units began trading on Nasdaq under the symbol "CFACU". On January 4, 2021, CF III's Class A common stock and warrants trading on Nasdaq under the symbols "CFAC" and "CFACW," respectively. On the Closing Date, all outstanding CF III units were separated, pursuant to their terms, into one share of Common Stock and one-third (1/3) of one warrant (and the units ceased trading on NASDAQ, and on August 18, 2021, the Common Stock and the Company's warrants were listed on Nasdaq under the new trading symbols "LIDR" and "LIDRW", respectively.

The Company has not paid any cash dividends on shares of its Common Stock to date and does not intend to pay cash dividends. The payment of cash dividends in the future will be dependent upon the Company's revenues and earnings, if any, capital requirements and general financial condition. The payment of any dividends will be within the discretion of the Company's board of directors (the "Board"). It is the present intention of the Board to retain all earnings, if any, for use in the Company's business operations and, accordingly, the Board does not anticipate declaring any dividends in the foreseeable future.

Information regarding CF III's common stock, warrants and units and related stockholder matters are described in the Final Proxy Statement/Prospectus in the section titled "Price Range and Dividends of Securities" and such information is incorporated herein by reference.

Recent Sales of Unregistered Securities

Reference is made to the disclosure set forth under Item 3.02 of this Current Report on Form 8-K concerning the sale and issuance of Common Stock of the Company.

Description of Registrant's Securities

The description of the Company's securities is contained in the Final Proxy Statement/Prospectus in the section titled "Description of Securities" and is incorporated herein by reference

Indemnification of Directors and Officers

Reference is made to the disclosure set forth under Item 5.02 of this Current Report on Form 8-K concerning indemnification agreements entered into with each of the Company's directors and executive officers.

Financial Statements and Supplementary Data

Reference is made to the disclosure set forth under Item 9.01 of this Current Report on Form 8-K concerning the financial statements and supplementary data of CF III and AEye Technologies.

Financial Statements and Exhibits

Reference is made to the disclosure set forth under Item 9.01 of this Report concerning the financial information of AEye Technologies and CF III.

Item 3.02. Unregistered Sales of Equity Securities

PIPE Subscription Agreement

Contemporaneously with the execution of the Merger Agreement, CF III entered into separate PIPE Subscription Agreements in a private placement with a number of PIPE investors, pursuant to which the PIPE Investors agreed to purchase, and CF III agreed to sell to the PIPE Investors, an aggregate of 22,000,000 shares of Common Stock, for a purchase price of \$10.00 per share and an aggregate purchase price of \$220 million. CF III also entered into a PIPE Subscription Agreement for 500,000 shares of Common Stock, for a purchase price of \$10.00 per share and an aggregate purchase price of \$5 million with an investor who defaulted on the Closing Date under the PIPE Subscription Agreement. The Company plans to aggressively pursue its available remedies with respect to such investor.

In accordance with the terms of the PIPE Subscription Agreements, on August 16, 2021 the Company issued 22,000,000 unregistered securities to the PIPE Investors. The shares of Common Stock issued pursuant to the Subscription Agreements were not registered under the Securities Act of 1933 (the “Securities Act”) and were issued in reliance upon the exemption provided in Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

This summary is qualified in its entirety by reference to the PIPE Subscription Agreements, the form of which is included as Exhibit 10.1 to this Current Report and is incorporated herein by reference.

Item 3.03. Material Modification to Rights of Security Holders

Second Amended and Restated Certificate of Incorporation

Immediately prior to the Closing of the Business Combination, CF III’s amended and restated certificate of incorporation, dated November 12, 2020 (the “Charter”), was further amended and restated to:

- (a) change the post-combination company’s name to AEye, Inc.;
- (b) change the nature of the business or purpose of the post-combination company to “any lawful act or activity for which corporations may be organized under the DGCL;
- (c) eliminate the Class B common stock (after giving effect to the conversion of each outstanding share of Class B common stock immediately prior to the Closing of the Business Combination into one share of Common Stock)
- (d) increase the term for directors from two (2) years to three (3) years and add a third class of directors.
- (e) amend certain terms in Article XI (*Corporate Opportunities*) with respect to certain non-employee directors of the post-combination company pursuing outside business activities and corporate opportunities; and
- (f) delete other provisions applicable only to blank check companies, and make conforming changes to reflect such deletions.

As previously reported in the Current Report on Form 8-K filed with the SEC on August 16, 2021, the CF III stockholders approved this second amendment and restatement of the Charter at the Special Meeting. This summary is qualified in its entirety by reference to the text of the second amended and restated certificate of incorporation, which is included as Exhibit 3.1 hereto and incorporated herein by reference.

Amended and Restated Bylaws

Upon the Closing of the Business Combination, CF III’s bylaws were amended and restated to be consistent with Company’s amended and restated certificate of incorporation and to make certain other changes that the Board deemed appropriate for a public operating company. The amended and restated bylaws are filed as Exhibit 3.2 hereto and incorporated herein by reference.

Item 5.01. Changes in Control of Registrant.

Reference is made to the disclosure in the Final Proxy Statement/Prospectus in the section titled “*The Business Combination Proposal*,” which is incorporated herein by reference. Further reference is made to the information set forth above under “*Introductory Note*” and contained in Item 2.01 “*Completion of Acquisition or Disposition of Assets*” to this Report, which is incorporated herein by reference.

Immediately after giving effect to the Business Combination, there were approximately 154,404,302 million shares of Common Stock outstanding. As of such time, the Company’s officers and directors and their affiliated entities held approximately 15.2% of the Company’s outstanding shares of Common Stock.

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

Appointment of Directors and Officers

The following persons are serving as executive officers and directors of the Company upon the Closing, with Blair LaCorte, Luis Dussan, Robert Brown, Thomas R. Tewell and Andrew S. Hughes having been named as executive officers effective upon the Closing on August 16, 2021, and each of the directors having been elected by the CF III stockholders to the Board also upon the Closing on August 16, 2021. For biographical and current

compensatory information concerning the executive officers and directors, see the disclosure in the Final Proxy Statement/Prospectus in the sections titled “*Management of the Combined Entity Following the Business Combination*” which is incorporated herein by reference.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Blair LaCorte	58	Chief Executive Officer and Director
Luis Dussan	46	Chief Technology Officer, Chief Product Strategist and Director
Robert Brown	56	Treasurer, Chief Financial Officer and Chief Accounting Officer
Thomas R. Tewell	54	Chief Operating Officer
Andrew S. Hughes	55	Secretary and General Counsel
Wen Hsieh	48	Director
Prof. Dr. Bernd Gottschalk	77	Director
Dr. Karl-Thomas Neumann	60	Director
Timothy J. Dunn	63	Director
Carol DiBattiste	69	Director

Effective upon the Closing on August 16, 2021, Howard W. Lutnick, Anshu Jain and Jane Novak resigned as executive officers of CF III and Howard W. Lutnick, Anshu Jain, Robert G. Sharp and Robert J. Hochberg resigned as directors of CF III.

The Board is classified into three classes, each comprising as nearly as possible one-third of the directors to serve three-year terms. As Class I directors, each of Wen Hsieh and Timothy J. Dunn will serve until the Company’s 2022 annual meeting; as Class II directors, each of Luis Dussan and Dr. Karl-Thomas Neumann will serve until the Company’s 2023 annual meeting; and as Class III directors, each of Blair LaCorte, Prof. Dr. Bernd Gottschalk and Carol DiBattiste will serve until the Company’s 2024 annual meeting, or in each case until their respective successors are duly elected and qualified, or until their earlier resignation, removal or death.

2021 Equity Incentive Plan

As previously reported in the Current Report on Form 8-K filed with the SEC on August 16, 2021, at the Special Meeting, the CF III stockholders considered and approved the CF Finance Acquisition Corp. III 2021 Equity Incentive Plan (the “Incentive Plan”), and reserved 21,541,913 shares of Common Stock for issuance thereunder. The Incentive Plan was previously approved, subject to stockholder approval, by the board of directors of CF III on February 17, 2021. The Incentive Plan became effective immediately upon the Closing of the Business Combination. The number of shares of Common Stock reserved for issuance under the Incentive Plan will automatically increase on January 1 of each year, beginning on January 1, 2022 and continuing through January 1, 2032, by 5% of the total number of shares of Common Stock outstanding on December 31 of the preceding calendar year, or a lesser number of shares as may be determined by the Board.

A more complete summary of the terms of the Incentive Plan is set forth in the Final Proxy Statement/Prospectus in the section titled “*The Equity Incentive Plan Proposal*”. That summary and the foregoing description of the Incentive Plan are qualified in their entirety by reference to the text of the Incentive Plan, which is filed as Exhibit 10.3 hereto and incorporated herein by reference.

Indemnification Agreements for Company Directors and Officers

In connection with the Closing of the Business Combination, the Company entered into indemnification agreements with each of its directors and officers (the “Indemnification Agreements”). The Indemnification Agreements provide the directors and executive officers with contractual rights to indemnification and expense advancement. The foregoing description of the Indemnification Agreements is not complete and is subject to, and qualified in its entirety by reference to the text of the form of Indemnification Agreement, which is included as Exhibit 10.2 to this Current Report on Form 8-K.

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

The information set forth in Item 3.03 to this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

Item 5.06. Change in Shell Company Status.

As a result of the Business Combination, the Company ceased being a shell company (as defined in Rule 21b-2 of the Exchange Act) as of the Closing Date. Reference is made to the disclosure in the Final Proxy Statement/Prospectus in the section titled “*The Business Combination Proposal*,” which is incorporated herein by reference. Further reference is made to the information contained in Item 2.01 to this Current Report on Form 8-K.

Item 8.01. Other Events

As a result of the Business Combination and by operation of Rule 12g-3(a) promulgated under the Exchange Act, AEye Inc. is a successor issuer to CF Finance Acquisition Corp. III. AEye Inc. hereby reports this succession in accordance with Rule 12g-3(f) under the Exchange Act.

Item 9.01. Financial Statement and Exhibits.

(a)-(b) Financial Statements.

The audited balance sheet of CF III., as of December 31, 2020 and 2019, and the related statements of operations, stockholders’ equity, and cash flows for the year ended December 31, 2020 and 2019, and the related notes thereto and report of independent registered public accounting firm, included in the Final Proxy Statement/Prospectus in the section titled “*Index to Financial Statements— Audited Financial Statements of CF Finance Acquisition Corp. III*” are incorporated herein by reference.

The audited consolidated balance sheets of AEye Technologies as of December 31, 2020 and 2019, the related consolidated statements of operations, other comprehensive income loss, shareholders’ equity, and cash flows for each of the years in the two-year period ended December 31, 2020, and the related notes thereto and report of independent registered public accounting firm, included in the Final Proxy Statement/Prospectus in the section titled “*Index to Financial Statements— Audited Financial Statements of AEye, Inc.*” are incorporated herein by reference.

The unaudited pro forma combined financial information of the Company for the year ended December 31, 2020 and for the six months ended June 30, 2021 is set forth in Exhibit 99.1 hereto and is incorporated herein by reference.

The unaudited financial statements of AEye Technologies, Inc. as of June 30, 2021 and for the six months ended June 30, 2021 are filed with this Current Report on Form 8-K as Exhibit 99.2 and incorporated herein by reference.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
2.1*	<u>Merger Agreement, dated as of February 17, 2021, by and among the Company, Merger Sub and AEye Technologies (included as Annex A-1 to the Final Proxy Statement/Prospectus filed under Rule 424(b)(3).(File No. 333-256058) on July 21, 2021)</u>
2.2*	<u>Amendment to the Merger Agreement, dated as of April 30, 2021, by and among the Company, Merger Sub and AEye Technologies (included as Annex A-2 to the Final Proxy Statement/Prospectus filed under Rule 424(b)(3).(File No. 333-256058) on July 21, 2021)</u>
3.1	<u>Second Amended and Restated Certificate of Incorporation of AEye, Inc.</u>
3.2	<u>Amended and Restated Bylaws of AEye, Inc.</u>
10.1*	<u>Form of PIPE Subscription Agreement (incorporated by reference to Exhibit 10.1 filed on the Registrant's Current Report on Form 8-K (File No. 001-39699), filed on February 17, 2021)</u>
10.2	<u>Form of Indemnification Agreement</u>
10.3*	<u>2021 Equity Incentive Plan (included as Annex A-1 to the Final Proxy Statement/Prospectus filed under Rule 424(b)(3).(File No. 333-256058) on July 21, 2021)</u>
99.1	<u>Unaudited Pro Forma Condensed Combined Financial Information of the Company as of December 31, 2020 and for the Six Months ended June 30, 2021</u>
99.2	<u>Unaudited Consolidated Financial Statements of AEye, Inc. for the Six Months ended June 30, 2021</u>
104	Cover Page Interactive Data File

* Filed previously

SIGNATURES

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

AEye, Inc.

Dated: August 21, 2021

By: /s/ Blair LaCorte
Blair LaCorte
Chief Executive Officer

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
CF FINANCE ACQUISITION CORP. III, INC.**

[___], 2021

CF Finance Acquisition Corp. III, Inc., a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), DOES HEREBY CERTIFY AS FOLLOWS:

1. The original name of the Corporation was “*CF SPAC Re Inc.*” and the name of the Corporation was subsequently changed to “*CF Finance Acquisition Corp. III*”. The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 15, 2016; the first, second and third certificates of amendment thereto were filed with the Secretary of State of the State of Delaware on July 10, 2020, July 10, 2020 and September 24, 2020, respectively; and an amended and restated certificate of incorporation was filed with the Secretary of State of the State of Delaware on November 12, 2020 (as amended to date, the “*Original Certificate*”).

2. This Second Amended and Restated Certificate of Incorporation (this “*Second Amended and Restated Certificate*”), which both restates and amends the provisions of the Original Certificate, was duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, as amended from time to time (the “*DGCL*”).

3. This Second Amended and Restated Certificate shall become effective on the date of filing with the Secretary of State of Delaware.

4. The text of the Original Certificate is hereby restated and amended in its entirety to read as follows:

**ARTICLE I
NAME**

The name of the corporation is AEye, Inc. (the “*Corporation*”).

**ARTICLE II
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE III
REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware is 919 North Market Street, Suite 950, County of New Castle, Wilmington, Delaware 19801. The name of the Corporation’s registered agent at such address is InCorp Services, Inc.

**ARTICLE IV
CAPITALIZATION**

Section 4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock which the Corporation is authorized to issue is 301,000,000 shares, consisting of (a) 300,000,000 shares of common stock, par value \$0.0001 per share (the "**Common Stock**") and (b) 1,000,000 shares of preferred stock, par value \$0.0001 per share (the "**Preferred Stock**").

Section 4.2 Preferred Stock. The Board of Directors of the Corporation (the "**Board**") is hereby expressly authorized to provide out of the unissued shares of the Preferred Stock for one or more series of Preferred Stock and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, if any, designations, powers, preferences and relative, participating, optional, special and other rights, if any, of each such series and any qualifications, limitations and restrictions thereof, as shall be stated in the resolution or resolutions adopted by the Board providing for the issuance of such series and included in a certificate of designation (a "**Preferred Stock Designation**") filed pursuant to the DGCL, and the Board is hereby expressly vested with the authority to the full extent provided by law, now or hereafter, to adopt any such resolution or resolutions.

Section 4.3 Common Stock.

(a) *Voting*.

(i) Except as otherwise required by law or this Second Amended and Restated Certificate (including any Preferred Stock Designation), the holders of the shares of Common Stock shall exclusively possess all voting power with respect to the Corporation.

(ii) Except as otherwise required by law or this Second Amended and Restated Certificate (including any Preferred Stock Designation), the holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders of the Corporation on which the holders of the shares of Common Stock are entitled to vote.

(iii) Except as otherwise required by law or this Second Amended and Restated Certificate (including any Preferred Stock Designation), at any annual or special meeting of the stockholders of the Corporation, the holders of the shares of Common Stock shall have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders of the Corporation. Notwithstanding the foregoing, except as otherwise required by law or this Second Amended and Restated Certificate (including any Preferred Stock Designation), the holders of the shares of Common Stock shall not be entitled to vote on any amendment to this Second Amended and Restated Certificate (including any amendment to any 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 of Preferred Stock are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Second Amended and Restated Certificate (including any Preferred Stock Designation) or the DGCL.

(b) *Dividends*. Subject to applicable law, the rights, if any, of the holders of any outstanding series of the Preferred Stock, the holders of the shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) *Liquidation, Dissolution or Winding Up of the Corporation*. Subject to applicable law, the rights, if any, of the holders of any outstanding series of the Preferred Stock, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of the shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.

Section 4.4 Rights and Options. The Corporation has the authority to create and issue rights, warrants and options entitling the holders thereof to acquire from the Corporation any shares of its capital stock of any class or classes, with such rights, warrants and options to be evidenced by or in instrument(s) approved by the Board. The Board is empowered to set the exercise price, duration, times for exercise and other terms and conditions of such rights, warrants or options; provided, however, that the consideration to be received for any shares of capital stock issuable upon exercise thereof may not be less than the par value thereof.

ARTICLE V BOARD OF DIRECTORS

Section 5.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Second Amended and Restated Certificate or the Bylaws of the Corporation (“**Bylaws**”), the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Second Amended and Restated Certificate, and any Bylaws adopted by the stockholders of the Corporation; provided, however, that no Bylaws hereafter adopted by the stockholders of the Corporation shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

Section 5.2 Number, Election and Term.

(a) The number of directors of the Corporation, other than those who may be elected by the holders of one or more series of the Preferred Stock voting separately by class or series, shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the Board.

(b) Subject to Section 5.5 hereof, the Board shall be divided into three classes, as nearly equal in number as possible and designated Class I, Class II, and Class III. The Board is authorized to assign members of the Board already in office to Class I, Class II, or Class III. The term of the initial Class I Directors shall expire at the first annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, the term of the initial Class II Directors shall expire at the second annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, and the term of the initial Class III directors shall expire at the third annual meeting of the stockholders following the effectiveness of this Second Amended and Restated Certificate. At each succeeding annual meeting of the stockholders of the Corporation, beginning with the first annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, each of the successors elected to replace the class of directors whose term expires at that annual meeting shall be elected for a three-year term or until the election and qualification of their respective successors in office, subject to their earlier death, resignation or removal. Subject to Section 5.5 hereof, if the number of directors that constitutes the Board is changed, any increase or decrease shall be apportioned by the Board among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors constituting the Board shorten the term of any incumbent director. Subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. The Board is hereby expressly authorized, by resolution or resolutions thereof, to assign members of the Board already in office to the aforesaid classes at the time this Second Amended and Restated Certificate (and therefore such classification) becomes effective in accordance with the DGCL.

(c) Subject to Section 5.5 hereof, a director shall hold office until the next annual meeting for the year in which his or her term expires and until his or her successor has been elected and qualified, subject, however, to such director’s earlier death, resignation, retirement, disqualification or removal.

(d) Unless and except to the extent that the Bylaws shall so require, the election of directors need not be by written ballot. The holders of shares of Common Stock shall not have cumulative voting rights.

Section 5.3 Newly Created Directorships and Vacancies. Subject to Section 5.5 hereof, newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely and exclusively by a majority vote of the remaining directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders), and any director so chosen shall hold office for the remainder of the full term of the class of directors to which the new directorship was added or in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

Section 5.4 Removal. Subject to Section 5.5 hereof, any or all of the directors may be removed from office, but only for cause, by the affirmative vote of holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, at a meeting called for that purpose.

Section 5.5 Preferred Stock—Directors. Notwithstanding any other provision of this *Article V*, and except as otherwise required by law, whenever the holders of one or more series of the Preferred Stock shall have the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of the Preferred Stock as set forth in this Second Amended and Restated Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this *Article V* unless expressly provided by such terms.

ARTICLE VI BYLAWS

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power and is expressly authorized to adopt, amend, alter or repeal the Bylaws by the affirmative vote of a majority of the total number of directors present at a regular or special meeting of the Board at which there is a quorum or by unanimous written consent. The Bylaws also may be adopted, amended, altered or repealed by the stockholders of the Corporation; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by this Second Amended and Restated Certificate (including any Preferred Stock Designation), the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders of the Corporation to adopt, amend, alter or repeal the Bylaws; and provided further, however, that no Bylaws hereafter adopted by the stockholders of the Corporation shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

ARTICLE VII SPECIAL MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT

Section 7.1 Special Meetings. Subject to the rights, if any, of the holders of any outstanding series of the Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, Chief Executive Officer of the Corporation, or the Board pursuant to a resolution adopted by a majority of the Board, and the ability of the stockholders of the Corporation to call a special meeting is hereby specifically denied. Except as provided in the foregoing sentence, special meetings of stockholders of the Corporation may not be called by another person or persons.

Section 7.2 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

Section 7.3 Action by Written Consent. Except as may be otherwise provided for or fixed pursuant to this Second Amended and Restated Certificate (including any Preferred Stock Designation) relating to the rights of the holders of any outstanding series of Preferred Stock, subsequent to the consummation of the Corporation's initial public offering of securities, any action required or permitted to be taken by the stockholders of the Corporation must be effected by a duly called annual or special meeting of such stockholders and may not be effected by written consent of the stockholders of the Corporation.

ARTICLE VIII
LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Limitation of Director Liability. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended unless a director violated his or her duty of loyalty to the Corporation or its stockholders, acted in bad faith, knowingly or intentionally violated the law, authorized unlawful payments of dividends, unlawful stock purchases or unlawful redemptions, or derived improper personal benefit from its actions as a director. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

Section 8.2 Indemnification and Advancement of Expenses.

(a) To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**proceeding**”) by reason of the fact that he or she is or was a director or 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 or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an “**indemnitee**”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred by such indemnitee in connection with such proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys’ fees) incurred by an indemnitee in defending or otherwise participating in any proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined that the indemnitee is not entitled to be indemnified under this Section 8.2 or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 8.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 8.2(a), except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

(b) The rights to indemnification and advancement of expenses conferred on any indemnitee by this Section 8.2 shall not be exclusive of any other rights that any indemnitee may have or hereafter acquire under law, this Second Amended and Restated Certificate, the Bylaws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Second Amended and Restated Certificate inconsistent with this Section 8.2, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than indemnitees.

ARTICLE IX CORPORATE OPPORTUNITY

Section 9.1 Corporate Opportunities and Non-Employee Directors.

(a) In recognition and anticipation that members of the Board who are not employees of the Corporation (the “**Non-Employee Directors**”) and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this *Article IX* are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith. For purposes of this *Article IX*, (i) “**Affiliate**” shall mean, (a) in respect of each Non-Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (b) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; and (ii) “**Person**” shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

(b) No Non-Employee Director (including any Non-Employee Director who serves as an officer of the Corporation in both his or her director and officer capacities) or his or her Affiliates (such Persons being referred to, collectively, as “**Identified Persons**” and, individually, as an “**Identified Person**”) shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 9.1(c) of this *Article IX*. Subject to said Section 9.1(c) of this *Article IX*, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person.

(c) The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of this Corporation) if such opportunity is expressly offered to such person solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section 9.1(b) of this *Article IX* shall not apply to any such corporate opportunity.

(d) In addition to and notwithstanding the foregoing provisions of this *Article IX*, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (i) the Corporation is unable, financially or legally, or is not contractually permitted to undertake, (ii) from its nature, is not in the line of the Corporation’s business or is of no practical advantage to the Corporation or (iii) is one in which the Corporation has no interest or reasonable expectancy.

(e) To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this *Article IX*.

**ARTICLE X
AMENDMENT OF SECOND AMENDED AND RESTATED
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 Second Amended and Restated Certificate (including any Preferred Stock Designation), and other provisions authorized by the laws of the State of Delaware at the time in force that may be added or inserted, in the manner now or hereafter prescribed by this Second Amended and Restated Certificate and the DGCL; and, except as set forth in *Article VIII*, all rights, preferences and privileges of whatever nature herein conferred upon stockholders, directors or any other persons by and pursuant to this Second Amended and Restated Certificate in its present form or as hereafter amended are granted subject to the right reserved in this *Article X*.

**ARTICLE XI
EXCLUSIVE FORUM FOR CERTAIN LAWSUITS**

Section 11.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the DGCL or this Second Amended and Restated Certificate or the Bylaws, or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine and, if brought outside of Delaware, the stockholder bringing the suit will be deemed to have consented to service of process on such stockholder's counsel except any action (A) as to which the Court of Chancery in the State of Delaware determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), (B) which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, (C) for which the Court of Chancery does not have subject matter jurisdiction, or (D) any action arising under the Securities Act of 1933, as amended, as to which the Court of Chancery and the federal district court for the District of Delaware shall have concurrent jurisdiction. Notwithstanding the foregoing, the provisions of this Section 11.1 will not apply to suits brought to enforce any liability or duty created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

Section 11.2 Consent to Jurisdiction. If any action the subject matter of which is within the scope of Section 11.1 immediately above is filed in a court other than a court located within the State of Delaware (a "**Foreign Action**") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 11.1 immediately above (an "**FSC Enforcement Action**") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

**ARTICLE XII
SEVERABILITY**

If any provision or provisions (or any part thereof) of this Second Amended and Restated Certificate shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Second Amended and Restated Certificate (including, without limitation, each portion of any paragraph of this Second Amended and Restated Certificate containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby, and (ii) the provisions of this Second Amended and Restated Certificate (including, without limitation, each portion of any paragraph of this Second Amended and Restated Certificate containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service or for the benefit of the Corporation to the fullest extent permitted by law.

[Signature page follows.]

IN WITNESS WHEREOF, CF Finance Acquisition Corp. III, Inc. has caused this Second Amended and Restated Certificate to be duly executed and acknowledged in its name and on its behalf by an authorized officer as of the date first set forth above.

CF FINANCE ACQUISITION CORP. III, INC.

By: _____
Name:
Title:

Signature Page to Second Amended and Restated Certificate of Incorporation

AMENDED AND RESTATED BY LAWS
OF
AEYE, INC.
(THE "CORPORATION")

ARTICLE I

OFFICES

Section 1.1. Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2. Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "**Board**") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II

STOCKHOLDERS MEETINGS

Section 2.1. Annual Meetings. The annual meeting of stockholders shall be held at such place, either within or without the State of Delaware and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders entitled to vote on such matters shall elect those directors of the Corporation to fill any term of a directorship that expires on the date of such annual meeting and may transact any other business as may properly be brought before the meeting.

Section 2.2. Special Meetings. Subject to the rights of the holders of any outstanding series of the preferred stock of the Corporation ("**Preferred Stock**"), and to the requirements of applicable law, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board, Chief Executive Officer, or the Board pursuant to a resolution adopted by a majority of the Board, and may not be called by any other person. Special meetings of stockholders shall be held at such place, either within or without the State of Delaware, and at such time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

Section 2.3. Notices. Written notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting and the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting, by the Corporation not less than 10 nor more than 60 days before the date of the meeting unless otherwise required by the General Corporation Law of the State of Delaware (the "**DGCL**"). If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement (as defined in Section 2.7(c)) given before the date previously scheduled for such meeting.

Section 2.4. Quorum. Except as otherwise provided by applicable law, the Corporation's Second Amended and Restated Certificate of Incorporation, as the same may be amended or restated from time to time (the "**Certificate of Incorporation**") or these By Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders of the Corporation, the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5. Voting of Shares.

(a) **Number of Votes.** Unless otherwise provided in the Certificate of Incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder.

(b) **Voting Lists.** The Secretary of the Corporation (the "**Secretary**") shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote at such meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order and showing the address and the number and class of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(b) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(b) or to vote in person or by proxy at any meeting of stockholders.

(b) **Manner of Voting.** At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxy holders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxy holder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) **Proxies.** Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons 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. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority. No stockholder shall have cumulative voting rights.

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) **Required Vote.** Subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, at all meetings of stockholders at which a quorum is present, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters presented to the stockholders at a meeting at which a quorum is present shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these By Laws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) **Inspectors of Election.** The Board may, and shall if required by law, in advance of any meeting of stockholders, designate one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders 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. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, 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 shall fix a new record date for notice of such adjourned meeting in accordance with Section 9.2, 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 2.7. Advance Notice for Business.

(a) Annual Meetings of Stockholders. No business may be transacted at an annual meeting of stockholders, other than business that is either (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the annual meeting by or at the direction of the Board or (iii) otherwise properly brought before the annual meeting by any stockholder of the Corporation (x) who is a stockholder of record entitled to vote at such annual meeting on the date of the giving of the notice provided for in this Section 2.7(a) and on the record date for the determination of stockholders entitled to vote at such annual meeting and (y) who complies with the notice procedures set forth in this Section 2.7(a). Notwithstanding anything in this Section 2.7(a) to the contrary, only persons nominated for election as a director to fill any term of a directorship that expires on the date of the annual meeting pursuant to Section 3.2 will be considered for election at such meeting.

(i) In addition to any other applicable requirements, for business (other than nominations) to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary and such business must otherwise be a proper matter for stockholder action. Subject to Section 2.7(a)(iii), a stockholder's notice to the Secretary with respect to such business, to be timely, must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the opening of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within 30 days before or within 60 days after such anniversary date (or if there has been no prior annual meeting), notice by the stockholder to be timely must be so received not earlier than the close of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation. The public announcement of an adjournment of an annual meeting shall not commence a new time period for the giving of a stockholder's notice as described in this Section 2.7(a).

(ii) To be in proper written form, a stockholder's notice to the Secretary with respect to any business (other than nominations) must set forth as to each such matter such stockholder proposes to bring before the annual meeting (A) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event such business includes a proposal to amend these By Laws, the language of the proposed amendment) and the reasons for conducting such business at the annual meeting, (B) the name and record address of such stockholder and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and by the beneficial owner, if any, on whose behalf the proposal is made, (D) a description of all arrangements or understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and any other person or persons (including their names) in connection with the proposal of such business by such stockholder, (E) any material interest of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made in such business and (F) a representation that such stockholder (or a qualified representative of such stockholder) intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

(iii) The foregoing notice requirements of this Section 2.7(a) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and such stockholder has complied with the requirements of such rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.7(a), provided, however, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.7(a) shall be deemed to preclude discussion by any stockholder of any such business. If the Board or the chairman of the annual meeting determines that any stockholder proposal was not made in accordance with the provisions of this Section 2.7(a) or that the information provided in a stockholder's notice does not satisfy

the information requirements of this Section 2.7(a), such proposal shall not be presented for action at the annual meeting. Notwithstanding the foregoing provisions of this Section 2.7(a), if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(iv) In addition to the provisions of this Section 2.7(a), a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 2.7(a) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(b) Special Meetings of Stockholders. 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. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only pursuant to Section 3.2.

(c) Public Announcement. For purposes of these By Laws, "**public announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act (or any successor thereto).

Section 2.8. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.9. Consents in Lieu of Meeting. Any action required or permitted to be taken by the stockholders of the Corporation must be effected by a duly called annual or special meeting of such holders and may not be effected by written consent of the stockholders.

Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this section and the DGCL to the Corporation, written consents signed by a sufficient number of holders entitled to vote to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

ARTICLE III

DIRECTORS

Section 3.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2. Advance Notice for Nomination of Directors.

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of holders of one or more series of Preferred Stock to elect directors. Nominations of persons for election to the Board at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in the Corporation's notice of such special meeting, may be made (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation (x) who is a stockholder of record entitled to vote in the election of directors on the date of the giving of the notice provided for in this Section 3.2 and on the record date for the determination of stockholders entitled to vote at such meeting and (y) who complies with the notice procedures set forth in this Section 3.2.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary. To be timely, a stockholder's notice to the Secretary must be received by the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not later than the close of business on the 90th day nor earlier than the close of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within 30 days before or within 60 days after such anniversary date (or if there has been no prior annual meeting), notice by the stockholder to be timely must be so received not earlier than the close of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Corporation; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the 10th day following the day on which public announcement of the date of the special meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting or special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 3.2.

(c) Notwithstanding anything in paragraph (b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is greater than the number of directors whose terms expire on the date of the annual meeting and there is no public announcement by the Corporation naming all of the nominees for the additional directors to be elected or specifying the size of the increased Board before the close of business on the 90th day prior to the anniversary date of the immediately preceding annual meeting of stockholders, a stockholder's notice required by this Section 3.2 shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase that are to be filled by election at such annual meeting, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the date on which such public announcement was first made by the Corporation.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth (i) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the person and (D) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and (ii) as to the stockholder giving the notice (A) the name and record address of such stockholder as they appear on the Corporation's books and the name and

address of the beneficial owner, if any, on whose behalf the nomination is made, (B) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, (C) a description of all arrangements or understandings relating to the nomination to be made by such stockholder among such stockholder, the beneficial owner, if any, on whose behalf the nomination is made, each proposed nominee and any other person or persons (including their names), (D) a representation that such stockholder (or a qualified representative of such stockholder) intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (E) any other information relating to such stockholder and the beneficial owner, if any, on whose behalf the nomination is made that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

(e) If the Board or the chairman of the meeting of stockholders determines that any nomination was not made in accordance with the provisions of this Section 3.2, or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 3.2, then such nomination shall not be considered at the meeting in question. Notwithstanding the foregoing provisions of this Section 3.2, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(f) In addition to the provisions of this Section 3.2, a stockholder shall also comply with all of the applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 3.2 shall be deemed to affect any rights of the holders of Preferred Stock to elect directors pursuant to the Certificate of Incorporation.

Section 3.3. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By Laws, the Board shall have the authority to fix the compensation of directors, including for service on a committee of the Board, and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. The directors may be reimbursed for their expenses, if any, for attendance at each meeting of the Board. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

ARTICLE IV

BOARD MEETINGS

Section 4.1. Annual Meetings. The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

Section 4.2. Regular Meetings. Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places (within or without the State of Delaware) as shall from time to time be determined by the Board.

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or President and (b) shall be called by the Chairman of the Board, President or Secretary on the written request of at least a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place (within or without the State of Delaware) as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent

through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By Laws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these By Laws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V

COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may by resolution passed by a majority of the Board designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board 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 that may require it.

Section 5.3. Alternate Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of the committee, the member or members thereof 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 to act at the meeting in place of any such absent or disqualified member.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any

absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these By Laws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these By Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By Laws.

ARTICLE VI

OFFICERS

Section 6.1. Officers. The officers of the Corporation elected by the Board shall be a Chairman of the Board, a Chief Executive Officer, a President, a Chief Financial Officer, a Secretary and such other officers (including without limitation, Vice Presidents, Assistant Secretaries and a Treasurer) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chief Executive Officer or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chief Executive Officer or President, as may be prescribed by the appointing officer.

(a) Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the stockholders and the Board. The Chairman of the Board shall have general supervision and control of the acquisition activities of the Corporation subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The powers and duties of the Chairman of the Board shall not include supervision or control of the preparation of the financial statements of the Corporation (other than through participation as a member of the Board). The position of Chairman of the Board and Chief Executive Officer may be held by the same person.

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation and general control of all of its business subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters, except to the extent any such powers and duties have been prescribed to the Chairman of the Board pursuant to Section 6.1(a) above. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The position of Chief Executive Officer and President may be held by the same person.

(c) President. The President shall make recommendations to the Chief Executive Officer on all operational matters that would normally be reserved for the final executive responsibility of the Chief Executive Officer. In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer, the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The President shall also perform such duties and have such powers as shall be designated by the Board. The position of President and Chief Executive Officer may be held by the same person.

(d) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the President. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(e) Secretary.

(i) The Secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chairman of the Board, Chief Executive Officer or President. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or any Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

(f) Assistant Secretaries. The Assistant Secretary or, if there be more than one, the Assistant Secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Secretary, perform the duties and have the powers of the Secretary.

(g) Chief Financial Officer. The Chief Financial Officer shall perform all duties commonly incident to that office (including, without limitation, the care and custody of the funds and securities of the Corporation, which from time to time may come into the Chief Financial Officer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board, the Chief Executive Officer or the President may authorize).

(h) Treasurer. The Treasurer shall, in the absence (or inability or refusal to act) of the Chief Financial Officer, perform the duties and exercise the powers of the Chief Financial Officer.

Section 6.2. Term of Office; Removal; Vacancies. The elected officers of the Corporation shall be appointed by the Board and shall hold office until their successors are duly elected and qualified by the Board or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chief Executive Officer or President may also be removed, with or without cause, by the Chief Executive Officer or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chief Executive Officer or President may be filled by the Chief Executive Officer, or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. Other Officers. The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

Section 6.4. Multiple Officeholders; Stockholder and Director Officers. Any number of offices may be held by the same person unless the Certificate of Incorporation or these By Laws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

ARTICLE VII

SHARES

Section 7.1. Certificated and Uncertificated Shares. The shares of the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board and the requirements of the DGCL.

Section 7.2. Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and 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 to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, Chief Executive Officer, the President or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or any benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities, or any combination thereof.

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued.

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an endorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii)(A) with respect to certificated shares, the endorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the endorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such endorsement or instruction or such other reasonable assurance that the endorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares within a reasonable time prior to or after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares prior to or within a reasonable time after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII

INDEMNIFICATION

Section 8.1. Right to Indemnification. To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “*proceeding*”), by reason of the fact that he or she is or was a director or 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 or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter an “*Indemnitee*”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred by such Indemnitee in connection with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify an Indemnitee in connection with a proceeding (or part thereof) initiated by such Indemnitee only if such proceeding (or part thereof) was authorized by the Board.

Section 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, an Indemnitee shall also have the right to be paid by the Corporation to the fullest extent not prohibited by applicable law the expenses (including, without limitation, attorneys’ fees) incurred in defending or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an “*advancement of expenses*”); provided, however, that, if the DGCL or the Board requires, an advancement of expenses incurred by an Indemnitee in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon the Corporation’s receipt 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 that such Indemnitee is not entitled to be indemnified under this Article VIII or otherwise.

Section 8.3. Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. 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 also be entitled to be paid the expense of prosecuting or defending such suit. In (a) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by an Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) 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 judicial decision from which there is no further right to appeal (hereinafter a “*final adjudication*”) that, the Indemnitee has not met any applicable standard 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 a determination by 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, shall 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 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 this Article VIII or otherwise shall be on the Corporation.

Section 8.4. Non-Exclusivity of Rights. The rights provided to any Indemnitee pursuant to this Article VIII shall not be exclusive of any other right, which such Indemnitee may have or hereafter acquire under applicable law, the Certificate of Incorporation, these By Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or 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 8.6. Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to persons other than Indemnitees. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Indemnitees under this Article VIII.

Section 8.7. Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By Laws inconsistent with this Article VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Indemnitees on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision; provided however, that amendments or repeals of this Article VIII shall require the affirmative vote of the stockholders holding at least 66.7% of the voting power of all outstanding shares of capital stock of the Corporation.

Section 8.8. Certain Definitions. For purposes of this Article VIII, (a) references to “*other enterprise*” shall include any employee benefit plan; (b) references to “*finer*” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “*servng at the request of the Corporation*” shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” for purposes of Section 145 of the DGCL.

Section 8.9. Contract Rights. The rights provided to Indemnitees pursuant to this Article VIII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Indemnitee’s heirs, executors and administrators.

Section 8.10. Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2. Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board 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 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, 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 business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business 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 adjournment of the meeting; provided, however, that the Board may fix a new record date for 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 with the foregoing provisions of this Section 9.2(a) 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 the stockholders 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 may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no 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 adopts the resolution relating thereto.

Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by mail, or by a nationally recognized delivery service, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at

the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "**Electronic transmission**" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By Laws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By Laws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders entitled to vote at such meeting and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) 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 (A) 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 proxy holder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and, if entitled to vote, to vote on matters submitted to the applicable stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation or these By Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board Chief Executive Officer, President, the Chief Financial Officer, the Treasurer or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The Board may adopt a corporate seal, which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. The resignation shall take effect at the time it is delivered unless the resignation specifies a later effective date or an effective date 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.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, Chief Executive Officer, President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairman of the Board, Chief Executive Officer, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, Chief Executive Officer, President, any Vice President or any officers authorized by the Board. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. The Board shall have the power to adopt, amend, alter or repeal the By Laws. The affirmative vote of a majority of the Board shall be required to adopt, amend, alter or repeal the By Laws. The By Laws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by applicable law or the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power (except as otherwise provided in Section 8.7) of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the By Laws.

**AEYE, INC.
INDEMNIFICATION AGREEMENT**

This Indemnification Agreement dated [____], 202[___], is made between AEye, Inc., a Delaware corporation (the “*Company*”), and [_____] (the “*Indemnitee*”).

RECITALS

WHEREAS, the Company desires to attract and retain the services of talented and experienced individuals, such as Indemnitee, to serve as directors and officers of the Company and its subsidiaries and wishes to indemnify its directors and officers to the maximum extent permitted by law;

WHEREAS, the Company and Indemnitee recognize that corporate litigation in general has subjected directors and officers to expensive litigation risks;

WHEREAS, Section 145 (“*Section 145*”) of the General Corporation Law of the State of Delaware, as amended (“*DGCL*”), under which the Company is organized, empowers the Company to indemnify its directors and officers by agreement and to indemnify persons who serve, at the request of the Company, as the directors and officers of other corporations or enterprises, and expressly provides that the indemnification provided by Section 145 is not exclusive;

WHEREAS, Section 145(g) of the DGCL allows for the purchase of director and officer (“*D&O*”) liability insurance by the Company, which in theory can cover asserted liabilities without regard to whether they are indemnifiable by the Company or not;

WHEREAS, individuals considering service or presently serving expect to be extended market terms of indemnification commensurate with their position, and that entities such as Company will endeavor to maintain appropriate D&O insurance; and

WHEREAS, in order to induce Indemnitee to serve or continue to serve as a director or officer of the Company and/or one or more subsidiaries of the Company, or otherwise serve the Company in an indemnifiable capacity as set forth below, the Company and Indemnitee enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants made herein and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Indemnitee and the Company agree as follows:

1. Definitions. As used in this Agreement:

(a) “*Agent*” means any person who is or was a director, officer, employee or other agent of the Company or a subsidiary of the Company; or is or was serving at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company as a director, officer, employee, fiduciary, or agent of another foreign or domestic corporation, limited liability company, employee benefit plan, nonprofit entity, partnership, joint venture, trust or other enterprise; or was a director, officer, employee, fiduciary, or agent of a foreign or domestic corporation which was a predecessor corporation of the Company or a subsidiary of the Company, or was a director, officer, employee, fiduciary, or agent of another enterprise at the request of, for the convenience of, or to represent the interests of such predecessor corporation.

(b) “*Board*” means the Board of Directors of the Company.

(c) **“Change in Control”** shall be deemed to have occurred if (i) any “person,” as such term is used in Sections 13(d) and 14(d) of the Exchange Act, other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority of the total voting power represented by the Company’s then outstanding voting securities, (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the Board, together with any new directors whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination was previously so approved, cease for any reason to constitute a majority of the Board, (iii) the stockholders of the Company approve a merger or consolidation or a sale of all or substantially all of the Company’s assets with or to another entity, other than a merger, consolidation or asset sale that would result in the holders of the Company’s outstanding voting securities immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least a majority of the total voting power represented by the voting securities of the Company or such surviving or successor entity outstanding immediately thereafter, or (iv) the stockholders of the Company approve a plan of complete liquidation of the Company.

(d) **“ERISA”** means Employee Retirement Income Security Act of 1974, as amended.

(e) **“Exchange Act”** means Securities Exchange Act of 1934, as amended.

(f) **“Expenses”** shall include all out-of-pocket costs of any type or nature whatsoever (including, without limitation, all attorneys’ fees and related costs and disbursements), actually and reasonably incurred by Indemnitee in connection with either the investigation, defense, or appeal of a Proceeding, or establishing or enforcing a right to indemnification under this Agreement, or Section 145 or otherwise; *provided, however*, that **“Expenses”** shall not include any judgments, fines, ERISA excise taxes or penalties, or amounts paid in settlement of a Proceeding.

(g) **“Final Adjudication”** and **“finally adjudged”** means a final judgment or other binding determination from which there is no further procedural recourse, including without limitation following exhaustion or expiration of all available appeals.

(h) **“Independent Counsel”** means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in relevant matters of corporation law and neither currently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party or (ii) any other party to or witness in the proceeding giving rise to a claim for indemnification hereunder; *provided however*, that “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. Where required by this Agreement, Independent Counsel shall be retained at the Company’s sole expense.

(i) **“Proceeding”** means any threatened, pending, or completed action, claim, demand, discovery request, subpoena, hearing, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing, or any other proceeding whether formal or informal, civil, criminal, administrative, or investigative, including any such investigation or proceeding instituted by or on behalf of the Company or its Board of Directors, including any appeal of the foregoing, in which Indemnitee is or reasonably may be involved as a party or target, that is associated with Indemnitee’s being an Agent of the Company.

(j) **“Securities Act”** means the Securities Act of 1933, as amended.

(k) **“Subsidiary”** means any corporation of which more than 50% of the outstanding voting securities is owned directly or indirectly by the Company, by the Company and/or one or more other subsidiaries

2. Agreement to Serve. Indemnitee agrees to serve and/or continue to serve as an Agent of the Company, at its will (or under separate agreement, if such agreement exists), in the capacity Indemnitee currently serves as an Agent of the Company, so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the Bylaws of the Company (**“Bylaws”**) or any subsidiary of the Company or until such time as Indemnitee tenders his or her resignation in writing; *provided, however*, that nothing contained in this Agreement is intended to create any right to continued employment or other service by Indemnitee.

3. Liability Insurance.

(a) Maintenance of D&O Insurance. The Company covenants and agrees that, so long as Indemnitee shall continue to serve as an Agent of the Company and thereafter so long as Indemnitee shall be subject to any possible Proceeding by reason of the fact that Indemnitee was an Agent of the Company, the Company, subject to Section 3(c), shall promptly obtain and maintain in full force and effect directors' and officers' liability insurance ("**D&O Insurance**") in reasonable amounts from established and reputable insurers of a minimum A.M. Best rating of A-VII, and as more fully described below. In the event of a Change in Control, the Company shall, as set forth in Section 3(c), either: (i) maintain such D&O Insurance for six (6) years; or (ii) purchase a six (6) year tail for such D&O Insurance.

(b) Rights and Benefits. In all policies of D&O Insurance, Indemnitee shall qualify as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's Agents of the same standing as Indemnitee.

(c) Limitation on Required Maintenance of D&O Insurance. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain D&O Insurance at all, or of any type, terms, or amount, if the Company determines in good faith and after using commercially reasonable efforts that: such insurance is not reasonably available; the premium costs for such insurance are disproportionate to the amount of coverage provided; the coverage provided by such insurance is limited so as to provide an insufficient or unreasonable benefit; Indemnitee is covered by similar insurance maintained by a subsidiary of the Company; or the Company is to be acquired and a tail policy of reasonable terms and duration can be purchased for pre-closing acts or omissions by Indemnitee.

4. Mandatory Indemnification. Subject to the terms of this Agreement:

(a) Third Party Actions. If Indemnitee is a person who was or is a party or is threatened to be made a party to any Proceeding (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, the Company shall indemnify Indemnitee against all Expenses and liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes and penalties, and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such Proceeding; *provided* that Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or Proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) Derivative Actions. If Indemnitee is a person who was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Company by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such Proceeding; *provided* that Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification under this Section 4(b) shall be made in respect to any claim, issue or matter as to which Indemnitee shall have been finally adjudged to be liable to the Company by a court of competent jurisdiction that the Indemnitee is liable to the Company, unless and only to the extent that the Delaware Court of Chancery or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such amounts which the Delaware Court of Chancery or such other court shall deem proper.

(c) Actions where Indemnitee is Deceased. If Indemnitee is a person who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, and if, prior to, during the pendency of or after completion of such Proceeding Indemnitee is deceased, the Company shall indemnify Indemnitee's heirs, executors and administrators against all Expenses and liabilities of any type whatsoever to the extent Indemnitee would have been entitled to indemnification pursuant to this Agreement were Indemnitee still alive.

(d) Certain Terminations. The termination of any Proceeding or of any claim, issue, or matter therein by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal action or Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(e) Limitations. Notwithstanding the foregoing provisions of Sections 4(a), 4(b), 4(c) and 4(d), but subject to the exception set forth in Section 13 which shall control, the Company shall not be obligated to indemnify the Indemnitee for Expenses or liabilities of any type whatsoever for which payment (and the Company's indemnification obligations under this Agreement shall be reduced by such payment) is actually made to or on behalf of Indemnitee, by the Company or otherwise, under a corporate insurance policy, or under a valid and enforceable indemnity clause, right, by-law, or agreement; and, in the event the Company has previously made a payment to Indemnitee for an Expense or liability of any type whatsoever for which payment is actually made to or on behalf of the Indemnitee from any such source, Indemnitee shall return to the Company the amounts subsequently received by the Indemnitee that source.

(f) Witness. In the event that Indemnitee is not a party or threatened to be made a party to a Proceeding, but is subpoenaed (or given a written request to be interviewed by or provide documents or information to a government authority of any jurisdiction) in such a Proceeding by reason of the fact that the Indemnitee is or was an Agent of the Company, or by reason of anything witnessed or allegedly witnessed by the Indemnitee in that capacity, the Company shall indemnify the Indemnitee against all actually and reasonably incurred out of pocket costs (including without limitation legal fees) incurred by the Indemnitee in responding to such subpoena or written request for an interview. As a condition to this right, Indemnitee must provide notice of such subpoena or request to the Company within fourteen (14) days, otherwise the Company's obligation to pay such costs shall only attach for costs incurred from the date of notice.

5. Indemnification for Expenses in a Proceeding in Which Indemnitee is Wholly or Partly Successful.

(a) Successful Defense. Notwithstanding any other provisions of this Agreement, to the extent Indemnitee has been successful, on the merits or otherwise, in defense of any Proceeding (including, without limitation, an action by or in the right of the Company) in which Indemnitee was a party by reason of the fact that Indemnitee is or was an Agent of the Company at any time, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by or on behalf of Indemnitee in connection with the investigation, defense or appeal of such Proceeding.

(b) Partially Successful Defense. Notwithstanding any other provisions of this Agreement, to the extent that Indemnitee is a party to any Proceeding (including, without limitation, an action by or in the right of the Company) in which Indemnitee was a party by reason of the fact that Indemnitee is or was an Agent of the Company at any time and is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by or on behalf of Indemnitee in connection with each successfully resolved claim, issue or matter.

(c) Dismissal. For purposes of this section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(d) Contribution. If the indemnification provided in this Agreement is unavailable and may not be paid to Indemnitee, then to the extent allowed by law, in respect of any threatened, pending or completed Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding), the Company shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in such proportion as is appropriate to reflect (i) the relative benefits received by the Company on the one hand and Indemnitee on the other hand from

the transaction from which such Proceeding arose, and (ii) the relative fault of Company on the one hand and of Indemnitee on the other in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Company on the one hand and of Indemnitee on the other shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information, active or passive conduct, and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Company agrees that it would not be just and equitable if contribution pursuant to this section were determined by pro rata allocation or any other method of allocation which does not take account of the foregoing equitable considerations.

(e) Settlements by Company. The Company may not settle any claim held by Indemnitee without express written consent of Indemnitee, which may be given or withheld in Indemnitee's sole discretion.

6. Mandatory Advancement of Expenses.

(a) Subject to the terms of this Agreement and following notice pursuant to Section 7(a) below, the Company shall advance, interest free, all Expenses reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any Proceeding to which Indemnitee is a party or is threatened to be made a party by reason of the fact that Indemnitee is or was an Agent of the Company (unless there has been a Final Adjudication such that Indemnitee is not entitled to indemnification for such Expenses) upon receipt satisfactory documentation supporting such Expenses. Such advances are intended to be an obligation of the Company to Indemnitee hereunder and shall in no event be deemed to be a personal loan. Such advancement of Expenses shall otherwise be unsecured and without regard to Indemnitee's ability to repay. The advances to be made hereunder shall be paid by the Company to Indemnitee within thirty (30) days following delivery of a written request therefore by Indemnitee to the Company, along with such documentation and information as is reasonably available to the Indemnitee and is reasonably necessary to determine whether and to what extent the claimant is entitled to advancement (which shall include without limitation reasonably detailed invoices for legal services, but with disclosure of confidential work product not required if that would work a waiver of privilege as to an adverse party). The Company shall discharge its advancement duty by, at its option, (a) paying such Expenses on behalf of Indemnitee, (b) advancing to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimbursing Indemnitee for Expenses already paid by Indemnitee. In the event that the Company fails to pay Expenses as incurred by Indemnitee as required by this paragraph, Indemnitee may seek mandatory injunctive relief (including without limitation specific performance) from any court having jurisdiction to require the Company to pay Expenses as set forth in this paragraph. If Indemnitee seeks mandatory injunctive relief pursuant to this paragraph, it shall not be a defense to enforcement of the Company's obligations set forth in this paragraph that Indemnitee has an adequate remedy at law for damages.

(b) Undertakings. Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which constitutes an undertaking whereby Indemnitee promises to repay any amounts advanced if and to the extent that it shall ultimately be determined that Indemnitee is not entitled to indemnification by the Company.

7. Notice and Other Indemnification Procedures.

(a) Notice by Indemnitee. Promptly after receipt by Indemnitee of notice of the commencement of or the threat of commencement of any Proceeding, Indemnitee shall, if Indemnitee believes that indemnification with respect thereto may be sought from the Company under this Agreement, notify the Company in writing of the commencement or threat of commencement thereof *provided, however*, that a delay in giving such notice will not deprive Indemnitee of any right to be indemnified under this Agreement unless, and then only to the extent that, the Company did not otherwise learn of the Proceeding and such delay is materially prejudicial to the Company; *provided, further*, that notice will be deemed to have been given without any action on the part of Indemnitee in the event the Company is a party to the same Proceeding and already has notice of all the matters for which Indemnitee is demanding indemnification and advancement.

(b) Insurance. If the Company receives notice pursuant to Section 7(a) of the commencement of a Proceeding that may be covered under D&O Insurance then in effect, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies.

(c) Defense. In the event the Company shall be obligated to pay the Expenses of any Proceeding against Indemnitee, the Company shall be entitled to assume the defense of such Proceeding, with counsel selected by the Company and approved by Indemnitee (which approval shall not be unreasonably withheld), upon the delivery to Indemnitee of written notice of the Company's election so to do. After delivery of such notice, and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same Proceeding; *provided* that (i) Indemnitee shall have the right to employ his or her own counsel in any such Proceeding at Indemnitee's expense; and (ii) Indemnitee shall have the right to employ his or her own counsel in any such Proceeding at the Company's expense if (A) the Company has authorized the employment of counsel by Indemnitee at the expense of the Company; (B) Indemnitee shall have reasonably concluded based on the written advice of Indemnitee's legal counsel that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense; or (C) the Company shall not, in fact, have employed counsel to assume the defense of such Proceeding. In addition to all the requirements above, if the Company has D&O Insurance, or other insurance, with a panel counsel requirement that may cover the matter for which indemnity is claimed by Indemnitee, then Indemnitee shall use such panel counsel or other counsel approved by the insurers, unless there is an actual conflict of interest posed by representation by all such counsel, or unless and to the extent Company waives such requirement in writing. Indemnitee and his or her counsel shall provide reasonable cooperation with such insurer on request of the Company.

8. Right to Indemnification.

(a) Right to Indemnification. In the event that Section 5(a) is inapplicable, the Company shall indemnify Indemnitee pursuant to this Agreement unless, and except to the extent that, it shall have been determined by one of the methods listed in Section 8(b) that Indemnitee has not met the applicable standard of conduct required to entitle Indemnitee to such indemnification.

(b) Determination of Right to Indemnification. A determination of Indemnitee's right to indemnification under this Section 8 shall be made at the election: (i) by a majority vote of directors who are not parties to the Proceeding for which indemnification is being sought, even though less than a quorum; (ii) by a committee of the Board consisting of directors who are not parties to the Proceeding for which indemnification is being sought, who, even though less than a quorum, have been designated by a majority vote of the disinterested directors; (iii) if there are no such disinterested directors or if the disinterested directors so direct, by Independent Counsel chosen by the Company in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (iv) by the Company's stockholders. However, in the event there has been a Change in Control, then the determination shall, at Indemnitee's sole option, be made by Independent Counsel as in (b)(iii) above, with Company choosing the Independent Counsel subject to Indemnitee's consent, such consent not to be unreasonably withheld.

(c) Submission for Decision. As soon as practicable, and in no event later than thirty (30) days after Indemnitee's written request for indemnification, the Board shall select the method for determining Indemnitee's right to indemnification. Indemnitee shall cooperate with the person or persons or entity making such determination with respect to Indemnitee's right to indemnification, including providing to such person, persons or entity, upon reasonable advance request, any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel or member of the Board shall act reasonably and in good faith in making a determination regarding Indemnitee's entitlement to indemnification under this Agreement.

(d) Application to Court. If (i) a claim for indemnification or advancement of Expenses is denied, in whole or in part, (ii) no disposition of such claim is made by the Company within sixty (60) days after the request therefore, (iii) the advancement of Expenses is not timely made pursuant to Section 6 of this Agreement or (iv) payment of indemnification is not made pursuant to Section 5 of this Agreement, Indemnitee shall have the right at his or her option to apply to the Delaware Court of Chancery, the court in which the Proceeding is or was pending, or any other court of competent jurisdiction, for the purpose of enforcing Indemnitee's right to indemnification (including the advancement of Expenses) pursuant to this Agreement. Upon written request by Indemnitee, the Company shall consent to service of process.

(e) Expenses Related to the Enforcement or Interpretation of this Agreement. The Company shall indemnify Indemnitee against all reasonable Expenses incurred by Indemnitee in connection with any hearing or proceeding under this Section 8 involving Indemnitee, and against all reasonable Expenses incurred by Indemnitee in connection with any other proceeding between the Company and Indemnitee to the extent involving the interpretation or enforcement of the rights of Indemnitee under this Agreement, if and to the extent Indemnitee is successful.

(f) Determination of Final Adjudication. In no event shall Indemnitee's right to indemnification (apart from advancement of Expenses) be determined prior to a Final Adjudication in a Proceeding at issue if the Proceeding is both ongoing, and of the nature to have a Final Adjudication, unless a Final Adjudication in another Proceeding establishes that Indemnitee is not entitled to indemnification in the first Proceeding.

(g) Standard. In any proceeding to determine Indemnitee's right to indemnification or advancement, Indemnitee shall be presumed to be entitled to indemnification or advancement, with the burden of proof on the Company to prove, by a preponderance of the evidence (or higher standard if required by relevant law) that Indemnitee is not so entitled.

(h) Good Faith. Indemnitee shall be fully indemnified for those matters where, in the performance of his or her duties for the Company, he or she relied in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any of the Company's officers or employees, or committees of the board of directors, or by any other person as to matters Indemnitee reasonably believed were within such other person's professional or expert competence and who was selected with reasonable care by or on behalf of the Company.

9. Exceptions. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated:

(a) Claims Initiated by Indemnitee. To indemnify or advance Expenses to Indemnitee with respect to Proceedings or claims initiated or brought voluntarily by Indemnitee (including cross actions), with a reasonable allocation where appropriate, unless (i) such indemnification is expressly required to be made by law, (ii) the Proceeding was authorized by the Board, (iii) such indemnification is provided by the Company, in its sole discretion, pursuant to the powers vested in the Company under the DGCL or (iv) the Proceeding is brought pursuant to Section 8 specifically to establish or enforce a right to indemnification under this Agreement or any other statute or law or otherwise as required under Section 145 in advance of a Final Adjudication, in which case Section 8(e) provision shall control. For clarity, the raising of defenses by the Company by way of argument or affirmative defenses in an Indemnitee-initiated Proceeding against the Company shall not themselves be deemed to be a Proceeding.

(b) Fees on Fees. To indemnify Indemnitee for any Expenses incurred by Indemnitee with respect to any Proceeding instituted by Indemnitee to enforce or interpret this Agreement, to the extent Indemnitee is not successful in such a Proceeding.

(c) Unauthorized Settlements. To indemnify Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding unless the Company consents to such settlement, which consent shall not be unreasonably withheld.

(d) Claims Under Section 16(b). To indemnify Indemnitee for Expenses associated with any Proceeding related to, or the payment of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act, or similar provisions of state statutory law or common law (provided, however, that the Company must advance Expenses for such matters as otherwise permissible under this Agreement).

(e) Payments Contrary to Law. To indemnify or advance Expenses to Indemnitee for which payment is prohibited by applicable law.

(f) Required Reimbursement. To indemnify Indemnitee for any reimbursement of the Company by Indemnitee of any compensation, including bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Securities Act or the Exchange Act (including without limitation reimbursements that (i) arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, as amended ("**Sarbanes-Oxley**") or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of Sarbanes-Oxley, or (ii) arise pursuant to regulations or policies adopted in compliance with Section 954 of the Investor Protection and Securities Reform Act of 2010, as amended).

10. Non-Exclusivity. The provisions for indemnification and advancement of Expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may have under any provision of law, the Company's Certificate of Incorporation or Bylaws, the vote of the Company's stockholders or disinterested directors, other agreements, or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while occupying Indemnitee's position as an Agent of the Company. Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as an Agent of the Company and shall inure to the benefit of the heirs, executors and administrators of Indemnitee. This Agreement shall supersede all prior indemnification agreements with the Company; *provided*, Indemnitee is entitled to any advancement or indemnification rights (pursuant to the Company's Certificate of Incorporation, Bylaws, a prior indemnification agreement, or other agreement) in effect at the time of Indemnitee's service that is at issue in the matter potentially subject to indemnification, to the extent such rights are more favorable to Indemnitee than those granted herein.

11. Permitted Defenses. It shall be a defense to any action for which a claim for indemnification is made under this Agreement (other than an action brought to enforce a claim for Expenses pursuant to [Section 6](#); *provided* that the required documents have been tendered to the Company) that Indemnitee is not entitled to indemnification because of the limitations set forth in [Sections 4](#) and [9](#). Neither the failure of the Company or an Independent Counsel to have made a determination prior to the commencement of such enforcement action that indemnification of Indemnitee is proper in the circumstances, nor an actual determination by the Company or an Independent Counsel that such indemnification is improper, shall be a defense to the action or create a presumption that Indemnitee is not entitled to indemnification under this Agreement or otherwise. In making any determination concerning Indemnitee's right to indemnification, there shall be a presumption that Indemnitee has satisfied the applicable standard of conduct. Any determination by the Company concerning Indemnitee's right to indemnification that is adverse to Indemnitee may be challenged by the Indemnitee in the Court of Chancery of the State of Delaware.

12. Subrogation. Subject to the limitations of [Section 13](#), in the event the Company is obligated to make a payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents reasonably required and take all action that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights (provided that the Company pays Indemnitee's costs and expenses of doing so), including without limitation by assigning all such rights to the Company or its designee to the extent of such indemnification or advancement of Expenses. Subject to the limitations of [Section 13](#), the Company's obligation to indemnify or advance expenses under this Agreement shall be reduced by any amount Indemnitee has collected from such other source, and in the event that Company has fully paid such indemnity or expenses, Indemnitee shall return to the Company any amounts subsequently received from such other source of indemnification.

13. Primacy of Indemnification. The Company acknowledges that Indemnitee may have certain rights to indemnification, advancement of expenses, or liability insurance, neither procured or provided by the Company (including for this section any parent, affiliate, subsidiary, investment vehicle, or joint venture of the Company) nor any entity Indemnitee served or is serving at the direction of the Company, from a third party (collectively, the "**Third Party Indemnitors**"). The Company agrees that (i) it is the indemnitor of first resort, *i.e.*, its obligations to Indemnitee under this Agreement and any indemnity provisions set forth in its Certificate of Incorporation, Bylaws or elsewhere (collectively, "**Indemnity Arrangements**") are primary, and any obligation of the Third Party Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee is secondary and excess, (ii) it shall advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement by or on behalf of Indemnitee, to the extent legally permitted and as required by any Indemnity Arrangement, without regard to any rights Indemnitee may have against the Third Party Indemnitors, and (iii) it irrevocably waives, relinquishes and releases the Third Party Indemnitors from any claims against the Third Party Indemnitors for contribution, subrogation or any other recovery of any kind arising out of or relating to any Indemnity Arrangement. The Company further agrees that no advancement or indemnification payment by any Third Party Indemnitor on behalf of Indemnitee shall affect the foregoing, and the Third Party Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Third Party Indemnitors are express third party beneficiaries of the terms of this [Section 13](#). The Company, on its own behalf and on behalf of its insurers to the extent allowed by its insurance policies, waives subrogation rights against Indemnitee and Third Party Indemnitors.

14. No Imputation. The knowledge or actions, or failure to act, of any director, officer, employee, or agent of the Company, or the Company itself shall not be imputed to Indemnitee for the purpose of determining Indemnitee's rights hereunder.

15. Survival of Rights.

(a) All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an Agent of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible claim or threatened, pending or completed Proceeding by reason of the fact that Indemnitee was serving in the capacity referred to herein.

(b) The Company shall require any successor to the Company (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

16. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (i) the validity, legality and enforceability of the remaining provisions of the Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal, or unenforceable) shall not in any way be affected or impaired thereby, and (ii) to the fullest extent possible, such remaining provisions shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal, or unenforceable.

17. Modification and Waiver. No supplement, modification, or amendment of this Agreement shall be binding unless it is in a writing signed by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (even if similar) nor shall such waiver constitute a continuing waiver.

18. Notice. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) upon delivery if delivered by hand to the party to whom such notice or other communication shall have been directed, (b) if mailed by certified or registered mail with postage prepaid, return receipt requested, on the third business day after the date on which it is so mailed, (c) one (1) business day after the business day of deposit with a nationally recognized overnight delivery service, specifying next day delivery, with written verification of receipt, or (d) on the same day as delivered by electronic transmission if delivered during business hours or on the next successive business day if delivered by electronic transmission after business hours. Addresses for notice to either party shall be as shown on the signature page of this Agreement, or to such other address as may have been furnished by either party in the manner set forth above.

19. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware. This Agreement is intended to be an agreement of the type contemplated by Section 145(f) of the DGCL.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement, and electronically transmitted signatures shall be valid.

(Signature page follows)

The parties hereto have entered into this Indemnification Agreement, including the undertaking contained herein, effective as of the date first above written.

COMPANY:

AEye, INC.

By: _____

Name:

Title:

Address: [address]

[address]

Email: [email]

INDEMNITEE:

[NAME]

Address: [address]

[address]

Email: [email]

(Signature page to Indemnification Agreement)

SELECTED HISTORICAL FINANCIAL INFORMATION AND OPERATING DATA OF AEYE

The following table shows selected historical financial information of AEye for the periods and as of the dates indicated.

The selected historical consolidated statements of operations and comprehensive loss data and historical consolidated statements of cash flow data of AEye for the years ended December 31, 2020 and 2019 and the historical consolidated balance sheet data as of December 31, 2020 and 2019 are derived from AEye's audited consolidated financial statements included elsewhere in this proxy statement/prospectus. The selected historical consolidated statements of operations and comprehensive loss data and historical consolidated statements of cash flow data of AEye for the three months and six months ended June 30, 2021 and 2020 and the consolidated balance sheet data as of June 30, 2021 are derived from AEye's unaudited interim condensed consolidated financial statements included elsewhere in this proxy statement/prospectus. In the opinion of AEye's management, the unaudited interim condensed consolidated financial statements include all adjustments necessary to state fairly AEye's financial position as of June 30, 2021 and the results of operations and cash flows for the three months and six months ended June 30, 2021 and 2020.

The financial information contained in this section relates to AEye, prior to and without giving pro forma effect to the impact of the Business Combination and, as a result, the results reflected in this section may not be indicative of the results of the post-combination company going forward. See the section titled "Selected Unaudited Pro Forma Condensed Combined Financial Information" included elsewhere in this proxy statement/prospectus.

Additionally, the following selected historical financial information should be read together with the consolidated financial statements and accompanying notes and "AEye's Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this proxy statement/prospectus. The selected historical financial information in this section is not intended to replace AEye's consolidated financial statements and the related notes. AEye's historical results are not necessarily indicative of the results that may be expected in the future and AEye's results for the three months and six months ended June 30, 2021 are not necessarily indicative of the results that may be expected for the full year ending December 31, 2021 or any other period.

Consolidated Statements of Operations and Comprehensive Loss Data
(in thousands, except per share data)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,		For the Year Ended December 31,	
	2021	2020	2021	2020	2020	2019
Revenue	\$ 747	\$ —	\$ 1,076	\$ 163	\$ 1,579	\$ 1,466
Cost of revenue	454	36	1,071	147	808	253
Gross profit	293	(36)	5	16	771	1,213
Operating expenses	12,387	5,568	22,820	13,110	27,253	30,034
Loss from operations	(12,094)	(5,604)	(22,815)	(13,094)	(26,482)	(28,821)
Total other income (expense), net	1,019	(1,898)	231	(623)	(69)	170
Net loss and comprehensive loss	\$ (11,075)	\$ (7,502)	\$ (22,584)	\$ (13,717)	\$ (26,551)	\$ (28,651)
Per share data						
Net loss per share (basic and diluted)	(1.02)	(0.66)	(2.08)	(1.21)	(2.36)	(2.58)
Weighted average shares outstanding (basic and diluted)	10,884,301	11,316,842	10,868,166	11,304,295	11,247,251	11,099,850

	As of June 30, 2021	As of December 31, 2020	As of December 31, 2019
Consolidated Balance Sheets Data (in thousands)			
Cash and cash equivalents	\$ 11,226	\$ 15,275	\$ 5,855
Working capital (1)	(42,652)	(18,113)	4,852
Total assets	28,280	25,885	21,060
Convertible notes	37,759	29,079	—
Borrowings - net of issuance costs	12,576	5,577	3,784
Total stockholders' (deficit) equity	(36,490)	(18,225)	5,711

(1) Calculated by subtracting current liabilities from current assets

Consolidated Statements of Cash Flows Data (in thousands)	For the Six Months Ended		For the Year Ended	
	2021	June 30, 2020	2020	December 31, 2019
Net cash provided by (used in):				
Operating activities	\$(18,339)	\$(10,005)	\$(19,689)	\$(25,829)
Investing activities	(245)	(3,914)	(4,036)	4,822
Financing activities	15,463	12,229	32,018	5,092

SELECTED UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The selected unaudited pro forma condensed combined financial information (the “**selected pro forma information**”) gives effect to the Business Combination described in the section titled “Unaudited Pro Forma Condensed Combined Financial Information.” The Business Combination will be accounted for as a reverse recapitalization. Under this method of accounting, CF III will be treated as the “accounting acquiree” and AEye as the “accounting acquirer” for financial reporting purposes. This determination is primarily based on AEye Stockholders comprising a relative majority of the voting power of the Combined Entity and having the ability to nominate the members of the Combined Entity Board, AEye’s operations prior to the acquisition comprising the only ongoing operations of the Combined Entity, and AEye’s senior management comprising a majority of the senior management of the Combined Entity. Accordingly, for accounting purposes, the financial statements of the Combined Entity will represent a continuation of the financial statements of AEye with the Business Combination treated as the equivalent of AEye issuing stock for the net assets of CF III, accompanied by a recapitalization. The net assets of CF III will be stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the Business Combination will be presented as those of AEye.

The selected unaudited pro forma condensed combined balance sheet data as of June 30, 2021 gives pro forma effect to the Business Combination as if it had occurred on June 30, 2021. The selected unaudited pro forma condensed combined statement of operations data for the six months ended June 30, 2021 and year ended December 31, 2020 gives pro forma effect to the Business Combination as if it had occurred on January 1, 2020.

The selected pro forma information has been derived from, and should be read in conjunction with, the unaudited pro forma condensed combined financial information of the Combined Entity appearing elsewhere in this proxy statement/prospectus and the accompanying

notes, in the section titled “Unaudited Pro Forma Condensed Financial Information.” The selected pro forma information has been presented for informational purposes only and is not necessarily indicative of what the Combined Entity’s financial position or results of operations actually would have been had the Business Combination and the other transactions contemplated by the Merger Agreement been completed as of the dates indicated. The selected pro forma information does not purport to project the future financial position or operating results of the Combined Entity.

The unaudited pro forma condensed combined financial statements have been prepared assuming two redemption scenarios after giving effect to the Business Combination, as follows:

- No Redemptions Scenario — this scenario assumes that no shares of CF III Class A Common Stock are redeemed; and
- Maximum Redemptions Scenario — this scenario assumes that 20,958,853 shares of CF III Class A Common Stock are redeemed for an aggregate payment of approximately \$211,684 thousand, which is derived from the number of shares that could be redeemed in connection with the Business Combination at an assumed redemption price of \$10.10 per share based on the Trust Account balance as of June 30, 2021.

The following summarizes the pro forma Class A Common Stock issued and outstanding immediately after the Business Combination, presented under the two redemption scenarios:

Stockholder	Pro Forma Combined (Assuming No Redemptions Scenario)		Pro Forma Combined (Assuming Maximum Redemptions Scenario)	
	Shares	%	Shares	%
Former CF III Class A public stockholders	23,000,000	11.3%	2,041,147	1.1%
Sponsor, other CF III initial stockholders and transferees (1)	6,250,000	3.0%	6,250,000	3.4%
Former AEye stockholders (including holders of AEye Preferred Stock) and holders of AEye Convertible Equity Instruments (2)(3)	152,223,647	74.7%	152,223,647	83.2%
PIPE Investors (4)	22,500,000	11.0%	22,500,000	12.3%
Pro forma common stock outstanding at June 30, 2021	203,973,647	100%	183,014,794	100%
Assumed options and assumed Warrants (3)	(30,002,411)		(30,002,411)	
Pro forma common stock outstanding at June 30, 2021	173,971,236		153,012,383	

- (1) Amount reflects 5,750,000 shares of CF III Class B Common Stock held by the Sponsor and the other CF III initial stockholders and converted into Class A Common Stock at Closing and 500,000 shares of CF III Class A Common Stock purchased by the Sponsor in the Private Placement.
- (2) Amount is based on 40,895,270 AEye Shares outstanding as of June 30, 2021, by applying the Treasury Stock Method and converted at an Exchange Ratio (as of June 30, 2021) of 3.7223 pursuant to the Merger Agreement.
- (3) Number of outstanding shares assumes the issuance of approximately 30,002,411 shares of Class A Common Stock underlying Assumed Options and Assumed Warrants, by applying the Treasury Stock Method, that do not represent legally outstanding shares of Class A Common Stock at closing.
- (4) Reflects 1,450,000 shares of the Class A Common Stock subscribed for by current holders of AEye Capital Stock and AEye Convertible Equity Instruments in the PIPE Investment, 20,550,000 shares of Class A Common Stock subscribed for by third party investors in the PIPE Investment and 500,000 shares of Class A Common Stock subscribed for by the Sponsor in the PIPE Investment.

The two alternative levels of redemptions assumed in the unaudited pro forma condensed combined balance sheet and statement of operations are based on the assumption that there are no adjustments for the outstanding Warrants issued in connection with the IPO as such securities are not exercisable until 30 days after the Closing. There are also no adjustments for the estimated 17,397,124 shares reserved for the potential future issuance of the Class A Common Stock upon the exercise of the Combined Entity stock options and upon the exercise of the Combined Entity warrants to be issued to holders of AEye Stock Options and AEye Warrant holders upon the consummation of the Business Combination, as such events have not yet occurred.

If the actual facts are different than these assumptions, then the amounts and shares outstanding in the unaudited pro forma condensed combined financial information will be different and those changes could be material.

	Pro Forma Combined (Assuming No Redemptions)	Pro Forma Combined (Assuming Maximum Redemptions)
	(In thousands, except share and per share data)	
Selected Unaudited Pro Forma Condensed Combined Statements of Operations Data		
Six Months Ended June 30, 2021		
Revenue	\$ 1,076	\$ 1,076
Net loss	\$ (22,234)	\$ (22,234)
Net loss per share – basic and diluted	(0.13)	(0.15)
Weighted-average common stock outstanding – basic and diluted	173,971,236	153,012,383
Year Ended December 31, 2020		
Revenue	\$ 1,579	\$ 1,579
Net loss	\$ (28,642)	\$ (28,642)
Net loss per share – basic and diluted	\$ (0.17)	\$ (0.19)
Weighted-average common stock outstanding – basic and diluted	173,614,708	152,288,934
Selected Unaudited Pro Forma Condensed Combined Balance Sheet Data as of June 30, 2021		
Cash and cash equivalents	\$ 413,661	\$ 201,977
Total assets	\$ 427,470	\$ 215,786
Total liabilities	\$ 24,647	\$ 24,647
Total stockholders' equity	\$ 402,823	\$ 191,139

COMPARATIVE PER SHARE INFORMATION

The comparative per share information sets forth summary historical per share information for CF III and AEye, respectively, and selected unaudited pro forma condensed combined per share information of the Combined Entity after giving effect to the Business Combination, presented under two redemption scenarios:

- Assuming no redemptions — this scenario assumes that no shares of CF III Class A Common Stock are redeemed; and

- Assuming maximum redemptions — this scenario assumes that 20,958,853 shares of CF III Class A Common Stock are redeemed for an aggregate payment of \$211,684 thousand, which is derived from the number of shares that could be redeemed in connection with the Business Combination at an assumed redemption price of approximately \$10.10 per share based on the Trust Account balance as of June 30, 2021.

The selected unaudited pro forma condensed combined balance sheet data as of June 30, 2021 gives pro forma effect to the Business Combination as if it had occurred on June 30, 2021. The selected unaudited pro forma condensed combined statement of operations data for the six months ended June 30, 2021 and year ended December 31, 2020 gives pro forma effect to the Business Combination as if it had occurred on January 1, 2020.

The two alternative levels of redemptions assumed in the unaudited pro forma condensed combined balance sheet and statement of operations are based on the assumption that there are no adjustments for the outstanding Warrants issued in connection with the IPO as such securities are not exercisable until 30 days after the Closing. There are also no adjustments for the estimated 17,397,124 shares reserved for the potential future issuance of the Class A Common Stock upon the exercise of the Combined Entity stock options and upon the exercise of the Combined Entity warrants to be issued to holders of AEye Stock Options and AEye Warrant holders upon the consummation of the business combination, as such events have not yet occurred.

This information is only a summary and should be read in conjunction with the historical financial statements of CF III and AEye and related notes included elsewhere in this proxy statement/prospectus. The selected unaudited pro forma condensed combined per share information is derived from, and should be read in conjunction with, the unaudited pro forma condensed combined financial information and related notes included elsewhere in this proxy statement/prospectus in the section titled “Unaudited Pro Forma Condensed Combined Financial Information.”

The selected unaudited pro forma condensed combined income (loss) per share information below does not purport to represent the income (loss) per share which would have occurred had the companies been combined during the periods presented, nor earnings per share for any future date of period. The selected unaudited pro forma condensed combined book value per share information below does not purport to represent what the value of CF III and AEye would have been had the companies been combined during the periods presented.

	CF III (Historical)	AEye (Historical)	Pro Forma Combined		AEye Equivalent Pro forma	
			No Redemptions	Maximum Redemptions	Per Share Data (3) No Redemptions	Maximum Redemptions
As of and for the six months ended June 30, 2021						
Book value per share (2)	\$ 0.60	\$ (3.35)	\$ 2.32	\$ 1.02	\$ 8.62	\$ 3.79
Net loss per share – basic and diluted (4)	—		\$ (0.13)	\$ (0.15)	\$ (0.48)	\$ (0.54)
Weighted average number of shares outstanding – basic and diluted (5)	23,000,000		173,971,236	153,012,383		
Net loss per share of CF III Class A Private Placement and Class B Common Stock – basic and diluted	\$ (0.25)					
Weighted average number of CF III Class A Private Placement and Class B Common Stock outstanding – basic and diluted	6,250,000					
Net loss per share of AEye Common Stock – basic and diluted		\$ (2.08)				
Weighted average shares of AEye Common Stock outstanding – basic and diluted		10,868,166				

- (1) There were no cash dividends declared in the period presented.
- (2) Book value per share is calculated as (a) total equity divided by (b) the total number of shares of common stock outstanding classified in permanent equity.
- (3) The equivalent pro forma per share data (columns five and six on the table above) is calculated by multiplying the pro forma combined per share data (columns three and four in the table above) by the Exchange Ratio as of June 30, 2021 (3.7223), which is defined in the Merger Agreement as the quotient obtained by dividing the Price per AEye Share (\$1.53 billion divided by the Fully Diluted Company Shares) by \$10.00 (ten dollars).
- (4) For CF III, this represents the net loss per share of CF III Class A public Shares outstanding - basic and diluted
- (5) For CF III, this represents weighted average number of CF III Class A Public Shares outstanding - basic and diluted.

Year Ended December 31, 2020 (1)	CF III (Historical)	AEye (Historical)	Pro Forma Combined		AEye Equivalent Pro Forma	
			No Redemptions	Maximum Redemptions	Per Share Data (3)	
			No Redemptions	Maximum Redemptions	No Redemptions	Maximum Redemptions
Book value per share (2)	\$ 0.63	\$ (1.68)	\$ 2.39	\$ 1.33	\$ 9.24	\$ 5.13
Net loss per share – basic and diluted (4)	—		\$ (0.16)	\$ (0.19)	\$ (0.64)	\$ (0.73)
Weighted average number of shares outstanding – basic and diluted (5)	23,000,000		173,614,708	152,288,934		
Net loss per share of CF III Class A Private Placement and Class B Common Stock – basic and diluted	\$ (0.52)					
Weighted average number of CF III Class A Private Placement and Class B Common Stock outstanding – basic and diluted	5,590,659					
Net loss per share of AEye Common Stock – basic and diluted		\$ (2.36)				
Weighted average shares of AEye Common Stock outstanding – basic and diluted		11,247,251				

- (1) There were no cash dividends declared in the period presented.
- (2) Book value per share is calculated as (a) total equity divided by (b) the total number of shares of common stock outstanding classified in permanent equity.
- (3) The equivalent pro forma per share data (columns five and six on the table above) is calculated by multiplying the pro forma combined per share data (columns three and four in the table above) by the Exchange Ratio as of December 31, 2020 (3.8606), which is defined in the Merger Agreement as the quotient obtained by dividing the Price per AEye Share (\$1.52 billion divided by the Fully-Diluted Company Shares) by \$10.00 (ten dollars).
- (4) For CF III, this represents the net loss per share of CF III Class A public Shares outstanding - basic and diluted
- (5) For CF III, this represents weighted average number of CF III Class A Public Shares outstanding - basic and diluted.

Introduction

CF III is providing the following unaudited pro forma condensed combined financial information to aid in the analysis of the financial aspects of the Business Combination.

The following unaudited pro forma condensed combined financial information presents the combination of the historical financial information of CF III and AEye adjusted to give effect to the PIPE Investment and AEye becoming a wholly owned subsidiary of CF III (which will amend the Existing Charter to, among other matters, change its name to “AEye, Inc.”) as a result of AEye merging with and into Merger Sub, a direct wholly owned subsidiary of CF III, with AEye surviving as a wholly owned subsidiary of the Combined Entity.

The unaudited pro forma condensed combined balance sheets as of June 30, 2021 combine the historical unaudited condensed balance sheet of CF III and the historical unaudited condensed consolidated balance sheet of AEye as of June 30, 2021 on a pro forma basis as if the Business Combination and other events contemplated by the Merger Agreement, summarized below, had been consummated on June 30, 2021.

The unaudited pro forma condensed combined statements of operations for the six months ended June 30, 2021 combines the historical unaudited condensed statements of operations of CF III and the historical unaudited condensed consolidated statements of operations and comprehensive loss of AEye for the six months ended June 30, 2021, giving effect to the transaction as if the Business Combination and other events contemplated by the Merger Agreement had been consummated on January 1, 2020. The unaudited pro forma condensed combined statements of operations for the year ended December 31, 2020 presents historical consolidated statements of operations and comprehensive loss of AEye for the year ended December 31, 2020, giving effect to the transaction as if the Transaction and other events contemplated by the Merger Agreement had been consummated on January 1, 2020.

The unaudited pro forma condensed financial information was derived from and should be read in conjunction with the following historical financial statements and the accompanying notes, which are included elsewhere in this proxy statement/prospectus:

- the (a) historical audited financial statements of CF III as of and for the year ended December 31, 2020 and (b) historical unaudited condensed financial statements of CF III as of and for the six months ended June 30, 2021; and
- the (a) historical audited consolidated financial statements of AEye as of and for the year ended December 31, 2020 and (b) historical unaudited condensed consolidated financial statements of AEye as of and for the six months ended June 30, 2021

The pro forma financial information has been prepared in accordance with Regulation S-X Article 11, Pro Forma Financial Information, as amended by the final rule, Release No. 33-10786, which is referred to herein as Article 11. The pro forma adjustments are described in the accompanying footnotes.

The unaudited pro forma condensed combined financial information should also be read together with “*CF III’s Management’s Discussion and Analysis of Financial Condition and Results of Operations*,” “*AEye’s Management’s Discussion and Analysis of Financial Condition and Results of Operations*” and other financial information included elsewhere in this proxy statement/prospectus.

Description of the Business Combination

Pursuant to the Merger Agreement, Merger Sub will merge with and into AEye, with AEye surviving the Merger. AEye will become a wholly owned subsidiary of CF III and CF III will immediately be renamed “AEye, Inc.” Upon the consummation of the Business Combination, AEye Stockholders will receive or have the right to receive shares of Class A Common Stock at a deemed value of \$10.00 per share after giving effect to the Exchange Ratio (which, as of June 30, 2021, would have been 3.7223). Accordingly, an estimated 203,973,647 shares of Class A Common Stock will be immediately issued and outstanding following consummation of the Business Combination, based on AEye’s Capital Stock balance as of June 30, 2021, CF III’s Common Stock balance as of June 30, 2021, and the Class A Common Stock to be issued in the PIPE Investment, and an estimated 17,397,124 shares will be reserved for the potential future issuance of the Class A Common Stock pursuant to the Equity Incentive Plan. At the Effective Time, by virtue of the Merger and without any action on the part of CF III, Merger Sub, AEye or any holder of AEye Capital Stock and AEye Convertible Equity Instruments, the following will occur with respect to the AEye Capital Stock and AEye Convertible Equity Instruments:

- the cancellation of each issued and outstanding share of AEye Preferred Stock and the conversion into the right to receive a number of shares of Class A Common Stock equal to the Exchange Ratio;
- the cancellation of each issued and outstanding share of AEye Capital Stock (including shares of AEye Common Stock resulting from the conversion of the AEye Convertible Equity Instruments) and the conversion into the right to receive a number of shares of Class A Common Stock equal to the Exchange Ratio;

- the conversion of all outstanding AEye Convertible Equity Instruments into a number of shares of AEye Common Stock equal to (i) the sum of the aggregate principal amount of the AEye Convertible Equity Instruments then outstanding plus all dividends accrued thereon, divided by (ii) the quotient obtained by dividing \$250,000,000 by the Fully-Diluted AEye Shares, immediately prior to the Effective Time. At the Effective Time, the AEye Common Stock will then convert to Class A Common Stock based on the Exchange Ratio;
- the conversion of each AEye Option that is outstanding, whether vested or unvested, will be assumed by the Combined Entity and converted into an option to purchase shares of Class A Common Stock based on the Exchange Ratio. Each Assumed Option shall have the same terms and conditions (including vesting and exercisability terms) as were applicable to the corresponding former AEye Option except for the number of shares exercisable and the exercise price, each of which will be adjusted using the Exchange Ratio;
- the conversion of each AEye Warrant that is outstanding shall be assumed by the Combined Entity and converted into a warrant to purchase shares of Class A Common Stock based on the Exchange Ratio. Each Assumed Warrant shall continue to be governed by the same terms and conditions (including vesting and exercisability terms) as were applicable to the corresponding former AEye Warrant except for the number of shares exercisable and the exercise price, each of which will be adjusted using the Exchange Ratio; and
- each AEye RSU that is outstanding shall be assumed by the Combined Entity and converted into an RSU of the Combined Entity based on the Exchange Ratio. Each Assumed RSU shall continue to be governed by the same terms and conditions (including vesting and exercisability terms) as were applicable to the corresponding former AEye RSU except for the number of shares exercisable, which will be adjusted using the Exchange Ratio.

Accounting for the Business Combination

The Business Combination will be accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with GAAP. Under this method of accounting, CF III will be treated as the “accounting acquiree” and AEye as the “accounting

acquirer” for financial reporting purposes. This determination was made considering both scenarios of no redemptions and maximum redemptions and is primarily based on:

- Historical AEye stockholders comprising a relative majority of the voting power of the Combined Entity and having the ability to nominate the members of the Combined Entity Board;
- Historical AEye Stockholders and holders of AEye Convertible Equity Instruments holding 74.7% (assuming no redemptions) of the Combined Entity;
- AEye’s relative historical size (based on revenues, total assets (excluding cash held in the Trust Account), and number of employees) being significantly larger than CF III;
- AEye’s historical operations prior to the acquisition comprising the only ongoing operations of the Combined Entity; and
- AEye’s historical senior management comprising a majority of the senior management of the Combined Entity.

Accordingly, for accounting purposes, the financial statements of the Combined Entity will represent a continuation of the financial statements of AEye with the Business Combination treated as the equivalent of AEye issuing stock for the net assets of CF III, accompanied by a recapitalization. The net assets of CF III will be stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the Business Combination will be presented as those of AEye.

Other Events in Connection with the Business Combination

In connection with the Business Combination:

- CF III will issue and sell 22,500,000 shares of its Class A Common Stock at a purchase price of \$10.00 per share pursuant to the PIPE Investment; and
- Prior to Closing, AEye was to either repay the PPP Loan, including associated interest, or if the PPP Loan had not been previously repaid or forgiven, place an amount necessary to satisfy the repayment of the PPP Loan in an escrow account. On June 19, 2021, the Company received notice of the Paycheck Protection Program (PPP) forgiveness payment made to Silicon Valley Bank (SVB) by the Small Business Administration in the amount of \$2,270 thousand in principal and \$27 thousand in interest. This amount represents the forgiveness of the total PPP Loan from SVB and, as such, AEye is not required to repay the PPP Loan or place the amount required to repay the PPP Loan into an escrow account.

Basis of Pro Forma Presentation

The unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X and reflects the adoption of Release No. 33-10786.

The adjustments in the unaudited pro forma condensed combined financial information have been identified and presented to provide relevant information necessary for an accurate understanding of the Combined Entity upon consummation of the Business Combination and other events contemplated by the Merger Agreement. Assumptions and estimates underlying the unaudited pro forma adjustments set forth in the unaudited pro forma condensed combined financial information are described in the accompanying notes.

The unaudited pro forma condensed combined financial information have been presented for illustrative purposes only and are not necessarily indicative of the operating results and financial position that would have been achieved had the Business Combination and other events contemplated by the Merger Agreement occurred on the dates indicated, and does not reflect adjustments for any anticipated synergies, operating efficiencies, tax savings or cost savings. Any additional Business Combination proceeds remaining after the payment of all transaction costs related to the Business Combination are expected to be used for other general corporate purposes. Further, the unaudited pro forma combined financial information does not purport to project the future operating results or financial position of the Combined Entity following the completion of the Business Combination. The unaudited pro forma adjustments represent management's estimates based on information available as of the date of these unaudited pro forma condensed financial information were prepared and are subject to change as additional information becomes available and analyses are performed. CF III and AEye have not had any historical relationship prior to the transactions. Accordingly, no pro forma adjustments were required to eliminate activities between the companies.

The unaudited pro forma condensed information contained herein assumes that the CF III Stockholders approve the Business Combination. CF III's public stockholders may elect to redeem their public shares for cash even if they approve the Business Combination. CF III cannot predict how many of its public stockholders will exercise their right to redeem their shares of CF III Class A Common Stock for cash. Therefore, the unaudited pro forma condensed financial information presents the following two redemption scenarios. The actual results may be within the parameters described by the two scenarios. However, there can be no assurance regarding which scenario will be closest to the actual results:

- No Redemptions Scenario — This scenario assumes that no shares of CF III Class A Common Stock are redeemed; and
- Maximum Redemptions Scenario — This scenario assumes that 20,958,853 shares of CF III Class A Common Stock are redeemed for an aggregate payment of \$211,684 thousand, which is derived from the number of shares that could be redeemed in connection with the Business Combination at an assumed redemption price of approximately \$10.10 per share based on the Trust Account balance as of June 30, 2021.

The following summarizes the pro forma shares of Class A Common Stock issued and outstanding immediately after the Business Combination:

Stockholder	Pro Forma Combined (Assuming No Redemptions Scenario)		Pro Forma Combined (Assuming Maximum Redemptions Scenario)	
	Shares	%	Shares	%
Former CF III Class A public stockholders	23,000,000	11.3%	2,041,147	1.1%
Sponsor, other CF III initial stockholders and transferees (1)	6,250,000	3.0%	6,250,000	3.4%
Former AEye Stockholders (including holders of AEye Preferred Stock) and holders of AEye Convertible Equity Instruments (2)(3)	152,223,647	74.7%	152,223,647	83.2%
PIPE Investors (3)	22,500,000	11.0%	22,500,000	12.3%
Pro forma common stock outstanding at June 30, 2021	203,973,647	100%	183,014,794	100%
Assumed options and assumed Warrants (3)	(30,002,411)		(30,002,411)	
Pro forma common stock outstanding at June 30, 2021	173,971,236		153,012,383	

- (1) Amount reflects 5,750,000 shares of CF III Class B Common Stock held by the Sponsor and the other CF III initial stockholders and converted into Class A Common Stock at Closing and 500,000 shares of CF III Class A Common Stock purchased by the Sponsor in the Private Placement.
- (2) Amount is based on 40,895,270 AEye Shares outstanding as of June 30, 2021, by applying the Treasury Stock Method and converted at an Exchange Ratio (as of June 30, 2021) of 3.7223 pursuant to the Merger Agreement.
- (3) Number of outstanding shares assumes the issuance of approximately 30,002,411 shares of Class A Common Stock underlying Assumed Options and Assumed Warrants, by applying the Treasury Stock Method, that do not represent legally outstanding shares of Class A Common Stock at closing.
- (4) Reflects 1,450,000 shares of the Class A Common Stock subscribed for by current holders of AEye Capital Stock and AEye Convertible Equity Instruments in the PIPE Investment, 20,550,000 shares of Class A Common Stock subscribed for by third party investors in the PIPE Investment and 500,000 shares of Class A Common Stock subscribed for by the Sponsor in the PIPE Investment.

The figures in this table are presented only as illustrative examples and are based on the scenarios described above, which may be different from the actual amount of redemptions in connection with the Business Combination. In the event that CF III Class A Common Stock is redeemed in connection with the Business Combination, but the number of shares redeemed is less than 20,958,853, the ownership percentages set forth above will vary between the two scenarios.

The two alternative levels of redemptions assumed in the unaudited pro forma condensed combined balance sheets and statement of operations are based on the assumption that there are no adjustments for the outstanding CF III Warrants issued in connection with the IPO as such securities are not exercisable until 30 days after the Closing.

The following unaudited pro forma condensed balance sheet as of June 30, 2021 under the no redemptions scenario and maximum redemptions scenario and the unaudited pro forma condensed combined statement of operation for the six months ended June 30, 2021 and the year ended December 31, 2020 are based on the historical financial statements of CF III and AEye. The unaudited pro forma adjustments are based on information currently available, and assumptions and estimates underlying the unaudited pro forma adjustments are described in the accompanying notes. If the actual facts are different than these assumptions, then the amounts and shares outstanding in the unaudited pro forma condensed combined financial information that follows will be different and those changes could be material.

UNAUDITED PRO FORMA CONDENSED
COMBINED BALANCE SHEET
AS OF JUNE 30, 2021

(In thousands, except share and per share data)

	As of June 30, 2021		Assuming No Redemptions		Assuming Maximum Redemptions	
	AEye (Historical)	CF III (Historical)	Transaction Accounting Adjustments	Pro Forma Combined	Transaction Accounting Adjustments	Pro Forma Combined
ASSETS						
CURRENT ASSETS:						
Cash and cash equivalents	\$ 11,226	\$ 128	\$ 232,305	A \$ 413,661	\$ (211,684)	J \$ 201,977
			(22,249)	C		
			(27,788)	D		
			225,000	E		
			(3,461)	B		
			(1,500)	R		
Accounts receivable, net	138				138	138
Inventories, net	4,468		—		4,468	4,468
Prepaid and other current assets	1,711	467	—		2,178	2,178
Total current assets	17,543	595	402,307		420,445	(211,684) 208,761
Cash held in trust account		232,305	(232,305)	A	—	—
Property and equipment, net	4,697				4,697	4,697
Other noncurrent assets	6,040	147	(3,859)	C	2,328	2,328
Total assets	\$ 28,280	\$ 233,047	\$ 166,143		\$ 427,470	\$ (211,684) \$ 215,786
LIABILITIES AND STOCKHOLDERS' EQUITY						
CURRENT LIABILITIES:						
Accounts payable	4,782	109			4,891	4,891
Accrued expenses and other current liabilities	6,048	81	(425)	C	5,704	5,704
Deferred revenue	272				272	272
Convertible notes	37,759		(37,758)	L	1	1
Borrowings - net of issuance costs, current portion	11,334	3,461	(2,270)	K	9,064	9,064
			(3,461)	B		
Franchise tax payable		100			100	100
Income tax payable		—			—	—
Total current liabilities	60,195	3,751	(43,914)		20,032	— 20,032
Deferred rent, noncurrent	3,333	—			3,333	3,333
Borrowings - net of issuance, noncurrent	1,242	—	(229)	O	1,013	1,013
Warrant liability		12,612	(12,343)	P	269	269
Total liabilities	\$ 64,770	\$ 16,363	\$ (56,486)		\$ 24,647	\$ — \$ 24,647
COMMITMENTS AND CONTINGENCIES						
Common Stock subject to redemption		211,684	(211,684)	F	—	—
STOCKHOLDERS' EQUITY (DEFICIT):						
Preferred stock	62,639	—	(62,639)	G	—	—
Common stock	—	—			—	—
Class A common stock	—	—	3	E	(6)	(2) J (8)
			2	F		
			(12)	H		
			—	L		
			1	M		
			—	N		
Class B common stock		1	(1)	M	—	—
Additional paid-in capital	10,239	9,458	(26,109)	C	539,469	(211,682) J 327,787
			224,998	E		
			211,682	F		
			62,639	G		
			12	H		
			(4,459)	I		
			38,034	L		
			—	N		
			229	O		
			12,343	P		
			1,903	Q		
			(1,500)	R		
Accumulated deficit	(109,368)	(4,459)	4,459	I	(136,640)	(136,640)
			(276)	L		
			425	C		
			2,270	K		
			(1,903)	Q		
			(27,788)	D		
Total stockholders' equity (deficit)	(36,490)	5,000	434,313		402,823	(211,684) 191,139
Total liabilities and stockholders' equity (deficit)	\$ 28,280	\$ 233,047	\$ 166,143		\$ 427,470	\$ (211,684) \$ 215,786

UNAUDITED CONDENSED COMBINED STATEMENTS OF
OPERATIONS
FOR THE SIX MONTHS ENDED JUNE 30, 2021

(In thousands, except share and per share data)

	For the Six Months Ended June 30, 2021		Assuming No Redemptions		Assuming Maximum Redemptions	
			Transaction Accounting Adjustments	Pro Forma Combined	Transaction Accounting Adjustments	Pro Forma Combined
	AEye (Historical)	CF III (Historical)				
REVENUE:						
Prototype sales and support	\$ 461			\$ 461		\$ 461
Development contracts	615			615		615
Total revenues	1,076			1,076	—	1,076
Cost of goods sold	1,071			1,071		1,071
Gross profit	5			5		5
OPERATING EXPENSES:						
Research and development	11,562			11,562		11,562
Sales and marketing	3,498			3,498		3,498
General and administrative	7,760	1,035	951 LL	8,811		8,811
			(510) NN			
			(425) MM			
Total operating expenses	22,820	1,035	16	23,871	—	23,871
LOSS FROM OPERATIONS	(22,815)	(1,035)	(16)	(23,866)	—	(23,866)
OTHER INCOME (EXPENSE):						
Change in fair value of embedded derivatives and warrants	(119)	(550)	119 HH	(12)		(12)
			538 KK			
PPP loan forgiveness	2,297			2,297		2,297
Interest income	5			5		5
Interest income on investment held in Trust Account		11	(11) GG	—		—
Interest expense	(1,952)		1,283 JJ	(658)		(658)
			11 II			
Total other income (expense), net	231	(539)	1,940	1,632	—	1,632
NET (LOSS)	\$ (22,584)	\$ (1,574)	\$ 1,924	\$ (22,234)	\$ —	\$ (22,234)
PER SHARE DATA						
Net loss per share (basic and diluted)	\$ (2.08)					
Weighted average shares outstanding (basic and diluted)	10,868,166					
Net loss per share (basic and diluted), Class A - Public shares		\$ —		\$ (0.13)		\$ (0.15)
Weighted average shares of Class A - Public shares		23,000,000		173,971,236		153,012,383
Net loss per share (basic and diluted), Class A - Private placement		\$ (0.25)				
Weighted average shares of Class A - Private placement		500,000				
Net loss per share (basic and diluted), Class B - Common Stock		\$ (0.25)				
Weighted average shares of Class B - Common stock		5,750,000				

UNAUDITED CONDENSED COMBINED
STATEMENT OF OPERATIONS
FOR THE YEAR ENDED DECEMBER 31, 2020

(In thousands, except share and per share data)

	For the Year Ended December 31, 2020		Assuming No Redemptions		Assuming Maximum Redemptions	
	AEye (Historical)	CF III (Historical)	Pro Forma Adjustments	Pro Forma Combined	Additional Pro Forma Adjustments	Pro Forma Combined
REVENUE:						
Prototype sales and support	\$ 365			\$ 365		\$ 365
Development contracts	1,214			1,214		1,214
Total revenues	\$ 1,579			\$ 1,579	\$ —	\$ 1,579
Cost of goods sold	808			808		808
Gross profit	771			771		771
OPERATING EXPENSES:						
Research and development	17,130			17,130		17,130
Sales and marketing	3,408			3,408		3,408
General and administrative	6,715	154	1,670	8,539		8,539
Total operating expenses	\$ 27,253	\$ 154	\$ 1,670	\$ 29,077	\$ —	\$ 29,077
LOSS FROM OPERATIONS	(26,482)	(154)	(1,670)	(28,306)	—	(28,306)
OTHER INCOME (EXPENSE):						
Change in fair value of embedded derivatives and warrants	1,410	(2,730)	(1,410)	(58)		(58)
			2,672	EE		
Interest income	23			23		23
Interest income on investment held in Trust Account		1	(1)	—	AA	—
Interest expense	(1,502)		1,185	(301)	DD	(301)
			16	CC		
Total other income (expense), net	(69)	(2,729)	2,462	(336)	—	(336)
NET LOSS	\$ (26,551)	\$ (2,883)	\$ 792	\$ (28,642)	\$ —	\$ (28,642)
PER SHARE DATA						
Net loss per share (basic and diluted)	\$ (2.36)					
Weighted average shares outstanding (basic and diluted)	11,247,251					
Net loss per share (basic and diluted), Class A - Public shares	\$ —			\$ (0.16)		\$ (0.19)
Weighted average shares of Class A - Public shares		23,000,000		173,614,708		152,288,934
Net loss per share (basic and diluted), Class A - Private placement	\$ (0.52)					
Weighted average shares of Class A - Private placement		500,000				
Net loss per share (basic and diluted), Class B - Common Stock	\$ (0.52)					
Weighted average shares of Class B - Common stock		5,090,659				

1. BASIS OF PRESENTATION

The Business Combination will be accounted for as a reverse recapitalization in accordance with GAAP. Under this method of accounting, CF III will be treated as the “accounting acquiree” and AEye as the “accounting acquirer” for financial reporting purposes. This determination is primarily based on AEye Stockholders comprising a relative majority of the voting power of the Combined Entity and having the ability to nominate the members of the Combined Entity Board, AEye’s operations prior to the acquisition comprising the only ongoing operations of the Combined Entity, and AEye’s senior management comprising a majority of the senior management of the Combined Entity. Accordingly, for accounting purposes, the financial statements of the Combined Entity will represent a continuation of the financial statements of AEye with the Business Combination treated as the equivalent of AEye issuing stock for the net assets of CF III, accompanied by a recapitalization. The net assets of CF III will be stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the Business Combination will be presented as those of AEye.

The unaudited pro forma condensed combined balance sheets as of June 30, 2021 combine the unaudited condensed balance sheet of CF III as of June 30, 2021 and the unaudited condensed balance sheet of AEye as of June 30, 2021, giving effect to the transaction as if the Business Combination and other events contemplated by the Merger Agreement had been consummated on June 30, 2021. The unaudited pro forma condensed combined statement of operations for the six months ended June 30, 2021 presents the historical consolidated statement of operations and comprehensive loss of AEye and the historical statement of operations and comprehensive loss of CF III for the six months ended June 30, 2021, giving effect to the transaction as if the Transaction and other events contemplated by the Merger Agreement had been consummated on January 1, 2020.

The unaudited pro forma condensed financial information was derived from and should be read in conjunction with the following historical financial statements and the accompanying notes, which are included elsewhere in this proxy statement/prospectus:

- the (a) historical audited financial statements of CF III as of and for the year ended December 31, 2020 and (b) historical unaudited condensed financial statements of CF III as of and for the six months ended June 30, 2021; and
- the (a) historical audited consolidated financial statements of AEye as of and for the year ended December 31, 2020 and (b) historical unaudited condensed consolidated financial statements of AEye as of and for the six months ended June 30, 2021

The unaudited pro forma condensed combined financial information does not give effect to any anticipated synergies, operating efficiencies, tax savings, or cost savings that may be associated with the Business Combination. The unaudited pro forma condensed combined financial information is not necessarily indicative of what the actual results of operations and financial position would have been had the Business Combination and related transactions taken place on the dates indicated, nor are they indicative of the future consolidated results of operations or financial position of the Combined Entity.

The pro forma adjustments reflecting the consummation of the Business Combination and related transactions are based on certain currently available information and certain assumptions and methodologies that AEye believes are reasonable under the circumstances. The unaudited condensed pro forma adjustments, which are described in the accompanying notes, may be revised as additional information becomes available and is evaluated. Therefore, it is likely that the actual adjustments will differ from the pro forma adjustments and it is possible the difference may be material. AEye believes that its assumptions and methodologies provide a reasonable basis for presenting all of the significant effects of the Business Combination and related transactions based on information available to management at the time and that the pro forma adjustments give appropriate effect to those assumptions and are properly applied in the unaudited pro forma condensed combined financial information.

2. ADJUSTMENTS TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Adjustments to Unaudited Pro Forma Condensed Combined Balance Sheet

The adjustments included in the unaudited pro forma condensed combined balance sheets as of June 30, 2021 are as follows:

(A) Reflects the transfer of \$232,306 thousand of investments held in the Trust Account to cash and cash equivalents that becomes available for general use by the Combined Entity following the Business Combination, assuming no redemptions.

(B) Reflects the repayment of the Sponsor loan upon completion of the Business Combination.

(C) Represents preliminary direct and incremental transaction costs estimated to be incurred by AEye related to the Business Combination of approximately \$22,249 thousand for advisory, banking, printing, legal and accounting fees. AEye capitalized and deferred \$3,860 thousand of these transaction costs and these costs were included in other current assets. These deferred costs will be reclassified to additional paid-in-capital upon the consummation of the Business Combination. Transaction expenses that are not directly incremental to the Business Combination are expensed. For the 6 months ended June 30, 2021, \$425 thousand of these expenses were incurred. The Unaudited Pro Forma Condensed Combined Statement of Operations reflect the impact of these expenses at (MM).

(D) Represents preliminary transaction costs estimated to be incurred by CF III of approximately \$27,788 thousand for advisory, placement agent, banking, printing, legal, and accounting fees in connection with the Business Combination and the PIPE Investment. These costs are expensed as incurred. For the 6 months ended June 30, 2021, \$510 thousand of expenses were incurred with the impact reflected in the Unaudited Pro Forma Condensed Combined Statement of Operations at (NN).

(E) Reflects cash proceeds from the concurrent PIPE Investment in the amount of \$225,000 thousand and corresponding offset to additional paid-in capital and common stock.

(F) Reflects the reclassification of 20,958,853 CF III Common Stock subject to possible redemption to permanent equity, assuming no redemptions.

(G) Reflects the cancellation of AEye Preferred Stock pursuant to the Merger Agreement. Recapitalization reflected at Note (H).

(H) Represents recapitalization of historical AEye Common and Preferred Stockholders equity through the issuance of 122,221,235 Combined Entity Common Stock and paid in capital (pursuant to the Exchange Ratio as of June 30, 2021, of 3.7223) using par value \$0.0001 per share at a stock price of \$10.00 per share.

(I) Reflects the reclassification of CF III's historical accumulated deficit to additional paid-in capital upon consummation of the Business Combination.

(J) Represents the redemption of the maximum number of 20,958,853 shares of CF III Class A Common Stock for approximately \$211,684 thousand allocated to the Class A Common Stock and additional paid-in capital using par value \$0.0001 per share at a redemption price of \$10.10 per share.

(K) Reflects the forgiveness of AEye's historical liabilities for the PPP Loan notified by the Small Business Administration on June 19, 2021.

(L) Reflects the conversion of AEye Convertible Equity Instruments into AEye Common Stock, immediately prior to the Business Combination and subsequently into Class A Common Stock, including the write off of unamortized debt discount, the elimination of the derivative liability and the write off of deferred debt issuance costs.

(M) Reflects the conversion of shares of CF III Class B Common Stock into shares of Class A Common Stock upon the consummation of a Business Combination on a one-for-one basis. Each share of CF III Class B Common Stock will be reclassified, on a one for one basis, as one new share of Class A Common Stock.

(N) Reflects the conversion of AEye Common Stock (from Convertible Equity Instruments - refer to Note (L)) into shares of Class A Common Stock at the Exchange Ratio (as of June 30, 2021) of 3.7223.

(O) Reflects the reclassification of AEye warrant liability to equity pursuant to the Merger Agreement.

(P) Reflects the reclassification of warrant liability related to 7,666,666 CF III public warrants as they are expected to qualify for equity classification upon the Closing of the transaction.

The unaudited pro forma condensed combined balance sheet reflects this reclassification as a decrease in warrant liabilities and a corresponding increase in Combined Entity additional paid-in capital.

(Q) Reflects the one-time recognition of share-based compensation impact for the "Brown Award" of which 25% of the unvested shares in the Brown Award will immediately vest upon the successful completion of the Business Combination. Unaudited Pro Forma Condensed Combined Statement of Operations impact shown at (FF).

The "Brown award" represents an option to purchase 876,893 shares of AEye, Inc. Common Stock in accordance with the 2016 Plan subject to the vesting schedule set forth in the Notice of Grant of Stock Option by and between AEye, Inc. and Robert Brown, dated November 17, 2020.

The options vest 25% on the first anniversary of the grant date, with the remaining vesting ratably over the next three years. The specific terms and conditions of the award state “[u]pon completion of a transaction with a special purpose acquisition company within 12 months after the Vesting Commencement Date, then 25% of the shares subject to the Option shall immediately vest.” The single vesting condition for the award is service based, with the performance condition of completing the transaction which accelerates the vesting of certain awards, as reflected in Adjustment (Q). On the grant date, the options were measured at their grant date fair values. The Company recorded share-based compensation expense on a straight-line basis over the four-year vesting period.

(R) Reflects the payment of \$1,500 thousand to an executive as part of an Option Repurchase and Release Agreement entered into with the executive on June 28, 2021 for the purchase of 145,833 vested options. The executive was awarded options under the Company’s 2016 Plan and ceased employment with AEye in April 2021.

Per the Option Repurchase and Release Agreement, the agreed consideration of \$1,500 thousand will be transferred following the closing of the first “Exit Event”, defined as any of the following: (a) the merger described in in the Merger Agreement and preliminary S-4 registration statement filed with the Securities and Exchange Commission on May 13, 2021; (b) a transaction whereby a special purpose acquisition company acquires equity interests of the Company; (c) a Change in Control (as defined in the 2016 Plan); or (d) the first firm commitment underwritten public offering pursuant to an effective registration statement on an established national or foreign securities exchange covering the offer and sale by the Company.

Adjustments to Unaudited Pro Forma Condensed Combined Statement of Operations

The adjustments included in the unaudited pro forma condensed combined statement of operations for the six months ended June 30, 2021 are as follows:

(GG) Reflects the elimination of interest income on the Trust Account.

(HH) Reflects the elimination of non-cash loss of approximately \$119 thousand associated with the fair value of the embedded derivative of the AEye Convertible Equity Instruments, assumed to be settled as part of the Business Combination and equity-classified.

(II) Reflects the elimination of interest expense from PPP Loan.

(JJ) Reflects the elimination of the amortization of debt discount associated with the embedded derivative, interest accruing on the convertible notes and interest expense related to the debt issuance costs associated with the convertible notes.

(KK) Reflects the elimination of the gain on CF III derivative warrant liability related to the public warrants as the CF III public warrants are expected to qualify for equity classification upon the Closing of the transaction.

(LL) Reflects the one-time recognition of share-based compensation expense for the "Brown Award" of which 25% of the unvested shares in the Brown Award will immediately vest upon the successful completion of the Business Combination.

(MM) Reflects the transaction expenses that are expensed as incurred. For the 6 months ended June 30, 2021, \$425 thousand of these expenses were incurred.

(NN) Reflects the transaction expenses of CF III. For the 6 months ended June 30, 2021, \$510 thousand of these expenses were incurred.

The adjustments included in the unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020 are as follows:

(AA) Reflects the elimination of interest income on the Trust Account.

(BB) Reflects the elimination of non-cash gain of approximately \$1,410 thousand associated with the fair value of the embedded derivative of the AEye Convertible Equity Instruments, assumed to be settled as part of the Business Combination and equity-classified.

(CC) Reflects the elimination of interest expense from PPP Loan.

(DD) Reflects the elimination of the amortization of debt discount associated with the embedded derivative, interest accruing on the convertible notes and interest expense related to the debt issuance costs associated with the convertible notes.

(EE) Reflects the elimination of the loss on CF III derivative warrant liability related to the public warrants as the CF III public warrants are expected to qualify for equity classification upon the Closing of the transaction.

(FF) Reflects the one-time recognition of share-based compensation expense for the "Brown Award" of which 25% of the unvested shares in the Brown Award will immediately vest upon the successful completion of the Business Combination.

3. NET LOSS PER SHARE

Represents the net loss per share calculated using the historical weighted average outstanding shares and the issuance of additional shares in connection with the Business Combination and PIPE Investment, assuming the shares were outstanding since January 1, 2020. As the Business Combination and PIPE Investment are being reflected as if they had occurred at the beginning of the period presented, the calculation of weighted average shares outstanding for basic and diluted net loss per share assumes that the shares issuable relating to the Business Combination and PIPE Investment have been outstanding for the entire period presented. If the maximum number of shares are redeemed, this calculation is adjusted to eliminate such shares for the entire period.

The unaudited pro forma net loss per share has been prepared assuming the no redemptions and maximum redemptions scenarios for the six months ended June 30, 2021 and for the year ended December 31, 2020 (in thousands, except share and per share data):

	For the Six Months Ended June 30, 2021		For the Year Ended December 31, 2020	
	Assuming No Redemptions	Assuming Maximum Redemptions	Assuming No Redemptions	Assuming Maximum Redemptions
Pro forma net loss	\$ (22,234)	\$ (22,234)	\$ (28,642)	\$ (28,642)
Basic and diluted weighted average shares outstanding	173,971,236	153,012,383	173,614,708	152,288,934
Pro forma net loss per share - basic and diluted	\$ (0.13)	\$ (0.15)	\$ (0.16)	\$ (0.19)
Pro forma weighted average shares outstanding - basic and diluted				
Former CF III Class A stockholders	23,000,000	2,041,147	23,000,000	1,674,226
Former CF III Class B stockholders	5,750,000	5,750,000	5,750,000	5,750,000
Class A Common Stock purchased by Sponsor in the Private Placement	500,000	500,000	500,000	500,000
Former AEye Stockholders (including holders of AEye Preferred Stock) and holders of AEye Convertible Equity Instruments	122,221,236	122,221,236	121,864,708	121,864,708
PIPE Investors	22,500,000	22,500,000	22,500,000	22,500,000
	<u>173,971,236</u>	<u>153,012,383</u>	<u>173,614,708</u>	<u>152,288,934</u>

Following the Closing, the following outstanding shares of common stock equivalents, calculated using the Treasury Stock Method, were excluded from the computation of pro forma diluted net loss per share for all the periods and scenarios presented above because including them would have had an anti-dilutive effect:

AEye Options that will convert into a right to purchase shares of Class A Common Stock	7,995,503
AEye Warrants that will convert into a right to purchase shares of Class A Common Stock	<u>64,721</u>
Total	8,060,224

AEYE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	June 30, 2021 (Unaudited)	December 31, 2020
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 11,226	\$ 15,275
Accounts receivable, net	138	156
Inventories, net	4,468	2,655
Prepaid and other current assets	1,711	1,396
Total current assets	<u>17,543</u>	<u>19,482</u>
Property and equipment—Net	4,697	4,865
Restricted cash	2,150	1,222
Other noncurrent assets	3,890	316
Total assets	<u>\$ 28,280</u>	<u>\$ 25,885</u>
LIABILITIES AND STOCKHOLDERS' DEFICIT		
CURRENT LIABILITIES:		
Accounts payable	4,782	1,807
Accrued expenses and other current liabilities	6,048	3,356
Deferred revenue (including \$200 from related parties)	272	660
Convertible notes	37,759	29,079
Borrowing - net of issuance costs, current portion	11,334	2,693
Total current liabilities	<u>60,195</u>	<u>37,595</u>
Deferred rent, noncurrent	3,333	3,631
Borrowings - net of issuance costs, noncurrent	1,242	2,884
Total liabilities	<u>\$ 64,770</u>	<u>\$ 44,110</u>
COMMITMENTS AND CONTINGENCIES (Note 15)		
STOCKHOLDERS' DEFICIT:		
Preferred stock—\$0.00001 par value: 17,500,000 shares authorized at June 30, 2021 and December 31, 2020 ; 16,383,725 shares issued and outstanding at June 30, 2021 and December 31, 2020 ; aggregate liquidation preference of \$63,162 at June 30, 2021 and December 31, 2020	62,639	62,639
Common stock—\$0.00001 par value: 37,500,000 shares authorized at June 30, 2021 and December 31, 2020 ; 10,886,441 and 10,838,010 shares issued and outstanding at June 30, 2021 and December 31, 2020	—	—
Additional paid-in capital	10,239	5,920
Accumulated deficit	(109,368)	(86,784)
Total stockholders' deficit	<u>(36,490)</u>	<u>(18,225)</u>
Total liabilities and stockholders' deficit	<u>\$ 28,280</u>	<u>\$ 25,885</u>

The accompanying notes are an integral part of these condensed consolidated financial statements

AEYE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(In thousands, except share and per share data)
(Unaudited)

	<u>Three months ended June 30,</u>		<u>Six months ended June 30,</u>	
	2021	2020	2021	2020
REVENUE:				
Prototype sales (including \$141 and \$161 thousand from related parties for the three and six months ended June 30, 2021, respectively)	\$ 228	\$ —	\$ 461	\$ 63
Development contracts (including \$500 thousand from related parties for the three and six months ended June 30, 2021)	519	—	615	100
Total revenues	<u>747</u>	<u>—</u>	<u>1,076</u>	<u>163</u>
Cost of revenue	454	36	1,071	147
Gross (loss) profit	293	(36)	5	16
OPERATING EXPENSES:				
Research and development	5,726	3,423	11,562	7,960
Sales and marketing	1,911	640	3,498	1,938
General and administrative	4,750	1,505	7,760	3,212
Total operating expenses	<u>12,387</u>	<u>5,568</u>	<u>22,820</u>	<u>13,110</u>
LOSS FROM OPERATIONS	<u>(12,094)</u>	<u>(5,604)</u>	<u>(22,815)</u>	<u>(13,094)</u>
OTHER INCOME (EXPENSE):				
Change in fair value of embedded derivative liability and warrant liability	(16)	(1,519)	(119)	(82)
Gain on PPP loan forgiveness	2,297	—	2,297	—
Interest income	2	2	5	13
Interest expense	(1,264)	(381)	(1,952)	(554)
Total other income (expense), net	<u>1,019</u>	<u>(1,898)</u>	<u>231</u>	<u>(623)</u>
Provision for income tax expense	—	—	—	—
NET LOSS AND COMPREHENSIVE LOSS	<u>\$ (11,075)</u>	<u>\$ (7,502)</u>	<u>\$ (22,584)</u>	<u>\$ (13,717)</u>
PER SHARE DATA				
Net loss per common share (basic and diluted)	(1.02)	(0.66)	(2.08)	(1.21)
Weighted average common shares outstanding (basic and diluted)	10,884,301	11,316,842	10,868,166	11,304,295

The accompanying notes are an integral part of these condensed consolidated financial statements.

AEYE, INC. & SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
Three and Six Months Ended June 30, 2021 and 2020
(In thousands, except share and per share data)
(Unaudited)

	Preferred Stock		Common Stock		Additional Paid in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount (1)			
BALANCE—December 31, 2019	16,383,725	\$62,639	11,283,838	\$ —	\$ 3,305	\$ (60,233)	\$ 5,711
Issuance of common stock upon exercise of stock options			21,770		14		14
Convertible notes					10,211		10,211
Stock-based compensation					280		280
Net loss						(6,215)	(6,215)
BALANCE—March 31, 2020	16,383,725	\$62,639	11,305,608	\$ —	\$ 13,810	\$ (66,448)	\$ 10,001
Issuance of common stock upon exercise of stock options			58,555		68		68
Stock-based compensation					263		263
Convertible notes					(10,211)		(10,211)
Net loss						(7,502)	(7,502)
BALANCE—June 30, 2020	16,383,725	\$62,639	11,364,163	\$ —	\$ 3,930	\$ (73,950)	\$ (7,381)
BALANCE—December 31, 2020	16,383,725	\$62,639	10,838,010	—	\$ 5,920	\$ (86,784)	\$ (18,225)
Issuance of common stock upon exercise of stock options			46,152	—	85		85
Stock-based compensation					1,610		1,610
Net loss						(11,509)	(11,509)
BALANCE—March 31, 2021	16,383,725	\$62,639	10,884,162	\$ —	\$ 7,615	\$ (98,293)	\$ (28,039)
Issuance of common stock upon exercise of stock options			2,279	—	4		4
Stock-based compensation			—	—	2,620	—	2,620
Net loss						(11,075)	(11,075)
BALANCE—June 30, 2021	16,383,725	\$62,639	10,886,441	\$ —	\$ 10,239	\$ (109,368)	\$ (36,490)

The accompanying notes are an integral part of these condensed consolidated financial statements.

AEYE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands, except share and per share data)
(Unaudited)

	<u>Six months ended June 30,</u>	
	2021	2020
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (22,584)	\$ (13,717)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	498	420
Change in fair value of embedded derivative liability and warrant liability	119	82
Noncash gain on PPP loan forgiveness	(2,297)	—
Stock-based compensation	4,230	543
Amortization of issuance costs	437	32
Amortization of debt issuance costs	543	282
Other	189	(23)
Changes in operating assets and liabilities:		
Accounts receivable	18	(484)
Inventories, net	(1,813)	(754)
Prepays and other current assets	(316)	3,013
Other noncurrent assets	(144)	104
Accounts payable	1,513	(150)
Accrued expenses and other current liabilities	1,953	185
Deferred rent, noncurrent	(297)	(242)
Deferred revenue	(388)	704
Net cash provided by (used in) operating activities	<u>\$ (18,339)</u>	<u>\$ (10,005)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(245)	(3,914)
Net cash provided by (used in) investing activities	<u>\$ (245)</u>	<u>\$ (3,914)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from the exercise of stock options	\$ 89	\$ 82
Proceeds from the issuance of convertible notes	8,045	10,376
Proceeds from SVB financing facility	10,000	2,270
Principal payments for SVB credit facility	(667)	(445)
Payments of deferred financing costs	(1,287)	—
Payment of debt issuance costs	(717)	(54)
Net cash provided by (used in) financing activities	<u>\$ 15,463</u>	<u>\$ 12,229</u>
NET (DECREASE) IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH	(3,121)	(1,690)
CASH, CASH EQUIVALENTS AND RESTRICTED CASH—Beginning of period	16,497	8,205
CASH, CASH EQUIVALENTS AND RESTRICTED CASH—Ending	<u>\$ 13,376</u>	<u>\$ 6,515</u>
SUPPLEMENTAL CASH FLOW INFORMATION:		
Cash paid for interest	142	98
SUPPLEMENTAL DISCLOSURE OF NONCASH INVESTING AND FINANCING ACTIVITIES:		
Property and equipment additions included in accounts payable and accrued liabilities	85	—
Deferred financings costs included in accounts payable and accrued liabilities	2,143	—
Noncash gain on extinguishment of debt related to PPP loan	2,297	—

The accompanying notes are an integral part of these condensed consolidated financial statements.

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

AEye, Inc. and subsidiaries (the “Company” or “AEye”), a Delaware corporation, was formed on February 15, 2013. US LADAR, Inc., AEye International, Ltd. and AEye Germany GmbH wholly owned subsidiaries were established, July 27, 2015, June 19, 2018 and December 13, 2019, respectively. AEye International IP, LLC a Delaware LLC was formed on June 14, 2019 and is a wholly owned subsidiary of AEye International, Ltd. Substantially, all the Company’s operations since formation have been conducted through the AEye, Inc. legal entity.

AEye is a provider of high-performance, active LiDAR systems for vehicle autonomy, advanced driver-assistance systems (ADAS), and robotic vision applications. AEye’s software-definable iDAR™ (Intelligent Detection and Ranging) platform combines solid-state active LiDAR, an optionally fused low-light HD camera, and integrated deterministic artificial intelligence to capture more intelligent information with less data, enabling faster, more accurate, and more reliable perception.

On February 17, 2021, CF Finance Acquisition Corp. III (Nasdaq: CFAC) (“CF III”), a special purpose acquisition company, announced that it had entered into a Merger Agreement that would result in AEye becoming a wholly owned subsidiary of CF III. Upon consummation of the Merger, CF III will change its name to “AEye, Inc.” An Amendment to the Merger Agreement was entered into on April 30, 2021 which reflects amendments, modifications and additions to certain recitals, definitions, sections and exhibits to the Merger Agreement.

Significant Risks and Uncertainties

The Company is subject to those risks common in the technology industry and also those risks common to early stage companies including, but not limited to, the possibility of not being able to successfully develop or market its products, technological obsolescence, competition, dependence on key personnel and key external alliances, the successful protection of its proprietary technologies, compliance with government regulations, and the possibility of not being able to obtain additional financing when needed.

In December 2019, a novel strain of coronavirus (COVID-19) began to impact the population of China and expanded into a worldwide pandemic during 2020, leading to significant business and supply chain disruptions. While the quarantine, social

distancing and other regulatory measures instituted or recommended in response to COVID-19 are expected to be temporary, the duration of the business disruptions, and related financial impact, cannot be estimated at this time. Nevertheless, COVID-19 presents material uncertainty and risk with respect to the Company, its performance, and its financial results and could adversely affect the Company's financial position and results.

Emerging Growth Company

The Company is an "emerging growth company," as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the independent registered public accounting firm attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. Following a transaction to merge the Company and a SPAC entity whereas the Company will continue as the surviving corporation, subject to the terms and conditions of an agreed upon merger agreement (the "Business Combination"), the Company has elected to take advantage of the benefits of the extended transition period for new or revised financial accounting standards. This may make it difficult or impossible to compare the Combined Entity's financial results with the financial results of another public company that is either not an emerging growth company or is an emerging growth company that has chosen not to take advantage of the extended transition period exemptions because of the potential differences in accounting standards used.

Basis of Preparation and Liquidity

The accompanying condensed consolidated financial statements are unaudited and have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") and include all adjustments necessary to the fair presentation of the Company's consolidated financial position, results of operations,

and cash flows for the period presented under the rules and regulations of the Securities and Exchange Commission (“SEC”) for interim financial reporting. The accompanying interim unaudited condensed consolidated financial statements and accompanying notes have been prepared in accordance with U.S. GAAP along with instructions to Form 10-Q and Article 10 of SEC Regulation S-X.

The accompanying condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Accordingly, these condensed consolidation financial statements should be read in conjunction with the audited consolidated financial statements for the year ended December 31, 2020 and the related notes which provide a more complete discussion of the Company’s accounting policies and certain other information. The information as of December 31, 2020 included on the condensed consolidated balance sheets was derived from the Company’s audited consolidated financial statements. The condensed consolidated financial statements were prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments necessary for a fair statement of the Company’s financial position as of June 30, 2021 and the results of operations and cash flows for the three and six months ended June 30, 2021 and 2020.

Reclassification of prior year presentation

Certain prior year amounts have been reclassified for consistency with the current year presentation. Specifically, Restricted cash is now presented as a separate line item on the condensed consolidated balance sheets and was previously included within other noncurrent assets; certain line items have been consolidated and presented together as deferred financing costs in Note 5 Other noncurrent assets; certain items are now presented as separate line items in Note 10 Interest expense.

Going concern

The accompanying condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern.

As of June 30, 2021, the Company had cash and cash equivalents of \$11,226, an accumulated deficit of \$109,368 and net current liabilities of \$42,652. During the six months ended June 30, 2021, the Company incurred a net loss of \$22,584 and had negative cash flows from operating activities of \$18,339.

While the Company is incurring losses and working to achieve profitability, there is sufficient cash on hand to support the next 12 months of operation. As discussed in Note 18 Subsequent Events, the Company effected the close of a merger transaction with CF Finance Acquisition Corp. III on August 16, 2021. As of August 21, 2021, the Company has received approximately \$256,800, before expenses, from the transaction, which alleviates the uncertainty in obtaining financing to meet the Company’s needs.

Use of Estimates—The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include the useful lives of fixed assets; the valuation of deferred tax assets, fixed assets, inventory, investments, embedded derivative, fair value of common stock, and share-based compensation.

Segment Reporting—We manage our business on the basis of one reportable and operating segment. Operating segments are defined as, components of an enterprise which separate financial information, is evaluated regularly by the chief operating decision maker, which is our Chief Executive Officer (“CEO”). The CEO decides how to allocate resources and assesses the Company’s performance based upon condensed consolidated financial information. All of our sales were made to customers (in USD) located in the United States, Europe, and Asia through AEye, Inc., and all property and equipment is located in the United States.

Concentration of Credit Risk—Financial instruments which potentially subject the Company to concentration of credit risk consist primarily of cash and cash equivalents and accounts receivable. The Company places its cash and cash equivalents with major financial institutions, which management assesses to be of high credit quality, to limit the exposure of each investment.

The Company's accounts receivables are derived from customers located in the U.S, Europe and Asia. The Company mitigates its credit risks by performing ongoing credit evaluations of its customers' financial conditions and requires customer advance payments in certain circumstances. The Company generally does not require collateral.

The Company's concentration of risk related to accounts receivable and accounts payable was determined by evaluating the number of customers and vendors accounting for 10% or more of accounts receivable (AR) and accounts payable (AP). As of the six months June 30, 2021, AEye had two customers accounting for 10% or more of AR and two vendors accounting for 10% or more of AP. As of December 31, 2020, AEye had four customers accounting for 10% or more of AR and three vendors accounting for 10% or more of AP. For the three months and six months ended June 30, 2021, AEye had two and three customers accounting for 10% or more of revenue, respectively. For the three and six months ended June 30, 2020, AEye had zero and three customers accounting for 10% or more of revenue, respectively.

Recently Issued Accounting Pronouncements

In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2016-02, Leases (Topic 842) (ASU 2016-02), which supersedes FASB Accounting Standards Codification Topic 840, Leases (Topic 840), and provides principles for the recognition, measurement, presentation and disclosure of leases for both lessees and lessors. Among its provisions, this standard requires lessees to recognize right-of-use assets and lease liabilities on the balance sheets for operating leases, and also requires additional qualitative and quantitative disclosures about lease arrangements, with a limited exception for short-term leases. In June 2020, the FASB issued ASU 2020-05, *Revenue from Contracts with Customers (Topic 606) and Leases (Topic 842): Effective Dates for Certain Entities*, which deferred the effective date of ASU 2016-02. As a result, ASU 2016-02 is now effective for smaller reporting companies for fiscal years beginning after December 15, 2021. In 2020, the Company planned to adopt the new standard as of January 1, 2021. Upon planning for the adoption of the new standard, the company determined additional time would better prepare the Company in considering and addressing the technical implications of the adoption. The Company revised its plans to adopt Topic 842 on January 1, 2022. The Company is currently evaluating the impact this standard will have on its consolidated financial statements and related disclosures. The adoption of this standard will require the recognition of a right-of-use asset and lease liability on the Company's condensed consolidated balance sheets.

In June 2016, the FASB issued ASU 2016-13, Measurement of Credit Losses on Financial Instruments, which has subsequently been amended by ASU No. 2018-19, ASU No. 2019-04, ASU No. 2019-05, ASU No. 2019-10 and ASU No. 2019-11. The objective of the guidance in ASU 2016-13 is to allow entities to recognize estimated credit losses in the period that the change in valuation occurs. ASU 2016-13 requires an entity to present financial assets measured on an amortized cost basis on the balance sheet net of an allowance for credit losses. Available for sale and held to maturity debt securities are also required to be held net of an allowance for credit losses. For public business entities, this standard is effective for fiscal years beginning after December 15, 2019. For smaller reporting companies, the standard is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact this standard will have on its consolidated financial statements and related disclosures and will adopt the guidance in the first quarter of fiscal 2023 as permitted for smaller reporting companies.

In December 2019, the FASB issued ASU 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes. This standard simplifies the accounting for income taxes by, among other things, eliminating certain exceptions related to the approach for intra-period tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. ASU 2019-12 is effective for public business entities for fiscal years beginning after December 15, 2020, with early adoption permitted. Upon adoption, the Company must apply certain aspects of this standard retrospectively for all periods presented while other aspects are applied on a modified retrospective basis through a cumulative-effect adjustment to retained earnings as of the beginning of the fiscal year of adoption. The Company is currently evaluating the impact this standard will have on its consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06, Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity’s Own Equity. This standard amends the accounting treatment for convertible instruments. For smaller reporting companies, the amendments are effective for fiscal years beginning after December 15, 2023. The Company is currently evaluating the impact this standard will have on its consolidated financial statements.

2. FAIR VALUE MEASUREMENTS

The fair value of the Company's financial assets and liabilities is determined in accordance with the fair value hierarchy established in FASB ASC Topic 820, *Fair Value Measurements and Disclosures*. ASC Topic 820 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The fair value hierarchy of ASC Topic 820 requires an entity to maximize the use of observable inputs when measuring fair value and classifies those inputs into three levels:

Level 1—Observable inputs, such as quoted prices in active markets

Level 2—Inputs, other than the quoted prices in active markets, which are observable either directly or indirectly or pricing based on quoted prices for similar assets or liabilities.

Level 3—Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions

The Company's financial assets and liabilities include cash equivalents. Cash equivalents in the form of money market funds are recorded at fair value. The Company classifies its cash equivalents within Level 1, as it uses quoted market prices.

Our financial instruments that are not re-measured at fair value include accounts receivable, accounts payable, accrued and other current liabilities, convertible notes and long-term debt. The carrying values of these financial instruments approximate their fair values.

Financial assets and liabilities measured at fair value on a recurring basis as:

	As of June 30, 2021			
	(unaudited)			
	Level 1	Level 2	Level 3	Total
Liabilities				
Warrant liability	\$ —	\$ —	\$ 229	\$229
Total financial liabilities	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 229</u>	<u>\$229</u>

Liabilities	December 31, 2020			
	Level 1	Level 2	Level 3	Total
Warrant liability	\$ —	\$ —	\$ 93	\$ 93
Embedded derivative liability	\$ —	\$ —	\$ 17	\$ 17
Total financial liabilities	\$ —	\$ —	\$ 110	\$ 110

The fair value of the redeemable convertible preferred stock warrant liability is based on significant unobservable inputs, which represent Level 3 measurements within the fair value hierarchy. In determining the fair value of the redeemable convertible preferred stock warrant liability, the Company used the Black-Scholes option-pricing model to estimate the fair value using unobservable inputs including the expected term, expected volatility, risk-free interest rate and expected dividend yield (see Note 9).

Warrant Liability - The fair value of the redeemable convertible preferred stock warrant liability is based on significant unobservable inputs, which represent Level 3 measurements within the fair value hierarchy. In determining the fair value of the redeemable convertible preferred stock warrant liability, the Company used the Black-Scholes option-pricing model to estimate the fair value using unobservable inputs including the expected term, expected volatility, risk-free interest rate and expected dividend yield.

Concurrent with entering into the loan and security arrangements with Comerica Bank and Silicon Valley Bank in 2017 and 2019 respectively, the Company issued to the lenders warrants to purchase shares of stock in the Company.

In the case of Comerica Bank, the Company issued a warrant for 7,353 shares of Series A Preferred Stock exercisable at \$2.04 a share, with an expiration date of August 17, 2027. These warrants are contingently redeemable and are classified as liabilities in the consolidated balance sheets.

The fair value of the warrants issued was recorded as of the date of initial issuance. As of June 30, 2021, the warrant liability was remeasured with the increase recognized as a loss of \$136 within change in fair value of embedded derivative liability and warrant liability in the consolidated statement of operations and comprehensive loss for the six months ended June 30, 2021.

Embedded Derivative Liability - During 2020, the Company entered into a convertible note agreement under which the Company may issue convertible equity instruments ("2020 Notes"). The 2020 Notes contain an embedded redemption feature, which is considered to be a derivative that is required to be separately accounted for at fair value and subsequently remeasured to fair value at each

reporting date. The fair value of the embedded derivative liability was estimated using a with and without method. This method isolates the value of the embedded derivative liability by measuring the difference in the host contract's value with and without the isolated feature. The resulting cash flows are discounted at the Company's borrowing rate, as adjusted for fluctuations in the market interest rate from the inception of the Company's comparative borrowings to the reporting date, to measure the fair value of the embedded derivative. The valuation for the conversion portion of the derivative factors in the expected timing and probability of a financing that would result in the conversion of the underlying, plus accrued interest discounted to the financing price per share. The probability and timing of a financing are estimated at each reporting date.

For the six months ended June 30, 2021 and year ended December 31, 2020, there were no transfers between Level 1 and Level 2 inputs. There were no transfers in or out of Level 3 inputs. There were no issuances, purchases, sales or settlements of Level 3 inputs, other than as disclosed below. For the six months ended June 30, 2021, and year ended December 31, 2020, the fair value of the embedded derivative liability was zero and 17 respectively.

The following table presents a summary of the changes in fair value of the Company's Level 3 financial instruments for the six months ended June 30, 2021:

	Embedded Derivative Liability	Warrant Liability	Total
Balance at December 31, 2020	\$ 17	\$ 93	\$110
(Gain) loss in fair value included in other income (expense)	(17)	136	119
Balance at June 30, 2021 (unaudited)	<u>\$ —</u>	<u>\$ 229</u>	<u>\$229</u>

3. CASH, CASH EQUIVALENTS, AND RESTRICTED CASH

Cash, cash equivalents (which consists entirely of money market funds) and restricted cash (which is presented within other noncurrent assets in the condensed consolidated balance sheets) consist of the following as of June 30, 2021 and the year ended December 31, 2020:

	June 30, 2021 (unaudited)	December 31, 2020
Cash and cash equivalents	\$ 11,226	\$ 15,275
Restricted cash	2,150	1,222
Total cash, cash equivalents, and restricted cash	<u>\$ 13,376</u>	<u>\$ 16,497</u>

4. INVENTORIES

Inventory, net of write-downs, as of June 30, 2021 and December 31, 2020 were as follows:

	June 30, 2021 (unaudited)	December 31, 2020
Raw materials	\$ 1,662	\$ 1,123
Work in-process	2,499	1,337
Finished goods	307	195
Total inventory, net	<u>\$ 4,468</u>	<u>\$ 2,655</u>

Total inventory balance as of June 30, 2021 and December 31, 2020 includes a reserve to reduce inventories to net realizable value of \$419 and \$273, respectively.

5. OTHER NONCURRENT ASSETS

Other noncurrent assets as of June 30, 2021 and December 31, 2020 were as follows:

	June 30, 2021 (unaudited)	December 31, 2020
Deferred financing costs	\$ 3,719	\$ 289
Other noncurrent assets	171	27
Total other noncurrent assets	<u>\$ 3,890</u>	<u>\$ 316</u>

Deferred financing costs primarily includes deferred incremental transactions costs.

6. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities as of June 30, 2021 and December 31, 2020 were as follows:

	June 30, 2021 (unaudited)	December 31, 2020
Payroll liabilities	\$ 1,673	\$ 1,014
Accrued interest	938	391
Accrued purchases and other	2,862	1,406
Deferred rent - current portion	575	545
Accrued expenses and other current liabilities	<u>\$ 6,048</u>	<u>\$ 3,356</u>

7. PROPERTY AND EQUIPMENT, NET

Property and equipment, net as of June 30, 2021 and December 31, 2020 consists of the following:

	June 30, 2021 (unaudited)	December 31, 2020
Lab and testing equipment	\$ 751	\$ 625
Computers and related equipment	328	218
Office furniture and equipment	338	338
Vehicles	205	165
Leasehold improvements	4,709	4,709
Construction in progress	54	—
Total property and equipment	<u>6,385</u>	<u>6,055</u>
Less accumulated depreciation and amortization	<u>(1,688)</u>	<u>(1,190)</u>
Property and equipment—net	<u>\$ 4,697</u>	<u>\$ 4,865</u>

Depreciation and amortization expense related to property and equipment amounted to \$498 and \$253 recognized within research and development, sales and marketing, and general and administrative expenses within the condensed consolidated statements of operations and comprehensive loss for the six months ended June 30, 2021 and for the three months ended June 30, 2021, respectively. Depreciation and amortization expense were \$420 and \$268 for the six months ended June 30, 2020 and for the three months ended June 30, 2020, respectively. Disposals of property and equipment were not material for the three and six months ended June 30, 2021 and the year ended December 31, 2020.

8. BORROWINGS

Silicon Valley Bank Financing Facility

On April 26, 2021, the Company entered into a loan and security agreement (the "Agreement") with an affiliate of Silicon Valley Bank ("SVB" or the "Lender") in connection with the non-binding term sheet for a financing facility of up to \$10,000 entered into on March 18, 2021. Under the Agreement, the Lender shall make a term loan advance to the Company of \$4,000. Subject to the terms and conditions of the Agreement, and upon the Company's request, the Lender shall make one term loan advance to the Company of \$6,000. The interest rate on the term loan advance is calculated at 8% per annum and payable monthly, in arrears. Upon entering the agreement, the \$4,000 was drawn. On May 13, 2021, the additional \$6,000 was drawn and the loan balance at June 30, 2021 for this facility was \$10,000. The principal and interest are due at maturity, which is the earlier of closing of a SPAC transaction or August 1, 2021, unless the term loan maturity date extension condition is met prior to August 1, 2021.

As discussed in Note 18, the Company met the conditions to extend the term loan maturity date to October 26, 2021.

The term loans also contain certain reporting and negative covenants. The reporting covenants include the delivery of audited financial statements within 180 days of year end, among other things. The negative covenants prohibit the Company from engaging in certain activities, such as an acquisition without the Lender's prior consent. The Company is not in default on any covenants. The balance of the financing facility, including interest, was repaid on August 20, 2021 as discussed in Note 18 Subsequent events.

Silicon Valley Bank Credit Facility

On August 16, 2019, the Company entered into a loan and security agreement with Silicon Valley Bank, which provides for growth capital term loans. Borrowings under this facility are secured by substantially all the Company's assets, excluding intellectual property. The term loan's borrowings are subject to certain financial covenants and restrictions. The Company complied with all financial covenants and restrictions as of June 30, 2021 and December 31, 2020.

The growth capital term loan facility is made up of a \$4,000 loan amount, which was drawn in December 2019. The Company began repaying the term loan under this facility beginning January 1, 2020 in equal monthly payments of principal, plus accrued interest. The interest rate on the term loan is the greater of (a) the prime rate plus 0.75% and (b) 5.5%. As of June 30, 2021 and December 31, 2020, the rate on the term loan was 5.5%.

On April 20, 2020, the Company entered into a deferral agreement with the Silicon Valley Bank, whereby the payment dates for all monthly principal payments on the term loan falling due after the deferred agreement's effective date was extended by six months. Therefore, the Company did not make any principal payments for any term loans for the period from May 31, 2020 to December 31, 2020. The Company accounted for this as a debt modification. For the six months ended June 30, 2021, the term loan balance was \$2,666.

Payroll Protection Program (PPP) Loan

On June 19, 2021, the Company received notice of the Paycheck Protection Program (PPP) forgiveness payment made to SVB by the Small Business Administration in the amount of \$2,270 in principal and \$27 in interest. This amount represents the forgiveness of the total PPP loan the Company received in 2020 under the PPP Loan provisions of the CARES act. As of June 30, 2021, there were no amounts outstanding under the PPP loan.

As of June 30, 2021 and December 31, 2020, the Company's borrowings consisted of:

	June 30, 2021 (unaudited)	December 31, 2020
Silicon Valley Bank financing facility	\$ 10,000	—
Silicon Valley Bank credit facility	2,666	\$ 3,334
Payroll Protection Program (PPP) Loan	—	2,270
Unamortized debt issuance costs - SVB financing and credit facility	(90)	(27)
Total borrowings, net of issuance costs	\$ 12,567	\$ 5,577
Borrowings - net of issuance costs, current portion	\$ 11,334	\$ 2,693
Borrowings - net of issuance costs, noncurrent portion	1,242	2,884
Total borrowings, net issuance costs	\$ 12,567	\$ 5,577

9. CONVERTIBLE NOTES

During 2020, the Company entered into various convertible note agreements ("2020 Notes") under which the Company may issue convertible equity instruments having an aggregate principal amount of up to \$40,000, a 3% accruing dividend and a maturity date, extended in July 2021, of October 31, 2021. During 2020 the Company received \$30,000 in proceeds related to the 2020 Notes. For the six months ended June 30, 2021, the Company issued an additional \$8,045 of convertible notes. There were no new convertible notes issued in the three months ended June 30, 2021.

Pursuant to the terms of the 2020 Notes, upon the closing by the Company of a financing, all outstanding principal and unpaid accrued interest of the 2020 Notes will automatically convert into Company preferred stock sold (the “Next Financing Stock”) at a “conversion price” equal to the lesser of:

- (i) the original issue price per share paid in the Next Financing Stock multiplied by 90%; and
- (ii) the price obtained by dividing \$250,000 by the number of outstanding shares of common stock of the Company immediately prior to the Next Financing, as applicable.

At June 30, 2021, the convertible notes balance was comprised of the following:

	June 30, 2021 (unaudited)	December 31, 2020
Convertible notes - face value	\$ 38,035	\$ 29,990
Unamortized issuance costs	(67)	(175)
Unamortized debt discount	(209)	(753)
Embedded derivative liability	—	17
Convertible notes - current	<u>\$ 37,759</u>	<u>\$ 29,079</u>

The Company recorded out-of-period adjustments in the quarter ended June 30, 2020 to correct amounts originally recorded in the three months ended March 31, 2020 related to (a) an understatement of the loss by \$1,479 thousand due to the change in fair value of embedded derivatives and warrants, and (b) \$10,211 thousand of convertible equity notes previously included in additional paid-in capital that should have been recorded as a liability. Such out-of-period adjustments are considered immaterial. These matters have no effect on the Company’s financial statements for the year ended December 31, 2020.

As a result of the merger with CF Finance Acquisition Corp. III effected on August 16, 2021, all outstanding principal and unpaid accrued interest of the 2020 Notes were converted to 5,584,308 Company preferred stock immediately prior to closing the transaction and subsequently converted to common stock of the newly combined entity as discussed in Note 18 Subsequent Events.

Embedded Derivative Liability

As outlined in the indenture governing the 2020 Notes, the 2020 Notes are automatically convertible, contingent upon the occurrence of certain events, most notably a financing (a “Next Financing”), defined as the issuance and sale of additional preferred stock (“Financing Stock”). The redemption price is defined as a price per share equal to 90% of the price per share paid by the other purchasers of the Financing Stock sold in the Next Financing. The 2020 Notes are redeemable into the number of shares of Next Financing Stock needed to settle all of the aggregate amount of principal and unpaid interest owed to the holder of such notes, which is based on the ultimate price per share associated with the Financing Stock. Consequently, the 2020 Notes are considered stock settled debt.

This redemption feature embedded in the 2020 Notes is considered to be a derivative that is required to be separately accounted for at fair value and subsequently remeasured to fair value at each reporting date. Accordingly, upon issuance of the 2020 Notes, the Company recognized the fair value associated with the embedded derivative which resulted in an embedded derivative liability of approximately \$1,520, with an equal and offsetting debt discount. At June 30, 2021, the Company remeasured the embedded derivative and determined that the fair value was \$0. The value of the embedded derivative liability at June 30, 2021 and December 31, 2020 is presented together with the associated convertible notes on the condensed consolidated balance sheet.

Valuation of the Embedded Derivative Liability

The Company determined the fair value of the embedded derivative using an option pricing Monte Carlo simulation model taking into account the probability of change in control occurring and potential repayment amounts and timing of such payments that would result under two scenarios:

Scenario I: If the Company has a liquidation event (sale, merger, IPO of the Company or any event that constitutes a Deemed Liquidation Event) (a “Change of Control”) or a dissolution event before the Next Financing, the instrument will be converted into the Company’s Series B Preferred Stock at the Series B Preferred Stock original issue price (as adjusted for stock splits, antidilution events and the like); currently \$6.1923, or the holders of instruments representing a majority (>50%) of the aggregate outstanding principal amount under the instruments, have the option to convert the Instrument to receive 1.5 times the principal amount of the Instrument and accrued dividends.

Scenario II: If the instruments have not converted on or before October 31, 2021, the Company shall pay the principal amount and the accrued dividends on the instrument to the instrument holders.

The option pricing Monte Carlo simulation model was used to estimate the value of the ability to sell the shares back to the Company at a fixed price in the future (i.e., the holder of the 2020 Notes can put the shares and receive the principal and interest payments plus any applicable premiums). The fair value of the embedded derivative was determined using a “with-and-without analysis”, where the value of the 2020 Notes including the embedded derivative is defined as the “with”, and the value of the 2020 Notes excluding the embedded derivative is defined as the “without”.

The following assumptions were made in the Company’s application of the option pricing Monte Carlo simulation model:

- **Beginning Stock Price.** The Company’s equity value was estimated based on a third party appraisal, which was understood to reasonably represent the value at the Valuation Date.
- **Term.** The time until a financing is raised was estimated by management.
- **Volatility.** Since the Company’s stock is not publicly traded, the expected volatilities are based on the historical and implied volatilities of similar companies whose stock prices are publicly available, after considering the industry, stage of life cycle, size, market capitalization, and financial leverage of the other companies.
- **Risk-free Rate.** The risk-free rate is consistent with the estimated term until a future funding round.

The following table sets forth the inputs to the option pricing Monte Carlo simulation model that were used to value the embedded derivative:

	June 30, 2021 (unaudited)
Time until Event/SPAC (years)	0.13
Volatility of the underlying asset	65.00%
Risk-free rate of interest	10.40%

The Company applied a discount factor to reflect the risks associated with payment. The selected discount rate represents the estimated discount rate where the face value equals fair value as of the original issuance date of February 26, 2020. The implied discount rate for the 2020 Notes was considered reasonable given the cost of equity for the overall business.

10. INTEREST EXPENSE

Interest expense for the six months ended June 30, 2021 and 2020 consisted of the following:

	Three months ended June 30,		Six months ended June 30,	
	2021	2020 (unaudited)	2021	2020
Interest on term loan debt	\$ 269	\$ 67	\$ 395	\$ 130
Interest on PPP loan	5	4	11	4
Interest on convertible note	288	78	566	106
Amortization of issuance costs	426	15	437	32
Amortization of debt discount	276	217	543	282
Interest expense	<u>\$ 1,264</u>	<u>\$ 381</u>	<u>\$ 1,952</u>	<u>\$ 554</u>

11. STOCKHOLDERS' DEFICIT

Preferred Stock—At June 30, 2021 and December 31, 2020, convertible preferred stock consisted of the following:

	Shared Authorized	Shares Outstanding	Liquidation Preference	Carrying Amount
Series A	9,234,087	9,226,734	\$ 18,844	\$18,595
Series B	8,265,913	7,156,991	44,318	44,044
Total	<u>17,500,000</u>	<u>16,383,725</u>	<u>\$ 63,162</u>	<u>\$62,639</u>

Common Stock—

Common stock reserved for future issuance as of June 30, 2021 and December 31, 2020 consists of the following:

	June 30, 2021 (unaudited)	December 31, 2020
Shares reserved for preferred stock outstanding	16,383,725	16,383,725
Shares reserved for Series A preferred stock warrant	7,353	7,353
Shares reserved for warrant to purchase common stock	61,612	61,612
Options issued and outstanding	8,379,760	8,497,693
Shares available for future option grants	386,150	6,648
Total	<u>25,218,600</u>	<u>24,957,031</u>

12. STOCK-BASED COMPENSATION

In 2014, the Company adopted the Equity Incentive Plan (the “2014 Plan”) and in 2016, the Company adopted the 2016 Stock Plan (the “2016 Plan” and together with the 2014 Plan, the “Plans”). The Plans provide for the grant of incentive stock options to employees only and non-statutory stock options and restricted stock awards to employees, directors and consultants of the Company. The aggregate number of shares of common stock that may be issued under the Plans is 10,498,559, of which 386,150 are available as of June 30, 2021 for future grants.

On November 17, 2020, Robert Brown was granted the option to purchase 876,893 shares of AEye, Inc. Common Stock in accordance with the 2016 Plan subject to the vesting schedule set forth in the Notice of Grant of Stock Option. The options vest 25% on the first anniversary of the grant date, with the remaining vesting ratably over the next three years.

In January 2021, the Board approved an amendment and restatement of the 2016 Stock Plan to provide for the issuance of restricted stock units (RSU) under the Plan and increase the number of shares of common stock of the Company reserved for issuance pursuant to the Plan by 310,000 shares to a new total of 8,901,684. As of June 30, 2021, 467,697 restricted stock awards were granted.

The Board determines the terms of the awards, including the amount, fair market value and vesting provisions. Under the 2016 Plan, options to purchase common stock generally vest over four years with 25% vesting at the end of first year and the rest vesting monthly thereafter. RSU awards generally vest 25% on the first anniversary of the grant date with the remaining RSU awards vesting ratably over the next three years.

or they vest ratably over the four years. Under the 2014 Plan, the vesting period for options to purchase common stock range from immediate to four years. Under each plan, the options expire ten years from the date of grant.

On June 28, 2021, the Company entered into an Option Repurchase and Release Agreement to purchase 145,833 vested options for \$1,500 from an executive awarded with these options under the Company's 2016 Plan. The \$1,500 consideration will be transferred following the closing of the first "Exit Event", defined as any of the following: (a) the merger described in in the Merger Agreement and preliminary S-4 registration statement filed with the Securities and Exchange Commission on May 13, 2021; (b) a transaction whereby a special purpose acquisition company acquires equity interests of the Company; (c) a Change in Control (as defined in the 2016 Plan); or (d) the first firm commitment underwritten public offering pursuant to an effective registration statement on an established national or foreign securities exchange covering the offer and sale by the Company. As of June 30, 2021 no consideration has yet been transferred to the executive.

A summary of stock option activity related to the Plans for the six months ended June 30, 2021 is as follows:

	Outstanding Stock Options	Weighted Average Exercise Price	Weighted Average Contractual Life (Years)	Aggregate Intrinsic Value
Balance at December 31, 2020	8,497,693	\$ 1.79	8.3	\$ 112,548
Granted	—	—		
Exercised	(49,265)	1.80		
Forfeited	(345,306)	1.97		
Expired	(46,060)	1.18		
Balance at June 30, 2021 (unaudited)	<u>8,057,062</u>	<u>\$ 1.78</u>	<u>7.9</u>	<u>\$ 255,464</u>
Vested and expected to vest as of June 30, 2021 (unaudited)	<u>8,057,062</u>	<u>\$ 1.73</u>	<u>7.6</u>	<u>\$ 234,165</u>
Vested and exercisable as of June 30, 2021 (unaudited)	<u>4,296,916</u>	<u>\$ 1.36</u>	<u>6.6</u>	<u>\$ 138,058</u>

The aggregate intrinsic value is the difference between the current fair value of the underlying common stock and the exercise price for in-the-money stock options.

The total fair value of options vested during the six months ended June 30, 2021 was \$1,568. The fair value of shares vested is calculated based on grant date fair value.

The following table summarizes the RSU award activity under the 2016 Plan:

	Common Stock	Weighted Average Grant date fair value
Unvested at December 31, 2020	—	—
Granted	467,697	\$ 32.51
Vested	(33,615)	\$ 32.60
Unvested at June 30, 2021 (unaudited)	434,082	\$ 32.50

Stock-Based Compensation Expense —The following table summarizes stock-based compensation expense recorded in each component of operating expenses in the Company’s condensed consolidated statements of operations and comprehensive loss for the six months ended June 30, 2021 and 2020:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020 (unaudited)	2021	2020
Research and development	\$ 776	\$ 111	\$ 1,397	\$ 247
Sales and marketing	415	38	773	81
General and administrative	1429	114	2,060	215
Total stock-based compensation expense	<u>\$ 2,620</u>	<u>\$ 263</u>	<u>\$ 4,230</u>	<u>\$ 543</u>

The weighted-average grant date fair value of options granted during the six months ended June 30, 2021 and 2020 was \$0 and \$0.93 respectively.

As of June 30, 2021, the total unrecognized compensation expense to unvested options for the Brown Award and other options was \$6,427 and \$2,546 respectively, expected to be recognized over an estimated weighted average period of 2.60 years. The total unrecognized compensation expense for RSUs, net of estimated forfeitures, was \$10,066 which is expected to be recognized over an estimated weighted average period of 3.40 years.

The Company estimates the fair value of stock-based awards on grant date using the Black-Scholes option-pricing model and assumptions discussed below. Each of these inputs are based on highly subjective assumptions and require significant judgment.

Fair Value of Common Stock— For the six months ended June 30, 2021, the Company estimates the fair value of the common stock underlying the stock option awards using the Probability Weighted Expected Return Method (PWERM). This

approach involves the estimation of future potential outcomes for the company, as well as values and probabilities associated with each respective potential outcome. The common stock per share value determined using this approach is ultimately based upon probability-weighted per share values resulting from the various future scenarios, which can include an IPO, merger or sale, dissolution, or continued operation as a private company.

For the six months ended June 30, 2021, the fair value of the common stock underlying the stock option awards was determined by the Board. Given the absence of a public trading market, the Board considered numerous objective and subjective factors to determine the fair value of the Common Stock at each meeting at which awards were approved. These factors included, but were not limited to (i) third-party valuations of common stock; (ii) the rights, preferences, and privileges of convertible preferred stock relative to common stock; (iii) the lack of marketability of common stock; (iv) stage and development of the Company's business; (v) general economic conditions; and (vi) the likelihood of achieving a liquidity event, such as an initial public offering ("IPO") or sale of the Company, given prevailing market conditions. To evaluate the fair value of the underlying shares for grants between two independent valuations and after the last independent valuation, a linear interpolation framework was used to evaluate the fair value of the underlying shares.

Volatility—Since the Company's stock is not publicly traded, the expected volatilities are based on the historical and implied volatilities of similar companies whose stock or option prices are publicly available, after considering the industry, stage of life cycle, size, market capitalization, and financial leverage of the other companies.

Risk-Free Interest Rate—The risk-free interest rates are based on US Treasury yields in effect at the grant date for notes with comparable terms as the awards.

Expected Term—The expected term of options granted to employees is based on the expected life of the stock options, giving consideration to the contractual terms and vesting schedules.

Dividend Yield—The expected dividend-yield assumption is based on the Company's current expectations about its anticipated dividend policy.

13. REVENUE

Disaggregation of Revenue

The Company recognized the following revenues by geographic area based on the primary billing address of the customer and timing of transfer of goods or services to customers (point-in-time or over time), as it believes it best depicts how the nature, amount, timing and uncertainty of its revenue and cash flows are affected by economic

factors. Total revenue based on the disaggregation criteria described above are as follows:

	Three months ended June 30,		Six months ended June 30,	
	2021	2020	2021	2020
(unaudited)				
Revenue by primary geographical market:				
United States	\$ 154	\$ —	\$ 387	\$ 128
Germany	500	—	500	—
Other European countries	64	—	64	35
Asia	29	—	125	—
Total	<u>\$ 747</u>	<u>\$ —</u>	<u>\$ 1,076</u>	<u>\$ 163</u>
Revenue by timing of recognition:				
Recognized at a point in time	\$ 720	\$ —	\$ 1,033	\$ 163
Recognized over time	27	—	43	—
Total	<u>\$ 747</u>	<u>\$ —</u>	<u>\$ 1,076</u>	<u>\$ 163</u>

Contract Liabilities

Contract liabilities consist of deferred revenue and customer advance payments. Deferred revenue includes billings in excess of revenue recognized and is recognized as revenue when the Company performs under the contract. Customer advance payments represent required customer payments in advance of product shipments according to payment terms. Customer advance payments are recognized as revenue when control of the performance obligation is transferred to the customer. Contract liabilities consisted of the following as of June 30, 2021:

	As of June 30, 2021 (unaudited)
Contract liabilities, current	\$ 272
Contract liabilities, long-term	—
Total	<u>\$ 272</u>

The following table shows the significant changes in contract liabilities balance as of June 30, 2021:

Beginning balance - April 1, 2021	\$ 779
Revenue recognized that was included in the contract liabilities beginning balance	(527)
Increase due to cash received and performance obligations not yet satisfied during the period	20
Ending balance - June 30, 2021 (unaudited)	<u>\$ 272</u>

Remaining Performance Obligations

Revenue allocated to remaining performance obligations represents the transaction price allocated to the performance obligations that are unsatisfied, or partially unsatisfied. It includes unearned revenue and amounts that will be invoiced and recognized as revenue in future periods and does not include contracts where the customer is not committed. The customer is not considered committed where they are able to terminate for convenience without payment of a substantive penalty under the contract. Additionally, as a practical expedient, the Company has not disclosed the value of unsatisfied performance obligations for contracts with an original expected length of one year or less. The deferred revenue balance represents the remaining performance obligations for contracts with an original duration of greater than one year.

For the three months ended June 30, 2021 the Company recognized \$527 of revenue that was deferred as of March 31, 2021. The deferred revenue balance of \$272 at June 30, 2021 is expected to be recognized over the next twelve months.

14. INCOME TAXES

The Company did not record a provision or benefit for income taxes during the six months ended June 30, 2021 and 2020. The Company continues to maintain a full valuation allowance for its net U.S. federal and state deferred tax assets.

15. COMMITMENTS AND CONTINGENCIES

The Company primarily leases offices, under noncancellable operating lease agreements that expire from 2022 to 2026. During 2019 the Company entered into a rental agreement for the Company's headquarters in Dublin, California. Under the agreement the Company is provided an option to extend the lease term one time for a period of five years and the Company received leasehold improvement incentives of \$3,845. The total amount of the leasehold improvement incentives are being amortized over the lease term.

The Company recognizes rent expense on a straight-line basis over the lease period. Rental expense is principally for leased office space and was \$941 and \$1,015 within the condensed consolidated statements of operations and comprehensive loss for the six months ended June 30, 2021 and 2020, respectively. Deferred rent liabilities, including deferred lease incentives, were \$3,909 and \$4,175 as of June 30, 2021 and December 31, 2020 within the condensed consolidated balance sheets.

Future minimum payments as of June 30, 2021 under the noncancellable operating leases are as follows:

	Operating Leases (unaudited)
Six months ended 2021	\$ 1,143
Years ended:	
2022	2,331
2023	2,342
2024	2,412
2025 and after	4,824
Total minimum lease payments	<u>\$ 13,052</u>

On February 25, 2021, the Company entered into a non-binding memorandum of understanding with a leading global automotive electronics supplier and committed to pay the counterparty \$3,800 under the arrangement as part of their joint development efforts. The payment is due on or after October 1, 2021. The arrangement between the parties is not binding until an agreement is signed by both parties detailing the terms and conditions of the agreement. At June 30, 2021, such an agreement has not yet been drafted or signed by both parties.

Contingencies—The Company may be subject to legal proceedings and claims that arise in the ordinary course of business. Management is not currently aware of any matters that will have a material effect on the financial position, results of operations, or cash flows of the Company.

16. RELATED PARTIES

On February 25, 2021, the Company entered into a non-binding memorandum of understanding with a leading global automotive electronics supplier, which is also an existing investor. The Company would commit to pay the counterparty \$3,800 under the arrangement as part of their joint development efforts. The payment is due on or after October 1, 2021 as disclosed in Note 15.

In July 2019, the Company entered into an agreement with an investor of the Company and major supplier to the automaker segment for a total transaction price of \$1,500 to be received by the Company. Under the arrangement the Company agreed to cooperate on the R&D costs associated with bidding on a supply contract with a major automaker. The Company determined that there were two performance obligations associated with the promises under the arrangement, with one being specified R&D efforts and the other related to the delivery of samples and approvals. Further the Company determined that the transaction price

associated with these two performance obligations should be allocated \$1,000 to the R&D efforts and \$500 to the delivery of samples and approvals. The Company determined that the performance obligation associated with the R&D efforts should be recognized over time given the customer simultaneously receives and consumes the benefits provided by the Company's performance, and the performance obligation associated with the delivery of samples and approvals should be recognized at a point in time, as the over time criteria was not met. During 2019, the Company recognized revenue of \$1,000 over time. Further, the Company recorded \$500 within deferred revenue on the consolidated balance sheet at December 31, 2020 and 2019. For the three months ended June 30, 2021, the Company satisfied the performance obligation and recognized the \$500.

Since November 2016, the Company has employed a sibling of Mr. Dussan, the Company's President and Chief Technology Officer, who held the position of Sr. Manager of Human Resources in 2020 and as at June 30, 2021. In 2020 and as at June 30, 2021, Mr. Dussan's sibling received total cash compensation of \$115 and \$58, respectively. In 2020 he was granted options to purchase 10 shares of common stock with an exercise price of \$2.33 per share. For the six months ended June 30, 2021, Mr. Dussan's sibling was granted 500 RSUs. In addition, he participates in all other benefits that the Company generally offers to all of its employees.

17. NET LOSS PER SHARE

The following table sets forth the computations of net loss per share for the periods listed:

	Three months ended June 30,		Six months ended June 30,	
	2021	2020	2021	2020
(unaudited)				
Numerator:				
Net loss attributable to common shareholders	\$ (11,075)	\$ (7,502)	\$ (22,584)	\$ (13,717)
Denominator:				
Weighted average common shares outstanding- Basic	10,884,301	11,316,842	10,868,166	11,304,295
Dilutive effect of potential common shares	—	—	—	—
Weighted average common shares outstanding- Diluted	<u>10,884,301</u>	<u>11,316,842</u>	<u>10,868,166</u>	<u>11,304,295</u>
Net loss per common share (basic and diluted)	<u>\$ (1.02)</u>	<u>\$ (0.66)</u>	<u>\$ (2.08)</u>	<u>\$ (1.21)</u>

Due to net losses for the three and six months ended June 30, 2021 and 2020, basic and diluted loss per share were the same, as the effect of all potentially dilutive securities would have been anti-dilutive. The following table sets forth the anti-dilutive common share equivalents for the periods listed:

	June 30, 2021	June 30, 2020
	(unaudited)	
Warrants to purchase common stock	61,612	61,612
Warrants to purchase Series A preferred stock warrant	7,353	7,353
Options to purchase common stock	8,379,760	5,387,133
Conversion of Series A preferred stock	9,226,734	9,226,734
Conversion of Series B preferred stock	7,156,991	7,156,991
Conversion of convertible notes	5,886,180	1,502,385
Total	<u>30,718,630</u>	<u>23,342,208</u>

18. SUBSEQUENT EVENTS

Management has evaluated subsequent events through August 21, 2021.

Merger with CF Finance Acquisition Corp. III

On February 17, 2021, the Company entered into an Agreement and Plan of Merger (the “Merger Agreement”) with CF Finance Acquisition Corp. III, a Delaware corporation (“CF III”) and Meliora Merger Sub, Inc. (“Merger Sub”), a Delaware corporation and wholly-owned subsidiary of CF III.

On August 16, 2021, pursuant to the Merger Agreement, the business combination between CF III and the Company was affected through the merger of Merger Sub with and into AEye, Inc., with AEye, Inc. as the surviving company and wholly owned subsidiary of CF III.

Contemporaneously with the execution of the Merger Agreement on February 17, 2021, CF III entered into subscription agreements with certain investors to purchase an aggregate of 22,500,000 shares of Class A common stock (“PIPE Shares”) for an aggregate purchase price of \$225,000 (“PIPE investment”).

Pursuant to the Merger Agreement, all outstanding principal and unpaid accrued interest of the 2020 Notes were converted to 5,584,308 Company preferred stock immediately prior to closing the transaction and subsequently converted to common stock of the newly combined entity.

As of August 21, 2021, the Company has received approximately \$256,800, before expenses, from the transaction.

Other events

On July 2, 2021, the Company and certain investors entered into an Amendment to Convertible Equity Instruments (the “Amendment”) pursuant to the 2020 Notes dated February 26, 2020. The Amendment amends and restates the maturity date of each instrument to October 31, 2021.

As a result of the 2020 Notes maturity date amendment to October 31, 2021, the Company also satisfied the term loan maturity date extension associated with the Silicon Valley Bank financing facility. The Company met the following criteria in the SVB agreement associated with the financing facility: (a) the maturity dates for the 2020 Notes have been extended at least thirty (30) days after October 1, 2021; and (b) no Default or Event of Default exists. Hence, the term loan maturity date was extended from the earlier of August 1, 2021 or the close of a SPAC transaction, to October 26, 2021.

On August 20, 2021, the Company repaid the balance of the Silicon Valley Bank financing facility, including interest.