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

FORM 8-K

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

Date of Report (Date of earliest event reported): May 21, 2015 (May 15, 2015)

HedgePath Pharmaceuticals, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**001-13467**	**30-0793665**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

324 South Hyde Park Avenue, Suite 350
Tampa, FL 33606
(813) 864-2559
(Address, including Zip Code and Telephone Number, including Area Code, of Principal Executive Offices)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation to 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))

Introduction

On May 15, 2015 (the "**Effective Date**"), HedgePath Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), and Mayne Pharma Ventures Pty Ltd., an Australian company ACN 168 896 357 ("**Mayne Pharma**"), along with Nicholas J. Virca, the Company's President and Chief Executive Officer ("**Virca**"), Frank O'Donnell, Jr., M.D., the Company's Executive Chairman ("**O'Donnell**") and Hedgepath, LLC, a Florida limited liability company and substantial stockholder of the Company which is controlled by Black Robe Capital LLC, of which O'Donnell is the manager ("**HPLLC**" and, together with the Company, Mayne Pharma, Virca and O'Donnell, the "**Parties**"), consummated a series of related transactions (collectively with the series of transactions that occurred among the Parties on June 24, 2014, the "**Transactions**") in order to obtain equity financing for the Company from Mayne Pharma and to remedy certain breaches by the Company related to the transactions previously consummated by the Parties on June 24, 2014, including certain provisions of the Equity Holders Agreement, dated June 24, 2014, by and between the Parties (the "**Equity Holders Agreement**") which governs certain rights and obligations of each of the Parties as they pertain to the Company's securities and the present and future governance of the Company.

Item 1.01. Entry into a Material Definitive Agreement.

Securities Purchase Agreement

On the Effective Date, the Company and Mayne Pharma entered into a Securities Purchase Agreement (the "**Purchase Agreement**") pursuant to which the Company issued (i) 33,333,333 shares (the "**Shares**" and each a "**Share**") of common stock, par value $0.0001 per share ("**Common Stock**"), and (ii) a warrant to purchase 33,333,333 shares of Common Stock (the "**Warrant**" and, together with the Shares, the "**Securities**") for an aggregate purchase price of $2,500,000, or $0.075 per Share. The transaction contemplated by the Purchase Agreement formally closed on May 18, 2015.

The Warrant is immediately exercisable, subject to certain restrictions in the A&R Equity Holders Agreement (defined below), at an exercise price of $0.075 per share and expires on May 15, 2020. As a result of the Purchase Agreement, Mayne Pharma owns approximately 49.5% of the outstanding Common Stock, or 51.1% of the Common Stock on a fully diluted basis assuming, among other things, the full exercise of the Warrant. Under the Purchase Agreement, Mayne Pharma has been granted one (1) demand and unlimited "piggyback" registration rights with respect to the Shares and the shares of Common Stock underlying the Warrant, which rights however only become exercisable upon termination or expiration of the Second A&R Supply Agreement (defined below).

The issuance of the Securities was exempt from the registration requirements of the Securities Act of 1933, as amended (the "**Securities Act**"), pursuant to Section 4(a)(2) of the Securities Act and/or Regulation D promulgated under the Securities Act because, among other things: (i) the issuance did not involve a public offering, (ii) Mayne Pharma is an accredited investor, (iii) Mayne Pharma took the securities for investment purposes and not resale and (iv) the Company took appropriate measures to restrict the transfer of the securities.

Equity Holders Agreement

On the Effective Date, as a condition of the Purchase Agreement, the Parties entered into an Amended and Restated Equity Holders Agreement (the "**A&R Equity Holders Agreement**"). The A&R Equity Holders Agreement amends and restates in its entirety the Equity Holders Agreement. Pursuant to the terms of the A&R Equity Holders Agreement:

- Mayne Pharma and HPLLC each confirmed their prior agreement under the Equity Holders Agreement to not offer, pledge, sell, contract to sell, swap or enter into any other transfer arrangement with respect to any of their Company securities until June 24, 2015 (the "**Lock-Up Period**") without the prior written consent of the other Parties, except for in limited circumstances as described in the A&R Equity Holders Agreement;
- Mayne Pharma, HPLLC, Virca and O'Donnell each confirmed their prior agreement under the Equity Holders Agreement that, during the Lock-Up Period, none of them will own greater than 49.5% of the Common Stock on a fully-diluted basis, except that Mayne Pharma is permitted to own greater than 49.5% of the Common Stock on a fully-diluted basis, but only as a result of its ownership of the Shares and the Warrant issued pursuant to the Purchase Agreement, it being understood that Mayne Pharma will not exercise the Warrant until after the Lock-up Period;
- Mayne Pharma agreed that while the A&R Equity Holders Agreement remains in effect, Mayne Pharma will not act in concert as part of a "group" (as defined in Section 13(d) of the Securities Exchange Act of 1934, as amended, a "**Group**") with any other person or persons to own or control more than fifty percent (50%) of the outstanding Common Stock;
- Mayne Pharma and its affiliates (the "**Mayne Pharma Group**") and HPLLC and its affiliates (the "**HPLLC Group**") will be afforded a right of first refusal to purchase a pro rata share of any new securities issued by the Company (except for certain exempt issuances as described in the A&R Equity Holders Agreement), such pro rata share to be determined based upon the number of shares of Common Stock held by Mayne Pharma Group or HPLLC Group, as applicable, on a fully diluted basis, as compared to the number of shares of Common Stock outstanding on a fully diluted basis immediately prior to the offering of the new securities;
- Mayne Pharma will continue to be afforded the right (as provided for in the Equity Holders Agreement) until June 24, 2016 to introduce accredited investors to the Company to participate in a private offering of the Company's securities (with some exceptions as described in the A&R Equity Holders Agreement). In the event that the Company contemplates a private offering of its securities, such accredited investors introduced by Mayne Pharma have the right to participate in up to 50% of the private offering;
- Virca confirmed his agreement (as provided for in the Equity Holders Agreement) to a restriction on transfers of his equity securities of the Company until the earlier of: (i) September 3, 2016, (ii) the receipt of written notice of acceptance for the filing of a new drug application (an "**NDA**") by the Company for its current product candidate, SUBA™-Itraconazole (the "**Product**"), for the treatment of human patients with cancer via oral administration (the "**Field**") by the relevant regulatory authority, or, (iii) to the extent provided in an applicable award agreement, upon his death or disability;
- O'Donnell and the Company agree that O'Donnell is not entitled to receive any grant or award of any equity securities under the Company's 2014 equity incentive plan (the "**EIP**") or otherwise until the Performance Goal Date (as defined below);

- For as long as either HPLLC or Mayne Pharma own more than forty percent (40%) of the Company's outstanding Common Stock on a fully-diluted basis, without the approval of either or both of HPLLC and Mayne Pharma, as applicable, the Company shall not increase the number of shares authorized under the EIP, amend the EIP, adopt a new stock grant plan or issue, grant or award more than 5,000,000 shares of Common Stock under the EIP in the aggregate (in addition to previous EIP grants);
- The Parties agree that all awards included in the initial issuance of securities from the EIP are subject to restriction on exercise until the earlier of: (i) September 3, 2016 and (ii) the receipt of written notice of acceptance for the filing of an NDA by the Company for the Product in the Field by the relevant regulatory authority, provided that any awards granted after the initial issuance of securities from the EIP in accordance with the A&R Equity Holders Agreement are not subject to this restriction (unless the Board otherwise provides);
- Mayne Pharma shall continue to have the right to designate one director to the Company's Board of Directors (the '**Board**"), currently Mr. Stefan J. Cross, and to designate a second director if the size of the Board is increased to seven directors until the earlier to occur of: (i) the date that the Second A&R Supply Agreement is terminated or expires, or (ii) the date on which the Mayne Pharma Group ceases to own ten percent (10%) or more of the issued and outstanding Common Stock (the "**Voting Rights Termination Date**");
- The Parties agree that, for as long as Mayne Pharma has the right to designate a director to the Board, all of the Parties will vote their shares in favor of appointing the Mayne Pharma candidate to the Board. In the event that Mayne Pharma is required to take action in its capacity as a stockholder to enforce its right to designate a director of the Board, the Company agrees to take all necessary actions to call a special meeting in accordance with the Second A&R Bylaws (defined below) for the election of such director;
- The Parties agree not to increase or decrease the size of the Board except with the unanimous consent of the Board until the Voting Rights Termination Date;
- Until the Voting Rights Termination Date, the Parties agree that any replacement or removal of Virca requires the unanimous approval of the Board and any replacement or removal of O'Donnell requires the approval of all of the members of the Board except for O'Donnell. Notwithstanding the foregoing, Virca and O'Donnell may be removed without unanimous approval of the Board upon the occurrence of the Majority Holder Condition (defined below), Failure Condition (defined below) or Material Breach Condition (defined below);
- The Parties agree to use diligent good faith efforts to ensure that the Board continues to consist of a majority of "Independent Directors" (as defined in the A&R Equity Holders Agreement) until such time as (i) a single stockholder (not acting as part of a Group) of the Company owns greater than ninety percent (90%) of the Company's Common Stock or (ii) only for so long as Mayne Pharma holds at least forty percent (40%) of the Company's outstanding Common Stock, there is a material breach of any document relating to the Transactions other than by Mayne Pharma, excluding the occurrence of a the Failure Condition, and Mayne Pharma has not otherwise nominated, designated, elected or appointed a majority of the directors on the Board (the "**Material Breach Condition**");

- The Parties agree to vote for the Board in its current composition (unless mutually agreed upon by Mayne Pharma and HPLLC) until such time as (i) either Mayne Pharma or HPLLC, alone, and not in concert as part of a Group, own a majority of the shares of the Company's outstanding Common Stock (the "**Majority Holder Condition**"), (ii) one hundred and fifty days after the Performance Goal (as defined below) is not satisfied (the "**Failure Condition**") and (iii) upon the occurrence of a Material Breach Condition. Upon the occurrence of the Majority Holder Condition or Failure Condition, the majority holder or Mayne Pharma, respectively, may remove any current director and appoint a new director as long as the Board continues to consist of a majority of Independent Directors. Upon the occurrence of the Material Breach Condition, the requirement that the Board consist of a majority of Independent Directors will cease and Mayne Pharma will have the right to remove any current director and appoint a new director. Mayne Pharma may remove current directors and appoint new directors by written consent or by calling a meeting in accordance with the Second A&R Bylaws; and
- Mayne Pharma shall continue (as under the Equity Holders Agreement) to be afforded a right of first refusal to purchase any shares of Common Stock being transferred or sold by the individual account of O'Donnell or Virca except for certain exempt transfers as described in the A&R Equity Holders Agreement.

In addition to the foregoing, pursuant to the A&R Equity Holders Agreement, the Parties agreed that the Company would seek to (i) close on one or more registered or unregistered equity, debt or equity-linked financings in which the Company receives aggregate net proceeds of at least $5,000,000 or (ii) enter into a license, development, commercialization or similar agreement relating to the Product, provided that the Company receives a net upfront payment of at least $5,000,000 in connection with such agreement and that such agreement will be subject to the approval of Mayne Pharma (collectively, the "**Performance Goal**") on or before May 31, 2016 (the "**Performance Goal Date**"). Under the A&R Equity Holders Agreement, all previously required performance goals as set forth in the original Equity Holders Agreement have been removed and replaced solely with the Performance Goal.

If the Company does not meet the Performance Goal, in addition to the remedies described above, O'Donnell may be required by Mayne Pharma to resign from his position as Executive Chairman (in connection with his removal as a director), O'Donnell will forfeit all then unvested options, warrants, restricted stock units, or other right to acquire Common Stock (or securities convertible into Common Stock) and HPLLC may be required to forfeit certain shares of Common Stock it owns. Furthermore, Mayne Pharma will continue to have the right to purchase (i) by written notice to O'Donnell all Company securities owned by O'Donnell individually, including vested options, vested warrants, vested restricted stock units and the like, or otherwise transferred by him, as the case may be, at the fair market value (as such term is described in the A&R Equity Holders Agreement) as of the date of such resignation or termination and (ii) any shares required to be forfeited by HPLLC at the price described in the A&R Equity Holders Agreement.

The A&R Equity Holders Agreement terminates (i) if the Company receives an adjudication of bankruptcy, the Company executes an assignment for the benefit of creditors, a receiver is appointed for the Company or the Company is voluntarily or involuntarily dissolved or (ii) if the Company, HPLLC and Mayne Pharma expressly agree in writing. Additionally, certain limited provisions of the A&R Equity Holders Agreement terminate at such time as the Mayne Pharma Group or the HPLLC Group, as the case may be, collectively owns less than ten percent (10%) of the Common Stock on a fully diluted basis.

In connection with their entry into the A&R Equity Holders Agreement, the Parties agreed to waive, among other things, certain specified prior breaches by the Company of its obligations under the original Equity Holders Agreement.

Second Amended and Restated Supply and License Agreement

On the Effective Date, the Company entered into the Second Amended and Restated Supply and License Agreement (the "**Second A&R Supply Agreement**") with Mayne Pharma, which amended and replaces a similar agreement entered into between the Company and Mayne Pharma under which Mayne Pharma has agreed to (i) license the rights to the Product in the Field in the United States to the Company and (ii) provide clinical and commercial supply of the Product. The Second A&R Supply Agreement extends the target launch date of the Product from March 31, 2017 to June 30, 2017, provides additional clarity regarding the development plan and budget with respect to the Product and expands the role of the Joint Development Committee (the "**JDC**") (comprised of representatives of the Company and Mayne Pharma) with respect to the Product (although the role of the JDC will remain advisory in nature). In addition, pursuant to the Second A&R Supply Agreement, through December 31, 2015, Mayne Pharma will provide certain services to the Company (in accordance with the development plan and Budget for the Product) including to direct clinical programming (subject to the oversight and approval by the JDC and, in certain circumstances, the Board), and to direct the regulatory approval process and intellectual property strategy related to the Product. Any services provided to the Company by Mayne Pharma in this regard will be provided at Mayne Pharma's expense (other than third party costs agreed to by the Company and Mayne Pharma), and such services will be subject to the prior approval of the Company.

First Amendment to Employment Agreement with Nicholas J. Virca

On the Effective Date, as a condition of closing of the Purchase Agreement, the Company and Virca, the President and Chief Executive Officer of the Company, entered into the First Amendment to Employment Agreement (the "**Employment Agreement Amendment**") to amend the terms under which Virca will continue to serve as President and Chief Executive Officer of the Company. The Employment Agreement Amendment amends the terms of that certain Employment Agreement, dated as of June 24, 2014, by and between the Company and Virca (the "**Employment Agreement**") principally to redefine Virca's responsibilities in his present role with the Company, including that Virca will report both to the Board and the JDC, remove a provision from the Employment Agreement requiring an automatic increase of Virca's base salary to $250,000 per year upon achievement of certain funding goals and otherwise update the Employment Agreement in consideration of the A&R Equity Holders Agreement. All other terms of the Employment Agreement remain in full force and effect.

First Amendment to Executive Chairman Agreement with Frank E. O'Donnell, Jr., M.D.

On the Effective Date, as a condition of closing of the Purchase Agreement, the Company and O'Donnell, the current Executive Chairman of the Company, entered into the First Amendment to Executive Chairman Agreement (the "**Executive Chairman Amendment**") to amend the terms under which O'Donnell will continue to serve in such capacity and as a director of the Company. The Executive Chairman Amendment amends the terms of that certain Executive Chairman Agreement, dated as of June 24, 2014, by and between the Company and O'Donnell (the "**Executive Chairman Agreement**") to clarify the conditions under which O'Donnell may be removed or required to resign from his positions as Executive Chairman and a director of the Company as provided for in the A&R Equity Holders Agreement. All other terms of the Executive Chairman Agreement remain in full force and effect.

Item 3.02. Unregistered Sales of Equity Securities

The information regarding the sale of the Securities set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

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

Pursuant to the Purchase Agreement, the Company has covenanted to amend its certificate of incorporation to remove therefrom the provisions requiring a staggered board of directors. On the Effective Date, the Board, and Mayne Pharma and HPLLC, as majority stockholders of the Company, approved such an amendment, which, under the terms of the Purchase Agreement, is required to be formally implemented within 30 days of the Effective Date.

In addition, on the Effective Date, as a condition of the Purchase Agreement and in connection with the A&R Equity Holders Agreement, the Board unanimously approved and adopted the Second Amended and Restated Bylaws of the Company (the "**Second A&R Bylaws**"). The Second A&R Bylaws amends those certain Amended and Restated Bylaws of the Company previously adopted by the Board on July 18, 2014 in a manner necessary to support the rights of Mayne Pharma under the A&R Equity Holders Agreement. The Second A&R Bylaws:

- Enable Mayne Pharma to appoint the chairman of any special meeting of the stockholders called by Mayne Pharma pursuant to the A&R Equity Holders Agreement (an "**EHA Special Meeting**");
- Provide separate notice and record date requirements for an EHA Special Meeting as compared to any other special meeting of the stockholders and to require the approval of Mayne Pharma to postpone or adjourn an EHA Special Meeting;
- Allow stockholders holding a majority of the outstanding shares of Common Stock to call a special meeting of the stockholders (previously, the request of stockholders holding at least sixty six and two-thirds percent [66 2/3%] was required to call a special meeting);
- Delineate between the ordinary processes and procedures for special meetings of the stockholders of the Company and the processes and procedures for EHA Special Meetings.
- Delineate between the ordinary nomination of directors and the nomination of any directors in accordance with the provisions in the A&R Equity Holders Agreement;
- Exclude from the processes and procedures described in the Second A&R Bylaws for any action by consent of the stockholders of the Company written consents of stockholders contemplated in connection with the A&R Equity Holders Agreement;
- Enable the chairman of the EHA Special Meeting to appoint one or more inspectors to an EHA Special Meeting;
- Require unanimous approval of the Board to change the number of directors on the Board until the Voting Rights Termination Date;

- Reflect that any vacancy arising from a removal of a director by Mayne Pharma pursuant to the A&R Equity Holders Agreement shall be filled in accordance with the A&R Equity Holders Agreement.
- Eliminate the classified Board structure and all references to the same (subject to the filing of a Certificate of Amendment to the Company's charter, as amended, which is required pursuant to the Purchase Agreement and is expected to occur within 30 days of the Effective Date);
- Reflect that O'Donnell may be removed pursuant to the A&R Equity Holders Agreement or any other written agreement between O'Donnell and the Company; and
- Allow for the amendment of the Second A&R Bylaws upon the affirmative vote of a majority of the Common Stock holders (previously sixty six and two-thirds percent [66 2/3%] vote was required) and prevent the Board of Directors, without the written consent of Mayne Pharma, from amending any provision of the Second A&R Bylaws that would impair or diminish the Parties rights as described in the A&R Equity Holders Agreement.

The preceding is a summary of the material changes in the Amended and Restated Bylaws and is qualified in its entirety by reference to the complete text of the Amended and Restated Bylaws filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

Set forth below is a list of Exhibits included as part of this Current Report.

3.1 Second Amended and Restated Bylaws of the Company

Cautionary Note on Forward-Looking Statements

This Current Report and any related statements of representatives and partners of the Company contain, or may contain, among other things, certain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve significant risks and uncertainties. Such statements may include, without limitation, statements with respect to the Company's plans, objectives, projections, expectations and intentions and other statements identified by words such as "projects," "may," "will," "could," "would," "should," "believes," "expects," "anticipates," "estimates," "intends," "plans," or similar expressions. These statements are based upon the current beliefs and expectations of the Company's management and are subject to significant risks and uncertainties, including those detailed in the Company's filings with the Securities and Exchange Commission. Actual results (including, without limitation, the results (i) of the Company's commercial partnership with Mayne Pharma and (ii) clinical trials for and of regulatory review of SUBA™-Itraconazole) may differ significantly from those set forth in the forward-looking statements. These forward-looking statements involve certain risks and uncertainties that are subject to change based on various factors (many of which are beyond the Company's control). The Company undertakes no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

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.

Dated: May 21, 2015

HEDGEPATH PHARMACEUTICALS, INC.

By: /s/ Nicholas J. Virca
Name: Nicholas J. Virca
Title: President and CEO

SECOND AMENDED AND RESTATED BYLAWS OF
HEDGEPATH PHARMACEUTICALS, INC.
(a Delaware Corporation)

(adopted effective as of May 15, 2015)

ARTICLE 1
OFFICES

SECTION 1.1. Principal Office. The principal offices of the HedgePath Pharmaceuticals, Inc., a Delaware corporation (the "**Corporation**") shall be in such location as the Board of Directors of the Corporation (the "**Board of Directors**") may determine.

SECTION 1.2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE 2
MEETINGS OF STOCKHOLDERS

SECTION 2.1. Place of Meeting; Chairman. All meetings of stockholders shall be held at such place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. The Chairman of the Board of the Corporation (the "**Chairman of the Board**") or any other person specifically designated by the Board of Directors shall act as chairman for any meeting of stockholders of the Corporation; provided, however, that in the event of any special meeting of the stockholders called, or requested to be called, by Mayne Pharma Ventures Pty Ltd (together with any of its transferees, collectively, "**MPV**") pursuant to that certain Amended and Restated Equity Holders Agreement by and among the Corporation, MPV, Hedgepath, LLC, Frank E. O'Donnell, Jr., M.D., and Nicholas J. Virca, dated as of May 15, 2015, as the same may be amended, modified, or amended and restated from time to time (the "**EHA**") (as so called or requested to be called by MPV, each an "**EHA Special Meeting**"), the chairman of such EHA Special Meeting shall be the person designated pursuant to the EHA. The chairman of each such meeting of the stockholders shall have full authority to control the process of any such meeting, including, without limitation, determining whether any proposals or nominations were properly brought before such meeting, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting, limitations on participation in such meeting to stockholders of record of the Corporation and their duly authorized and constituted proxies and such other persons as such chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, requiring ballots by written consent (except as limited by the Certificate of Incorporation of the Corporation, as amended (the "**Certificate of Incorporation**"), or by the Delaware General Corporation Law (the "**DGCL**"), limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot.

SECTION 2.2. Annual Meetings. The annual meeting of stockholders of the Corporation shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, subject to any postponement in the Board of Directors' sole discretion, upon notice of such postponement given in any manner deeded reasonable by the Board of Directors.

SECTION 2.3. Special Meetings. Special meetings of the stockholders of the Corporation, for any purpose or purposes, unless otherwise proscribed by the DGCL or by the Certificate of Incorporation, may be called exclusively by: (i) the Chairman of the Board or the Chief Executive Officer, President or other executive officer of the Corporation, (ii) an action of the Board of Directors or (iii) the request in writing of the stockholders of record, and only of record, owning not less than a majority of the entire capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. The officers or directors shall fix the time and any place, either within or without the State of Delaware, as the place for holding such meeting. Notwithstanding anything to the contrary contained in these Bylaws, (a) any EHA Special Meeting may be called, or requested to be called, by MPV acting alone and in its sole discretion and (b) the date fixed by the officers or directors of the Corporation, as the case may be, for the holding of such EHA Special Meeting shall be no more than forty-five (45) days following the Corporation's receipt of written request or notification from MPV.

SECTION 2.4. Notice of Meeting. Written notice of the annual and each special meeting of stockholders of the Corporation, stating the time, place and purpose or purposes thereof, and the means of remote communications, if any, by which stockholders or proxy holders may be deemed to be present in person and able to vote at such meeting, shall be given to each stockholder entitled to vote thereat, not less than ten (10) nor more than sixty (60) days before the meeting and shall be signed by the Chairman of the Board, the President or the Secretary of the Corporation (the "**Secretary**"). The Board of Directors may postpone a special meeting in its sole discretion in any manner it deems reasonable. Notwithstanding anything to the contrary contained in these Bylaws, (a) any written notice of an EHA Special Meeting shall be given to each stockholder entitled to vote thereat not more than ten (10) days before such EHA Special Meeting and (b) the Board of Directors may postpone any such EHA Special Meeting only with the prior approval of MPV.

SECTION 2.5. Business Conducted at Meetings

Section 2.5.1 (a) At any meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before a meeting, business must be:

(i) specified in the notice of meeting (or any supplement thereto provided within the notice period specified in Section 2.4) given by or at the direction of the Chairman of the Board, the President or the Board of Directors;

(ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors; or

(iii) otherwise properly brought before the meeting by any stockholder of the Corporation (subject to Section 2.3 and 2.5.1(b) of these Bylaws) who (A) is a stockholder of record on the date of the giving of the notice provided for in this Section 2.5 and on the record date for the determination of stockholders entitled to notice of and to vote at the meeting and (B) complies with the advance notice procedures set forth in this Section 2.5.

(b) Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and included in the Corporation's notice of meeting, the foregoing clause 2.5.1(a)(iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual or special meeting of stockholders, provided that in the case of a special meeting of stockholders, the item of business is presented by the requisite number of stockholders of the Corporation in accordance with Section 2.3 of these Bylaws. Stockholders seeking to nominate persons for election to the Board of Directors must comply with Section 2.6.2 hereof and this Section 2.5.1 shall not be applicable to director nominations.

(c) In addition to any other applicable requirements set forth in these Bylaws, the U.S. federal securities laws or otherwise, for business to be properly brought before a meeting called by stockholders, such stockholder(s) must have given timely notice thereof in writing to the Secretary. Any special meeting of the Corporation proposed to be called by a stockholder or stockholders in such capacity shall not be required to be held: (i) with respect to any matter, within 12 months after any annual or special meeting of stockholders at which the same matter was included on the agenda, or if the same matter will be included on the agenda at an annual meeting to be held within 90 days after the receipt by the Corporation of such request (the election or removal of directors to be deemed the same matter with respect to all matters involving the election or removal of directors) or (ii) if the purpose of the special meeting is not a lawful purpose or if such request violates applicable law. A stockholder may revoke a request for a special meeting at any time by written revocation delivered to the Secretary, and if, following such revocation, there are un-revoked requests from stockholders holding in the aggregate less than the requisite number of shares entitling the stockholders to request the calling of a special meeting, the Board of Directors, in its discretion, may cancel the special meeting. If none of the stockholders who submitted the request for a special meeting appears or sends a qualified representative to present the nominations proposed to be presented or other business proposed to be conducted at the special meeting, the Corporation need not present such nominations or other business for a vote at such meeting.

Section 2.5.2 To be timely, a stockholder's notice of a proposal to be included at an annual meeting must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the annual meeting of stockholders; *provided, however,* that if the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than sixty (60) days after the anniversary of the preceding year's annual meeting, to be timely, notice by the stockholder must be so received not later than the close of business on the tenth (10th) day following the day on which public disclosure of the date of the annual meeting is first given or made (which shall include the making of any and all filings of the Corporation made on the EDGAR system of the U.S. Securities and Exchange Commission ("**SEC**") or any similar public database maintained by the SEC, whichever first occurs). In the case of a special meeting of stockholders, notice must be provided not later than the close of business on the tenth (10th) day following the day on which public disclosure of the date of the special meeting is first given or made.

Section 2.5.3 A record stockholders' notice to the Secretary shall set forth in writing as to each matter the stockholder(s) propose to bring before the meeting: (a) a detailed description of the business desired to be brought before the meeting and the reasons for proposing such business, including the complete text of any resolutions, bylaws or certificate of incorporation amendments proposed for consideration, (b) the name and address, as they appear on the Corporation's books, of the stockholders proposing such business, (c) the class and number of shares of the Corporation which are owned directly or indirectly of record and directly or indirectly beneficially owned by the stockholders and each of its affiliates (within the meaning of Rule 144 promulgated under the Securities Act of 1933, as amended, or any successor rule thereto ("**Rule 144**")), including any shares of the Corporation owned or controlled via derivatives, synthetic securities, hedged positions and other economic and voting mechanisms, (d) any material interest of the stockholders in such proposed business and any agreements or understandings to which such stockholders are a party which relate in any way, directly or indirectly, to the proposed business to be conducted, including a description of all arrangements or understandings between such stockholder and any other person or persons (including their names), (e) a representation as to whether or not such stockholder intends to solicit proxies; (f) a representation as to whether or not such stockholder intends to appear in person or by proxy at the applicable meeting, (g) any pending or threatened litigation in which such stockholder is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, and (g) such other information regarding the stockholder

in his, her or its capacity as a proponent of a stockholder proposal that would be required to be disclosed in a proxy statement or other filing with the SEC required to be made in connection with the contested solicitation of proxies pursuant to the SEC's proxy rules.

Section 2.5.4 Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 2.5. The Chairman of the meeting shall, in his or her sole discretion, determine and declare to the meeting whether or not any business was properly brought before the meeting. Any such business not properly brought before the meeting shall not be transacted. If and to the extent that shares of the Corporation's capital stock is registered under or the Corporation is otherwise subject to the reporting requirements of the Exchange Act, nothing in this Section 2.5 shall affect the right of a stockholder to request inclusion of a proposal in the Corporation's proxy statement to the extent that such right is provided by an applicable rule of the SEC. Notwithstanding the foregoing, the advance notice provisions of these Bylaws shall apply to all stockholder proposals regardless of whether such proposal is sought to be included in the Corporation's proxy statement or in a separate proxy statement.

Section 2.5.5. Notwithstanding anything to the contrary contained in these Bylaws, (a) the provisions of Section 2.5.1 through Section 2.5.4 of these Bylaws shall not apply to any EHA Special Meeting and (b) for any such EHA Special Meeting, MPV shall only be required to deliver to the Secretary, not less than forty-five (45) days prior to such EHA Special Meeting, written notice setting forth (i) a general description of the business desired to be brought before such EHA Special Meeting and the reasons for proposing such business, together with the text of any resolutions proposed for consideration, and (ii) such other information regarding MPV in its capacity as a proponent of a stockholder proposal that may be required to be disclosed in a proxy statement or other filing with the SEC required to made in connection with the contested solicitation of proxies pursuant to the SEC's proxy rules.

SECTION 2.6. Nomination of Directors. Nomination of candidates for election as directors of the Corporation at any meeting of stockholders called for the election of directors, in whole or in part (an "**Election Meeting**"), must be made by the Board of Directors or by any stockholder entitled to vote at such Election Meeting, in accordance with the following procedures.

Section 2.6.1. Nominations made by the Board of Directors shall be made at a meeting of the Board of Directors or by written consent of the directors in lieu of a meeting prior to the date of the Election Meeting. At the request of the Secretary, and if and to the extent that shares of the Corporation's capital stock is registered under or the Corporation is otherwise subject to the reporting requirements of the Exchange Act, each proposed nominee nominated by the Board of Directors shall provide the Corporation with such information concerning himself or herself as is required, under the rules of the SEC and any applicable securities exchange, to be included in the Corporation's proxy statement soliciting proxies for his or her election as a director.

Section 2.6.2. The exclusive means by which a stockholder may nominate a director shall be by delivery of a notice to the Secretary, not less than sixty (60) days prior to the date of an Election Meeting, setting forth: (a) the name, age, business address and the primary legal residence address of each nominee proposed in such notice, (b) the principal occupation or employment of such nominee, (c) the number of shares of capital stock of the Corporation which are owned directly or indirectly of record and directly or indirectly beneficially owned by the nominee and each of its affiliates (within the meaning of Rule 144), including any shares of the Corporation owned or controlled via derivatives, hedged positions and other economic and voting mechanisms, (d) any material agreements, understandings or relationships, including financial transactions and compensation, between the nominating stockholder and the proposed nominees and (d) such other information concerning each such

nominee as would be required, under the rules of the SEC, in a proxy statement soliciting proxies in a contested election of such nominees. Such notice shall include a signed consent of each such nominee to serve as a director of the Corporation, if elected. In addition, any stockholder nominee, to be validly nominated, shall submit to the Secretary the questionnaire required pursuant to Section 2.6.3 of these Bylaws. A stockholder intending to nominate one or more candidates for election as directors must comply with the advance notice bylaw provisions specifically applicable to the nomination of candidates for election as directors for such nomination to be properly brought before the meeting.

Section 2.6.3 To be eligible to be a director nominee nominated by a stockholder or stockholders for election or reelection as a director of the Corporation, such nominee must deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.6.2 of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire (the "**Questionnaire**") with respect to the background, qualification and experience of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be in the form approved by the Corporation and provided by the Secretary or such Secretary's designee) and a written representation and agreement that such person: (a) will abide by the requirements of these Bylaws and the Certificate of Incorporation as in effect at the time of their nomination and as validly amended, (b) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "**Voting Commitment**") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (c) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (d) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation. If, prior to the Election Meeting, there is a change in any information set forth on the Questionnaire, then such director candidate shall promptly notify the Secretary by submitting a revised Questionnaire.

Section 2.6.4. In the event that a person is validly designated by the Board of Directors as a nominee in accordance with this Section 2.6 and shall thereafter become unable or willing to stand for election to the Board of Directors, the Board of Directors may designate a substitute nominee who meets all applicable standards under these Bylaws.

Section 2.6.5. If the Chairman of the Election Meeting determines that a nomination was not made in accordance with the foregoing procedures, such nomination shall be void.

Section 2.6.6. Notwithstanding anything to the contrary contained in these Bylaws, (a) the provisions of Section 2.6.1 through Section 2.6.5 of these Bylaws shall not apply to the nomination or designation of a candidate for election as director by MPV pursuant to the EHA, whether in connection with filling any vacancy on the Board of Directors or otherwise, and (b) for any such nomination or designation, MPV shall only be required to deliver to the Secretary, not less than forty-five (45) days prior to the Election Meeting, written notice setting forth such information concerning such nominee(s) as may be required under the rules of the SEC, in a proxy statement soliciting proxies in a contested election of such nominee(s).

SECTION 2.7. Quorum; Adjournment.

Section 2.7.1 The holders of a majority of the shares of capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy (provided the proxy has authority to vote on at least one matter at such meeting), shall constitute a quorum at any meeting of stockholders for the transaction of business, except when stockholders are required to vote by class, in which event a majority of the issued and outstanding shares of the appropriate class shall be present in person or by proxy (provided the proxy has authority to vote on at least one matter at such meeting) in order to constitute a quorum as to such class vote, and except as otherwise provided by the DGCL or by the Certificate of Incorporation. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to have less than a quorum if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

Section 2.7.2 Notwithstanding any other provision of the Certificate of Incorporation or these Bylaws, at any annual or special meeting of stockholders of the Corporation, whether or not a quorum is present, the Chairman of the Board or the person presiding as chairman of the meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, whether or not a quorum shall be present or represented; provided, however, that the person presiding as chairman of an EHA Special Meeting may adjourn such EHA Special Meeting only with the approval of MPV. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in accordance with Section 2.4 of these Bylaws. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

SECTION 2.8. Voting; Proxies.

Section 2.8.1 Except as provided for below or by applicable law, rule or regulation, when a quorum is present at any meeting of the stockholders, any action by the stockholders on a matter except the election of directors shall be approved if approved by the majority of the votes cast. Except as provided below with respect to Contested Elections, each nominee for director shall be elected by the majority of the votes cast (which includes votes withheld) with respect to that nominee's election at any meeting for the election of directors at which a quorum is present. Directors shall be elected by a plurality of the votes cast in any Contested Election. For purposes of these Bylaws, a "**Contested Election**" means an election of directors with respect to which, as of five days prior to the date the Corporation first mails the notice of meeting for such meeting to stockholders, there are more nominees for election than positions on the Board of Directors to be filled by election at the meeting. In determining the number of votes cast in a Contested Election, abstentions and broker non-votes, if any, will not be treated as votes cast. The provisions of this paragraph will govern with respect to all votes of stockholders except as otherwise provided for (i) in the Certificate of Incorporation, (ii) by a specific statutory provision superseding the provisions of these Bylaws, or (iii) in the EHA.

Section 2.8.2 Every stockholder having the right to vote shall be entitled to vote in person, or by proxy: (a) appointed by an instrument in writing subscribed by such stockholder or by his or her duly authorized attorney or (b) authorized by the transmission of an electronic record by the stockholder to the person who will be the holder of the proxy or to a firm which solicits proxies or like agent who is authorized by the person who will be the holder of the proxy to receive the transmission subject to any procedures the Board of Directors may adopt from time to time to determine that the electronic record is authorized by the stockholder; *provided, however,* that no such proxy shall be valid after the expiration of six (6) months from the date of its execution, unless coupled with an interest, or unless the person executing it specifies therein the length of time for which it is to continue in force,

which in no case shall exceed seven (7) years from the date of its execution. If such instrument or record shall designate two (2) or more persons to act as proxies, unless such instrument shall provide the contrary, a majority of such persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one (1) be present, then such powers may be exercised by that one (1). Unless required by the DGCL or determined by the Chairman of the meeting to be advisable, the vote on any matter need not be by written ballot. No stockholder shall have cumulative voting rights.

SECTION 2.9. Consent of Stockholders. Whenever the vote of the stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, the meeting and vote of stockholders may be dispensed with if stockholders, having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, consent in writing to such corporate action being taken; provided, that in no case shall the written consent be by the holders of stock having less than the minimum percentage of the vote required by the DGCL. Any action by consent of the stockholders pursuant to this Section 2.9 must follow the notice and timing procedures of Section 2.5 applicable to any business to be conducted at a stockholder meeting. Further, upon the request of a stockholder to conduct a consent solicitation, the Board of Directors shall adopt a resolution fixing a record date within ten (10) days of the date on which a request therefor is received, provided that such record date shall not be more than ten (10) days after the date of the adoption of such resolution. Notwithstanding anything to the contrary contained in these Bylaws, any action by consent of the stockholders contemplated by the EHA shall not be subject to any of the requirements of, or procedures set forth in, Section 2.5 or Section 2.6 of these Bylaws.

SECTION 2.10. Voting of Stock of Certain Holders. Shares standing in the name of another entity, domestic or foreign, may be voted by such officer, agent or proxy as the governing documents of such entity may prescribe, or in the absence of such provision, as the board of directors or governing body of such entity may determine. Shares standing in the name of a deceased person may be voted by the executor or administrator of such deceased person, either in person or by proxy. Shares standing in the name of a guardian, conservator or trustee may be voted by such fiduciary, either in person or by proxy, but no such fiduciary shall be entitled to vote shares held in such fiduciary capacity without a transfer of such shares into the name of such fiduciary. Shares outstanding in the name of a receiver may be voted by such receiver. A stockholder whose shares are pledged shall be entitled to vote such shares, unless in the transfer by the pledgor on the books of the Corporation, he or she has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his or her proxy, may represent the stock and vote thereon.

SECTION 2.11. Treasury Stock. The Corporation shall not vote, directly or indirectly, shares of its own stock owned by it; and such shares shall not be counted in determining the total number of outstanding shares.

SECTION 2.12. Fixing Record Date. The Board of Directors may fix in advance a date for any meeting of stockholders (which date shall not be more than sixty (60) nor less than ten (10) days preceding the date of any such meeting of stockholders), a date for payment of any dividend or distribution, a date for the allotment of rights, a date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining a consent of stockholders (which date shall not precede or be more than ten (10) days after the date the resolution setting such record date is adopted by the Board of Directors), in each case as a record date (the "**Record Date**") for the determination of the stockholders entitled to notice of, and to vote at, any such meeting and any adjournment thereof, to receive payment of any such dividend or distribution, to receive any such allotment of rights, to exercise the rights in respect of any such change, conversion or exchange of capital

stock, or to give such consent, as the case may be. In any such case such stockholders and only such stockholders as shall be stockholders of record on the Record Date shall be entitled to such notice of and to vote at any such meeting and any adjournment thereof, to receive payment of such dividend or distribution, to receive such allotment of rights, to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such Record Date. Notwithstanding anything to the contrary contained in these Bylaws, (a) the Board of Directors shall fix a Record Date for an EHA Special Meeting no more than ten (10) days preceding the date of such EHA Special Meeting and (ii) the provisions of this Section 2.12 shall not apply to any action by consent of the stockholders contemplated by the EHA.

SECTION 2.13. Inspectors. The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors. Notwithstanding anything to the contrary contained in these Bylaws, the chairman of an EHA Special Meeting shall have the exclusive right to appoint one or more inspectors for such EHA Special Meeting.

ARTICLE 3
BOARD OF DIRECTORS

SECTION 3.1. Powers. The business, properties and affairs of the Corporation shall be managed by, or under the direction of, its Board of Directors, 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 Bylaws directed or required to be exercised or done by the stockholders. Subject to compliance with the provisions of the DGCL, the powers of the Board of Directors shall include the power to make a liquidating distribution of the assets, and wind up the affairs of, the Corporation.

SECTION 3.2. Number, Qualifications Term.

Section 3.2.1 The number of directors which shall constitute the whole Board of Directors shall be not less than one (1) and not more than nine (9). Within the limits above specified, the number of the directors of the Corporation shall be determined solely in the discretion of the Board of Directors; provided, however, that such determination shall require the unanimous approval of the Board of Directors until the Voting Rights Termination Date (as defined in the EHA). Directors need not be residents of Delaware or stockholders of the Corporation. Each director shall be at least eighteen (18) years of age.

Section 3.2.2 Directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier death, incapacity, resignation or removal. No decrease in the number of directors shall shorten the term of any incumbent director.

SECTION 3.3. Vacancies, Additional Directors; Removal From Office; Resignation. If any vacancy occurs in the Board of Directors caused by death, resignation, retirement, disqualification, removal from office or otherwise, or if any new directorship is created by an increase in the authorized number of directors, a majority of the directors then in office, though less than a quorum, or a sole remaining director, but not the stockholders of the Corporation, may choose a successor or fill the newly created directorship; provided, however, that any vacancy arising from the removal of a director by MPV under or pursuant to the EHA shall be filled in accordance with the EHA, including, without limitation, through an action by written consent of the stockholders or at an EHA Special Meeting. Any director so chosen shall hold office for the unexpired term of his or her predecessor in his or her office and until his or her successor shall be elected and qualified, unless sooner displaced. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Any director, or the entire Board of Directors, may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, provided such action is taken in accordance with the provisions of Article 2 hereof or as otherwise set forth in the EHA. Any director may resign or voluntarily retire upon giving written notice to the Chairman of the Board or the Board of Directors. Any retirement or resignation of a director shall be effective upon the giving of the notice, unless the notice specifies a later time for its effectiveness. If such retirement or resignation is effective at a future time, the Board of Directors may elect a successor to take office when the retirement or resignation becomes effective.

SECTION 3.4. Regular Meetings. A regular meeting of the Board of Directors shall be held each year, without notice other than this Bylaw provision, at the place of, and immediately prior to and/or following, the annual meeting of stockholders; and other regular meetings of the Board of Directors shall be held during each year, at such time and place as the Board of Directors may from time to time provide by resolution, either within or without the State of Delaware, without other notice than such resolution.

SECTION 3.5. Special Meeting. A special meeting of the Board of Directors may be called by the Chairman of the Board or by the President and shall be called by the Secretary on the written request of a majority of the directors. The Chairman of the Board or President so calling, or the directors so requesting, any such meeting shall fix the time and any place, either within or without the State of Delaware, as the place for holding such meeting.

SECTION 3.6. Notice of Special Meeting. Written notice (including via email) of special meetings of the Board of Directors shall be given to each director at least twenty-four (24) hours prior to the time of a special meeting. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting solely for the purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting, except that notice shall be given with respect to any matter when notice is required by the DGCL.

SECTION 3.7. Quorum. A majority of the Board of Directors then serving shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the act of a majority of the directors present at any meeting at which there is quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by the DGCL, by the Certificate of Incorporation or by

these Bylaws. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved of by at least a majority of the required quorum for that meeting.

SECTION 3.8. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof as provided in Article 4 of these Bylaws, may be taken without a meeting, if a written consent thereto is signed by all of the members of the Board of Directors or of such committee, as the case may be. Evidence of any consent to action under this Section 3.8 may be provided in writing, including electronically via email or facsimile.

SECTION 3.9. Meeting by Telephone. Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken by means of a meeting by telephone conference or similar communications method (including by means of the Internet) so long as all persons participating in the meeting can hear each other. Any person participating in such meeting shall be deemed to be present in person at such meeting.

SECTION 3.10. Compensation. Directors, as such, may receive reasonable compensation for their services, which shall be set by the Board of Directors, and expenses of attendance at each regular or special meeting of the Board of Directors; *provided, however,* that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving additional compensation therefor. Members of special or standing committees may be allowed like compensation for their services on committees.

SECTION 3.11. Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation and also of its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney and includes the right to copy and obtain extracts.

ARTICLE 4
COMMITTEES OF DIRECTORS

SECTION 4.1. Generally. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more additional special or standing committees, each such additional committee to consist of one or more of the directors of the Corporation. Each such committee shall have and may exercise such of the powers of the Board of Directors in the management of the business and affairs of the Corporation as may be provided in such resolution, except as delegated by these Bylaws or by the Board of Directors to another standing or special committee or as may be prohibited by law.

SECTION 4.2. Committee Operations. A majority of a committee shall constitute a quorum for the transaction of any committee business. Such committee or committees shall have such name or names and such limitations of authority as provided in these Bylaws or as may be determined from time to time by resolution adopted by the Board of Directors. The Corporation shall pay all expenses of committee operations. The Board of Directors may designate one or more appropriate 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 any members of such committee or committees, 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 appropriate member of the Board of Directors to act at the meeting in the place of any absent or disqualified member.

SECTION 4.3. Minutes. Each committee of directors shall keep regular minutes of its proceedings and report the same to the Board of Directors when required. The Corporation's Secretary, any Assistant Secretary or any other designated person shall (a) serve as the Secretary of the special or standing committees of the Board of Directors of the Corporation, (b) keep regular minutes of standing or special committee proceedings, (c) make available to the Board of Directors, as required, copies of all resolutions adopted or minutes or reports of other actions recommended or taken by any such standing or special committee and (d) otherwise as requested keep the members of the Board of Directors apprised of the actions taken by such standing or special committees.

ARTICLE 5
NOTICE

SECTION 5.1. Methods of Giving Notice.

SECTION 5.1.1. Notice to Directors or Committee Members. Whenever under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, notice is required to be given to any director or member of any committee of the Board of Directors, personal notice is not required but such notice may be: (a) given in writing and mailed to such director or committee member, (b) sent by electronic transmission (including via e-mail) to such director or committee member, or (c) given orally or by telephone; *provided, however,* that any notice from a stockholder to any director or member of any committee of the Board of Directors must be given in writing and mailed to such director or member and shall be deemed to be given upon receipt by such director or member. If mailed, notice to a director or member of a committee of the Board of Directors shall be deemed to be given when deposited in the United States mail first class, or by overnight courier, in a sealed envelope, with postage thereon prepaid, addressed, to such person at his or her business address. If sent by electronic transmission, notice to a director or member of a committee of the Board of Directors shall be deemed to be given if by (i) facsimile transmission, when receipt of the fax is confirmed electronically, (ii) electronic mail, when delivered to an electronic mail address of the director or member, (iii) a posting on an electronic network together with a separate notice to the director or member of the specific posting, upon the later of (1) such posting and (2) the giving of the separate notice (which notice may be given in any of the manners provided above), or (iv) any other form of electronic transmission, when delivered to the director or member.

SECTION 5.1.2. Notices to Stockholders. Whenever under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, notice is required to be given to any stockholder, personal notice is not required but such notice may be given: (a) in writing and mailed to such stockholder, (b) by a form of electronic transmission consented to by the stockholder to whom the notice is given or (c) as otherwise permitted by the SEC. If mailed, notice to a stockholder shall be deemed to be given when deposited in the United States mail in a sealed envelope, with postage thereon prepaid, addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation. If sent by electronic transmission, notice to a stockholder shall be deemed to be given if by (i) facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (ii) electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (iii) a posting on an electronic network together with a separate notice to the stockholder of the specific posting, upon the later of (1) such posting and (2) the giving of the separate notice (which notice may be given in any of the manners provided above), or (iv) any other form of electronic transmission, when directed to the stockholder.

SECTION 5.2. Written Waiver. Whenever any notice is required to be given by the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in a signed writing or sent by the transmission of an electronic record attributed to the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

SECTION 5.3. Consent. Whenever all parties entitled to vote at any meeting, whether of directors or stockholders, consent, either by a writing on the records of the meeting or filed with the Secretary, or by presence at such meeting and oral consent entered on the minutes, or by taking part in the deliberations at such meeting without objection, the actions taken at such meeting shall be as valid as if had at a meeting regularly called and noticed. At such meeting any business may be transacted which is not excepted from the written consent or to the consideration of which no objection for lack of notice is made at the time, and if any meeting be irregular for lack of notice or such consent, provided a quorum was present at such meeting, the proceedings of such meeting may be ratified and approved and rendered valid and the irregularity or defect therein waived by a writing signed by all parties having the right to vote thereat. Such consent or approval, if given by stockholders, may be by proxy or power of attorney, but all such proxies and powers of attorney must be in writing.

ARTICLE 6
OFFICERS

SECTION 6.1. Officers. The officers of the Corporation shall include the Chairman of the Board, the President, the Treasurer and the Secretary. The officers of the Corporation may include a Chief Financial Officer and such other officers and agents with such titles as the Board of Directors may prescribe, including, without limitation, one or more Vice Presidents of any class or designation, Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers. All officers of the Corporation shall hold their offices for such terms and shall exercise such powers and perform such duties as prescribed by these Bylaws, the Board of Directors or President, as applicable. Any two or more offices may be held by the same person. The Chairman of the Board shall be elected from among the directors. No officer need be a director or a stockholder of the Corporation. The Board of Directors may delegate to any officer of the Corporation the power to appoint other officers and to prescribe their respective duties and powers.

SECTION 6.2. Election and Term of Office. The President, Chairman of the Board, Treasurer and Secretary shall be elected only by, and shall serve only at the pleasure of, the Board of Directors. All other officers of the Corporation may be appointed as the Board of Directors or the Chairman of the Board or President deem necessary and elect or appoint. The officers of the Corporation shall be elected or ratified annually by the Board of Directors at its first regular meeting held after the annual meeting of stockholders or as soon thereafter as conveniently possible (or, in the case of those officers elected or appointed other than by the Board of Directors, ratified at the Board of Directors' first regular meeting held following their election or appointment or as soon thereafter as conveniently possible). Each officer shall hold office until his or her successor shall have been chosen and shall have qualified or until his or her death or the effective date of his or her resignation or removal, or until he or she shall cease to be a director in the case of the Chairman of the Board.

SECTION 6.3. Removal and Resignation. Any officer or agent of the Corporation may be removed, either with or without cause, by the affirmative vote of a majority of the Board of Directors and, other than the Chairman of the Board, the Chief Executive Officer (should one be serving) and the President, may also be removed, either with or without cause, by action of the Chairman of the Board, the Chief Executive Officer or the President whenever, in his, her or their judgment, as applicable, the best interests of the Corporation shall be served thereby, but such right of removal and any purported removal shall be without prejudice to the contractual rights, if any, of the person so removed. Any executive

officer or other officer or agent may resign at any time by giving written notice to the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Notwithstanding anything the contrary contained in these Bylaws, the Chairman of the Board may be removed, or caused to resign, pursuant to the EHA or any written agreement between the Chairman of the Board and the Corporation.

SECTION 6.4. Vacancies. Any vacancy occurring in any required office of the Corporation by death, resignation, removal or otherwise, shall be filled by the Board of Directors for the unexpired portion of the term. Any vacancy in any other office may be filled as the Board of Directors, the Chairman of the Board or President deem necessary.

SECTION 6.5. Compensation. The compensation of the President shall be determined by the Board of Directors or a designated committee thereof. Compensation of all other officers of the Corporation shall be determined by the President in consultation with the Board of Directors or a designated committee thereof. No officer who is also a director shall be prevented from receiving such compensation by reason of his or her also being a director.

SECTION 6.6. Chairman of the Board. Except as set forth in these Bylaws, the Chairman of the Board (who may also be designated as Executive Chairman), if such an officer be elected, shall preside at all meetings of the Board of Directors and of the stockholders of the Corporation. In the Chairman of the Board's absence, such duties shall be attended to by any vice chairman of the Board of Directors, or if there is no vice chairman, or such vice chairman is absent, then by the President. The Chairman of the Board shall act as liaison between the Board of Directors and the executive officers of the Corporation and shall be responsible for general oversight of such executive officers. The Chairman of the Board may also, but shall not be required to, hold the position of Chief Executive Officer of the Corporation, if so elected or appointed by the Board of Directors. The Chairman of the Board shall formulate and submit to the Board of Directors matters of general policy for the Corporation and shall perform such other duties as usually appertain to the office or as may be prescribed by the Board of Directors. He or she may sign with the President or any other officer of the Corporation thereunto authorized by the Board of Directors certificates for shares of the Corporation, the issuance of which shall have been authorized by resolution of the Board of Directors, and any deeds or bonds, which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof has been expressly delegated or reserved by these Bylaws or by the Board of Directors to some other officer or agent of the Corporation, or shall be required by law to be otherwise executed.

SECTION 6.7. President. The President shall, subject to the oversight by and control of the Board of Directors and the Chairman of the Board, have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President may also, but shall not be required to, hold the position of Chief Executive Officer of the Corporation, if so elected or appointed by the Board of Directors. The President shall keep the Board of Directors and the Chairman of the Board fully informed and shall consult them concerning the business of the Corporation. Subject to the supervisory powers of the Board and the Chairman of the Board, the President may sign with the Chairman of the Board or any other officer of the Corporation thereunto authorized by the Board of Directors, certificates for shares of capital stock of the Corporation, the issuance of which shall have been authorized by resolution of the Board of Directors, and any deeds, bonds, mortgages, contracts, checks, notes, drafts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof has been expressly delegated by these Bylaws or by the Board of Directors to some other officer or agent of the Corporation, or shall be required by law to be otherwise executed. In general, he or she shall perform all other duties normally incident to the office of the President, except any duties expressly delegated to other persons by these Bylaws, the Board of Directors and such other duties as may be prescribed by the stockholders, Chairman of the Board or the Board of Directors from time to time.

SECTION 6.8. Chief Executive Officer. The Chief Executive Officer, if any, shall, in general, perform such duties as usually pertain to the position of chief executive officer and such duties as may be prescribed by the Board of Directors.

SECTION 6.9. Treasurer. The Treasurer shall (a) have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for monies due and payable to the Corporation from any source whatsoever and deposit all such moneys in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Section 7.3 of these Bylaws; (b) prepare, or cause to be prepared, for submission at each regular meeting of the Board of Directors, at each annual meeting of stockholders, and at such other times as may be required by the Board of Directors, the Chairman of the Board or the President, a statement of financial condition of the Corporation in such detail as may be required; and (c) in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Chairman of the Board, the President or the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

SECTION 6.10. Secretary. The Secretary shall (a) keep the minutes of the meetings of the stockholders, the Board of Directors and committees of directors; (b) see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law; (c) be custodian of the corporate records and of the seal of the Corporation, and see that the seal of the Corporation or a facsimile thereof is affixed to all certificates for shares prior to the issuance thereof and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (d) keep or cause to be kept a register of the post office address of each stockholder which shall be furnished by such stockholder; (e) have general charge of other stock transfer books of the Corporation; and (f) in general, perform all duties normally incident to the office of the Secretary and such other duties as from time to time may be assigned to him or her by the Chairman of the Board, the President or the Board of Directors.

ARTICLE 7
CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

SECTION 7.1. Contracts, etc. Subject to the provisions of Section 6.1 of these Bylaws, the Board of Directors may authorize any officer, officers, agent or agents to enter into and/or execute any and all agreements, deeds, bonds, mortgages, contracts and other obligations or instruments in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

SECTION 7.2. Checks, etc. All checks, demands, drafts or other orders for the payment of money, and notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or such agent or agents of the Corporation, and in such manner, as shall be determined by the Board of Directors.

SECTION 7.3. Bank Accounts and Drafts. In addition to such bank accounts as may be authorized by the Board of Directors, the primary financial officer or any person designated by said primary financial officer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as he or she may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check of the Corporation in accordance with the written instructions of said primary financial officer, or other person so designated by such primary financial officer.

SECTION 7.4. Voting of Securities Owned by Corporation. All stock and other securities of any other corporation owned or held by the Corporation for itself, or for other parties in any capacity, and all proxies with respect thereto shall be executed by the person authorized to do so by resolution of the Board of Directors or, in the absence of such authorization, by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President.

ARTICLE 8
SHARES OF STOCK

SECTION 8.1. Issuance. Each stockholder of the Corporation shall be entitled to a certificate or certificates showing the number of shares of stock registered in his or her name on the books of the Corporation. The certificates shall be in such form as may be determined by the Board of Directors, shall be issued in numerical order and shall be entered in the books of the Corporation as they are issued. They shall exhibit the holder's name and the number of shares and shall be signed by the Chairman of the Board and the President or such other officers as may from time to time be authorized by resolution of the Board of Directors. Any or all the signatures on the certificate may be a facsimile. In case any officer who has signed or whose facsimile signature has been placed upon any such certificate shall have ceased to be such officer before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as if such officer had not ceased to be such officer at the date of its issue. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designation, preferences and relative participating, option or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class of stock; provided that except as otherwise provided by the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish to each stockholder who so requests the designations, preferences and relative participating, option or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and rights. All certificates surrendered to the Corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in the case of a lost, stolen, destroyed or mutilated certificate a new certificate (or uncertificated shares in lieu of a new certificate) may be issued therefor upon such terms and with such indemnity, if any, to the Corporation as the Board of Directors may prescribe. In addition to the above, all certificates (or uncertificated shares in lieu of a new certificate) evidencing shares of the Corporation's stock or other securities issued by the Corporation shall contain such legend or legends as may from time to time be required by the DGCL.

SECTION 8.2. Lost Certificates. The Board of Directors may direct that a new certificate or certificates (or uncertificated shares in lieu of a new certificate) be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates (or uncertificated shares in lieu of a new certificate), the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall require or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate or certificates alleged to have been lost, stolen or destroyed, or both.

SECTION 8.3. Transfers. In the case of shares of stock represented by a certificate, upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Transfers of shares shall be made only on the books of the Corporation by the registered holder thereof, or by his or her attorney thereunto authorized by power of attorney and filed with the Secretary and the Corporation's transfer agent, if any.

SECTION 8.4. Registered Stockholders. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

SECTION 8.5. Uncertificated Shares. The Board of Directors may approve the issuance of uncertificated shares of some or all of the shares of any or all of its classes or series of capital stock.

ARTICLE 9
DIVIDENDS

SECTION 9.1. Declaration. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property or in shares of capital stock, subject to the provisions of the Certificate of Incorporation.

SECTION 9.2. Reserve. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE 10
INDEMNIFICATION

SECTION 10.1. Power to Indemnify in Actions, Suits, or Proceedings Other Than Those By or in the Right of the Corporation Subject to Section 10.3 of this Article 10, the Corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or

proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person (or the legal representative of such person) is or was a director or officer of the Corporation or any predecessor of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director or officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

SECTION 10.2. Power to Indemnify in Actions, Suits or Proceedings By or in the Right of the Corporation Subject to Section 10.3 of this Article 10, the Corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person (or the legal representative of such person) is or was a director or officer of the Corporation or any predecessor of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

SECTION 10.3. Authorization of Indemnification. Any indemnification under this Article 10 (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 10.1 or Section 10.2 of this Article 10, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination: (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders (but only if a majority of the directors who are not parties to such action, suit or proceeding, if they constitute a quorum of the Board of Directors, presents the issue of entitlement to indemnification to the stockholders for their determination). Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

SECTION 10.4. Good Faith Defined. For purposes of any determination under Section 10.3 of this Article 10, to the fullest extent permitted by applicable law, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 10.4 shall mean any other Corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 10.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 10.1 or 10.2 of this Article 10, as the case may be.

SECTION 10.5. Indemnification By a Court. Notwithstanding any contrary determination in the specific case under Section 10.3 of this Article 10, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery in the State of Delaware for indemnification to the extent otherwise permissible under Sections 10.1 and 10.2 of this Article 10. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 10.1 or 10.2 of this Article 10, as the case may be. Neither a contrary determination in the specific case under Section 10.3 of this Article 10 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 10.5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

SECTION 10.6. Expenses Payable in Advance. To the fullest extent not prohibited by the DGCL, or by any other applicable law, expenses incurred by a person who is or was a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding; *provided, however*, that if the DGCL requires, an advance of expenses incurred by any person in his or her capacity as a director or officer (and not in any other capacity) shall be made only upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article 10.

SECTION 10.7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article 10 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 10.1 and 10.2 of this Article 10 shall be made to the fullest extent permitted by law. The provisions of this Article 10 shall not be deemed to preclude the

indemnification of any person who is not specified in Section 10.1 or 10.2 of this Article 10 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

SECTION 10.8. Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was a director, officer, employee or agent of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article 10.

SECTION 10.10. Certain Definitions. For purposes of this Article 10, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and 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 interests of the Corporation" as referred to in this Article 10.

SECTION 10.10. Survival of Indemnification and Advancement of Expenses. The rights to indemnification and advancement of expenses conferred by this Article 10 shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, administrators and other personal and legal representatives of such a person.

SECTION 10.11. Limitation on Indemnification Notwithstanding anything contained in this Article 10 to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 10.5 hereof), the Corporation shall not be obligated to indemnify any director or officer in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors.

SECTION 10.12. Indemnification of Employees and Agents. The Corporation may, but shall not be required to, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article 10 to directors and officers of the Corporation.

SECTION 10.13. Effect of Amendment or Repeal. Neither any amendment or repeal of any Section of this Article 10, nor the adoption of any provision of the Certificate of Incorporation or the Bylaws inconsistent with this Article 10, shall adversely affect any right or protection of any director, officer, employee or other agent established pursuant to this Article 10 existing at the time of such amendment, repeal or adoption of an inconsistent provision, including without limitation by eliminating or reducing the effect of this Article 10, for or in respect of any act, omission or other matter occurring, or any action or proceeding accruing or arising (or that, but for this Article 10, would accrue or arise), prior to such amendment, repeal or adoption of an inconsistent provision.]

ARTICLE 11
MISCELLANEOUS

SECTION 11.1. Books. The books of the Corporation may be kept within or without the State of Delaware (subject to any provisions contained in the DGCL) at such place or places as may be designated from time to time by the Board of Directors.

SECTION 11.2. Fiscal Year. The fiscal year of the Corporation shall be such fiscal year as may be designated by the Board of Directors.

SECTION 11.3. Ratification. Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non-disclosure, miscomputation or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

ARTICLE 12
AMENDMENTS

The stockholders of the Corporation may alter, amend, repeal or remove any Bylaw only by the affirmative vote of the stockholders owning a majority of the entire capital stock of the Corporation issued and outstanding and entitled to vote at a meeting of the stockholders, duly called*; provided, however,* that no such change to any Bylaw shall alter, modify, waive, abrogate or diminish the Corporation's obligation to provide the indemnity called for by Article 10 of these Bylaws, the Certificate of Incorporation or applicable law. Except as set forth in the Certificate of Incorporation, and subject to the laws of the State of Delaware, the Board of Directors may, by majority vote of those present at any meeting at which a quorum is present, alter, amend or repeal these Bylaws, or enact such other Bylaws as in their judgment may be advisable for the regulation of the conduct of the affairs of the Corporation. For the avoidance of doubt, the Board of Directors may not, without the prior written consent of MPV, (i) alter, amend, change, add to, repeal, impair or diminish, in any way, any provision of these Bylaws referencing or pertaining to the EHA or (ii) otherwise make any amendment, or add any provision, to these Bylaws that would impair or diminish, in any way, any right of MPV under the EHA.

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