

THIRD
AMENDED AND RESTATED
BY-LAWS
OF
MGM HOLDINGS INC.
A Delaware Corporation
Effective: [], 2010

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
<u>OFFICES</u>	
<u>Registered Office</u>	1
<u>Other Offices</u>	1
ARTICLE II	
<u>MEETINGS OF STOCKHOLDERS</u>	
<u>Place of Meetings</u>	1
<u>Annual Meetings</u>	1
<u>Special Meetings</u>	1
<u>Notice</u>	2
<u>Adjournments</u>	2
<u>Quorum</u>	3
<u>Voting</u>	3
<u>Proxies</u>	3
<u>Consent of Stockholders in Lieu of Meeting</u>	4
<u>Action by Telegram, Cablegram or Other Electronic</u>	
<u>Transmission</u>	5
<u>List of Stockholders Entitled to Vote</u>	5
<u>Record Date</u>	6
<u>Stock Ledger</u>	6
<u>Conduct of Meetings</u>	6
<u>Meeting by Remote Communication</u>	7
<u>Actions Requiring Stockholder Approval</u>	7
ARTICLE III	
<u>DIRECTORS</u>	
<u>Number and Election of Directors</u>	8
<u>Vacancies</u>	9
<u>Duties and Powers</u>	10
<u>Annual Meeting of the Board of Directors</u>	10
<u>Meetings and Notice</u>	10
<u>Quorum and Required Vote and Adjournment</u>	10
<u>Decisions Requiring Approval of a Majority of the Board</u>	11
<u>Decisions Requiring the Approval of a Supermajority of the</u>	
<u>Board</u>	13
<u>Decisions Requiring Non-Executive Director Approval</u>	14
<u>Resignations and Removals of Directors</u>	14

<u>Actions of the Board by Written Consent</u>	15
<u>Meetings by Means of Conference Telephone</u>	15
<u>Independent Directors</u>	15
<u>Lead Director</u>	15
<u>Chairman of the Board of Directors</u>	16
<u>Committees</u>	16
<u>Compensation</u>	18
<u>Interested Directors</u>	18

ARTICLE IV OFFICERS

<u>General</u>	19
<u>Election, Removal, Resignation and Compensation</u>	19
<u>Voting Securities Owned by the Corporation</u>	19
<u>Chief Executive Officer</u>	19
<u>Presidents</u>	20
<u>Chief Operating Officer</u>	20
<u>Chief Financial Officer</u>	20
<u>Vice Presidents</u>	20
<u>Secretary</u>	20
<u>Assistant Secretaries</u>	21
<u>Assistant Treasurers</u>	21
<u>Other Officers</u>	21

ARTICLE V STOCK

<u>Form</u>	22
<u>Lost Certificates</u>	22
<u>Transfers</u>	23
<u>Dividend Record Date</u>	23
<u>Record Owners</u>	23
<u>Transfer and Registry Agents</u>	23
<u>Copies of Restrictions</u>	23

ARTICLE VI NOTICES

<u>Notices</u>	24
<u>Waivers of Notice</u>	24

ARTICLE VII GENERAL PROVISIONS

<u>Dividends</u>	25
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<u>Disbursements</u>	25
<u>Fiscal Year</u>	25
<u>Corporate Seal</u>	25

ARTICLE VIII INDEMNIFICATION

<u>Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation</u>	26
<u>Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation</u>	27
<u>Authorization of Indemnification</u>	28
<u>Good Faith Defined</u>	28
<u>Indemnification Against Expenses of Successful Party</u>	28
<u>Indemnification by a Court</u>	29
<u>Nonexclusivity of Indemnification and Advancement of Expenses</u>	29
<u>Insurance</u>	29
<u>Certain Definitions</u>	30
<u>Continuing Obligation</u>	30

ARTICLE IX AMENDMENTS

<u>Amendments</u>	30
<u>Restrictions</u>	31

ARTICLE X MISCELLANEOUS

<u>Inconsistent Provisions</u>	32
<u>Capitalized Terms</u>	32
<u>Significant Stockholder Information Rights</u>	32

List of Exhibits

Exhibit A Definitions

THIRD
AMENDED AND RESTATED
BY-LAWS
OF
MGM HOLDINGS INC.
(hereinafter called the “Corporation”)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the Corporation shall be in the City of Wilmington, County of Newcastle, State of Delaware. The registered office of the Corporation may be changed from time to time by action of the board of directors of the Corporation (the “Board of Directors”).

Section 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.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. The Board of Directors may designate any place, either within or without the State of Delaware, and/or by means of remote communication in the manner authorized by the General Corporation Law of the State of Delaware (the “DGCL”), as the place of meeting for any annual meeting or for any special meeting of the stockholders.

Section 2. Annual Meetings. The annual meeting of the stockholders (the “Annual Meeting”) shall be held each year on such date and at such time as shall be designated from time to time by the Board of Directors for the purpose of electing directors and conducting such other proper business as may come before the meeting. The date, time and place, if any, and/or the means of remote communication, of the Annual Meeting shall be determined by the Board of Directors.

Section 3. Special Meetings. Unless otherwise required by law or by the

certificate of incorporation of the Corporation (as amended and restated from time to time, the “Certificate of Incorporation”), a special meeting of the stockholders (a “Special Meeting”) may be called at any time and for any purpose or purposes by either (i) the Board of Directors, (ii) the Lead Director, (iii) the Chairman, if any, (iv) the CEO (or, if there be more than one CEO, any Co-CEO) or (v) the stockholders holding not less than twenty-five percent (25%) of the Corporation’s capital stock issued and outstanding and entitled to vote thereat by written request (the “Request”), which Request (x) may only be provided by a stockholder (or its respective affiliates) participating in such request a maximum of once per year and (y) shall state the purpose or purposes of the meeting and shall be delivered to the Chairman or the Lead Director and the secretary of the Corporation (the “Secretary”). Notwithstanding the foregoing, no Special Meetings may be held to remove (1) the Independent Directors (as defined in Section 13 of Article III) prior to the Annual Meeting to be held in 2012, (2) unless consented to by the applicable Significant Stockholder, a Significant Stockholder Director Designee prior to the earlier of (a) the two (2) year anniversary of the Effective Date and (b) the date on which the Significant Stockholder appointing the applicable Significant Stockholder Director Designee ceases to beneficially own, together with such Significant Stockholder’s Affiliates, at least ten percent (10%) of the issued and outstanding capital stock of the Corporation, or (3) an Executive Director so long as such individual is a CEO of the Corporation. At a Special Meeting, only the business specified in the notice of meeting (or any supplement thereto) shall be conducted. A Special Meeting called pursuant to clause (v) above (A) will be held not more than sixty (60) days or less than forty-five (45) days after the date the Request is delivered in accordance with this Section 3 and (B) may only be adjourned for a period of more than fourteen (14) days or cancelled upon the written consent of the stockholders requesting the meeting (such consent to be granted or withheld in such stockholders’ sole and absolute discretion).

Section 4. Notice. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a Special Meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to notice of and to vote at such meeting.

Section 5. Adjournments. Except as set forth in Section 3 of this Article II, any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place, if any, thereof and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. 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, notice of the adjourned meeting in accordance with the requirements of Section 4 of this Article II shall be given to each stockholder of record entitled to notice of and to vote at the meeting.

Section 6. Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. When a specified item of business requires by applicable law a vote by a class or series (if the Corporation shall then have outstanding shares of more than one class or series) voting as a class or series, the holders of a majority of the shares of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 5 of this Article II, until a quorum shall be present or represented. The quorum requirements set forth herein of all meetings of the stockholders may not be amended, modified, waived or terminated in any manner except in accordance with Article IX.

Section 7. Voting. Unless otherwise required by law, the Certificate of Incorporation, these Third Amended and Restated By-Laws (as amended and restated from time to time in accordance with Article IX, the "By-Laws"), or the Stockholders' Agreement, dated as of [___], 2010, by and among the Corporation and the parties thereto (as may be amended or modified from time to time, the "Stockholders Agreement") (but in the case of the Stockholders' Agreement, only prior to termination thereof in accordance with its terms), any question brought before any meeting of the stockholders, other than the election of directors (which shall be elected by a plurality of votes cast), shall be decided by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented and entitled to vote thereat. Where a separate vote by class or series is required by applicable law, the affirmative vote of the holders of a majority of shares of such class or series present in person or represented by proxy at the meeting shall be the act of such class or series. Subject to Section 12(a) of this Article II and to the provisions of the Stockholders' Agreement prior to termination thereof in accordance with its terms, each stockholder represented at a meeting of the stockholders shall be entitled to cast the number of votes for each share of the capital stock entitled to vote thereat held by such stockholder as set forth in the Certificate of Incorporation. Such votes may be cast in person or by proxy as provided in Section 8 of this Article II. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of the stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 8. Proxies. Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three (3) years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

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

(b) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 9. Consent of Stockholders in Lieu of Meeting. Any action required or permitted to be taken at any Annual or Special Meeting of stockholders of the Corporation (other than the election or removal of a director or directors) may be taken without a meeting and without a vote, if prior notice shall be provided as described in this Section 9, and a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock 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 and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Whenever stockholders take any action by written consent, a written notice shall be promptly given to all stockholders, which shall provide a summary of the action or actions taken by such stockholder consent. Unless otherwise required by law, written notice of any action by written consent shall be given to each stockholder entitled to notice of, and to participate in such consent, not less than two (2) business days prior to the effective date of such consent. The foregoing sentence requiring two (2) business days' prior written notice will no longer apply upon consummation of a Public Offering. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. All consents properly delivered in accordance with this Section 9 shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein

unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 9 to the Corporation, written consents signed by a sufficient number of holders to take such corporate action are so recorded.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

Section 10. Action by Telegram, Cablegram or Other Electronic Transmission. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section 10; provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded.

Section 11. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided

with the notice of the meeting.

Section 12. Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, which consent is requested by the Board of Directors, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors or if the stockholders consent to corporate action in writing without a meeting is requested by the stockholders, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 13. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 11 of this Article II or the books of the Corporation or to vote in person or by proxy at any meeting of the stockholders.

Section 14. Conduct of Meetings. The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate, provided that the Board of Directors shall have no authority to adopt any rules or regulations inconsistent with the provisions of the Certificate

of Incorporation, these By-Laws or the Stockholders' Agreement. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the Chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such Chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the Chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the Chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

Section 15. Meeting by Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders not physically present at a meeting of stockholders may, by means of remote communication, participate in a meeting of stockholders and be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication; provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at such meeting by means of remote communication is a stockholder, (ii) the Corporation shall implement reasonable measures to provide such stockholders a reasonable opportunity to participate in such meeting and to vote on matters submitted to the stockholders, including, but not limited to, an opportunity to read or hear the proceedings of such meeting substantially concurrently with such proceedings and (iii) if any stockholder votes or takes other action at such meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 16. Actions Requiring Stockholder Approval. Upon the approval of a requisite vote of the Board of Directors, the following actions to be duly authorized, must also be approved (1) in the instances of clauses (a) and (b) below, by the stockholders in accordance with Section 7 of this Article II at a duly constituted Annual or Special Meeting (or by written consent in lieu thereof in accordance with Section 9 of this Article II) and (2) in the instance of clause (c) below, by the holders of at least a majority of the shares of capital stock of the Corporation represented and entitled to vote thereon at a duly constituted Annual or Special Meeting (or by written consent in lieu thereof in accordance with Section 9 of this Article II), excluding, for the purposes of this clause (2), the vote and the shares of capital stock of the Corporation held by the related-party Significant Stockholder in the transaction and such Significant Stockholders' Affiliates (except that the capital stock of any such Significant Stockholder and its Affiliates may be counted in determining the presence of a quorum at a meeting of the Board of Directors or the stockholders which authorizes the transaction):

(a) an Issuance of Equity Interests of more than five percent (5%) of the issued and outstanding capital stock of the Corporation at such time (without giving effect to

such Issuance), except with respect to an Issuance in connection with (i) the terms of a stock option plan or other equity-based compensation plan of the Corporation or its Subsidiaries that has been approved by the Board of Directors and the Equity Interests issued upon the exchange, exercise or conversion of such Equity Interests, (ii) dividends or distributions of Equity Interests or Other Capital Stock or Other Capital Stock Equivalents to the stockholders ratably on a per share basis pursuant to Section 1 of Article VII hereof, or in connection with a stock split, (iii) a Public Offering or (iv) pursuant to the exchange, exercise or conversion of Equity Interests outstanding prior to such Issuance so long as (x) any such exchange is on a pro rata basis or (y) any such exercise or conversion is completed in accordance with their terms without any amendment or modification prior to or in connection with such Issuance;

(b) a direct or indirect acquisition by the Corporation or its Subsidiaries, in any transaction or series of related transactions, which in accordance with its terms requires either (i) an amount in excess of \$50 million in cash or (ii) if capital stock is to be issued in connection with such acquisition, an Issuance of Equity Interests of more than five percent (5%) of the issued and outstanding capital stock of the Corporation at such time (without giving effect to such Issuance); provided, that the foregoing shall not apply to (x) acquisitions that do not require Board of Director approval under Section 8(c) of Article III or (y) other acquisitions of motion pictures, television programs and other intellectual property in the ordinary course of business for which the approval of the Board of Directors has been obtained, if required or (z) capital expenditures of the Corporation in the ordinary course (individually or in the aggregate) approved in the Annual Budget; and

(c) a related party transaction between the Corporation and/or its Affiliates, on the one hand, and any Significant Stockholder and/or its Affiliates, on the other hand, in excess of \$50 million in any transaction or series of transactions, whether or not such related party transaction was approved by the disinterested directors on the Board of Directors.

The stockholder approval rights set forth in clauses (a) and (b) of this Section 16 may be terminated upon the consummation of a Public Offering by the approval of a majority of the directors present at a duly constituted meeting of the Board of Directors.

ARTICLE III

DIRECTORS

Section 1. Number and Election of Directors. The Board of Directors shall consist of nine (9) authorized directors. The size of the Board of Directors may be increased or decreased only by the approval of the holders of at least sixty six and two thirds percent (66 2/3%) of the then issued and outstanding shares of capital stock of the Corporation entitled to vote thereon. Subject to the Stockholders' Agreement, prior to its termination, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at each Annual or Special Meeting of the stockholders and entitled to vote in the election of directors in compliance with the provisions of the Stockholders' Agreement (for the

avoidance of doubt, shares of Class B Common Stock of the corporation shall not have any voting rights with respect to the election of directors). Each director so elected shall hold office until the next Annual Meeting of stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Directors need not be stockholders. No advance notice requirement for director nominations or to bring any action before a meeting of stockholders may be adopted without the approval of at least a majority of the then issued and outstanding shares of capital stock of the Corporation entitled to vote thereon.

Section 2. Vacancies.

(a) Except as expressly set forth in this Section 2, vacancies arising through death, resignation, removal or otherwise on the Board of Directors may be filled with a director nominated by a majority of the Board of Directors (or, alternatively, a nominee proposed by the stockholders) and elected by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented and entitled to vote thereon at a duly constituted Annual or Special Meeting; provided, that an Independent Director shall be replaced with a director that meets the requirements of an "Independent Director" as set forth in Section 13 if, after giving effect to such replacement there would be less than three (3) Independent Directors on the Board of Directors; provided, further, that there shall be at least one (1) Non-Executive Director (including a Significant Stockholder Director Designee) on the Board of Directors that has significant experience in the entertainment industry; provided that, for the avoidance of doubt, no Significant Stockholder Director Designee shall be required to have experience in the entertainment industry. Any replacement directors so chosen shall hold office until the next Annual Meeting or until their successors are duly elected and qualified, or until their earlier death, resignation or removal.

(b) Any vacancies of an Independent Director that is not a Significant Stockholder Director Designee on the Board of Directors prior to the Annual Meeting to be held in 2012 will be filled with an Independent Director nominated by a majority of the Non-Executive Directors on the Board of Directors and elected by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented and entitled to vote thereon at a duly constituted Annual or Special Meeting.

(c) A Significant Stockholder, and only a Significant Stockholder, may appoint, remove and/or replace its Significant Stockholder Director Designee upon providing written notice of such appointment, removal or replacement to the Board of Directors until the earlier of (i) the two (2) year anniversary of the Effective Date and (ii) the date on which the applicable Significant Stockholder appointing such director ceases to beneficially own, together with such Significant Stockholder's Affiliates, at least ten percent (10%) of the issued and outstanding capital stock of the Corporation.

(d) Notwithstanding anything in these By-Laws to the contrary, any directors nominated by the Board of Directors or designated by a Significant Stockholder to replace a director on the Board of Directors shall be nominated or designated after full, timely and meaningful consultation with the Executive Directors. For the avoidance of doubt, the foregoing

consultation rights of the Executive Directors shall in no way be construed or expanded in any way to entitle the Executive Directors to an approval, veto or other similar right over the nomination, designation or appointment of a director on the Board of Directors.

Section 3. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which, subject to the provisions set forth in the Stockholders' Agreement prior to termination thereof in accordance with its terms, 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, by the provisions of the Stockholders' Agreement prior to termination thereof in accordance with its terms or by these By-Laws required to be exercised or done by or with the consent of the stockholders.

Section 4. Annual Meeting of the Board of Directors. The annual meeting of each newly elected Board of Directors shall be held (with notice as provided under Article VI of these By-Laws) immediately after, and at the same place, if any, as the Annual Meeting.

Section 5. Meetings and Notice. The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, the CEO (or, if there be more than one CEO, any Co-CEO), the Lead Director or by any three (3) directors. Notice of any regular meeting or special meeting ("Board Notice"), stating the place, if any, date and hour of the meeting, shall be given to each director as provided in Article VI not less than three (3) business days prior to the scheduled meeting but subject in any event to Section 6 of this Article III. Any meeting of the Board of Directors may be adjourned from time to time to reconvene at the same or some other place. If a meeting is adjourned, notice of the adjourned meeting in accordance with the requirements stated for special meetings in this Section 5 shall be given to each director unless such meeting was adjourned due to a failure to meet the quorum requirement as set forth in Section 6 of this Article III. No matter will be discussed at any meeting of the Board of Directors if it is not set forth in the Board Notice.

Section 6. Quorum and Required Vote and Adjournment. A quorum of the Board of Directors shall consist of a majority of the directors then in office, such majority to include at least one (1) of the Executive Directors; provided, that, if (i) notice of such meeting has been duly delivered to all Directors at least three (3) business days prior to the scheduled meeting in accordance with the notice procedures set forth in Article VI of these By-Laws, and (ii) the quorum is not present within thirty minutes from the time appointed for the meeting solely because of the absence of an Executive Director, the meeting shall be adjourned and reconvened on the second (2nd) business day after such adjournment at the same time and place (or to such other time or such other place as the other directors may determine with notice thereof delivered to the Co-CEOs at least three (3) business days prior to such adjourned meeting), and, if at such adjourned meeting quorum is not present within thirty minutes from the time appointed for the meeting solely because of the absence of an Executive Director, then the

separate requirement that an Executive Director be present for a quorum of the Board of Directors to be established shall not apply to such adjourned meeting solely for purposes of establishing a quorum. The foregoing quorum requirements and adjournment procedures shall not apply to any meeting of the Board of Directors for which, in the good faith opinion of the directors (other than the Executive Directors), there is a willful or unreasonable failure on the part of the Executive Directors to attend a meeting of the Board of Directors for the purpose of preventing the transaction of business at such meeting, and in such event, the majority of the directors in office shall constitute a quorum of the Board of Directors for such meeting. A quorum must be present at a meeting of the Board of Directors (whether in person or by telephone, videoconference or otherwise) to conduct business. A quorum must exist at all times during any meeting of the Board of Directors, including the reconvening of a meeting previously adjourned, in order for any action taken at such meeting to be valid. The foregoing quorum requirements set forth in this Section 6 of this Article III shall terminate and no longer be valid if there are no Executive Directors on the Board of Directors, in which case, a majority of the directors in office shall constitute a quorum of the Board of Directors.

Other than with respect to decisions set forth in Sections 7, 8 and 9 of this Article III below or as otherwise expressly provided herein, the approval of a majority of directors present at a duly called meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors. Each director shall be entitled to one (1) vote.

Section 7. Decisions Requiring Approval of a Majority of the Board.

Notwithstanding anything herein to the contrary, the following actions shall not be taken by the Corporation without first obtaining the approval of a majority of the entire Board of Directors at a duly called meeting of the Board of Directors at which a quorum is, subject to Section 6 of this Article III, present (or by unanimous written consent of the Board of the Directors in lieu of a meeting in accordance with Section 11 of this Article III) and, as applicable, the requisite approval of stockholders pursuant to Section 16 of Article II:

(a) enter into, in one or a series of transactions, (a) licensing agreements in any or all media (now known or hereafter developed) in the Domestic Territory or any Major International Territory with respect to the Corporation's library of motion pictures, television programs and other intellectual property, in each case, with (i) so-called "base license fees", minimum guarantees, advances and other similar types of fixed consideration during the term thereof (collectively, "Minimum Fees") in excess of \$75 million or (ii) a license term greater than fifteen (15) years, (b) output agreements in any or all media (now known or hereafter developed) in the Domestic Territory or any Major International Territory with respect to the Corporation's newly released motion pictures or television programs or other intellectual property, in each case, with (X) (i) an output term in excess of five (5) years or a license term in excess of fifteen (15) years and (ii) Minimum Fees in excess of \$75 million or (Y) Minimum Fees in excess of \$150 million or (c) sales of library assets or rights, individually or in the aggregate, in each case, with (i) a term greater than twenty-five (25) years or (ii) for consideration in excess of \$75 million; provided, that whether or not such consent is required, the CEOs shall, to the extent practicable, provide to the Board of Directors advance notice and timely and meaningful information regarding all such output, licensing and sale transactions that are material to the Corporation;

(b) (i) spend “going in” US P&A (i.e., for the period prior to and including opening weekend) on a motion picture in excess of \$50 million, unless such US P&A Budget is otherwise set forth with reasonable specificity in the approved Annual Budget for such fiscal year or (ii) adopt a P&A Budget if implementing such decision would require the affirmative waiver of any material term or condition in any credit facility of the Corporation;

(c) commit to deficit finance a television production where the deficit reasonably projected to be assumed by the Corporation is greater than \$200,000 per episode, unless such deficit obligation is set forth with reasonable specificity in the approved Annual Budget of the Corporation for such fiscal year or, if approved in any such Annual Budget, to the extent the proposed deficit is in excess of the amounts budgeted therefor;

(d) cause the Corporation to (a) enter into or amend any employment agreement for an employee that is not included in the then-current Annual Budget and provides for annual compensation (i.e. base salary) in excess of \$400,000 per annum (it being understood and agreed that the CEOs shall have authority, without the approval of the Board of Directors, to enter into or change any employment agreement for an employee that is entitled to annual compensation (i.e. base salary) at or below \$400,000 (subject to the aforementioned restriction) and to terminate the employment of any such employee in their sole discretion); or (b) pay any discretionary bonus to any employee to the extent not included in the then-current Annual Budget; provided, that (i) other than as expressly set forth herein, the CEOs will have general hiring and firing authority over all employees of the Corporation without the need for the approval of the Board of Directors and (ii) the hiring of the Co-President/President of the motion picture department, Co-President/Chief Operating Officer, Chief Financial Officer, head of the television department, head of the digital media department (which may include interactive gaming and/or digital entertainment) (including any replacements thereof) shall require the approval of a majority of the Board of Directors but the CEOs shall have the right to fire any such executives (including any replacements thereof) in their discretion and without the approval of the Board of Directors;

(e) incur any indebtedness for borrowed money or assume, guarantee, endorse or assume other responsibility for the obligations of any other Person, in each case, except for the Corporation’s obligations (a) pursuant to the Exit Financing Credit Agreement, (b) in connection with production/acquisition financing for motion pictures, television programs and other audiovisual programs greenlit by the Greenlight Committee and (c) otherwise in the ordinary course of business, provided that such ordinary-course indebtedness shall not exceed \$100 million;

(f) authorize, adopt or amend any profit sharing, stock-based or equity option plan, other than the Equity Incentive Plan (any amendment, alteration or discontinuation of which, for the avoidance of doubt, shall require the approval of the Board of Directors as set forth herein and in the Equity Incentive Plan);

(g) enter into any affiliate or other “related-party” transactions (including any transaction (which shall include any distribution agreements) between the Corporation and/or any of its Subsidiaries, on the one hand, and any purchaser of an interest in Cypress

Entertainment, Inc. or Garoge, Inc., on the other hand, at any time that Cypress Entertainment, Inc. or Garoge, Inc., as applicable, are controlled (as such term is defined in the definition of “Affiliate” herein) by either or both of the Executive Directors, their respective Affiliates or their respective family trusts or other similar Persons, which shall require the approval of a majority of “disinterested” directors with respect to such matter; and

(h) enter into any transaction with respect to the Issuance of Equity Interests; provided, that any Issuance shall be limited to the amounts determined in good faith by the Board of Directors to be appropriate to satisfy the working capital needs and other corporate purposes of the Corporation (including future acquisitions and investments).

Section 8. Decisions Requiring the Approval of a Supermajority of the Board. Notwithstanding anything herein to the contrary, the following acts shall not be taken by the Corporation without first obtaining the approval of at least two-thirds of the entire Board of Directors at a duly called meeting of the Board of Directors at which a quorum is, subject to Section 6 of this Article III, present (or by unanimous written consent of the Board of Directors in lieu of a meeting in accordance with Section 11 of this Article III) and, as applicable, the requisite approval of stockholders pursuant to Section 16 of Article II:

(a) (i) the adoption of an Annual Budget for a given fiscal year (which shall include (1) an overall operating budget; (2) an overall development budget; (3) an overall production/acquisition budget; (4) an overall P&A/marketing budget; and (5) the target number of motion pictures, television programs and other audiovisual programs to be produced, acquired and/or released in such fiscal year and the target ranges of production budgets and P&A for each anticipated motion picture, television program or other audiovisual programs) and, until such approval is obtained for any fiscal year, no expenditures not previously approved shall be made for any new development or new production projects or (ii) make any material changes to the then-current and approved Annual Budget and business plan of the Corporation and its Subsidiaries included in the Annual Budget;

(b) the creation of or the Issuance of any new class of Equity Interests with rights, preferences or privileges senior to the Common Stock;

(c) a material acquisition or disposition (other than (a) any acquisitions which are entered into pursuant to the Greenlight Committee’s authority and (b) acquisitions or dispositions otherwise in the ordinary course of business, including, without limitation, the acquisition, disposition and exploitation of motion pictures, television programs and other audiovisual content (or any underlying intellectual property));

(d) a merger or consolidation involving, or sale of all or substantially all of the assets of, the Corporation or its Subsidiaries (other than ordinary course development and production subsidiaries);

(e) amendments to or a repeal of any provision of the Certificate of Incorporation or By-Laws;

- (f) conversion of the Corporation into another form of legal entity;
- (g) commencement of any bankruptcy, insolvency, liquidation, dissolution or any similar proceedings, or any corporate action in furtherance thereof, of the Corporation or its Subsidiaries; and
- (h) commencement of an initial Public Offering or filing of a shelf registration of the Corporation or any of its Subsidiaries, subject to the Registration Rights Agreement (it being understood that the Board of Directors, so long as at least two-thirds of the Board of Directors approve such action, shall have the right to cause the Corporation to commence an initial Public Offering or file a shelf registration of the Corporation or any of its Subsidiaries, subject to the Registration Rights Agreement).

Section 9. Decisions Requiring Non-Executive Director Approval.
Notwithstanding anything herein to the contrary, the greenlighting of or the production of a motion picture requiring a net cash investment by the Corporation in the production of such motion picture in excess of \$75 million, which was not included with reasonable specificity in the approved Annual Budget of the Corporation for such applicable fiscal year or, if approved in any such Annual Budget, to the extent such production budget is in excess of the amounts budgeted therefor, shall not be taken by the Corporation or the Greenlight Committee without first obtaining the approval of at least four (4) of the Non-Executive Directors on the Board of Directors at a duly called meeting of the Board of Directors at which a quorum is, subject to Section 6 of this Article III, present (or by unanimous written consent of the Board of Directors in lieu of a meeting in accordance with Section 11 of this Article III).

Section 10. Resignations and Removals of Directors.

(a) Any director of the Corporation may resign at any time, by giving notice in writing or by electronic transmission to the Chairman, the Lead Director or the Secretary. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective.

(b) Except as otherwise required by applicable law, but subject to Section 2.2 of the Stockholders' Agreement (so long as the Stockholders' Agreement is not terminated) and Section 2(c) of this Article III, any or all of the directors (except for an Executive Director) may be removed from office at any time, with cause, and at any duly constituted Annual Meeting or Special Meeting, with or without cause, by a vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented and entitled to vote thereon. Any vacancy on the Board of Directors caused by a removal of a director will be filled in accordance with Section 2 of this Article III.

(c) In the event that an Executive Director ceases to be a CEO, such Executive Director shall immediately resign or be removed in accordance this Section 10. For so long as an Executive Director is a CEO, such individual shall not be removed from the Board of Directors.

Section 11. Actions of the Board by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all of the voting members of the Board of Directors or committee, as the case may be, unanimously consent to such action in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 12. Meetings by Means of Conference Telephone. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 12 shall constitute presence in person at such meeting.

Section 13. Independent Directors. After the Annual Meeting to be held in 2012, the Board of Directors shall at all times be comprised of at least three (3) Independent Directors. An "Independent Director" shall be a Non-Executive Director that has not, within the period commencing five (5) years preceding the appointment of such individual, (i) received remuneration from an Executive Director, a Spyglass Stockholder, a Significant Stockholder or any of their respective Affiliates or an entity at which an Executive Director served as an officer in excess of \$120,000, (ii) served on a board or in an executive or consulting capacity at or subject to the behest, direction or approval of an Executive Director, a Spyglass Stockholder, a Significant Stockholder or any of their respective Affiliates or an entity at which an Executive Director served as an officer, or (iii) any business or personal relationship with an Executive Director, a Spyglass Stockholder, a Significant Stockholder or any of their respective Affiliates that would make such individual be beholden to an Executive Director, a Spyglass Stockholder, a Significant Stockholder or any of their respective Affiliates or otherwise be likely to impair such individual's ability to act in the best interests of the Corporation or its stockholders, in each case as determined by the majority of the other Non-Executive Directors then in office.

Section 14. Lead Director. A Lead Director shall be designated by the Non-Executive Directors from among the Independent Directors. The Lead Director shall (i) preside at all meetings of the stockholders and the Board of Directors, as the case may be; (ii) preside at all executive sessions, if any, of the non-management directors; (iii) determine the frequency and timing of executive sessions, if any, of the non-management directors and report to the CEO (or, if applicable, the Co-CEOs) on all relevant matters arising from those sessions, and shall invite the Chairman and the CEO (or, if applicable, the Co-CEOs) to join the executive session for further discussion as appropriate; (iv) consult with the CEO (or, if applicable, the Co-CEOs) or committee chairs regarding the topics and schedules of the meetings of the Board of Directors and committees, as the case may be, and may supplement such topics and schedules, after prior consultation with, as applicable, the CEO (or, if applicable, the Co-CEOs) or committee chairs; (v) review, comment on and, after prior consultation with, as applicable, the

CEO (or, if applicable, the Co-CEOs) or committee chairs, supplement all Board of Directors and committee meeting agendas and provide meaningful input to management on the agenda and scope and quality of information sent to the Board of Directors; (vi) coordinate the Board of Director's (A) annual performance review of the CEO (or, if applicable, the Co-CEOs) and (B) annual self-assessment and evaluation process, if any; (vii) monitor information provided to the Board of Directors by the Corporation's senior management; and (viii) serve as the point of contact for stockholders to communicate with the Board of Directors.

Section 15. Chairman of the Board of Directors. The Board of Directors may designate a non-executive Chairman from among the Independent Directors, who may be the current Lead Director at such time. If so designated, the Board of Directors shall no longer have a separate Lead Director. The Chairman of the Board of Directors shall preside at all meetings of the stockholders and of the Board of Directors and shall have the duties and powers of the Lead Director enumerated in Section 14 of this Article III above. The Chairman of the Board of Directors shall also perform such other duties and may exercise such other powers, in each case, as are customarily delegated to a non-executive chairman as may from time to time be assigned by these By-Laws or by the Board of Directors.

Section 16. Committees.

(a) The Board of Directors shall designate an audit committee, a compensation committee and a greenlight committee. The Board of Directors may also establish other committees with the unanimous approval of the entire Board of Directors. Each committee shall consist of one or more of the directors of the Corporation; provided, that both of the Executive Directors (and, if there be only one Executive Director, the Executive Director) and no non-Executive Directors shall be appointed to serve on the greenlight committee, and one (1) of the Executive Directors (such individual to be determined by the Executive Directors) shall be appointed to serve on each other committee, with the exception of the audit committee (which shall, among other things, be required to recommend approval of the transactions referred to in Section 7(g) of this Article III) and the compensation committee (which shall, among other things, be required to recommend approval of the transactions referred to in Sections 7(d) and 7(f) of this Article III). Neither the audit committee nor the compensation committee shall include the Executive Directors. The foregoing right of the Executive Directors to serve on a committee of the Board of Directors shall terminate if both of the Executive Directors cease to serve as directors of the Corporation.

(b) The greenlight committee (the "Greenlight Committee") shall be comprised of (i) both of the Executive Directors (and, if there be only one Executive Director, the Executive Director) and (ii) the heads of each of the motion picture, television and digital media (which may include interactive gaming and digital entertainment) departments, if such department heads report directly to the Co-CEOs and, in each case, upon such department head's employment by the Corporation (each such department head being referred to herein as a "Department Head Committee Member"). The Department Head Committee Members and any additional members of senior management designated by the Co-CEOs to attend meetings of the Greenlight Committee shall serve in an advisory capacity only, and such members shall not have the right to vote on any decisions of the Greenlight Committee.

(c) The Greenlight Committee shall be the sole decision-making authority of the Corporation where any decision to (i) acquire a motion picture, television program or other audiovisual program of any kind or nature (which shall include interactive games, digital entertainment and all ancillary rights) or any rights thereto (and determine the acquisition cost therefor), (ii) proceed to production (or co-production) of a motion picture, television program or other audiovisual program (and determine the production budget therefor), or (iii) finance or co-finance any of the foregoing, is made (such decision, a “Greenlight”), in each case, subject only to Sections 7,8 and 9 of this Article III with respect to motion pictures, the Annual Budget and the guidelines of the Greenlight Committee (as more fully described in Exhibit A thereto).

(d) The Greenlight Committee shall also exclusively determine the amount of print and advertising costs and expenses (“P&A”) to be spent on each motion picture and review all P&A budgets (each a “P&A Budget”) for each motion picture, subject only to Section 7(b) of this Article III and the Annual Budget. Similarly, initial marketing expenditures to be paid by the Corporation in connection with the launch of a television program or other audiovisual program shall be determined exclusively by the Greenlight Committee.

(e) A low case performance model, medium case performance model and high case performance model shall be prepared for each motion picture, television program and other audiovisual program, as applicable, and a low case, medium case and high case P&A Budget (if applicable) and marketing and media plan tied to each performance model shall be prepared for each such motion picture or other program (collectively, the “Greenlight Models”). The applicable Greenlight Models shall be prepared in connection with each such program greenlit by the Greenlight Committee and presented to the Greenlight Committee.

(f) Upon the Board of Directors’ request, the Greenlight Committee will provide a Greenlight Package and the Greenlight Models to the Board of Directors for informational purposes (it being understood and agreed that a Greenlight Package shall not be a condition to any such Greenlight decision). Minutes of each Greenlight Committee meeting shall be maintained by a designated member of the Greenlight Committee (or other individual designated by the Co-CEOs (or, if there be one CEO, the CEO)).

(g) Notwithstanding anything to the contrary contained herein, in the event that so-called “hot properties” projects owned or controlled by third parties should require Greenlight decisions to be made within an expedited timeframe, which the Co-CEOs (or, if there be one CEO, the CEO) reasonably determine in good faith does not allow for customary Greenlight Committee procedures (“Exigent Circumstances”), the Co-CEOs shall have the authority to make the Greenlight decision with respect thereto without a formal Greenlight Committee meeting and without preparing a Greenlight Package or Greenlight Models; provided, that (a) a Greenlight Package and Greenlight Models will be prepared following such Greenlight decision and presented to the Greenlight Committee at such time (and thereafter provided to the Board of Directors for informational purposes upon request) and (b) the authority of the Co-CEOs to Greenlight under Exigent Circumstances is subject to any applicable provision in Section 2.4 of the Stockholders’ Agreement prior to termination thereof in accordance with its terms and the approved Annual Budget (the “Exigent Circumstances Exception”).

(h) The Greenlight Committee and the provisions set forth in paragraphs (c) through (h) hereof may be terminated or amended by the Board of Directors if both of the Executive Directors cease to serve as directors of the Corporation.

(i) Except as otherwise required by the Stockholders' Agreement until termination thereof in accordance with its terms, the Board of Directors may designate one or more directors as alternate members of any committee (other than the Greenlight Committee), who may replace any absent or disqualified member at any meeting of any such committee. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 17. Compensation. The Board of Directors shall have the authority to fix the compensation of directors. The Significant Stockholder Director Designees of Anchorage Capital and of Icahn and the Executive Directors shall not receive compensation for serving as directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a reasonable fixed sum for attendance at each meeting of the Board of Directors or a reasonable stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor; provided, that any employee of the Corporation who also serves as a director shall not be entitled to compensation for such services, but shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred in connection with such service. Members of special or standing committees may be allowed like compensation for service as committee members.

Section 18. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IV

OFFICERS

Section 1. General. The officers of the Corporation shall be chosen by a majority of the Board of Directors and shall consist of the Co-CEOs (or, if there be one CEO, the CEO), president, chief operating officer, chief financial officer, vice presidents, secretary and such other officers and assistant officers as may be deemed necessary or desirable by the Board of Directors. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation or directors of the Corporation. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable.

Section 2. Election, Removal, Resignation and Compensation. The Board of Directors, at its first meeting held after each Annual Meeting (or action by written consent of stockholders in lieu of the Annual Meeting), shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors or a Co-CEO (or, if there be one CEO, the CEO). Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by any of the Co-CEOs (or, if there be one CEO, the CEO) or any other officer authorized to do so by the Board of Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chief Executive Officer. The Board of Directors may designate a Chief Executive Officer (or, if applicable, the Co-CEOs). The CEO (or, if applicable, the Co-CEOs) shall have general responsibility for implementation of the policies of the Corporation, as determined by the Board of Directors, and for the management of the business and affairs of the Corporation. The CEO (or, if applicable, the Co-CEOs) shall have the power to execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign

and execute documents when so authorized by these By-Laws, the Board of Directors or the CEO (or, if applicable, the Co-CEOs). In the absence or disability of the Chairman of the Board of Directors (or the Lead Director, as applicable), the CEO (or, if applicable, the Co-CEOs) shall preside at all meetings of the stockholders and, provided such CEO is also a director, the Board of Directors. The CEO (or, if applicable, the Co-CEOs) shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

Section 5. Presidents. The president (or, if there be more than one, the presidents) of the Corporation shall, under the direction of the CEO (or, if applicable, the Co-CEOs), be responsible for certain specified business, affairs and property of the Corporation as determined by the CEO (or, if applicable, the Co-CEOs), and control over the officers, agents and employees in their respective departments and shall see that all orders and resolutions of the Board of Directors are carried into effect. The president (or, if applicable, the co-presidents) of the Corporation shall have such other powers and perform such other duties as may be prescribed by the Board of Directors, the CEO (or, if applicable, the Co-CEOs) or as may be provided in these By-Laws.

Section 6. Chief Operating Officer. The chief operating officer of the Corporation shall, under the direction of the CEO (or, if applicable, the Co-CEOs), be responsible for the general supervision of the management and control of the operations of the Corporation. The chief operating officer of the Corporation shall have such other powers and perform such other duties as may be prescribed by the Board of Directors, the CEOs (or, if applicable, the Co-CEOs) or as may be provided in these By-Laws.

Section 7. Chief Financial Officer. The chief financial officer of the Corporation shall, under the direction of the CEO (or, if applicable, the Co-CEOs), be responsible for all financial and accounting matters and for the direction of the officers of treasurer and controller. The chief financial officer of the Corporation shall have such other powers and perform such other duties as may be prescribed by the Board of Directors, the CEO (or, if applicable, the Co-CEOs) or as may be provided in these By-Laws.

Section 8. Vice Presidents. The vice-president (or if there is more than one, the co-vice presidents) of the Corporation in the order determined by the Board of Directors or by the CEO (or, if applicable, the Co-CEOs), shall, in the absence or disability of the president (or, if applicable, the co-presidents), act with all of the powers and be subject to all the restrictions of the president. The vice-presidents (or, if applicable, the co-vice presidents) of the Corporation shall have such other powers and perform such other duties as the Board of Directors, the CEO (or, if applicable, the Co-CEOs), the president (or, if applicable, the co-presidents) or these By-Laws may, from time to time, prescribe.

Section 9. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and regular and special meetings of the Board of Directors,

and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board of Directors or the CEO (or, if applicable, the Co-CEOs), under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no assistant secretary, then the Board of Directors or the CEO (or, if applicable, the Co-CEOs) may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any assistant secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such assistant secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 10. Assistant Secretaries. Assistant secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the CEO (or, if applicable, the Co-CEOs), any vice president of the Corporation, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 11. Assistant Treasurers. Assistant treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the CEO (or, if applicable, the Co-CEOs), any vice president, if there be one, or the chief financial officer, and in the absence of the chief financial officer or in the event of the chief financial officer's inability or refusal to act, shall perform the duties of the chief financial officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the chief financial officer. If required by the Board of Directors, an assistant treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of assistant treasurer and for the restoration to the Corporation, in case of the assistant treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the assistant treasurer's possession or under the assistant treasurer's control belonging to the Corporation.

Section 12. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors or the CEO (or, if applicable, the Co-CEOs), under whose supervision they shall be. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers. Notwithstanding the foregoing, all officers of the Corporation shall be under the direct or indirect supervision of and report to the CEO (or, if applicable, the Co-CEOs).

ARTICLE V

STOCK

Section 1. Form. Except as otherwise provided in the resolution by the Board of Directors, all shares of capital stock of the Corporation shall be uncertificated. In the event the Board of Directors elects to provide in a resolution that certificates shall be issued to represent any shares of capital stock of the Corporation, such certificates shall signed by, or in the name of the Corporation by (i) a Chairman of the Board of Directors or a president and (ii) by a treasurer or a secretary or an assistant treasurer or assistant secretary of the Corporation, certifying the number of shares of a specific class or series owned by such holder in the Corporation. If such a certificate is countersigned (1) by a transfer agent or an assistant transfer agent other than the Corporation or its employee or (2) by a registrar, other than the Corporation or its employee, the signature of any such Chairman of the Board of Directors, president, treasurer, secretary, assistant treasurer or assistant secretary may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the corporation. If the shares are certificated, all certificates shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the Corporation. Any shares of certificated stock of the Corporation shall only be transferred on the books of the Corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization, and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates, and record the transaction on its books. Uncertificated shares of stock of the Corporation may be transferred on the books of the Corporation upon receipt of proper transfer instructions from the registered owner of the uncertificated shares, an instruction from a source duly authorized by such owner or from an attorney lawfully constituted by such owner. The Board of Directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar, or both in connection with the transfer of any class or series of securities of the Corporation.

Section 2. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate 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, 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 such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require

and/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 on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate.

Section 3. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in the Certificate of Incorporation and these By-Laws and in accordance with the provisions set forth in the Stockholders' Agreement until termination thereof in accordance with its terms. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; provided, however, that such surrender and endorsement or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. Every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or an assistant secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 4. Dividend Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or (subject to Section 12 of Article II hereof) for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, subject to Section 12 of Article II hereof, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 6. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

Section 7. Copies of Restrictions. Pursuant to Section 202 of the DGCL, there shall be conspicuously set forth on the face or back of the certificate that the Corporation shall issue to represent any shares of capital stock, a statement to the effect that the Corporation will furnish without charge to each stockholder who so requests a copy of the relevant restrictions on such shares. Within a reasonable time after the issuance or transfer of shares of uncertificated stock, if any, the Corporation shall send to the registered owner thereof a written

notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the DGCL or a statement to the effect that the Corporation will furnish without charge to each stockholder who so requests a copy of the relevant restrictions on such shares.

ARTICLE VI

NOTICES

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given (a) to the Corporation, such notice may be given by mail, addressed to the Corporation at its principal executive offices, with postage thereon prepaid or (b) to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid; such notice shall be deemed (x) with respect to clause (a), to be given when delivered to the Corporation's principal executive offices and (y) with respect to clause (b), to be given when delivered to such person's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under applicable law, the Certificate of Incorporation or these By-Laws shall be effective if given by a form of electronic transmission if consented to in advance by the stockholder to whom the notice is given in advance of such notice. Any such consent shall be revocable by the stockholder by written notice to the Corporation. In addition, any such consent shall be deemed to be automatically revoked if (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by electronic transmission, as described above, shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by a posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder. Notice to directors or committee members may be given personally or by telegram, telex, cable or by means of electronic transmission and in such cases shall be effective only upon receipt.

Section 2. Waivers of Notice. Whenever any notice is required by applicable law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent

thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any Annual or Special Meeting of stockholders or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these By-Laws.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may (where permitted by the Certificate of Incorporation) and shall (where required by the Certificate of Incorporation) be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 11 of Article III hereof), and may be paid in cash, in property or in shares of the Corporation's capital stock. Any dividends declared by the Board of Directors shall be paid to the stockholders ratably on a per share basis. 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, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

INDEMNIFICATION

Section 1. Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify, in the manner and to the fullest extent permitted by the DGCL (but in the case of any amendment thereto, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto) and, without limiting the foregoing, as required pursuant to any indemnity agreements of the Corporation or any of its Subsidiaries, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation or any of its Subsidiaries (in and to the extent of their capacities as such, and not as stockholders and/or optionholders of the Corporation or its Subsidiaries), or is or was serving at the request of the Corporation or any of its Subsidiaries as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against any costs or expenses (including attorneys' fees and expenses), 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/or its Subsidiaries, as the case may be, and with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The Corporation may indemnify, in the manner and to the fullest extent permitted by the DGCL (but in the case of any amendment thereto, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (other than by or in the right of the Corporation), by reason of the fact that such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation or any of its Subsidiaries as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any costs or expenses (including attorneys' fees and expenses), 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 or 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, that such person had reasonable cause to believe that such person's conduct was unlawful. To the fullest extent permitted by the DGCL, reasonable and documented costs and expenses (including attorneys' fees), judgments or fines incurred by and amounts paid in

settlement by any such director, officer, employee or agent in defending any such action, suit or proceeding, shall (with respect to officers and directors) and may (with respect to other persons) be advanced by the Corporation as incurred prior to the final disposition of such action, suit or proceeding (with advances requested by any such director, officer, employee or agent to be made available by the Corporation promptly after receipt by the Corporation of a written request for such advance); provided, that such director, officer, employee or agent undertakes to repay such advances if it shall ultimately be determined that he or she is not entitled to be indemnified as authorized by the DGCL and this Article VIII.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify, in the manner and to the fullest extent permitted by the DGCL (but in the case of any amendment thereto, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto) and, without limiting the foregoing, as requested pursuant to any indemnity agreements of the Corporation or any of its Subsidiaries, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that such person is or was a director or officer of the Corporation or of any of its Subsidiaries (in and to the extent of their capacities as such, and not as stockholders and/or option-holders of the Corporation or its Subsidiaries), or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against any costs or expenses (including attorneys' fees and expenses) 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 interest of the Corporation and/or its Subsidiaries, as the case may be. The Corporation may indemnify, in the manner and to the fullest extent permitted by the DGCL (but in the case of any amendment thereto, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any costs or expenses (including attorneys' fees and expenses) 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 interest of the Corporation. Notwithstanding anything to the contrary in this Article VIII, Section 2, 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 for negligence or misconduct in the performance of such person's duty to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware 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. To the fullest

extent permitted by the DGCL, reasonable and documented costs and expenses (including attorneys' fees), judgments or fines incurred by and amounts paid in settlement by any such director, officer, employee or agent in defending any such action, suit or proceeding shall (with respect to officers and directors) and may (with respect to other persons) be advanced by the Corporation as incurred prior to the final disposition of such action, suit or proceeding (with advances requested by any such director, officer, employee or agent to be made available by the Corporation promptly after receipt by the Corporation of a written request for such advance); provided, that such director, officer, employee or agent undertakes to repay such advances if it shall ultimately be determined that he or she is not entitled to be indemnified as authorized by the DGCL and this Article VIII.

Section 3. Authorization of Indemnification. Any indemnification under this Article VIII (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 present or former director or officer or the present or former employee or agent (if indemnification is authorized by the Board of Directors), is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made (i) by the Board of Directors 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.

Section 4. Good Faith Defined. For purposes of any determination under Section 3 of this Article VIII, 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 provisions of this Section 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 1 or Section 2 of this Article VIII, as the case may be.

Section 5. Indemnification Against Expenses of Successful Party. Notwithstanding the other provisions of this Article VIII, to the extent that a director or officer, or an employee or agent (if indemnification is authorized by the Board of Directors) of the Corporation or any of its Subsidiaries, or any person that is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or Section 2 of this Article VIII, as the case may be, or in defense of any claim, issue or matter therein, such person shall be indemnified against costs and

expenses (including attorneys' fees and expenses) actually and reasonably incurred by such person in connection therewith.

Section 6. Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director, officer, employee or agent, or any person that is or was serving at the request of the Corporation or any of its Subsidiaries as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 1 or Section 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of such director, officer, employee, agent or other person is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director, officer, employee, agent or such other person seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 6 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director, officer, employee, agent or such other person seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII 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, these By-Laws, any agreement, any 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 and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person, it being the policy of the Corporation that indemnification of the persons specified in Section 1 and Section 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or Section 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

Section 8. Insurance. Upon resolution passed by the Board of Directors, 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 serving at the request of the Corporation or any of its Subsidiaries as a director, officer, employee or agent of another corporation, partnership, joint venture, trust 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 VIII.

Section 9. Certain Definitions. For purposes of this Article VIII, references to “the Corporation” shall include, in addition to the resulting or surviving corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term “other enterprise” as used in this Article VIII 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. For purposes of this Article VIII, references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director or officer, or any employee or agent of the Corporation (if indemnification is authorized by the Board of Directors) which imposes duties on, or involves services by, such director or officer, or employee or agent (if indemnification is authorized by the Board of Directors) 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 VIII. For purposes of this Section 9 of Article VIII, the term “include” shall be deemed to be followed by “but shall not be limited to”.

Section 10. Continuing Obligation. Any amendment, repeal or modification of the foregoing provisions of this Article VIII shall not adversely affect any right or protection of a director, officer, employee or agent, or any person that is or was serving at the request of the Corporation or any of its Subsidiaries as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, existing at the time of, or increase the liability of any director, officer, employee or agent of the Corporation, or such other person, with respect to any acts or omissions of such director, officer, employee, agent or such other person occurring prior to, such amendment, repeal or modification.

ARTICLE IX

AMENDMENTS

Section 1. Amendments. These By-Laws may not be altered, amended or repealed, in whole or in part, nor shall new By-Laws be adopted (A) by the Board of Directors, without obtaining (i) the approval of sixty six and two thirds percent (66 2/3%) of the directors of the Board of Directors at a duly called meeting of the Board of Directors at which a quorum is, subject to Section 6 of Article III, present (or by unanimous written consent of the Board of

Directors in lieu of a meeting), (ii) a written instrument signed by the Corporation and (iii) the approval of at least 66 2/3% of the then issued and outstanding shares of capital stock of the Corporation entitled to vote thereon or (B) by the stockholders, without obtaining the approval of at least 66 2/3% of the then issued and outstanding shares of capital stock of the Corporation entitled to vote thereon, except as otherwise provided in Article III Section 1 and the last sentence of this Section 1; provided, however, in any case and notwithstanding anything to the contrary herein, that for so long as the Spyglass Stockholders and their Affiliates own at least fifty percent (50%) of the issued and outstanding capital stock held by the Spyglass Stockholders on the Effective Date (as appropriately adjusted for share splits and similar events), the consent of the holders of a majority of the issued and outstanding capital stock held by the Spyglass Stockholders shall be required for any amendment to these By-Laws that disproportionately adversely affects the rights or obligations of the Spyglass Stockholders relative to the Original Stockholders (determined solely with regards to rights under the Stockholders' Agreement prior to termination thereof in accordance with its terms or these By-Laws and without regard to personal circumstances); provided, further, in any case and notwithstanding anything to the contrary herein, that (x) any amendment to any of the following provisions of these By-Laws adversely affecting the rights or obligations of any of the Spyglass Stockholders or any of their Affiliates will require the consent of the holders of a majority of the issued and outstanding shares of capital stock then held by the Spyglass Stockholders and their Affiliates: Article II Section 16, Article III Sections 1, 2, 6, 7, 8, 9, 10, 13, 14, 15 and 16 and Article IV Section 5 and this Article IX Section 1, (y) any amendment to Article III Section 2 and this Article IX Section 1 adversely affecting the rights of any Significant Stockholder prior to the two (2) year anniversary of the Effective Date will require the prior unanimous written consent of all of the Significant Stockholders, and (z) (i) Limited Voting Stockholders owning a majority of the then issued and outstanding shares of Limited Voting Common Stock owned by all Limited Voting Stockholders shall be required to approve any amendment affecting the specific rights or obligations of the Limited Voting Common Stock that does not similarly affect the rights or obligations of the Voting Common Stock and (ii) no such amendment shall, without the prior written approval of each Limited Voting Stockholder, terminate, modify or waive a Limited Voting Stockholder's rights or obligations in respect of the conversion of Limited Voting Common Stock into Voting Common Stock. The foregoing consent rights of the Spyglass Stockholders and their Affiliates and the Significant Stockholders pursuant to clauses (x) and (y) above shall automatically terminate upon the consummation of a Public Offering.

Section 2. Restrictions. The Corporation shall not have a classified or staggered board, "blank check preferred stock" or any Poison Pill. The provisions of the previous sentence may only be amended and a classified or staggered board, "blank check preferred stock" or any Poison Pill may only be adopted and authorized by means of an amendment of these By-Laws in accordance with the requirements set forth in Section 1 of this Article IX expressly adopting and authorizing such classified or staggered board, "blank check preferred stock" or Poison Pill.

ARTICLE X

MISCELLANEOUS

Section 1. Inconsistent Provisions. In the event that any provision of these By-Laws conflicts with a provision in the Stockholders' Agreement as in effect on the date of these By-Laws and without giving effect to any amendment or modification thereto prior to termination thereof in accordance with its terms, the provision in the Stockholders' Agreement shall govern, and any inconsistent provision of these By-Laws shall automatically be amended to be consistent with such provision in the Stockholders' Agreement until such time as the Stockholders' Agreement is no longer in effect.

Section 2. Capitalized Terms. Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in Exhibit A attached hereto.

Section 3. Significant Stockholder Information Rights. Any Significant Stockholder Director Designee will be permitted to communicate information regarding the Board of Directors and the Corporation received by such Significant Director Designee in his capacity as a director on the Board of Directors to the Significant Stockholder (or its Affiliate) appointing such designee so long as such Significant Stockholder (or its Affiliate receiving such information) agree to keep such information confidential pursuant to a customary confidentiality agreement with the Corporation, which agreement shall not contain any standstill provisions, and agrees not to share such information with, or use such information for the benefit of, a Company Competitor. The fact that (x) a Significant Stockholder (or its Affiliate(s)) owns any interest in a Company Competitor or (y) an owner, employee, consultant or Affiliate of such Significant Stockholder is a director of a Company Competitor, shall not preclude such Significant Stockholder (or its Affiliates) or director from receiving Board of Director or Corporation information so long as such Persons do not share such information with, disclose such information to, or otherwise use such information for the benefit of a Company Competitor. The rights contained in this Section 3 will terminate with respect to any Significant Stockholder Director Designee (and the related Significant Stockholder and its Affiliates) upon the first material breach (other than an inadvertent breach) by such Significant Stockholder Director Designee or Significant Stockholder (or its Affiliates receiving such information) of this Section 3 or the confidentiality agreement entered into by the related Significant Stockholder (and its Affiliate receiving such information); provided that the determination as to whether a material breach has occurred in connection with this Section 3 shall be made by a majority of the directors at a duly constituted meeting of the Board of Directors for which the relevant Significant Stockholder Director Designee was provided notice thereof and a reasonable opportunity to address the Board of Directors.

* * *

Adopted as of: [____], 2010

Exhibit A

Definitions

“Affiliates” (a) shall mean, with respect to any person, any person that directly or indirectly controls, is controlled by or is under common control with, such person or any Immediate Family of such person; (b) shall also include, with respect to any person who is an individual, a trust, the beneficiaries of which, or a corporation or partnership, the stockholders or partners of which, include only such individual and/or such individual’s Immediate Family; (c) shall also include, with respect to any person, an entity or trust established or utilized for purposes of estate planning for such person; and (d) in the case of a Spyglass Stockholder, without limitation to the foregoing in this definition of “Affiliate”, shall also include any member, shareholder, or partner listed on Schedule B to the Stockholders’ Agreement. For purposes of this definition, the term “control” (including the correlative terms “controlling”, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

“Anchorage Capital” shall mean the following, individually or collectively, (i) Anchorage Capital Master Offshore, Ltd., (ii) PCI Fund L.L.C., (iii) GRF Master Fund, L.P., (iv) Anchorage Illiquid Opportunities Offshore Master, L.P., and (v) Anchorage Illiquid Opportunities Offshore Master II, L.P.

“Annual Budget” shall mean the annual operating budget and business plan for the Corporation and its Subsidiaries, as approved by the Board of Directors in accordance with Section 8(a)(i) of Article III.

“Business Day” shall mean a day other than a Saturday, Sunday, United States federal or New York State holiday or other day on which commercial banks in New York City are authorized or required by law to close.

“CEO” shall mean a chief executive officer of the Corporation.

“Chairman” shall mean the non-executive chairman of the Board of Directors.

“Common Stock” shall mean, collectively, the Voting Common Stock and Limited Voting Common Stock.

“Common Stock Equivalents” shall mean any warrants, rights options or other securities exchangeable or exercisable for, or convertible into, Common Stock.

“Company Competitor” shall mean any Person, together with its Affiliates, that is engaged directly or indirectly in the motion picture, television, interactive video gaming (other than casino gaming) or digital entertainment industry or any other business that directly competes with a material line of the business then conducted by the Corporation or its

Subsidiaries. Whether a Person is a Company Competitor shall be determined by the Board of Directors, acting in good faith.

“Domestic Territory” shall mean the entire territorial United States and Canada and their respective territories, possessions and commonwealths.

“Effective Date” shall mean the effective date of the Plan pursuant to the terms thereof.

“Equity Incentive Plan” shall mean the 2010 MGM Holdings Inc. Stock Incentive Plan adopted by the Corporation, as amended from time to time.

“Equity Interests” shall mean Common Stock, Common Stock Equivalents or any other equity securities of the Corporation, or securities exchangeable or exercisable for, or convertible into, such other equity securities of the Corporation.

“Executive Directors” shall mean Gary Barber and Roger Birnbaum.

“Exit Financing Credit Agreement” shall mean the Credit Agreement, dated on or about the Effective Date, in the principal amount not to exceed \$500,000,000, by and among Metro-Goldwyn-Mayer Inc., as borrower, JP Morgan Chase Bank N.A., as administrative agent, and the other parties thereto, the loan documents under, and as defined in, such Credit Agreement, and all loans and other obligations of the borrower and guarantors under such Credit Agreement and loan documents.

“Governmental Authority” shall mean any government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Greenlight Package” shall refer to, subject to the Exigent Circumstances Exception, a range of factors the Greenlight Committee will consider when making a greenlight decision, including, without limitation, the following (to the extent then available and applicable): (i) an estimated budget; (ii) a proposed director and potential replacements; (iii) proposed key talent and potential replacements; (iv) the Greenlight Model; (v) total of all expected material third party participations and cut-in points; (vi) domestic and international theatrical estimates; (vii) domestic and international home video estimates; (viii) domestic and international TV estimates; (ix) summary of proposed co-financing and other soft money benefits; (x) low, medium and high estimates of projected net film ultimate for the motion picture based on elements of the applicable motion picture.

“Highland Capital” shall mean the following, individually or collectively, (i) Highland Restoration Capital Partners, L.P. and (ii) Highland Restoration Capital Partners Master, L.P.

“Icahn” shall mean, individually or collectively, Carl Icahn, Icahn Capital LP, Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II L.P., Icahn

Partners Master Fund III L.P. and any and all successors of any of the foregoing, of which Carl Icahn or his estate, directly or indirectly, owns at least 80% of the vote and value thereof.

“Immediate Family” shall have the meaning specified in Rule 16a-1 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

“Issuance” shall mean the issuance of additional Equity Interests by the Corporation.

“Limited Voting Common Stock” shall mean the class B common stock, par value \$0.01 per share, of the Corporation.

“Limited Voting Stockholder” shall mean any holder of shares of Limited Voting Common Stock; provided, however, that any reference to a Limited Voting Stockholder shall be made exclusively with respect to the shares of Limited Voting Common Stock held by such Person.

“Major International Territory” shall mean any of Australia, Japan, the United Kingdom, Germany, France, Italy, Spain, Russia, and Latin America, subject to replacement of any of the foregoing in the good faith judgment of the Management Stockholders (and upon written notice to the Board of Directors) based on then-current industry data.

“Management Stockholders” shall mean employees (and their Affiliates) or former employees (and their Affiliates) of the Corporation or its Subsidiaries who hold Equity Interests.

“Non-Executive Directors” shall mean the Directors other than the Executive Directors.

“Original Stockholders” shall mean those certain creditors of the Corporation, together with their permitted transferees, successors and assigns, including those identified on Schedule A-1 of the Stockholders’ Agreement.

“Other Capital Stock” shall mean equity securities of the Corporation other than Common Stock or Common Stock Equivalents.

“Other Capital Stock Equivalents” shall mean any securities exchangeable or exercisable for, or convertible into, Other Capital Stock.

“Person” shall mean any individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, Governmental Authority or other entity of any nature whatsoever.

“Plan” shall mean the Amended Joint Prepackaged Plan of Reorganization confirmed by order dated [●], 2010 of the United States Bankruptcy Court for the Southern

District of New York in the chapter 11 case commenced by the Corporation and certain of its Affiliates.

“Poison Pill” shall mean any plan or arrangement of the sort commonly referred to as a “stockholder rights plan” or “shareholders rights plan” or “poison pill” or any other similar plan, instrument or device that is designed to prevent or make, or has the effect of preventing or making, more difficult a hostile takeover of the Corporation, including by increasing the cost to a potential acquirer of such a takeover either through the issuance of new rights, shares of common stock or preferred stock or any other security or device that may be issued to stockholders of the Corporation other than all stockholders of the Corporation that carry severe redemption provisions, favorable purchase provisions or otherwise.

“Public Offering” shall mean an underwritten public offering and sale of the class A common stock, par value \$0.01 per share, of the Corporation, pursuant to an effective registration statement under the Securities Act.

“Registration Rights Agreement” shall mean that certain Registration Rights Agreement, dated as of [•], among the Corporation and the stockholders named therein or bound thereby, as it may be amended from time to time.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

“Significant Stockholder” shall mean each of (a) Highland Capital, (b) Anchorage Capital and (c) Icahn, in each case until such time after the Effective Date as such Person, together with its Affiliates, no longer beneficially owns at least ten percent (10%) of the issued and outstanding Common Stock of the Corporation.

“Significant Stockholder Director Designee” shall mean, with respect to each Significant Stockholder, the one (1) Non-Executive Director that such Significant Stockholder designated in writing to serve as a director on the Board of Directors and successors thereto designated in writing by the Significant Stockholder; provided, that following the earlier of either (a) the two (2) year anniversary of the Effective Date and (b) the date on which such Significant Stockholder ceases to beneficially own, together with such Significant Stockholder’s Affiliates, at least ten percent (10%) of the issued and outstanding capital stock of the Corporation, such Significant Stockholder Director Designee shall cease to be a Significant Stockholder Director Designee for the purposes of these By-Laws (and instead shall be treated herein as a Non-Executive Director).

“Spyglass Stockholders” shall mean the Persons identified on Schedule A-2 of the Stockholders’ Agreement.

“Subsidiary” shall mean, with respect to any person, any corporation, limited liability company, partnership, association or other business entity of which fifty percent (50%) or more of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote generally in the election of directors, managers or

trustees thereof, or fifty percent (50%) or more of the equity interest therein, is at the time owned or controlled, directly or indirectly, by any person or one or more of the other Subsidiaries of such person or a combination thereof.

“Voting Common Stock” shall mean the class A common stock, par value \$0.01 per share, of the Corporation.