SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

September 3, 2009
Date of Report (Date of earliest event reported)

Discovery Laboratories, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**000-26422**	**94-3171943**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

2600 Kelly Road, Suite 100
Warrington, Pennsylvania 18976
(Address of principal executive offices)

(215) 488-9300
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

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

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

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

On September 3, 2009, the Board of Directors (the "Board") of Discovery Laboratories, Inc. (the "Company") approved the execution and delivery of a non-employee executive agreement (the "CEO Agreement") with Mr. W. Thomas Amick, Chairman of the Board of the Company. Effective as of August 13, 2009, Mr. Amick assumed the responsibilities of the Chief Executive Officer on an interim basis following the resignation of Robert J. Capetola, Ph.D. as Chief Executive Officer of the Company. Mr. Amick has agreed to devote, on a part-time basis, such of his business time, attention and efforts as reasonably necessary to the proper performance of his duties, which the Company currently anticipates will involve on average two days per week. Under the CEO Agreement, Mr. Amick will be paid at a per diem rate of $3,000, payable in arrears at the end of each calendar month. In addition, on September 3, 2009, in accordance with the CEO Agreement, the Compensation Committee of the Board authorized a grant of options to Mr. Amick to purchase 60,000 shares of common stock of the Company under the Company's 2007 Long-Term Incentive Plan (the "Plan") at an exercise price of $0.49 per share, the closing market price of the Company's common stock on the date of grant. The option grant, in part, replaces an automatic grant of options to purchase 30,000 shares of common stock of the Company that Mr. Amick would have received under the Plan as a non-executive Chairman of the Board. The options will vest in full on the first anniversary date of the grant. The foregoing summary of the CEO Agreement is qualified in its entirety by the full text of the CEO Agreement, which is attached to this Current Report on Form 8-K as Exhibit 10.1, and is incorporated herein by reference.

Mr. Amick has served as a member of the Company's Board since September 2004 and as its Chairman of the Board since March 2007. Mr. Amick currently serves as Chairman of the Board for Argolyn Bioscience and Chairman and CEO of Aldagen, Inc. In 2004, Mr. Amick retired from a distinguished 30-year career with Johnson & Johnson, having most recently served as Vice President, Business Development at Johnson & Johnson Development Corporation from 2003 to 2004, and President of Ortho Biotech Europe from 2001 to 2003. He also served as President of Janssen-Ortho, Inc., managing the entire Johnson & Johnson pharmaceutical and biotechnology portfolio for Canada, as Vice President of the Oncology Franchise of Ortho Biotech, and has held various other sales and executive positions throughout his career. Mr. Amick is a member of the Advisory Boards for Quaker BioVentures and Intersouth Partners and a member of the boards of directors of several private biotechnology companies. He holds a B.A. degree in business administration from Elon College and has attended executive courses at the Kellogg School of Management, Harvard Business School and Darden School of Business.

As of August 13, 2009 the, Company entered into a separation agreement and general release (the "Separation Agreement") with Dr. Capetola providing for (i) an upfront severance payment of $250,000, (ii) periodic payments in an amount equal to his base salary (calculated at a rate of $490,000 per annum), in accordance with stated payroll practices and less required withholdings, with such payment to end the earlier of (x) May 3, 2010 or (y) the date, if ever, a Corporate Transaction event takes place (as such term is defined in the Separation Agreement), and (iii) the accelerated vesting of all outstanding restricted shares and options which shall remain exercisable to the end of their stated terms. In addition, Dr. Capetola will be entitled to the continuation of medical and insurance coverage for a period of 24 or 27 months, depending upon circumstances. In addition, the Separation Agreement provides that upon the occurrence of a Corporate Transaction prior to May 4, 2010, Dr. Capetola will receive a payment of up to $1,580,000 or, if any such Corporate Transaction also constitutes a Change of Control (as such term is defined in the Separation Agreement), a payment of up to $1,777,500; provided, however, that in each case any such payment shall be reduced by the sum of the amounts that may then have been already paid under clauses (i) and (ii) of this paragraph. A "Corporate Transaction" is defined in the Separation Agreement as (1) one or more corporate partnering or strategic alliance transactions, Business Combinations or public or private financings that (A) are completed during the Severance Period (as defined in the Separation Agreement) and (B) result in cash proceeds (net of transaction costs) to the Company of at least $20 million received during the Severance Period or within 90 calendar days thereafter, or (2) an acquisition of the Company, by business combination or other similar transaction, that occurs during the Severance Period and the consideration paid to stockholders of the Company, in cash or securities, is at least $20 million. For this purpose, net proceeds shall be calculated without taking into account any amounts received by the Company as reimbursement for costs of development and research activities to be performed in connection with any such transaction. The foregoing summary of the Separation Agreement is qualified in its entirety by the full text of the Separation Agreement, which is attached to this Current Report on Form 8-K as Exhibit 10.2, and is incorporated herein by reference.

On September 3, 2009, the Board approved an amendment (the "Amendment") to the vesting provisions of restricted shares of the Company's common stock, par value $0.001 per share, (the "RSAs") that were awarded as of October 31, 2007 to certain key employees of the Company, including the individuals set forth below ("Grantees"), as replacement grants to shares of phantom stock previously granted to awardees on December 16, 2005 and January 3, 2006. The RSA's were originally scheduled to vest fully on the date the Company's first drug product becomes widely commercially available, as such date is determined by the Company. Under the Amendment, the shares of restricted stock shall vest on the fourth anniversary of the original date of grant.

Name and Position	Grants of Restricted Shares Effective October 30, 2007
John G. Cooper Executive Vice President, Chief Financial Officer and Treasurer	9,000
David L. Lopez, Esq., CPA Executive Vice President, General Counsel, Chief Compliance Officer and Secretary	9,000
Robert Segal, M.D. Senior Vice President Medical and Scientific Affairs, and Medical Officer	4,000

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

On September 3, 2009, the Board adopted an amendment to the Company's Amended and Restated By-Laws ("By-Laws"). In Article I, Section 9, the Board modified the timelines, requirements, and procedures concerning stockholder nominations of candidates to elections of the Board of Directors, including the requirement that the stockholder represent that such person will not have undisclosed voting arrangements as a director and that the stockholder disclose material relationships between the stockholder and the nominee, opportunities for the stockholder to profit from any change in the value of the shares of the Company and any proxy arrangements, short positions, dividend rights and performance related fees connected with a change in value of the Company's shares.

In Article I, Section 10, the Board modified terms governing stockholder proposals other than director nominations, including requiring the enhanced stockholder disclosure requirements added to Article I, Section 9 as described above.

The foregoing description of the amendment to the By-Laws is qualified in its entirety by reference to the full text of the By-Laws.

Pursuant to Article II, Section 2 of the By-Laws, the number of directors of the Company may be increased or decreased by the vote of a majority of the entire Board then in office. On September 3, 2009, the Board unanimously adopted a resolution setting the size of the Board at five members, effective immediately, which represents a decrease of one in the size of the Board.

Item 8.01. Other Events.

On September 4, 2009, the Company issued a press release announcing that its 2009 annual meeting of stockholders will be held on December 7, 2009 in New York, New York. The record date for determining stockholders entitled to vote at the meeting will be October 8, 2009.

The date of the 2009 annual meeting will be more than 30 days after the anniversary date of the 2008 annual meeting. Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, stockholders may present proposals for inclusion in the Company's proxy statement for the 2009 annual meeting by submitting their proposals to the Company a reasonable time before the Company begins to print and send its proxy materials. The Company's Board of Directors has set September 15, 2009 as the deadline for receipt of stockholder proposals pursuant to Rule 14a-8. In order for a proposal under Rule 14a-8 to be considered timely, it must be received by the Company on or prior to September 15, 2009, at the Company's principal executive offices at 2600 Kelly Rd., Suite 100, Warrington, PA 18976 and be directed to the attention of the Corporate Secretary. All stockholder proposals must be in compliance with applicable laws and regulations in order to be considered for inclusion in the proxy statement for the 2009 annual meeting.

Under the Company's By-Laws, stockholders may also present a proposal or director nomination at the 2009 annual meeting if advance written notice is timely given to the Secretary of the Company, at the Company's principal executive offices, in accordance with the Company's By-Laws. To be timely, notice by a stockholder of any proposal or nomination must be provided not later than the close of business on September 15, 2009. The Company's By-Laws specify requirements relating to the content of the notice that stockholders must provide.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

3.1	Amended and Restated By-Laws of Discovery Labs, effective as of September 3, 2009.
10.1	Agreement dated as of August 13, 2009 by and between Discovery Labs and W. Thomas Amick.
10.2	Agreement dated as of August 13, 2009 by and between Discovery Labs and Robert J. Capetola.
99.1	Press release dated September 4, 2009.

Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

SIGNATURES

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

Discovery Laboratories, Inc.

By: /s/ W. Thomas Amick
Name: W. Thomas Amick
Title: Chairman of the Board and Interim Chief Executive Officer

Date: September 4, 2009

AMENDED AND RESTATED
BY-LAWS OF
DISCOVERY LABORATORIES, INC.
(A Delaware Corporation)

ARTICLE I

Meetings of Stockholders

Section 1. **Annual Meeting.** The annual meeting of the stockholders of Discovery Laboratories, Inc. (the "Corporation"), for the election of directors and for the transaction of such other business as may come before the meeting shall be held at such date and time as shall be designated by the Board of Directors (the "Board"), the Chairman of the Board or the President.

Section 2. **Special Meeting.** Special meetings of the stockholders, unless otherwise prescribed by statute, may be called at any time by the Board, the Chairman of the Board or the Chief Executive Officer. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

Section 3. **Notice of Meetings.** Notice of the place, date and time of the holding of each annual and special meeting of the stockholders and, in the case of a special meeting, the purpose or purposes thereof shall be given personally or by mail in a postage prepaid envelope to each stockholder entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, and, if mailed, it shall be directed to such stockholder at his or her address as it appears on the records of the Corporation, unless such stockholder shall have filed with the Secretary of the Corporation a written request that notices to such stockholder be mailed to some other address, in which case it shall be directed to the stockholder at such other address. If mailed, such notice shall be deemed to be delivered when deposited in United States mail so addressed with postage thereon prepaid. Notice of any meeting of stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy and shall not, at the beginning of such meeting, object to the transaction of any business because the meeting is not lawfully called or convened, or who shall, either before or after the meeting, submit a signed waiver of notice, in person or by proxy. Unless the Board shall fix after the adjournment a new record date for an adjourned meeting, notice of such adjourned meeting need not be given if the time and place to which the meeting shall be adjourned were announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which may have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 4. **Place of Meetings.** Meetings of the stockholders my be held at such place, within or without the State of Delaware, as the Board or other officer calling the same shall specify in the notice of such meeting, or in a duly executed waiver of notice thereof.

Section 5. **Quorum.** At all meetings of the stockholders, the holders of a majority of the votes of the shares of stock of the Corporation issued and outstanding and entitled to vote shall be present in person or by proxy to constitute a quorum for the transaction of any business, except when stockholders are required to vote by class, in which event a majority of the issued and outstanding shares of the appropriate class shall be present in person or by proxy, or except as otherwise provided by statute or in the Corporation's Restated Certificate of Incorporation (the "Certificate of Incorporation"). In the absence of a quorum, the holders of a majority of the votes of the shares of stock present in person or by proxy and entitled to vote, or if no stockholder entitled to vote is present, then the chairman of the meeting, as set forth in Section 6 below, may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 6. **Organization.** At each meeting of the stockholders, the Chairman of the Board, or in his absence or inability to act, the President, or in the absence or inability to act of the Chairman of the Board and the President or an Executive Vice President, or in the absence of all the foregoing, any person chosen by a majority of those stockholders present shall act as chairman of the meeting. The Secretary, or, in his absence or inability to act, the Assistant Secretary or any person appointed by the chairman of the meeting shall act as secretary of the meeting and keep the minutes thereof.

Section 7. **Order of Business.** The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting.

Section 8. **Voting.** Except as otherwise provided by statute, the Certificate of Incorporation or any certificate duly filed in the office of the Secretary of State of the State of Delaware, each holder of record of shares of stock of the Corporation having voting power shall be entitled at each meeting of the stockholders to one vote for every share of such stock standing in his name on the record of stockholders of the Corporation on the date fixed by the Board as the record date for the determination of the stockholders who shall be entitled to notice of and to vote at such meeting; or if such record date shall not have been so fixed, then at the close of business on the day next preceding the day on which the meeting is held; or each stockholder entitled to vote at any meeting of stockholders may authorize another person or persons to act for him by a proxy signed by such stockholder or his attorney-in-fact. Any such proxy shall be delivered to the secretary of such meeting at or prior to the time designated in the order of business for so delivering such proxies. No proxy shall be valid after the expiration of three years from the date thereof, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the stockholder executing it, except in those cases where an irrevocable proxy is permitted by law. Except as otherwise provided by statute, these Amended and Restated By-Laws (the "By-Laws"), or the Certificate of Incorporation, any corporate action to be taken by vote of the stockholders shall be authorized by a majority of the total votes, or when stockholders are required to vote by class by a majority of the votes of the appropriate class, cast at a meeting of stockholders by the holders of shares present in person or represented by proxy and entitled to vote on such action. Unless required by statute, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by written ballot. On a vote by written ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted

Section 9. **Nominations.** The procedures governing stockholder nominees of candidates to elections of the Board of Directors or to fill vacancies, as applicable, shall be administered by the Corporation's Nomination Committee. This Section 9 shall be the exclusive means by which a stockholder may make such nominations before any meeting of stockholders (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting). For nominations for election to the Board or for other business to be properly brought by a stockholder before a meeting of stockholders, the stockholder must first have given timely written notice thereof to the Secretary of the Corporation. In addition to other applicable requirements, to be timely, a notice of nominations or other business to be brought before an annual meeting of stockholders must be substantially in the form set forth below and delivered to the Secretary not later than the date set forth in the "Stockholder Proposals" section of the Proxy Statement delivered by the Corporation to its stockholders, and filed with the Securities and Exchange Commission, in connection with the preceding year's annual meeting. If the Corporation did not deliver a Proxy Statement in connection with the preceding year's annual meeting, such notice must be delivered not less than 120 nor more than 150 days prior to the first anniversary of the preceding year's annual meeting; provided, that if the date of an annual meeting is more than 30 days before or more than 60 days after such anniversary, all notices must be delivered not earlier than 90 days prior to such annual meeting and not later than the later of (i) 60 days prior to the annual meeting or (ii) 10 days following the date on which public announcement of the date of such annual meeting is first made by the Corporation. With respect to special meetings of stockholders, such notice must be delivered to the Secretary not more than 90 days prior to such meeting and not later than the later of (i) 60 days prior to such meeting or (ii) 10 days following the date on which public announcement of the date of such meeting is first made by the Corporation. Any stockholder delivering notice to the Secretary under this Section 9, Article I must be a stockholder of record on the date such notice is delivered. The Secretary shall deliver the notice to the Nomination Committee. No stockholder nominee may be a candidate for election at any meeting of stockholders or otherwise elected to fill a vacancy in the Board unless such person has been approved by the Nomination Committee and was nominated in accordance with the procedures set forth in this Section 9, Article I. If the facts warrant, the Board, or the chairman of a stockholders meeting at which Directors are to be elected may determine and declare that a nomination was not made in accordance with the foregoing procedure and, if it is so determined, no election may be made with respect to such nominee. The right of stockholders to make nominations pursuant to the foregoing procedure is subject to the superior rights, if any, of the holders of any class or series of stock having a preference over the common stock. The procedures set forth in this Section 9 of Article I for nomination for the election of Directors by stockholders are in addition to, and not in limitation of, any procedures now in effect or hereafter adopted by or at the direction of the Board or any committee thereof.

If a stockholder attempts to nominate a candidate to the Board and complies with the procedure set forth in this Section 9, Article I but the Nomination Committee rejects such stockholder's nomination, such stockholder may nominate such candidate notwithstanding the decision of the Nomination Committee at the next election of Directors after such candidate was rejected by the Nomination Committee if such stockholder delivers to the Secretary written requests that such person be nominated to the Board from stockholders holding at least 50% of the eligible votes as of the record date of such election.

To be in proper written form, each such notice to the Secretary delivered in connection with a stockholder nomination must set forth as to each person whom the stockholder proposes to nominate for election as a director:

(i) the name, age, business address and residence address of the person;
(ii) the principal occupation or employment of the person;
(iii) the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the person;
(iv) a representation that the person does not have, nor will not have, any undisclosed voting commitments or other arrangements with respect to such person's actions as a director; and
(v) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of Directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

Each such notice to the Secretary must also set forth as to the stockholder giving the notice:

(i) the name and record address of such stockholder;
(ii) the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by such stockholder;
(iii) a description of all arrangements, material relationships, or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder;
(iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice;
(v) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder and any other director indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation;
(vi) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Corporation;
(vii) any short interest in any security of the Corporation (for purposes of this By-Law a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security);
(viii) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation;
(ix) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner;
(x) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date; and
(xi) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of Directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

All notices delivered to the Secretary in connections must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a Director if elected.

Section 10. **Stockholder Proposals.** The procedures governing stockholder proposals, other than the nomination of a director or directors by a stockholder, ("Other Business") of business to be conducted at meetings of stockholders shall be administered by the Corporation's Nomination Committee. This Section 10 shall be the exclusive means by which a stockholder may submit any Other Business that the stockholder proposes to bring before an any meeting of stockholders (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Company's notice of meeting). At any meeting of the stockholders, only such Other Business shall be conducted as shall have been properly brought before such meeting. To be properly brought before a meeting, Other Business must be: (a) as specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board; (b) otherwise properly brought before the meeting by or at the direction of the Board; or (c) otherwise properly brought before the meeting by a stockholder. For Other Business to be properly brought by a stockholder before a meeting of stockholders, the stockholder must first have given timely written notice thereof to the Secretary of the Corporation. In addition to other applicable requirements set forth in the Exchange Act, to be timely, a notice of other Other Business to be brought before an annual meeting of stockholders must be substantially in the form set forth below and delivered to the Secretary not later than the date set forth in the "Stockholder Proposals" section of the Proxy Statement delivered by the Corporation to its stockholders, and filed with the Securities and Exchange Commission, in connection with the preceding year's annual meeting. If the Corporation did not deliver a Proxy Statement in connection with the preceding year's annual meeting, such notice must be delivered not less than 120 nor more than 150 days prior to the first anniversary of the date of the Corporation's proxy statement delivered to stockholders in connection with the preceding year's annual meeting; provided, that if (A) the date of an annual meeting is more than 30 days before or more than 60 days after such anniversary, or (B) no proxy statement was delivered to stockholders by the Corporation in connection with the preceding year's annual meeting, all notices must be delivered not earlier than 90 days prior to such annual meeting and not later than the later of (i) 60 days prior to the annual meeting or (ii) 10 days following the date on which public announcement of the date of such annual meeting is first made by the Corporation. With respect to special meetings of stockholders, such notice must be delivered to the Secretary not more than 90 days prior to such meeting and not later than the later of (i) 60 days prior to such meeting or (ii) 10 days following the date on which public announcement of the date of such meeting is first made by the Corporation. Any stockholder delivering notice to the Secretary under this Section 10 of Article I must be a stockholder of record on the date such notice is delivered. The Nomination Committee must approve each stockholder proposal of other business before such proposal may be voted on at any meeting of stockholders or otherwise. No stockholder proposal of other business before such proposal may be voted on at any meeting of stockholders or otherwise unless such proposal was approved in accordance with the procedures set forth in this Section 10 of Article I. The procedures set forth in this Section 10 of Article I for submission of any Other Business that the stockholder proposes to bring before any meeting of stockholders are in addition to, and not in limitation of, any procedures now in effect or hereafter adopted by or at the direction of the Board or any committee thereof. If the chairman of a meeting of stockholders determines that Other Business was not properly brought before the meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the Other Business was not properly brought before the meeting and such Other Business shall not be transacted.

To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the meeting:

(i) a brief description of the Other Business desired to be brought before the meeting and the reasons for conducting such Other Business at the meeting;
(ii) the name and record address of such stockholder;
(iii) the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by such stockholder;
(iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such Other Business by such stockholder and any material interest of such stockholder in such business;
(v) a representation that such stockholder intends to appear in person or by proxy at the meeting to bring such business before the meeting;
(vi) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a “Derivative Instrument”) directly or indirectly owned beneficially by such stockholder and any other director indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation;
(vii) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Company;
(viii) any short interest in any security of the Company (for purposes of this By-Law a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security);
(ix) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation;
(x) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner;
(xi) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder’s immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date); and
(xii) any other information that is required by law to be provided by the stockholder in his capacity as proponent of a stockholder proposal.

Section 11. **List of Stockholders.** The officer who has charge of the stock ledger of the Corporation, or the transfer agent of the Corporation's stock, if there be one then acting, shall prepare and make, at least 10 days before every meeting of 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 10 days prior to the meeting, either at a place within the city where the meeting is to be held, at the place where the meeting is to be held or at the office of the transfer agent. The list shall also 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.

Section 12. **Inspectors.** The Board may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If the inspectors shall not be so appointed or if any of them shall fail to appear or act, the chairman of the meeting may, and on the request of any stockholder entitled to vote thereat shall, appoint inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. Upon the request of the chairman of the meeting or any stockholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as inspector of an election of directors. Inspectors need not be stockholders.

Section 13. **Consent of Stockholders in Lieu of Meeting.** Unless otherwise provided in the Certificate of Incorporation, any action required by Subchapter VII of the General Corporation Law of the State of Delaware, to be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, 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 this State, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

ARTICLE II

Board Of Directors

Section 1. **General Powers.** The business and affairs of the Corporation shall be managed by the Board. The Board may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by statute or the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

Section 2. **Number, Qualifications, Elections and Term of Office.** The number of directors of the Corporation ("Directors") shall be fixed from time to time by the vote of a majority of the entire Board then in office and the number thereof may thereafter by like vote be increased or decreased to such greater or lesser number (not less than three) as may be so provided, subject to the provisions of Section 11 of this Article II. All of the Directors shall be of full age and need not be stockholders. Except as otherwise provided by statute or these By-Laws, the Directors shall be elected at the annual meeting of the Stockholders for the election of Directors at which a quorum is present, and the persons receiving a plurality of the votes cast at such meeting shall be elected. Each Director shall hold office until the next annual meeting of the stockholders and until his successors shall have been duly elected and qualified, or until such Director's death, or until such Director shall have resigned, or have been removed, as hereinafter provided in these By-Laws, or as otherwise provided by statute or the Certificate of Incorporation.

Section 3. **Place of Meetings.** Meetings of the Board may be held at such place, within or without the State of Delaware, as the Board may from time to time determine or as shall be specified in the notice or waiver of notice of such meeting.

Section 4. **Annual Meeting.** The Board shall meet for the purpose of organization, the election or appointment of officers and the transaction of other business, as soon as practicable after each annual meeting of the stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. Such meeting may be held at any other time or place (within or without the State of Delaware) which shall be specified in a notice thereof given as hereinafter provided in Section 7 of this Article II.

Section 5. **Regular Meetings.** Regular meetings of the Board shall be held at such time and place as the Board may from time to time determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day. Notice of regular meetings of the Board need not be given except as otherwise required by statute or these By-Laws.

Section 6. **Special Meetings.** Special meetings of the Board may be called by the Chairman of the Board, two or more directors or the President of the Corporation.

Section 7. **Notice of Meetings.** Notice of each special meeting of the Board (and of each regular meeting for which notice shall be required) shall be given by the Secretary as hereinafter provided in this Section 7 of Article II, in which notice shall be stated the time and place (within or without the State of Delaware) of the meeting. Notice of each such meeting shall be delivered to each Director either personally or by telephone, telegraph, cable or wireless, at least 24 hours before the time at which such meeting is to be held or by first-class mail, postage prepaid, addressed to him at his residence, or usual place of business, at least three days before the day on which such meeting is to be held. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail. Notice of any such meeting need not be given to any director who shall, either before or after the meeting, submit a signed waiver of notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of notice to him. Except as otherwise specifically required by these By-Laws, a notice or waiver of notice of any regular or special meeting need not state the purposes of such meeting.

Section 8. **Quorum and Manner of Acting.** A majority of the entire Board shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and, except as otherwise expressly required by statute or the Certificate of Incorporation, the act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. Any one or more members of the Board or any committee thereof may participate in a meeting of the Board or such committee by means of a conference telephone or similar communications equipment allowing all participants in the meeting to hear each other at the same time and participation by such means shall constitute presence in person at a meeting. In the absence of a quorum at any meeting of the Board, a majority of the directors present thereat, or if no director be present, the Secretary, may adjourn such meeting to another time and place, or such meeting, unless it be the annual meeting of the Board, need not be held. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. Except as provided in Article III of these By-Laws, the directors shall act only as a Board and the individual directors shall have no power as such.

Section 9. **Organization.** At each meeting of the Board, the Chairman of the Board (or, in his or her absence or inability to act, the President, or, in his or her absence or inability to act, another Director chosen by a majority of the Directors present) shall act as chairman of the meeting and preside thereat. The Secretary (or, in his or her absence or inability to act, any person appointed by the chairman of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 10. **Resignations.** Any Director may resign at any time by giving written notice of his resignation to the Board, the Chairman of the Board, the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 11. **Vacancies.** Vacancies, including newly created directorships, may be filled by the decision of majority of the Directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this Section for the filling of other vacancies.

Section 12. **Removal of Directors.** Except as otherwise provided in the Certificate of Incorporation or in these By-Laws, any Director may be removed, either with or without cause, at any time, by the affirmative vote of a majority of the votes of the issued and outstanding shares of stock entitled to vote for the election of the stockholders called and held for that purpose, or by a majority vote of the Board at a meeting called for such purpose, and the vacancy in the Board caused by any such removal may be filled by such stockholders or Directors, as the case may be, at such meeting, and if the stockholders shall fail to fill such vacancy, such vacancy shall be filled in the manner as provided by these By-Laws.

Section 13. **Compensation.** The Board shall have authority to fix the compensation, including fees and reimbursement of expenses, of Directors for services to the Corporation in any capacity, provided no such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 14. **Action by the Board.** To the extent permitted under the laws of the State of Delaware, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Board or committee.

ARTICLE III

Executive and Other Committees

Section 1. **Executive and Other Committees.** The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of two or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the Committee. Any such committee, to the extent provided in the resolution, shall have and may exercise the powers of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it, provided, however, that in the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Each committee shall keep minutes of its proceedings and shall, report such minutes to the Board when required. All such proceedings shall be subject to revision or alteration by the Board; provided, however, that third parties shall not be prejudiced by such revision or alteration.

Section 2. **General.** A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. Notice of such meetings shall be given to each member of the committee in the manner provided for in Article II, Section 7. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee. Nothing herein shall be deemed to prevent the Board from appointing one or more committees consisting in whole or in part of persons who are directors of the Corporation; provided, however, that no such committee shall have or may exercise any authority of the Board.

ARTICLE IV

Officers

Section 1. **Number and Qualifications.** The officers of the Corporation shall include the Chairman of the Board, the President, one or more Vice Presidents (one or more of whom may be designated an Executive Vice President or a Senior Vice President), the Treasurer and the Secretary. Any two or more offices may be held by the same person. Such officers shall be elected or appointed from time to time by the Board, each to hold office until the meeting of the Board following the next annual meeting of the stockholders, or until his or her successor shall have been duly elected or appointed and shall have qualified, or until such Officer's death, or until such Officer shall have resigned, or have been removed, as hereinafter provided in these By-Laws. The Board may from time to time elect a Vice Chairman of the Board, and the Board may from time to time elect, or the Chairman of the Board, or the President may appoint, such other officers (including one or more Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers), as may be necessary or desirable for the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as may be prescribed by the Board or by the appointing.

Section 2. **Resignation.** Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Board, the Chairman of the Board, the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3. **Removal.** Any officer or agent of the Corporation may be removed, either with or without cause, at any time, by the vote of the majority of the entire Board at any meeting of the Board or, except in the case of an officer or agent elected or appointed by the Board, by the Chairman of the Board or the President. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed.

Section 4. **Vacancies.** A vacancy in any office, whether arising from death, disability, resignation, removal or any other cause, may be filled for the unexpired portion of the term of the office which shall be vacant, in the manner prescribed in these By-Laws for the regular election or appointment to such office.

Section 5. **a.** **The Chairman of the Board.** The Chairman of the Board, if one be elected, shall, if present, preside at each meeting of the stockholders and of the Board and shall be an ex officio member of all committees of the Board. He shall perform all duties incident to the office of Chairman of the Board and such other duties as may from time to time be assigned to him by the Board.

b. **The Vice Chairman of the Board.** The Vice Chairman of the Board, if one be elected, shall have such powers and perform all such duties as from time to time may be assigned to him by the Board or the Chairman of the Board and, unless otherwise provided by the Board, shall in the case of the absence or inability to act of the Chairman of the Board, perform the duties of the Chairman of the Board and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Chairman of the Board.

Section 6. **The President.** The President shall be the chief executive officer of the Corporation and shall have general and active supervision and direction over the business and affairs of the Corporation and over its several officers, subject, however, to the direction of the Chairman of the Board and the control of the Board. If no Chairman of the Board is elected or at the request of the Chairman of the Board, or in the case of his absence or inability to act, unless there be a Vice Chairman of the Board so designated to act, the President shall perform the duties of the Chairman of the Board and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Chairman of the Board. He shall perform all duties incident to the office of President and such other duties as from time to time may be assigned to him by the Board or the Chairman of the Board.

Section 7. **Vice Presidents.** Each Executive Vice President, each Senior Vice President and each Vice President shall have such powers and perform all such duties as from time to time may be assigned to such person by the Board, the Chairman of the Board or the President. They shall in the order of their seniority, have the power and may perform the duties of the Chairman of the Board and the President.

Section 8. **The Treasurer.** The Treasurer shall exercise general supervision over the receipt, custody and disbursement of corporate funds. He or she shall have such further powers and duties as may be conferred upon him from time to time by the President or the Board of Directors. He or she shall perform the duties of controller if no one is elected to that office.

Section 9. **The Secretary.** The Secretary shall:

(a) keep or cause to be kept in one or more books provided for the purpose, the minutes of all meetings of the Board, the committees of the Board and the stockholders;

(b) see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law;

(c) be custodian of the records and the seal of the Corporation and affix and attest the seal to all stock certificates of the Corporation (unless the seal be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal;

(d) see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and

(e) in general, perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman of the Board, or the President.

Section 10. **Officer's Bonds or Other Security.** If required by the Board, any officer of the Corporation may be required to give a bond or other security for the faithful performance of his duties, in such amount and with such surety or sureties as the Board may require.

Section 11. **Compensation.** The compensation of the officers of the Corporation for their services as such officers shall be fixed from time to time by the Board; provided, however, that the Board may delegate to the Chairman of the Board or the President the power to fix the compensation of officers and agents appointed by the Chairman of the Board or the President, as the case may be. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he is also a director of the Corporation, but any such officer who shall also be a Director shall not have any vote in the determination of the amount of compensation paid to him.

ARTICLE V

Indemnification

The Corporation shall, to the fullest extent permitted by the laws of the state of Delaware, indemnify any and all persons whom it shall have power to indemnify against any and all of the costs, expenses, liabilities or other matters incurred by them by reason of having been officers or Directors of the Corporation, any subsidiary of the Corporation or of any other corporation for which such person acted as officer or director at the request of the Corporation.

ARTICLE VI

Contracts, Checks, Drafts, Bank Account, Etc.

Section 1. **Execution of Contracts.** Except as otherwise required by statute, the Certificate of Incorporation or these By-Laws, any contracts or other instruments may be executed and delivered in the name and on behalf of the Corporation by such officer or officers (including any assistant officer) of the Corporation as the Board may, from time to time, direct. Such authority may be general or confined to specific instances as the Board may determine. Unless authorized by the Board or expressly permitted by these By-Laws, an officer or agent or employee shall not have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it pecuniarily liable for any purpose or to any amount.

Section 2. **Loans.** Unless the Board shall otherwise determine, either (a) the Chairman of the Board, the Vice Chairman of the Board or the President, singly, or (b) a Vice President, together with the Treasurer, may effect loans and advances at any time for the Corporation or guarantee any loans and advances to any subsidiary of the Corporation, from any bank, trust company or other institution, or from any firm, corporation or individual, and for such loans and advances way make, execute and deliver promissory notes, bonds or other certificates or evidences of indebtedness of the Corporation, or guarantee of indebtedness of subsidiaries of the Corporation, but no officer or officers shall mortgage, pledge, hypothecate or transfer any securities or other property of the Corporation, except when authorized by the Board.

Section 3. **Checks, Drafts, Etc.** All checks, drafts, bills of exchange or other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed in the name and on behalf of the Corporation by such persons and in such manner as shall from time to time be authorized by the Board.

Section 4. **Deposits.** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may from time to time designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts and other orders for the payment of money which are payable to the order of the Corporation my be endorsed, assigned and delivered by any officer or agent of the Corporation, or in such manner as the Board may determine by resolution.

Section 5. **General and Special Bank Accounts.** The Board may, from time to time, authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these By-Laws, as it may deem expedient.

Section 6. **Proxies in Respect of Securities of Other Corporations.** Unless otherwise provided by resolution adopted by the Board, the Chairman of the Board, the President or a Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Corporation, and under its corporate seal, or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper in the premises.

ARTICLE VII

Shares, Etc.

Section 1. **Stock Certificates.** Shares of stock of the Corporation shall be represented by certificates, or shall be uncertificated shares that may be evidenced by a book-entry system maintained by the registrar of such stock, or a combination of both. To the extent that shares are represented by certificates, such certificates shall be in a form approved by the Board. Each certificate shall be signed in the name of the Corporation by (A) the Chairman or Vice Chairman of the Board or the President or a Vice President, and (B) the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and sealed with the seal of the Corporation (which seal may be a facsimile, engraved or printed); provided, however, that where any such certificate is countersigned by a transfer agent other than the Corporation or one of its employees, or is registered by a registrar other than the Corporation or one of its employees, the signature of the officers of the Corporation upon such certificates may be facsimiles, engraved or printed. In case any officer who shall have signed or whose facsimile signature has been placed upon such certificates shall have ceased to be such officer before such certificates shall be issued, they may nevertheless be issued by the Corporation with the same effect as if such officer were still in office at the date of their issue.

Section 2. **Books of Account and Record of Shareholders.** The books and records of the Corporation may be kept at such places within or without the state of incorporation as the Board of Directors may from time to time determine. The stock record books and the blank stock certificate books shall be kept by the Secretary or by any other officer or agent designated by the Board of Directors.

Section 3. **Transfer of Shares.** Subject to any restrictions on transfer and unless otherwise provided by the Board, shares of stock may be transferred only on the books of the Corporation by the surrender to the Corporation or its transfer agent of the shares in certificated form, properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, or upon proper instructions from the holder of uncertificated shares, in each case with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Except as otherwise provided by applicable law, the Corporation shall be entitled to recognize the exclusive right of a person in whose name any share or shares stand on the record of stockholders as the owner of such share or shares for all purposes, including, without limitation, the rights to receive dividends or other distributions and to vote as such owner, and the Corporation may hold any such stockholder of record liable for calls and assessments and the Corporation shall not be bound to recognize any equitable or legal claim to or interest in any such share or shares on the part of any other person whether or not it shall have express or other notice thereof. Whenever any transfers of shares shall be made for collateral security and not absolutely, and both the transferor and transferee request the Corporation to do so, such fact shall be stated in the entry of the transfer.

Section 4. **Regulations.** The Board may make such additional rules and regulations, not inconsistent with these By-Laws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for shares of stock to bear the signature or signatures of any of them.

Section 5. **Lost, Destroyed or Mutilated Certificates.** The holder of any certificate representing shares of stock of the Corporation shall immediately notify the Corporation of any loss, destruction or mutilation of such certificate, and the Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it which the owner thereof shall allege to have been lost, stolen or destroyed or which shall have been mutilated, and the Board may, in its discretion, require such owner or his legal representative to give the Corporation a bond in such sum, limited or unlimited, and in such form and with such surety or sureties as the Board in its absolute discretion shall determine, to indemnify the Corporation against any claim that way be made against it on account of the alleged loss, theft or destruction of any such certificate, or the issuance of a new certificate. Anything herein to the contrary notwithstanding, the Board, in its absolute discretion, may refuse to issue any such new certificate, except pursuant to legal proceedings under the laws of the State of Delaware.

Section 6. **Fixing of Record Date.** In order that the Corporation may determine the stockholders entitled to notice of, or to vote at, any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix in advance a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders of record entitled to notice of, or to vote at, a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE VIII

Offices

Section 1. **Principal or Registered Office.** The principal registered office of the Corporation shall be at such place as may be specified in the Certificate of Incorporation or other certificate filed pursuant to law, or if none be so specified, at such place as may from time to time be fixed by the Board.

Section 2. **Other Offices.** The Corporation also may have an office or offices other than said principal or registered office, at such place or places either within or without the State of Delaware.

ARTICLE IX

Fiscal Year

The fiscal year of the Corporation shall be determined by the Board.

ARTICLE X

Seal

The Board shall provide a corporate seal which shall contain the name of the Corporation, the words "Corporate Seal" and the year and State of Delaware.

ARTICLE XI

Amendments

Section 1. **Stockholders.** These By-Laws may be amended or repealed, or new By-Laws may be adopted, at any annual or special meeting of the stockholders, by a majority of the total votes of the stockholders or when stockholders are required to vote by class by a majority of the appropriate class, in person or represented by proxy and entitled to vote on such action; provided, however, that the notice of such meeting shall have been given as provided in these By-Laws, which notice shall mention that amendment or repeal of these By-Laws, or the adoption of new By-Laws, is one of the purposes of such meeting.

Section 2. **Board of Directors.** These By-Laws may also be amended or repealed or new By-Laws may be adopted by the Board at any meeting of the Board; provided, however, that notice of such meeting shall have been given as provided in these By-Laws, which notice shall mention that amendment or repeal of the By-Laws, or the adoption of new By-Laws, is one of the purposes of such meetings. By-Laws adopted by the Board may be amended or repealed by the stockholders as provided in Section 1 of this Article XI.

ARTICLE XII

Miscellaneous

Section 1. **Interested Directors.** No contract or other transaction between the Corporation and any other corporation shall be affected and invalidated solely by the fact that any one or more of the Directors of the Corporation is or are interested in or is a director or officer or are directors or officers of such other corporation, and any Director or Directors, individually or jointly, may be a party or parties to or may be interested in any contract or transaction of the Corporation or in which the Corporation is interested; and no contract, act or transaction of the Corporation with any person or persons, firm or corporation shall be affected or invalidated by the fact that any Director of the Corporation is a party or are parties to or interested in such contract, act or transaction, or in any way connected with such person or persons, firms or associations, and each and every person who may become a Director of the Corporation is hereby relieved from any liability that might otherwise exist from contracting with the Corporation for the benefit of himself or herself, any firm, association or corporation in which such Director may be in any way interested.

Section 2. **Ratification.** Any transaction questioned in any stockholders derivative suit on the grounds of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, nondisclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board or, by the stockholders in case less than a quorum of Directors are qualified, and, if so ratified, shall have the same force and effect as if the questioned transaction had been originally duly authorized, and said ratification shall be binding upon the Corporation and its stockholders, and shall constitute a bar to any claim or execution of any judgment, in respect of such questioned transaction.

AGREEMENT

This Agreement ("**Agreement**") shall be effective as of August 13, 2009, by and between DISCOVERY LABORATORIES, INC., a Delaware corporation ("**Company**") and W. THOMAS AMICK, Chairman of the Board of Directors of the Company ("**Amick**").

WHEREAS, the Company has requested that Amick, in addition to serving as Chairman of the Board, accept the position of Chief Executive Officer ("**CEO**"), and Amick has agreed to serve in that capacity on a part-time, interim basis and on the terms as set forth in this Agreement.

NOW, THEREFORE, intending to be legally bound, , the Company and Amick agree as follows:

1. CEO Appointment. The Company hereby appoints Amick, and Amick agrees to serve, as CEO of the Company. The parties agree that Amick will continue to serve as Chairman of the Company's Board of Directors during the Term of this Agreement.

2. Duties. Amick will be responsible for all duties customarily associated with the title CEO, with a specific focus on securing strategic alliance partners and/or accessing capital through financing and other transactions to advance the Company's KL_4 surfactant pipeline and to build shareholder value.

3. Term. Amick will serve as CEO until such time as the Company's Board of Directors determine that his services as CEO are no longer needed (the "**Term**"). In any event, unless extended in writing, this Agreement will terminate on June 30, 2010.

4. Time; Location. During the Term, Amick agrees to devote, on a part-time basis, such of his business time, attention and efforts as reasonably necessary to the proper performance of his duties. The parties currently expect that his duties will require, on average, approximately two days per week. Amick will render services to the Company at the Company's headquarters located in Doylestown, Pennsylvania, or at such other places as he shall deem appropriate for the performance of his duties.

5. Compensation. In consideration of the services to be provided under this Agreement, the Company will pay Amick at a per diem rate of Three Thousand Dollars ($3,000), payable monthly in arrears at the end of each calendar month. In addition:

(a) the Company will pay or reimburse Amick for all reasonable expenses incurred in carrying out his duties and responsibilities under this Agreement, including lodging and travel expenses, subject to submission of documentation in accordance with the Company's reimbursement policies.

(b) Amick shall be entitled to an award of 60,000 options to purchase common stock of the Company under the Company's 2007 Long-Term Incentive Plan, on such terms and effective as of such date as are approved by the Compensation Committee of the Company's Board of Directors.

6. Representations, Warranties and Covenants of Amick.

(a) Amick represents and warrants to the Company that he is presently under no contractual or other restriction or obligation which is inconsistent with his execution of this Agreement or the performance of the obligations hereunder, and during the Term, Amick covenants that he shall not enter into any agreement, either written or oral, in conflict with this Agreement. The Company acknowledges that Amick currently serves as Chairman of Aldagen, Inc., is an advisor to several private equity firms focused on the biopharmaceutical industry and serves as a member of the board of directors of several biotechnology companies.

(b) Amick represents and agrees that he has not been debarred by the U. S. Food and Drug Administration or any equivalent foreign agency from practicing before such agency. Amick further agrees that he will notify the Company immediately in the event of any debarment or threat of debarment occurring during the period in which Amick is performing services.

7. Termination. Either party may terminate this Agreement at any time upon ten (10) days written notice to the other party.

8. Independent Contractor. Amick is and throughout the Term shall be an independent contractor and not an employee of the Company. Amick shall not be entitled to nor receive any benefit normally provided to the Company's employees such as, but not limited to, vacation payment, retirement, health care or sick pay. The Company shall not be responsible for withholding income or other taxes from the payments made to Amick. Amick shall be solely responsible for filing all returns and paying any federal, state and municipal income, social security or other tax levied upon or determined with respect to the payments made to Amick pursuant to this Agreement.

9. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania without reference to any conflict of law principles of such State.

10. Headings. The headings in this Agreement are inserted for convenience only and shall not be used to define, limit or describe the scope of this Agreement or any of the obligations herein.

11. Final Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior negotiations, understandings and agreements between the parties, whether written or oral. This Agreement may be amended, supplemented or changed only by an agreement in writing signed by both of the parties.

12. Notices. Any notice required to be given or otherwise given pursuant to this Agreement shall be in writing and shall be hand delivered, mailed by certified mail, return receipt requested or sent by recognized overnight courier service as follows:

If to Amick:

W. Thomas Amick
[at the address and fax number maintained in the Company's files]

If to Company:
Discovery Laboratories, Inc.
2600 Kelly Rd., Suite 100
Warrington, PA 18976
Tel: (215) 488-9300
Fax: (215) 488-9557
Attn: General Counsel

13. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

14. Amendment. No amendment or modification of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties hereto.

15. Successors and Assigns. The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company. Amick shall not be entitled to assign any of his rights or obligations under this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date first above written.

DISCOVERY LABORATORIES, INC.

By: _____
John G. Cooper,
Executive Vice President and
Chief Financial Officer

W. THOMAS AMICK

By: _____

SEPARATION OF EMPLOYMENT AGREEMENT AND GENERAL RELEASE

THIS SEPARATION OF EMPLOYMENT AGREEMENT AND GENERAL RELEASE (this "Agreement") is made as of August 13, 2009 between Discovery Laboratories, Inc. (the "Company") and Robert J. Capetola, Ph.D. ("Executive") (hereinafter collectively referred to as the "Parties").

WHEREAS, the Company and Executive are parties to an employment agreement dated May 4, 2006, as amended (the "Employment Agreement");

WHEREAS, Executive desires to resign all of his positions with the Company and Executive and the Company wish to mutually agree on matters relating to Executive's resignation, on the terms set forth in this Agreement; and

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound hereby, Executive and the Company agree as follows:

1. Resignation from Employment and the Board of Directors. As of 5:00 p.m. on the date of this Agreement as set forth above (the "Resignation Date"), Executive hereby resigns all employment and related job duties and responsibilities with the Company including, without limitation, his positions as President and Chief Executive Officer and as a member of the Board of Directors of the Company. This resignation is the product of an agreement by the Parties hereto and is not a result of any disagreement Executive had about the operations, policies or practices of the Company or any of its subsidiaries or affiliates. Terms not otherwise defined in this Agreement shall have the meaning given to them in the Employment Agreement.

2. Severance Payments and Benefits to Executive.

(a) Separation Payment. On the Effective Date (as defined in Section 8(d) of this Agreement), Company shall pay to Executive a lump sum cash payment in an amount equal to the sum of (i) all unpaid compensation accrued through the Resignation Date, and any unreimbursed employee business expenses (subject to submission of appropriate documentation) (provided, that any payment under this Section 2(a) shall not exceed the amount that otherwise would be calculated in accordance with Section 7(a)(i) of the Employment Agreement), plus (ii) $250,000.

(b) Periodic Severance Payments. During the period beginning as of the Resignation Date and ending on May 3, 2010 (the "Severance Period", unless terminated early under Section 2(e) or 2(f) of this Agreement), Company shall pay to Executive an amount equal to his Base Salary (calculated at a rate of $490,000 per annum), payable in accordance with the Company's normal bi-weekly payroll practices and less any required withholdings.

(c) Severance Period Benefits. During the period beginning as of the Resignation Date and ending on May 3, 2010 (the "Benefits Period", unless extended under Section 2(e) or 2(f) of this Agreement), the Company shall provide Executive continuation of the health (initially pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA")), life and other benefits as set forth, and to the extent described, in Section 7(b)(iv) of the Employment Agreement.

(d) Stock Options and Restricted Stock. On the Effective Date, all shares of stock and all options to acquire Company stock held by Executive shall accelerate and become fully vested and all stock options shall continue to be exercisable for the remainder of their stated terms. In the event of a Change of Control, if Executive shall elect not to exercise all or any portion of his Company options, Executive shall be treated no less favorably than the Company's senior executives with respect to any extension, monetization or other disposition of such executives' similar unexercised options in connection with the Change of Control.

(e) Additional Severance Payments and Benefits in the Event of a Corporate Transaction. In the event that, prior to the expiration of the Severance Period, the Company consummates a Corporate Transaction, as that term is defined below, then:

1) the periodic payments under Section 2(b) shall cease and, within 10 days from the date of a Corporate Transaction (or, if the Corporate Transaction consists of more than one transaction, the date of the last of such transactions), the Company shall pay Executive a lump sum cash payment in the amounts described in Section 7(b)(iii) of the Employment Agreement, reduced by the aggregate of any severance payments paid to Executive pursuant to Sections 2(a)(ii) and 2(b); and

2) the Benefits Period under Section 2(c) shall be extended for a period ending 24 months after the Resignation Date.

For the purposes of this Agreement, the term "Corporate Transaction" means (i) one or more corporate partnering or strategic alliance transactions, Business Combinations or public or private financings that (A) are completed during the Severance Period and (B) result in cash proceeds (net of transaction costs) to the Company of at least $20 million received during the Severance Period or within 90 calendar days thereafter, or (ii) an acquisition of the Company, by Business Combination or other similar transaction, that occurs during the Severance Period and the consideration paid to stockholders of the Company, in cash or securities, is at least $20 million. Net proceeds shall be calculated without taking into account any amounts received by the Company as reimbursement for costs of development and research activities to be performed in connection with any such transaction.

(f) Additional Severance Payments and Benefits in the Event of a Change of Control. In the event that, prior to the expiration of the Severance Period, the Company consummates a Corporate Transaction that constitutes a Change of Control, as that term is defined under the Employment Agreement, then:

1) the periodic payments under Section 2(b) shall cease and, in lieu of the Severance Payments provided under Section 2(e) of this Agreement, within 10 days from the date of a Change of Control, the Company shall pay Executive a lump sum cash payment in an amount equal to the product of 2.25 times the sum of (A) the Executive's Base Salary and (B) the Highest Annual Bonus, reduced by the aggregate of any severance payments paid to Executive pursuant to Sections 2(a)(ii) and 2(b); and

2) The Benefits Period under Section 2(c) shall be extended for a period ending 27 months after the Resignation Date.

(g) Other Miscellaneous Severance Matters.

1) Executive acknowledges and agrees that, from and after the date of this Agreement, Executive shall not be entitled to any benefits or employment rights set forth in his Employment Agreement, during the Severance Period or otherwise, other than the benefits set forth in this Agreement.

2) In the event of a Corporate Transaction or a Change of Control in which the Company's vice-presidents shall decide or otherwise be required to accept a reduction in any severance payments payable in connection with such transaction pursuant to their respective employment agreements then in effect, the lump sum cash payments to be provided to Executive pursuant to Sections 2(e) or (f) of this Agreement shall then likewise be reduced in an amount and manner so as to constitute a substantially similar proportional adjustment as that experienced by the Company's vice-presidents; provided, however, that (i) such adjustment shall be applied solely with respect to payments that otherwise would be paid to Executive under Sections 2(e) or (f) of this Agreement, (ii) the Company shall promptly notify Executive that such adjustment will occur and provide copies of the transaction documents at the time the transaction is publicly disclosed, and (iii) under no circumstances will Executive be required to return any money that has been previously paid to him.

(h) Survival of Obligations. The obligations of the Company under this Section 2 shall survive the death of Executive. Any amounts remaining due at the time of or after Executive's death shall be paid on the dates set forth in this Agreement and shall be payable to his surviving spouse or his estate or legal representative. If the Company remains obligated to provide any benefits after the time of Executive's death, such benefits shall be provided to surviving participants and/or beneficiaries under the Company's health and welfare and other benefit plans, in accordance with any applicable provisions of COBRA and the provisions of such plans.

(i) Acknowledgements. All payments made to Executive under this Agreement shall be subject to applicable federal, state and local withholding taxes. Executive hereby acknowledges that, under the Employment Agreement and under the Company's general policies and practices, Executive is not otherwise entitled to receive the benefits described in this Agreement unless Executive signs this Agreement. Executive further acknowledges that, other than the foregoing payments described in this Section 2, he has received payment in full for all of the compensation, wages, benefits and payments of any kind otherwise due him from the Company, including compensation, bonuses, commissions, lost wages, severance, expense reimbursements, payments to benefit plans, accrued but unused vacation and personal or sick time as provided in the Employment Agreement or otherwise. The Parties acknowledge that the consideration described in Section 2 represents good, valuable, and sufficient consideration for the mutual promises and duties set forth in this Agreement.

3. Complete Release by Executive; Indemnity by Company.

(a) Release. For and in consideration of the payments and promises contemplated by Section 2 of this Agreement and for other good and valuable consideration as more fully described herein, the receipt and adequacy of which is hereby acknowledged, Executive hereby waives, releases and gives up any claim or cause of action that Executive, Executive's heirs, executors, administrators, successors and assigns may have against the Company, its subsidiaries and affiliates and their employee benefit plans and the trustees, fiduciaries and administrators of those plans, and any of the foregoing present or past employees, officers, shareholders, managers, directors, agents and contractors, and each of their predecessors, successors and assigns (the "Released Parties"), based on any event that has occurred before Executive signs this Agreement, or arising from or based upon Executive's employment with the Company and/or separation from employment and/or termination of the Employment Agreement, including, but not limited to, any claims for salary, bonuses, severance pay, vacation pay or any benefits under the Employee Retirement Income Security Act of 1974, as amended; any claims of harassment or discrimination based upon race, color, national origin, ancestry, religion, marital status, sex, sexual orientation, harassment, retaliation, citizenship status, pregnancy, leave of absence (including, but not limited to, the Family Medical Leave Act or any other federal, state or local leave laws), medical condition or disability, under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans With Disabilities Act, Section 1981 of the Civil Rights Act of 1866, or any other federal, state or local law prohibiting discrimination in employment; any claims of age discrimination under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act of 1990, or under any federal, state or local law prohibiting age discrimination; the Worker Adjustment and Retraining Notification Act; whistleblower claims; claims of breach of implied or express contract, breach of promise, misrepresentation, negligence, fraud, estoppel, defamation, infliction of emotional distress, violation of public policy, wrongful or constructive discharge or any other employment-related tort; any claim for costs, fees or other expenses, including attorneys' fees; and all claims under any other federal, state or local law relating to employment, including the Sarbanes-Oxley Act of 2002. This waiver includes a waiver of claims that Executive may know about and claims that Executive may not know about. However, the foregoing waiver shall not apply to, and Executive does not hereby waive, release or give up (i) any claim for workers' compensation benefits, (ii) any vested benefits (if any) under the terms of any retirement savings, insurance, or other qualified plan(s) maintained by the Company, (iii) any right to unemployment benefits that Executive may have, (iv) any rights that Executive may have to purchase health benefit continuation coverage under COBRA, (v) any rights that Executive may have under this Agreement, the Indemnification Agreement (as defined below), the Agreements between the Company and Executive related to Executive's Options Agreements and Restricted Stock Agreements, and (vi) any rights of Executive under the Company's Certificate of Incorporation, as amended from time to time, and the Company's Bylaws, as amended from time to time, and any insurance policies maintained by the Company, including directors and officers liability and product and general liability policies.

(b) Claims. Executive represents and warrants that Executive has not filed, commenced or lodged against or relating to the Company, or permitted to be filed, commenced or lodged against or relating to the Company on Executive's behalf, any complaints, charges, claims, actions or other proceedings of any nature or description in or before any court, administrative agency or other forum. Executive hereby agrees that neither Executive, nor any non-governmental person, organization or other entity acting on Executive's behalf, has in the past or will in the future file any lawsuit or arbitration asserting any claim that is waived under Section 3(a) of this Agreement. If Executive breaks this promise and files a lawsuit or arbitration making any claim waived in this Agreement, Executive shall pay for all costs, including reasonable attorneys' fees, incurred by the Company in defending against any such claim. Furthermore, Executive hereby gives up any right to individual damages in connection with any administrative, arbitration or court proceeding with respect to Executive's employment with and/or termination of employment from the Company, and if Executive is awarded money damages, Executive hereby agrees to assign to the Company all right and interest to such money damages. Executive affirms that he has not assigned or transferred any claim against the Company or any of the Released Parties, nor has he purported to do so.

(c) Executive Indemnity. The Company hereby acknowledges that the Indemnification Agreement, effective as of September 15, 2000 ("Indemnification Agreement"), between Executive and the Company shall survive the termination of the Employment Agreement and any expiration of the Severance Period and remain in full force and effect in accordance with its terms.

4. Release of Executive by the Company.

(a) In consideration of the promises by Executive under this Agreement, including the representations, covenants and release provided under Section 3, and for other good and valuable consideration as more fully described herein, the Company hereby irrevocably and unconditionally releases, waives and forever discharges Executive from known and unknown claims, promises, causes of action or similar rights of any type that the Company may have against Executive. However, the foregoing waiver shall not apply to, and the Company does not hereby waive, release or give up (i) any claim arising under the terms of any health, welfare, equity incentive or other employee benefit plan maintained by the Company, (ii) any rights that the Company may have under this Agreement, the Indemnification Agreement, the Agreements between the Company and Executive related to Executive's Options Agreements and Restricted Stock Agreements, and (iii) any rights of the Company to recoup reimbursement or advances to Executive under the Company's Certificate of Incorporation, as amended from time to time, and the Company's Bylaws, as amended from time to time, and any insurance policies maintained by the Company, including directors and officers liability and product and general liability policies .

(b) Claims. The Company represents and warrants that the Company has not filed, commenced or lodged against or relating to Executive any complaints, charges, claims, actions or other proceedings of any nature or description in or before any court, administrative agency or other forum. The Company hereby agrees that it will not in the future file any lawsuit or arbitration asserting any claim that is waived under Section 4(a) of this Agreement. If the Company breaks this promise and files a lawsuit or arbitration making any claim waived in this Agreement, the Company shall pay for all costs, including reasonable attorneys' fees, incurred by Executive in defending against any such claim.

5. Executive's Promises and Representations.

(a) Employment Separation. Executive promises never to knowingly seek employment with the Company or its affiliates.

(b) No Admission of Liability. Executive agrees that the payments made and other consideration received pursuant to this Agreement are not to be construed as an admission of legal liability by the Company and that no person or entity shall utilize this Agreement or the consideration received pursuant to this Agreement as evidence of any admission of liability since the Company expressly denies liability. Executive agrees not to assert that this Agreement is an admission of guilt or wrongdoing and acknowledges that the Released Parties do not believe or admit that any of them has done anything wrong. Similarly, the Company agrees that the terms of this Agreement are not to be construed as an admission of legal liability by Executive and that no person or entity shall utilize this Agreement or the consideration received pursuant to this Agreement as evidence of any admission of liability since Executive expressly denies liability. The Company agrees not to assert that this Agreement is an admission of guilt or wrongdoing and acknowledges that Executive does not believe or admit that he has done anything wrong.

(c) Other Confidentiality. Executive acknowledges that, as a company in a highly competitive industry, the Company follows a policy intended to fully protect its trade secrets and confidential information (collectively, "Confidential Information"). In the course of Executive's employment, Executive has had access to Confidential Information, the use or disclosure of which would be seriously damaging to the Company. Such Confidential Information is the Company's property and is not readily ascertainable from public sources. Executive's access to Confidential Information has been essential to the performance of Executive's duties for the Company. Executive represents and warrants that (i) he is in compliance with all obligations of Executive as set forth in the Proprietary Information and Inventions Agreement, (ii) he has timely made all disclosures required to be made by him under the Proprietary Information and Inventions Agreement, and (iii) he has executed and delivered all documents and assignments contemplated by the Proprietary Information and Inventions Agreement. Executive covenants that he will comply with all obligations that arise under the Proprietary Information and Inventions Agreement that arise as a result of or in connection with the termination of his employment with the Company. The Company acknowledges that Executive has signed all documents related to the Proprietary Information and Inventions Agreement that the Company has requested him to sign. At the Company's reasonable request, Executive agrees to promptly make all disclosures and execute all documents appropriate to preserve the confidentiality of, and/or otherwise protect, the Company's interest in, any Confidential Information and Inventions, including with respect to trade secrets, inventor disclosure statements and patent prosecution. Executive will promptly surrender to the Company all documents, computer disks and hard drives, all notes and memoranda relating to or containing Confidential Information.

(d) Non-Disparagement. The Parties agree that at no time will either Party disparage the other Party or make uncomplimentary statements or remarks about the other Party (including, with respect to the Company, any of its present or past employees, officers, managers, and directors), to any person or entity, whether orally, in writing or by any other means of communication. Except as may be required by law, Executive also agrees not to at any time discuss the Company or its business with, or comment on the Company or its business, to any employee or other representative of any federal, state or local government or administrative agency, self-regulatory organization, investment banking firm, newspaper, magazine or television or radio station, or any Internet site, or any reporter, writer or other person or entity, whether orally, in writing or by any other means of communication. The Company agrees that it will not respond to inquiries about Executive, except to confirm his dates of employment and title. Notwithstanding the foregoing, the Parties shall not be prevented from providing information in connection with, or testifying in (i) a judicial, arbitration or other proceeding in connection with this Agreement or under any other agreement related to the exceptions set forth in Sections 3(a) or 4(a), or (ii) as may be required by any applicable statute, law, ordinance, regulation, order, or rule of any federal, state, local or other governmental agency or body, including without limitation, any securities exchange, having jurisdiction over the Parties and the business and research and development activities of the Company.

(e) Non-Competition During and After Employment. Clause (X) of Section 4(c) of the Employment Agreement is hereby amended in its entirety to read:

> (X) compete with the Company in the business of developing or commercializing pulmonary surfactants, including aerosolization technologies intended for use therewith, or any other category of compounds which forms the basis of the Company's material products on the Resignation Date or any material products under development on the Resignation Date,

(f) Enforcement. Executive acknowledges that a breach or threatened breach of Section 5 (d) of this Agreement will constitute a material breach of this Agreement and cause the Company irreparable injury and damage. Executive therefore agrees that, in addition to any other remedies that may be available to the Company at law, the Company will be entitled to an injunction and/or other equitable relief (without the requirement of posting a bond or other security) to prevent a breach or threatened breach of such provisions and to secure their enforcement.

(g) Return of Company Property. Promptly after execution of this Agreement, but in no event later than the close of business on August 24, 2009, Executive shall return to the Company all originals and copies of all files, memoranda, documents, records, credit cards; keys, electronically or optically stored data, and any other property of the Company, the Company's clients or its affiliates in his possession, custody or control including, but not limited to, the Company's records, office equipment, such as computers and related equipment, telephones, pagers, etc. At such time, at the request of the Company, Executive shall certify that he has no property of the Company, the Company's clients or its affiliates in his possession or under his control. The Company acknowledges that Executive owns the cell phone that he has used for business purposes. After the date of this Agreement, Executive shall be solely responsible for all expenses related to his cell phone.

(h) Cooperation and Transition of Duties. Executive agrees to reasonably cooperate in the transition of his duties and responsibilities as reasonably requested by the Company including, if required, executing such customary and reasonable documents and certifications that relate to matters arising prior to his resignation. Executive agrees to fully cooperate with the Company and participate in the preparation for, response to, prosecution of and/or defense of any pending, actual or threatened litigation involving the Company, its clients, vendors and/or its affiliates. The Company will reimburse Executive for all reasonable out-of-pocket expenses incurred by Executive as a result of such cooperation.

6. Termination.

(a) This Agreement shall terminate upon (i) the occurrence of a Corporate Transaction or Change of Control (whichever occurs later), effective on the closing date of such Corporate Transaction or Change of Control, or, if the Corporate Transaction consists of more than one transaction, the closing date of the last of such transactions, and payment to Executive of all amounts owed to him under this Agreement as a result of such Corporate Transaction or Change of Control.

(b) This Agreement may be terminated by the Company, on written notice to Executive (stating in reasonable detail the reasons for such termination) only if Executive materially breaches the material terms and conditions of Sections 5(c), (d) and (h) of this Agreement, Section 4(c) of the Employment Agreement and the Proprietary Information and Inventions Agreement. Unless and until such breach occurs, the Company shall provide to Executive the consideration described in Section 2 of this Agreement.

1) In the event that the Company terminates the Agreement in accordance with this Section 6(b), the Company agrees that it shall not object to the Executive, in his sole discretion (and Executive agrees that, if he shall challenge the Company's termination, he shall only do so by), moving for expedited relief under the Commercial Rules of the AAA for a determination as to whether or not a material breach under this Agreement has occurred. In such event, the Company agrees that it shall continue to make the payments, as and when due, that otherwise would have been payable to Executive under this Agreement, and all such payments shall be deposited into an escrow account held by AAA.

2) If it shall be determined by an arbitrator under the Commercial Rules of the AAA, or a court of competent jurisdiction, that such a material breach has occurred, in addition to and not in substitution for any other remedies that the Company may have, in law or in equity, the Company shall be entitled to recoup any payments or benefits that have been paid or afforded to Executive under this Agreement, as well as all amounts held in escrow by AAA.

3) In the event that the arbitrator determines that the Executive's conduct did not constitute a material breach of this Agreement, this Agreement shall be deemed re-instated and all funds then held in the AAA escrow account shall be paid to Executive (less any withholdings, which shall be returned to the Company), and Company shall pay to Executive, within five (5) days of the Arbitrator's determination, interest on the amounts deposited in the escrow account held by AAA, from the original due date until paid, calculated at a rate of ten percent (10%) per annum. In addition, Executive shall be entitled to the benefits set forth in Section 11 of the Employment Agreement.

7. Consideration of Agreement. Both Parties acknowledge that, before signing this Agreement, they have carefully read this Agreement; they fully understood it; it is written in a manner that is understandable to both of them; and they are entering into it knowingly and voluntarily.

8. Miscellaneous.

(a) Entire Agreement. This Agreement is the entire agreement between Executive and the Company with respect to his resignation and the termination of his employment with the Company. This Agreement may not be modified or canceled in any manner except by a writing signed by both Executive and an authorized officer of the Company. In deciding to sign this Agreement, Executive has not relied on any statement by anyone associated with the Company that is not contained in this Agreement. Executive acknowledges that the Company has made no promises, assurances, or representations of any kind to Executive with respect to his resignation and the termination of his employment with the Company, other than those explicitly contained in this Agreement.

(b) Binding Effect; Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors, assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect, and whether by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business or assets of the Company expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed within the continental United States by first class certified mail, return receipt requested, postage prepaid, addressed as follows:

(i) if to the Company:

Discovery Laboratories, Inc.
2600 Kelly Road, Suite 100
Warrington, PA 18976
Attn: General Counsel

(ii) if to the Executive:

Robert J. Capetola, Ph.D.
6097 Hidden Valley Dr.
Doylestown, PA 18902

Addresses may be changed by written notice sent to the other party at the last recorded address of that party.

(d) Consideration Period. Executive acknowledges that the Company has advised him to consult with an attorney prior to executing this Agreement. Executive also acknowledges that he has been given a period of at least 21 days within which to consider the Agreement. For a period of seven days following the execution of this Agreement, Executive may revoke this Agreement, and this Agreement shall not become effective or enforceable until the revocation period has expired, such date being the "Effective Date" under this Agreement. If Executive wishes to revoke this Agreement, he shall provide written notice to the Company, attention Corporate Secretary, no later than 5:00 p.m. on August 20, 2009. Executive acknowledges and agrees that, for the purpose of this Section 8(d), time is of the essence and that, should he fail to deliver a revocation notice no later than 5:00 p.m. on August 20, 2009, he shall have waived his right to revoke this Agreement.

(e) Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction or arbitrator to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of this Agreement containing any provision held to be invalid, void or otherwise unenforceable that is not itself invalid, void or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable. Notwithstanding the foregoing, if any of Executive's release, representations or covenants contained in Section 3 of this Agreement are declared to be invalid, illegal, unenforceable or barred for any reason whatsoever, the Company shall have the right to consider its obligations under this Agreement to be nullified and, in such case, the Company may cease providing any payments or benefits that otherwise may be due under this Agreement. In such event, however, Executive shall not be obligated to return any payments or benefits received prior to the date of such declaration.

(f) Interpretation and Governing Law. This Agreement shall be construed as a whole according to its fair meaning. It shall not be construed strictly for or against Executive or the Company. This Agreement shall be governed by the statutes and common law of the Commonwealth of Pennsylvania, excluding its choice of law statutes and common law.

(g) Negotiation; Arbitration. If the Parties are unable to resolve any controversy, claim or dispute of whatever nature between Executive and the Company arising out of or related to this Agreement or the construction interpretation, performance, breach, termination, enforceability or validity of this Agreement (herein a "Dispute") then the Dispute shall be settled by final and binding arbitration in accordance with the provisions of Section 15 of the Employment Agreement. The provisions of Section 11 of the Employment Agreement shall not be applicable to any such proceeding.

(h) Company Representations. The Company represents and warrants as follows: (a) it is a corporation validly existing and in good standing under the laws of the State of Delaware, (b) it has full corporate power to enter into and perform its obligations under this Agreement and has obtained all necessary consents related thereto, and (c) this Agreement has been duly executed and delivered by it and is binding and enforceable against it in accordance with its terms.

(i) Headings. The headings to the Sections of this Agreement are for convenience of reference only and shall not be given any effect in the construction or interpretation of this Agreement.

(j) Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original, but such counterparts shall together constitute but one and the same document. One or more counterparts of this Agreement may be delivered by via telecopy or other electronic means, with the intention that they shall have the same effect as an original counterpart of this Agreement.

EXECUTIVE IS ADVISED TO READ THIS AGREEMENT AND CAREFULLY CONSIDER ALL OF ITS PROVISIONS BEFORE SIGNING IT. IT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.

[Signatures appear on the next page.]

IN WITNESS WHEREOF and intending to be legally bound, Executive and the Company have executed this Agreement on the dates indicated below:

EXECUTIVE

Robert J. Capetola, Ph.D.

DISCOVERY LABORATORIES, INC.

By: W. Thomas Amick,
Chairman of the Board

Exhibit 99.1

Discovery Labs Announces Date of 2009 Annual Shareholder Meeting

Warrington, PA — September 4, 2009 — Discovery Laboratories, Inc. (Nasdaq: DSCO), a biotechnology company developing its proprietary KL_4 surfactant technology to improve respiratory critical care medicine, today announced that its Annual Meeting of Stockholders will be held on Monday, December 7, 2009. Discovery Labs expects to mail its definitive proxy statement to all stockholders of record on or about October 21, 2009.

Rule 14a-8 Stockholder Proposal Deadline

The date of the 2009 annual meeting will be more than 30 days after the anniversary of the 2008 annual meeting. Pursuant to Rule 14a-8 under the Securities Exchange Act, stockholders may present proposals for inclusion in the Company's proxy statement for the 2009 annual meeting by submitting their proposals to the Company a reasonable time before the Company begins to print and send its proxy materials. The Company's Board of Directors has set September 15, 2009 as the deadline for receipt of stockholder proposals pursuant to Rule 14a-8. In order for a proposal under Rule 14a-8 to be considered timely, it must be received by the Company on or prior to September 15, 2009, at the Company's principal executive offices at 2600 Kelly Rd., Suite 100, Warrington, PA 18976 and be directed to the attention of the Corporate Secretary. All stockholder proposals must be in compliance with applicable laws and regulations in order to be considered for inclusion in the proxy statement for the 2009 annual meeting.

Bylaws Advance Notice Deadline

Under the Company's By-Laws, stockholders may also present a proposal or director nomination at the 2009 annual meeting if advance written notice is timely given to the Secretary of the Company, at the Company's principal executive offices, in accordance with the Company's By-Laws. To be timely, notice by a stockholder of any proposal or nomination must be provided not later than the close of business on September 15, 2009. The Company's By-Laws specify requirements relating to the content of the notice that stockholders must provide.

About Discovery Labs

Discovery Laboratories, Inc. is a biotechnology company developing Surfactant Therapies for respiratory diseases. Surfactants are produced naturally in the lungs and are essential for breathing. Discovery Labs' novel proprietary KL_4 Surfactant Technology produces a synthetic, peptide-containing surfactant that is structurally similar to pulmonary surfactant and is being developed in liquid, aerosol or lyophilized formulations. In addition, Discovery Labs' proprietary Capillary Aerosolization Technology produces a dense aerosol, with a defined particle size that is capable of potentially delivering aerosolized KL_4 surfactant to the deep lung without the complications currently associated with liquid surfactant administration. Discovery Labs believes that its proprietary technology platform makes it possible, for the first time, to develop a significant pipeline of surfactant products to address a variety of respiratory diseases for which there frequently are few or no approved therapies. For more information, please visit our website at www.Discoverylabs.com.

Forward Looking Statements

To the extent that statements in this press release are not strictly historical, all such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements, including without limitation, any relating to the second half of the Company's fiscal year, are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Examples of such risks and uncertainties are: risks relating to the rigorous regulatory requirements required for approval of any drug or drug-device combination products that Discovery Labs may develop, including that: (i) Discovery Labs and the U.S. Food and Drug Administration (FDA) or other regulatory authorities will not be able to agree on the matters raised during regulatory reviews, or Discovery Labs may be required to conduct significant additional activities to potentially gain approval of its product candidates, if ever, (ii) the FDA or other regulatory authorities may not accept or may withhold or delay consideration of any of Discovery Labs' applications, or may not approve or may limit approval of Discovery Labs' products to particular indications or impose unanticipated label limitations, and (iii) changes in the national or international political and regulatory environment may make it more difficult to gain FDA or other regulatory approval; risks relating to Discovery Labs' research and development activities, including (a) time-consuming and expensive pre-clinical studies, clinical trials and other efforts, which may be subject to potentially significant delays or regulatory holds, or fail, and (b) the need for sophisticated and extensive analytical methodologies, including an acceptable biological activity test, if required, as well as other quality control release and stability tests to satisfy the requirements of the regulatory authorities; risks relating to Discovery Labs' ability to develop and manufacture drug products and capillary aerosolization systems for clinical studies, and, if approved, for commercialization of drug and combination drug-device products, including risks of technology transfers to contract manufacturers and problems or delays encountered by Discovery Labs, its contract manufacturers or suppliers in manufacturing drug products, drug substances and capillary aerosolization systems on a timely basis or in an amount sufficient to support Discovery Labs' development efforts and, if approved, commercialization; risks that (a) market conditions, the competitive landscape or otherwise, may make it difficult to launch and profitably sell products, (b) Discovery Labs may be unable to identify potential strategic partners or collaborators to market its products, if approved, in a timely manner, if at all, and (c) Discovery Labs' products will not gain market acceptance by physicians, patients, healthcare payers and others in the medical community; the risk that Discovery Labs or its strategic partners or collaborators will not be able to attract or maintain qualified personnel; the risk that Discovery Labs will not be able in a changing financial market to raise additional capital or enter into strategic alliances or collaboration agreements, or that the ongoing credit crisis will adversely affect the ability of Discovery Labs to fund its activities, or that additional financings could result in substantial equity dilution; the risk that Discovery Labs will not be able to access credit from its committed equity financing facilities, or that the share price at which Discovery Labs may access the facilities from time to time will not enable Discovery Labs to access the full dollar amount potentially available under the facilities; the risk that Discovery Labs will be unable to maintain The Nasdaq Global Market listing requirements, causing the price of Discovery Labs' common stock to decline; the risk that recurring losses, negative cash flows and the inability to raise additional capital could threaten Discovery Labs' ability to continue as a going concern; the risks that Discovery Labs may be unable to maintain and protect the patents and licenses related to its products, or other companies may develop competing therapies and/or technologies, or health care reform may adversely affect Discovery Labs; risks of legal proceedings, including securities actions and product liability claims; risks relating to reimbursement and health care reform; and other risks and uncertainties described in Discovery Labs' filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

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