

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

FORM 8-K

CURRENT REPORT

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

December 12, 2018

Date of Report (Date of earliest event reported)

ABRAXAS PETROLEUM CORPORATION

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation)

0-16071

(Commission File Number)

**18803 Meisner Drive
San Antonio, Texas 78258
(210) 490-4788**

74-2584033

(I.R.S. Employer Identification Number)

(Address of principal executive offices and Registrant's telephone number, including area code)

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

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

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

Emerging growth company

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

Item 5.03. Amendments To Articles Of Incorporation Or Bylaws; Change In Fiscal Year.

Effective December 12, 2018, the Board of Directors (the "Board") of Abraxas Petroleum Corporation ("Abraxas" or the "Company") approved and adopted an amendment (the "Amendment") to the Amended and Restated Bylaws of the Company (the "Bylaws") amending Article II, Section 9 of the Bylaws to provide for majority voting in uncontested elections of directors.

A director nominee may be elected only upon the affirmative vote of a majority of the total votes cast, which means that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election. Votes cast do not include abstentions or "broker non-votes." Prior to the adoption of the Amendment, members of the board were elected by a plurality of votes cast, whether or not the election was contested. The Bylaws will retain plurality voting for contested director elections.

Prior to each meeting for the election of directors, each incumbent director nominee is required to submit an irrevocable letter of resignation, which shall become effective if both (1) in an uncontested election the incumbent director nominee does not receive a majority of the votes cast representing shares present in person or by proxy and entitled to vote at such meeting and (2) the Board of Directors determines, on an informed basis and in good faith, that acceptance of the resignation is in the best interests of the Company. The Nominating Committee of the Board of Directors (the "Nominating Committee") shall consider the resignation and recommend to the Board of Directors whether to accept such resignation. The Nominating Committee in making its recommendation and the Board of Directors in making its decision regarding the tendered resignation may each consider any factors or other information that they consider appropriate. The Board of Directors will consider and act on the Nominating Committee's recommendation and publicly disclose its determination. Any director who does not receive a majority of the votes cast representing shares present in person or by proxy and entitled to vote at the meeting shall not participate in the Board of Directors' decision with respect to his or her resignation.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Bylaws, attached hereto as Exhibit 3.1 and incorporated herein by reference.

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

(e) Abraxas has entered into employment agreements with each of its executive officers: Robert L.G. Watson, the Company's Chairman of the Board, President and Chief Executive Officer, Steven P. Harris, the Company's Vice President-Chief Financial Officer, Peter A. Bommer, the Company's Vice President-Engineering, Tod A. Clarke, the Company's Vice President-Land, Kenneth W. Johnson, the Company's Vice President-Operations, G. William Krog, Jr., the Company's Vice President-Chief Accounting Officer, Dirk A. Schwartz, the Company's Vice President-Business Development, and Stephen T. Wendel, the Company's Vice President-Marketing (each an "Executive Officer" and collectively, the "Executive Officers").

Under the terms of the employment agreements, each of the Executive Officers will receive compensation as determined from time to time by the Board in its sole discretion. The employment agreements for the Executive Officers become effective on January 1, 2019, are scheduled to terminate on December 31, 2019, and are renewed automatically for an additional year if by December 1 neither Abraxas nor the Executive Officer, as the case may be, has given notice to the contrary. The employment agreements supersede all previous employment agreements with the Executive Officers.

The employment agreements contain the following defined terms:

"Cause" means termination upon

(i) the willful and continued failure by the Executive Officer to substantially perform his duties with Abraxas (other than any such failure resulting from his incapacity due to physical or mental illness or any such actual or anticipated failure resulting from termination by him for Good Reason) after a written demand for substantial performance is delivered to the Executive Officer by the Board, which demand specifically identifies the manner in which the Board believes that he has not substantially performed his duties, or

(ii) the willful engaging by the Executive Officer in conduct which is demonstrably and materially injurious to the Company, monetarily or otherwise. The Executive Officer shall not be deemed to have been terminated for Cause unless and until the Executive Officer has been delivered a copy of a resolution duly adopted by the affirmative vote (which cannot be delegated) of not less than a majority of the members of the Board who are not officers of the Company at a meeting of the Board called and held for such purposes (after reasonable notice to the Executive Officer and an opportunity for the Executive Officer, together with the Executive Officer's counsel, to be heard before the Board), finding that in the good faith opinion of the Board, the Executive Officer was guilty of conduct set forth in clauses (i) or (ii) above and specifying the particulars thereof in detail.

"Change in Control" means the occurrence of

(i) any "person" or "group" (as such terms are used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act")) becoming the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), except that a person shall be deemed to be the "beneficial owner" of all shares that any such person has the right to acquire pursuant to any agreement or arrangement or upon exercise of conversion rights, warrants, options or otherwise, without regard to the sixty day period referred to in such Rule), directly or indirectly, of securities representing 20% or more of the combined voting power of the Company's then outstanding securities,

(ii) any person or group making a tender offer or an exchange offer for 20% or more of the combined voting power of the Company's then outstanding securities,

(iii) at any time during any period of two consecutive years (not including any period prior to the execution of the employment agreement), individuals who at the beginning of such period constituted the Board and any new directors, whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds (2/3) of the Company directors then still in office who either were the Company directors at the beginning of the period or whose election or nomination for election was previously so approved ("Current Directors"), ceasing for any reason to constitute a majority thereof,

(iv) the Company consolidating, merging or exchanging securities with any other entity and the stockholders of the Company immediately before the effective time of such transaction not beneficially owning, immediately after the effective time of such transaction, shares entitling such stockholders to a majority of all votes (without consideration of the rights of any class of stock entitled to elect directors by a separate class vote) to which all stockholders of the corporation issuing cash or securities in the consolidation, merger or share exchange would be entitled for the purpose of electing directors or the Current Directors immediately after the effective time of the consolidation, merger or share exchange not constituting a majority of the Board of Directors of the corporation issuing cash or securities in the consolidation, merger or share exchange, or

(v) any person or group acquiring all or substantially all of the Company's assets.

"Disability" means the incapacity of the Executive Officer due to physical or mental illness which causes the Executive Officer to have been absent from the full-time performance of his duties with the Company for six consecutive months, and within 30 days after the Company gives the Executive Officer written notice of termination, the Executive Officer has not returned to the full-time performance of his duties.

"Good Reason" means, without the Executive Officer's express written consent, any of the following:

(i) a material adverse alteration in the nature or status of his position, duties or responsibilities from those in effect immediately prior to a Change in Control, other than any such alteration primarily attributable to the fact that the Company may no longer be a public company or may be a subsidiary of another entity,

(ii) a reduction in his current annual base salary as in effect immediately prior to the Change in Control or as the same may be increased from time to time,

(iii) a change in the principal place of his employment, as in effect at the time of a Change in Control, to a location more than fifty (50) miles from such principal place of employment, excluding required travel on the Company's business to an extent substantially consistent with Employee's

business travel obligations as of the date of the agreement,

(iv) the failure by the Company, without his consent, to pay to him any portion of his current compensation, or to pay to him any portion of any deferred compensation, within ten (10) days of the date any such compensation payment is due,

(v) the failure by the Company to continue in effect any compensation plan in which he participates, or any substitute plans adopted prior to the Change in Control, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan in connection with the Change in Control, or the failure by the Company to continue his participation therein on the same basis, both in terms of the amount of benefits provided and the level of his participation relative to other participants, as existed at the time of the Change in Control,

(vi) the failure by the Company to continue to provide him with benefits at least as favorable to those enjoyed by him under any of the Company's pension, life insurance, medical, health and accident, disability, deferred compensation or savings plans in which he is currently participating, the taking of any action by the Company which would directly or indirectly materially reduce any of such benefits or deprive him of any material fringe benefit enjoyed by him, or the failure by the Company to provide him with the number of paid vacation days to which he is entitled on the basis of the Company's practice with respect to him as in effect at the time of the Change in Control,

(vii) the failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform his employment agreement, or

(viii) any purported termination of his employment which is not effected pursuant to the employment agreement's termination provisions.

"Retirement" means termination in accordance with the Company's retirement policy, generally applicable to its salaried employees or in accordance with any retirement arrangement established with the Executive Officer's consent with respect to himself.

At all times during the term of each Executive Officer's employment agreement, such Executive Officer's employment is at will and may be terminated by Abraxas for any reason without notice or cause. If, during the term of the employment agreement for each of the Executive Officers or any extension thereof, a Change in Control occurs, then such Executive Officer will be entitled to an automatic extension of the term of the Executive Officer's employment agreement for a period of 36 months beyond the term in effect immediately before the Change in Control.

If, following a Change in Control, an Executive Officer's employment is terminated by the Company other than for Cause or Disability, by reason of the Executive Officer's death or Retirement, or by such Executive Officer for Good Reason, then such terminated Executive Officer will be entitled to a lump sum payment equal to three times his annual base salary.

If any lump sum payment to an Executive Officer would individually or together with any other amounts paid or payable constitute a would constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code")) (the "Parachute Payments") which will be subject to the excise tax imposed under Section 4999 of the Code (the "Excise Tax"), then the total amounts received by the Executive Officer from the Company which constitute Parachute Payments shall be reduced to an amount equal, in the aggregate, to one dollar (\$1.00) less than three (3) times the Executive Officer's base amount (as defined in Section 280G of the Code) so that no portion of the Parachute Payments received by Employee shall be subject to the Excise Tax, if and only if (i) such reduction in the Parachute Payments produces a better net after-tax position (taking into account any applicable Excise Tax under Section 4999 of the Code and any applicable income tax) than the total payment provided for herein and (ii) there are no other amounts receivable by the Executive Officer from the Company which, by their terms, may not be reduced such that no portion of such amounts received by the Executive Officer shall be subject to the Excise Tax.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

3.1 Amended and Restated Bylaws of Abraxas Petroleum Corporation as of December 12, 2018

10.1 Form of Employment Agreement for Executive Officers

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.

ABRAXAS PETROLEUM CORPORATION

By: /s/ Steven P. Harris
Steven P. Harris
Vice President – Chief Financial Officer

Dated: December 18, 2018

AMENDED AND RESTATED
BYLAWS
OF
ABRAXAS PETROLEUM CORPORATION,
a Nevada Corporation
December 12, 2018
ARTICLE I
OFFICES

Section 1. Principal Office and Registered Agent. The principal office of the Corporation in the state of Nevada shall be at One East First Street, Reno, Washoe County, Nevada 89501. The name and address of the registered agent is the Corporation Trust Company of Nevada, One East First Street, Reno, Washoe County, Nevada 89501.

Section 2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Nevada as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II
STOCKHOLDERS

Section 1. Place of Meeting. All meetings of the stockholders shall be held at the principal office of the Corporation, or at such other place within or without the State of Nevada as shall be specified or fixed in the notices or waivers of notice thereof.

Section 2. Quorum, Adjournment of Meeting. Unless otherwise required by law or provided in the Articles of Incorporation or these Bylaws, the holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at any meeting of stockholders for the transaction of business and the act of a majority of such stock so represented at any meeting of stockholders at which a quorum is present shall constitute the act of the stockholders. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Notwithstanding the other provisions of the Articles of Incorporation or these Bylaws, the chairman of the meeting or the holders of a majority of the issued and outstanding stock, present in person or represented by proxy, at any meeting of stockholders, whether or not a quorum is present, shall have the power to adjourn such meeting from time to time, without any notice other than announcement at the meeting of the time and place of the holding of the adjourned meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at such meeting. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally called.

Section 3. Annual Meetings. An annual meeting of the stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, within or without the State of Nevada, on such date, and at such time as the Board of Directors shall fix and set forth in the notice of the meeting.

Section 4. Special Meetings. Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, the President or the Board of Directors pursuant to a resolution approved by a majority of the entire Board of Directors of the Corporation (as determined in accordance with the Bylaws of the Corporation). Notwithstanding anything contained in the Articles of Incorporation or Bylaws of the Corporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal this Section 4 or adopt any provision inconsistent with any provision of this Section 4.

Section 5. Record Date. For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders, or any adjournment thereof, or entitled 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 of Directors of the Corporation may fix in advance, a date as the record date for any such determination of stockholders, which date shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

If the Board of Directors does not fix a record date for any meeting of the stockholders, the record date for determining stockholders entitled to notice of or to vote at such meeting shall be at the close of business on the day next preceding the day on which notice is given, or, if in accordance with Article VIII, Section 3 of these Bylaws, notice is waived, at the close of business on the day next preceding the day on which the meeting is held. If, in accordance with Section 12 of this Article II, corporate action without a meeting of stockholders is to be taken, the record date for determining stockholders entitled to express consent to such corporate action in writing, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the date on which the Board of Directors adopts the resolution relating thereto.

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 of Directors may fix a new record date for the adjourned meeting.

Section 6. Notice of Meetings. Written notice signed by the President, Vice President, Secretary, or Assistant Secretary, or other persons as the President or Board of Directors may designate, of the place, date and hour of all meetings, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by or at the direction of the Chairman of the Board or the President, the Secretary or the other person(s) calling the meeting to each stockholder entitled to vote thereat not less than ten (10) nor more than sixty (60) days before the date of the meeting. Such notice may be delivered either personally or by mail. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

Section 7. Stock List. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in the name of such stockholder, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at the offices of the Corporation in San Antonio, Texas or a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The stock 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 8. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for him by proxy. Proxies for use at any meeting of stockholders shall be in writing and filed with the Secretary, or such other officer as the Board of Directors may from time to time determine by resolution, before or at the time of the meeting. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the secretary of the meeting who shall decide all questions touching upon the qualification of voters, the validity of the proxies and the acceptance or rejection of votes, unless an inspector or inspectors shall have been appointed by the chairman of the meeting, in which event such inspector or inspectors shall decide all such questions.

No proxy shall be valid after six (6) months from its date, unless the proxy provides for a longer period, which in no event may exceed seven (7) years. Each proxy shall be revocable unless expressly provided therein to be irrevocable and coupled with an interest sufficient in law to support an irrevocable power.

Should a proxy designate two or more persons to act as proxies, unless such instrument shall provide the contrary, a majority of such persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, each proxy so attending shall be entitled to exercise such powers in respect of the same portion of the shares as he is of the proxies representing such shares.

Section 9. Voting, Elections; Inspections. Unless otherwise required by law or provided in the Articles of Incorporation, each stockholder shall have one vote for each share of stock entitled to vote which is registered in his, her or its name on the record date for the meeting. Shares registered in the name of another corporation or other entity, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws (or comparable instrument) of such corporation or other entity may prescribe, or in the absence of such provision, as the Board of Directors (or comparable body) of such corporation or other entity may determine. Shares registered in the name of a deceased person may be voted by his executor or administrator, either in person or by proxy.

All voting, except as required by the Articles of Incorporation or where otherwise required by law, may be by a voice vote; provided, however, that upon written demand therefor by stockholders holding a majority of the issued and outstanding stock present in person or by proxy at any meeting a stock vote shall be taken. Every stock vote shall be taken by written ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. All elections of directors shall be by ballot, unless otherwise provided in the Articles of Incorporation.

At any meeting at which a vote is taken by ballots, the chairman of the meeting may appoint one or more inspectors, each of whom shall subscribe an oath or affirmation to execute faithfully the duties of inspector at such meeting with strict impartiality and according to the best of his ability. Such inspector shall receive the ballots, count the votes and make and sign a certificate of the result thereof. The chairman of the meeting may appoint any person to serve as inspector, except no candidate for the office of director shall be appointed as an inspector.

At any meeting for the election of directors at which a quorum is present, each director nominee shall be elected by the vote of a majority of the votes cast representing shares present in person or by proxy and entitled to vote at the meeting. However, in a contested election, meaning the number of nominees on the ballot for any election of directors exceeds the number of director nominees to be elected, each of the directors shall be elected by the vote of a plurality of the votes cast representing shares present in person or by proxy and entitled to vote on the election of directors.

For purposes hereof, a majority of the votes cast means that the number of shares voted "for" a director must exceed the number of votes cast "against" the election of that director. "Votes cast" shall not include abstentions and "broker non-votes." Ballots will not give stockholders the option to "withhold" votes from the election of directors, but rather will give the choice to vote "for" or "against" each director nominee or to abstain.

Prior to each meeting for the election of directors, each incumbent director nominee shall submit to the Board of Directors an irrevocable letter of resignation, which shall become effective if both (1) in an uncontested election the incumbent director nominee does not receive a majority of the votes cast representing shares present in person or by proxy and entitled to vote at such meeting and (2) the Board of Directors determines, on an informed basis and in good faith, that acceptance of the resignation is in the best interests of the Corporation. The Nominating Committee shall consider the resignation and recommend to the Board of Directors whether to accept such resignation. The Nominating Committee in making its recommendation and the Board of Directors in making its decision regarding the tendered resignation may each consider any factors or other information that they consider appropriate. The Board of Directors will consider and act on the Nominating Committee's recommendation and publicly disclose its determination. Any director who does not receive a majority of the votes cast representing shares present in person or by proxy and entitled to vote at the meeting shall not participate in the Board of Directors' decision with respect to his or her resignation.

If the Board of Directors determines to accept the resignation of an unsuccessful incumbent director nominee, then the Board of Directors may fill the resulting vacancy pursuant to Article III, Section 1 of these Bylaws or may decrease the size of the Board of Directors via resolution pursuant to the provisions of Article III, Section 1 of these Bylaws or leave the seat vacant.

Unless otherwise provided in the Articles of Incorporation, cumulative voting for the election of directors shall be prohibited.

Section 10. Conduct of Meetings. The meetings of the stockholders shall be presided over by the Chairman of the Board, or if he is not present, by the President, or if neither the Chairman of the Board nor the President is present, by a chairman elected at the meeting. The Secretary of the Corporation, if present, shall act as secretary of such meetings, or if he is not present, an Assistant Secretary shall so act; if neither the Secretary nor an Assistant Secretary is present, then a secretary shall be appointed by the chairman of the meeting. The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

Section 11. Treasury Stock. The Corporation shall not vote, directly or indirectly, shares of its own stock owned by it and such shares shall not be counted for quorum purposes.

Section 12. Action Without Meeting. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. Notwithstanding anything contained in the Articles of Incorporation or Bylaws of the Corporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal this Section 12 or adopt any provision inconsistent with any provision of this Section 12.

Section 13. Nominations and Business at Stockholder Meetings.

(A) Annual Meetings of Stockholders. (1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation (i) who was a stockholder of record at the time of giving of notice provided for in this Section 13, and at the time of the annual meeting, (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in this Section 13 as to such business or nomination.

(2) Without qualification, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 13, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 60th day nor earlier than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 90th day prior to such annual meeting and not later than the close of business on the later of the 60th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period for the giving of a stockholder's notice as described above.

(3) To be in proper form, a stockholder's notice (whether given pursuant to paragraph A(1) above or paragraph B below) to the Secretary must:

(a) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, (ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (B) 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 direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) 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, (D) any short interest in any security of the Company (for purposes of this Section 13, 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), (E) 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, (F) 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 and (G) 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 (iii) any other information relating to such stockholder and beneficial owner, if any, 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, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder;

(b) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, set forth (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and beneficial owner, if any, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(c) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors (i) all information relating to such 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 in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and

beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K (or any successor rule) if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the “registrant” for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(d) with respect to each nominee for election or reelection to the Board of Directors, include a completed, dated and signed questionnaire, representation and agreement and any other information required by paragraph (D) below.

(4) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 13 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 70 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 13 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (a) is a stockholder of record at the time of giving of notice provided for in this Section 13, (b) is entitled to vote at the meeting, and (c) complies with the notice procedures set forth in this Section 13 as to such nomination. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Section 13 with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by paragraph D below) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 90th day prior to the date of such special meeting and not later than the close of business on the later of the 60th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 70 days prior to the date of such special meeting, the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(C) General. (1) Only such persons who are nominated in accordance with the procedures set forth in this Section 13 shall be eligible to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 13. Except as otherwise provided by law, the Articles of Incorporation or these Bylaws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 13 and, if any proposed nomination or business is not in compliance with this Section 13, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Section 13, “public announcement” shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Section 13, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 13; provided, however, that any reference in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to paragraph (A)(1)(c) or paragraph (B) of this Section 13. Nothing in this Section 13 shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Articles of Incorporation or these Bylaws.

(D) Submission of Questionnaire, Representation and Agreement; Other Information. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 13) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (1) is not and will not become a party to (a) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation or (b) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (3) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation. The Corporation may also require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(E) Amendment. Notwithstanding any other provisions of the Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, the Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation, voting together as a single class, shall be required to alter, amend, repeal or adopt any provision inconsistent with this Section 13.

BOARD OF DIRECTORS

Section 1. (a) Number, Election and Terms of Directors. The business and affairs of the Corporation shall be managed by a Board of Directors which shall consist of not less than three (3) nor more than twelve (12) persons, who need not be residents of the State of Nevada or stockholders of the Corporation. The exact number of directors within the minimum and maximum limitations specified in the preceding sentence shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by a majority of the entire Board of Directors. The directors shall be divided into three classes, as nearly equal in number as possible, with the term of office of the first class to expire at the 1996 Annual Meeting of Stockholders, the term of office of the second class to expire at the 1997 Annual Meeting of Stockholders and the term of office of the third class to expire at the 1998 Annual Meeting of Stockholders. At each Annual Meeting of Stockholders following such initial classification and election, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding Annual Meeting of Stockholders after their election.

(b) Newly Created Directorships. A directorship to be filled by reason of any increase in the number of directors may be filled (i) by election at an annual or special meeting of stockholders called for that purpose or (ii) by the Board of Directors for a term of office continuing only until the next election of one or more directors by the stockholders- provided that the Board of Directors may not fill more than two such directorships during the period between any two successive annual meetings of stockholders.

(c) Vacancies in the Board of Directors. Any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by a majority vote of the directors then in office, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of the class to which they have been elected expires. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(d) Removal of Directors. Any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

(e) Amendment, Repeal, etc. Notwithstanding any other provisions of the Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, the Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation, voting together as a single class, shall be required to alter, amend, repeal or adopt any provision inconsistent with this Section 1.

Section 2. Quorum. Unless otherwise provided in the Articles of Incorporation, a majority of the total number of directors shall constitute a quorum for the transaction of business of the Board of Directors and the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3. Place of Meetings, Order of Business. The directors may hold their meetings and may have an office and keep the books of the Corporation, except as otherwise provided by law, in such place or places, within or without the State of Nevada, as the Board of Directors may from time to time determine by resolution. The meetings of the Board of Directors shall be presided over by the Chairman of the Board, or if he is not present, by the President, and the business of the meeting shall be transacted in such order as shall from time to time be determined by the Chairman of the Board, or in his absence, by the President, or by resolution of the Board of Directors.

Section 4. First Meeting. Each newly elected Board of Directors may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of the stockholders. Notice of such meeting shall not be required. At the first meeting of the Board of Directors in each year at which a quorum shall be present, held next after the annual meeting of stockholders, the Board of Directors shall proceed to the election of the officers of the Corporation.

Section 5. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as shall be designated from time to time by resolution of the Board of Directors. Notice of such regular meetings shall not be required.

Section 6. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or on the written request of any two directors, by the Secretary, in each case on at least twenty-four (24) hours personal, written, telegraphic, cable or wireless notice to each director. Such notice, or any waiver thereof pursuant to Article VIII, Section 3 hereof, need not state the purpose or purposes of such meeting, except as may otherwise be required by law or provided for in the Articles of Incorporation or these Bylaws.

Section 7. Compensation. Unless otherwise restricted by the Articles of Incorporation, the Board of Directors shall have the authority to fix the compensation of directors.

Section 8. Action Without a Meeting; Telephone Conference Meeting. Unless otherwise restricted by the Articles of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee designated by the Board of Directors, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, either originally or in counterparts, consent thereto in writing. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of Nevada.

Unless otherwise restricted by the Articles of Incorporation, subject to the requirement for notice of meetings, members of the Board of Directors, or members of any committee designated by the Board of Directors, may participate in a meeting of such Board of Directors or committee, as the case may be, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 9. Approval or Ratification of Acts or Contracts by Stockholders. The Board of Directors in its discretion may submit any act or contract for approval or ratification at any annual meeting of the stockholders, or at any special meeting of the stockholders called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by the vote of the stockholders holding a majority of the issued and outstanding shares of stock of the Corporation entitled to vote and present in person or by proxy at such meeting (provided that a quorum is present), shall be as valid and as binding upon the Corporation and upon all the stockholders as if it has been approved or ratified by every stockholder of the Corporation. In addition, any such act or contract may be approved or ratified by the written consent of stockholders holding a majority of the issued

and outstanding shares of capital stock of the Corporation entitled to vote and such consent shall be as valid and as binding upon the Corporation and upon all the stockholders as if it had been approved or ratified by every stockholder of the Corporation.

ARTICLE IV

COMMITTEES

Section 1. Designation; Powers. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, including, if they shall so determine, an executive committee, each such committee to consist of one or more of the directors of the Corporation. Any such designated committee shall have and may exercise such of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation as may be provided in such resolution, except that no such Committee shall have the power or authority of the Board of Directors in reference to amending the Articles of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution of the Corporation, or amending, altering or repealing the Bylaws or adopting new Bylaws for the Corporation and, unless such resolution or the Articles of Incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Any such designated committee may authorize the seal of the Corporation to be affixed to all papers which may require it. In addition to the above, such committee or committees shall have such other powers and limitations of authority as may be determined from time to time by resolution adopted by the Board of Directors.

Section 2. Procedure; Meetings. Quorum. Any committee designated pursuant to Section 1 of this Article shall choose its own chairman, shall keep regular minutes of its proceedings and report the same to the Board of Directors when requested, shall fix its own rules or procedures, and shall meet at such times and at such place or places as may be provided by such rules, or by resolution of such committee or resolution of the Board of Directors. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any resolution.

Section 3. Substitution of Members. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

ARTICLE V

OFFICERS

Section 1. Number, Titles and Term of Office. The officers of the Corporation shall be a President, one or more Vice Presidents (any one or more of whom may be designated Executive Vice President or Senior Vice President), a Treasurer, a Secretary, a Registered Agent and, if the Board of Directors so elects, a Chairman of the Board and such other officers as the Board of Directors may from time to time elect or appoint. Each officer shall hold office until his successor shall be duly elected and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same person, unless the Articles of Incorporation provides otherwise. Except for the Chairman of the Board, if any, no officers need be a director.

Section 2. Salaries. The salaries or other compensation of the officers and agents of the Corporation shall be fixed from time to time by the Board of Directors.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed, either with or without cause, by the vote of a majority of the whole Board of Directors at a special meeting called for the purpose, or at any regular meeting of the Board of Directors, provided the notice for such meeting shall specify that the matter of any such proposed removal will be considered at the meeting but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4. Vacancies. Any vacancy occurring in any office of the Corporation may be filled by the Board of Directors.

Section 5. Powers and Duties of the Chief Executive Officer. The President shall be the chief executive officer of the Corporation unless the Board of Directors designates the Chairman of the Board as chief executive officer. Subject to the control of the Board of Directors and the executive committee (if any), the chief executive officer shall have general executive charge, management and control of the properties, business and operations of the Corporation with all such powers as may be reasonably incident to such responsibilities; he may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Corporation and may sign all certificates for shares of capital stock of the Corporation and shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him by the Board of Directors.

Section 6. Powers and Duties of the Chairman of the Board. The Chairman of the Board shall have no administrative duties relating to the Corporation or its property and he shall act as a consultant and advisor to the President. The Chairman of the Board shall preside when present at meetings of the stockholders and the Board of Directors. In addition, he shall exercise such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors or as may be prescribed by the Bylaws.

Section 7. Powers and Duties of the President. Unless the Board of Directors otherwise determines, the President shall have the authority to agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Corporation; and he shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him by the Board of Directors.

Section 8. Vice Presidents. In the absence of the President, or in the event of his inability or refusal to act, a Vice President designated by the Board of Directors shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions of the President. In the absence of a designation by the Board of Directors of a Vice President to perform the duties of the President, or in the event of his absence or inability or refusal to act, the Vice President who is present and who is senior in terms of time as a Vice President of the Corporation shall so act. The Vice Presidents shall perform such other duties and have such other powers as the chief executive officer or the Board of Directors may from time to time prescribe.

Section 9. Treasurer. The Treasurer shall have responsibility for the custody and control of all the funds and securities of the Corporation, and he shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the Board of Directors. He shall perform all acts incident to the position of Treasurer, subject to the control of the chief executive officer and the Board of Directors; and he shall, if required by the Board of Directors, give such bond for the faithful discharge of his duties in such form as the Board of Directors may require.

Section 10. Assistant Treasurers. Each Assistant Treasurer shall have the usual powers and duties pertaining to his office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the chief executive officer or the Board of Directors. The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability or refusal to act.

Section 11. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors, committees of directors and the stockholders, in books provided for that purpose; he shall attend to the giving and serving of all notices; he may in the name of the Corporation affix the seal of the Corporation to all contracts of the Corporation and attest the affixation of the seal of the Corporation thereto; he may sign with the other appointed officers all certificates for shares of capital stock of the Corporation; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection of any director upon application at the office of the Corporation during business hours; he shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the Board of Directors; and he shall in general perform all acts incident to the office of Secretary, subject to the control of the chief executive officer and the Board of Directors.

Section 12. Assistant Secretaries. Each Assistant Secretary shall have the usual powers and duties pertaining to his office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the chief executive officer or the Board of Directors. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability or refusal to act.

Section 13. Resident Agent. The Resident Agent shall be either a natural person or a corporation, resident or located in the State of Nevada. Along with all other powers authorized by law, the Articles of Incorporation or these Bylaws the Registered Agent may accept legal process, demand or notice authorized by law to be served upon the Corporation.

Section 14. Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board of Directors, the chief executive officer shall have the power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of security holders of or with respect to any action of security holders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporations.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 1. To the fullest extent allowed by Nevada law, any director of the Corporation shall not be liable to the corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director, except that this Article VI does not eliminate or limit the liability of a director for:

- (a) an act or omission which involves intentional misconduct, fraud or a knowing violation of law; or
- (b) the payment of dividends in violation of N.R.S. 78.300.

Section 2. The Corporation shall indemnify each director, officer, agent and employee, now or hereafter serving the Corporation, each former director, officer, agent and employee, and each person who may now or hereafter serve or who may have heretofore served at the Corporation's request as a director, officer, agent or employee of another corporation or other business enterprise, and the respective heirs, executors, administrators and personal representatives of each of them against all expenses actually and reasonably incurred by, or imposed upon, him in connection with the defense of any claim, action, suit or proceeding, civil or criminal against him by reason of his being or having been such director, officer, agent or employee, except in relation to such matters as to which he shall be adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom in such action, suit or proceedings to be liable for gross negligence or willful misconduct in the performance of duty. For purposes hereof, the term "expenses" shall include but not be limited to all expenses, costs, attorneys' fees, judgments (including adjudications other than on the merits), fines, penalties, arbitration awards, costs of arbitration and sums paid out and liabilities actually and reasonably incurred or imposed in connection with any suit, claim, action or proceeding, and any settlement or compromise thereof approved by the Board of Directors as being in the best interests of the Corporation. However, in any case in which there is no disinterested majority of the Board of Directors available, the indemnification shall be made: (1) only if the Corporation shall be advised in writing by counsel that in the opinion of counsel (a) such officer, director, agent or employee was not adjudged or found liable for gross negligence or willful misconduct in the performance of duty as such director, officer, agent or employee or the indemnification provided is only in connection with such matters as to which the person to be indemnified was not so liable, and in the case of settlement or compromise, the same is in the best interests of the Corporation; and (b) indemnification under the circumstances is lawful and falls within the provisions of these Bylaws and (2) only in such amount as counsel shall advise the Corporation in writing is, in his opinion, proper. In making or refusing to make any payment under this or any other provisions of these Bylaws, the Corporation, its directors, officers, employees and agents shall be fully protected if they rely upon the written opinion of counsel selected by, or in the manner designated by, the Board of Directors.

Section 3. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in these Bylaws.

Section 4. The Corporation may indemnify each person, though he is not or was not a director, officer, employee or agent of the Corporation, who served at the request of the Corporation on a committee created by the Board to consider and report to it in respect of any matter. Any such indemnification may be made under the provisions hereof and shall be subject to the limitations hereof, except that (as indicated) any such committee member need not be nor have been a director, officer, employee or agent of the Corporation.

Section 5. The provisions hereof shall be applicable to actions, suits or proceedings (including appeals) commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after the adoption hereof.

Section 6. The indemnification provisions herein provided shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, or by law or statute, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or Agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and persons described in Section 4 of this Article above, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of these Bylaws.

ARTICLE VII

CAPITAL STOCK

Section 1. Certificates of Stock. The shares of capital stock of the Corporation shall be represented by a certificate, unless the Board of Directors of the Corporation adopts a resolution permitting shares to be uncertificated. Every holder of capital stock of the Corporation shall be entitled to have a certificate for shares of capital stock. The certificates for shares of the capital stock of the Corporation shall be in such form, not inconsistent with that required by law and the Articles of Incorporation, as shall be approved by the Board of Directors. The President or a Vice President shall cause to be issued to each stockholder one or more certificates, under the seal of the Corporation or a facsimile thereof if the Board of Directors shall have provided for such seal, and signed by the President or a Vice President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer certifying the number of shares (and, if the stock of the Corporation shall be divided into classes or series, the class and series of such shares) owned by such stockholder in the Corporation; provided however, that any of or all the signatures on the certificate may be facsimile. The stock record books and the blank stock certificate books shall be kept by the Secretary, or at the office of such transfer agent or transfer agents as the Board of Directors may from time to time by resolution determine. In case any officer, transfer agent or registrar who shall have signed or whose facsimile signature or signatures shall have been placed upon any such certificate or certificates shall have ceased to be such officer, transfer agent or registrar before such certificate is issued by the Corporation, such certificate may nevertheless be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The stock certificates shall be consecutively numbered and shall be entered in the books of the Corporation as they are issued and shall exhibit the holder's name and number of shares.

Section 2. Transfer of Shares. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation, and in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 3. Ownership of Shares. The Corporation shall be entitled to treat the holder of record of any share or shares of capital stock of the Corporation as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Nevada.

Section 4. Regulations Regarding Certificates. The Board of Directors shall have the power and authority to make all such rules, restrictions and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of capital stock of the Corporation.

Section 5. Lost or Destroyed Certificates. The Board of Directors may determine the conditions upon which a new certificate of stock may be issued in place of a certificate which is alleged to have been lost, stolen or destroyed; and may, in their discretion, require the owner of such certificate or his legal representative to give bond, with sufficient surety, to indemnify the Corporation and each transfer agent and registrar against any and all losses or claims which may arise by reason of the issue of a new certificate in the place of the one so lost, stolen or destroyed.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Corporation shall be such as established from time to time by the Board of Directors.

Section 2. Corporate Seal. The Board of Directors may provide a suitable seal containing the name of the Corporation. The Secretary shall have charge of the seal (if any). If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by the Assistant Secretary or Assistant Treasurer.

Section 3. Notice and Waiver of Notice. Whenever any notice is required to be given by law, the Articles of Incorporation or under the provisions of these Bylaws, said notice shall be deemed to be sufficient if given (i) by telegraphic, cable, electronic mail or wireless transmission or (ii) by deposit of the same in a post office box in a sealed prepaid wrapper addressed to the person entitled thereto at his post office address, as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such transmission or mailing as the case may be.

Whenever notice is required to be given by law, the Articles of Incorporation or under any of the provisions of these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be

transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Articles of Incorporation or the Bylaws.

Section 4. Resignations. Any director, member of a committee or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the chief executive officer or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 5. Facsimile Signatures. In addition to the provisions for the use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors.

Section 6. Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his duties, be fully protected in relying in good faith upon the books of account or reports made to the Corporation by any of its officers, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the Board of Directors or by any such committee, or in relying in good faith upon other records of the Corporation.

ARTICLE IX

AMENDMENTS

The Board of Directors shall have the power to adopt, amend and repeal from time to time the Bylaws of the Corporation, subject to the right of the stockholders entitled to vote by law with respect thereto to amend or repeal such Bylaws as adopted or amended by the Board of Directors; provided, however, that in the case of amendments by stockholders or any repeal by stockholders, notwithstanding any other provisions of these Bylaws or any other provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law, the Articles of Incorporation or these Bylaws, the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding shares of the Corporation entitled to vote, voting together as a single class, shall be required to alter, amend or repeal any provision of these Bylaws.

EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”), executed as of _____, _____ (“Effective Date”), is between Abraxas Petroleum Corporation, a Nevada corporation (“Abraxas” or the “Company”), and _____ (“Employee”).

RECITALS

WHEREAS, the Board of Directors (the “Board”) of the Company, has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of certain employees to their assigned duties; and

WHEREAS, in order to induce Employee to remain in the employ of the Company, and in consideration of Employee’s agreement to continue employment with the Company, the parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Term of Agreement. This Agreement shall commence on the date hereof and shall continue in effect through _____ (the “Term”); provided, however, that commencing on January 1, ____ and each January 1 thereafter, the Term shall automatically be extended for an additional year unless, not later than December 1 of the preceding year, either party shall have given notice that it does not wish to extend the Term. Except in the event of a Change in Control (as defined in Section 4 hereof), at all times during the Term or any extended Term, Employee’s employment shall remain at will and may be terminated by the Company for any reason without notice or Cause (as hereinafter defined). If a Change in Control shall have occurred during the original or extended Term, the Term shall continue in effect for a period of 36 months beyond the Term in effect immediately before such Change in Control.

2. Terms of Employment. During the Term, Employee agrees to be a full-time employee of the Company serving in the position of _____, to devote substantially all of his working time and attention to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities associated with his position, to use his best efforts to perform faithfully and efficiently such responsibilities. In addition, Employee agrees to serve in such other capacities or offices to which Employee may be assigned, appointed or elected from time to time by the Board. Nothing herein shall prohibit Employee from devoting his time to civic and community activities or managing personal investments, as long as the foregoing do not interfere with the performance of his duties hereunder.

3. Compensation.

(a) As compensation for services under this Agreement, Employee shall be entitled to receive base salary and other compensation to be determined from time to time by the Board in its sole discretion. In addition, Employee shall be entitled to participate in any additional bonus, incentive compensation or employee benefit arrangement which may be established from time to time by the Company in its sole discretion. Notwithstanding anything to the contrary provided in this Agreement, prior to a Change in Control, Employee shall not be entitled to receive any compensation from the Company upon termination, voluntary or involuntary, of his employment with the Company, regardless of the reason for such termination.

(b) The Company shall reimburse Employee, in accordance with Company policy in effect from time to time, for all reasonable travel, entertainment and other business expenses incurred by Employee in the performance of his responsibilities under this Agreement within a reasonable time after receipt of written substantiation of such expenses from Employee.

4. Change in Control. For purposes of this Agreement, a Change in Control shall be deemed to have occurred if:

(a) any “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”)) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act as in effect on the date hereof, except that a person shall be deemed to be the “beneficial owner” of all shares that any such person has the right to acquire pursuant to any agreement or arrangement or upon exercise of conversion rights, warrants, options or otherwise, without regard to the sixty day period referred to in such Rule), directly or indirectly, of securities representing 20% or more of the combined voting power of the Company’s then outstanding securities,

(b) any person or group shall make a tender offer or an exchange offer for 20% or more of the combined voting power of the Company’s then outstanding securities,

(c) at any time during any period of two consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constituted the Board and any new directors, whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds (2/3) of the Company directors then still in office who either were the Company directors at the beginning of the period or whose election or nomination for election was previously so approved (“Current Directors”), cease for any reason to constitute a majority thereof,

(d) the Company shall consolidate, merge or exchange securities with any other entity and the stockholders of the Company immediately before the effective time of such transaction do not beneficially own, immediately after the effective time of such transaction, shares entitling such stockholders to a majority of all votes (without consideration of the rights of any class of stock entitled to elect directors by a separate class vote) to which all stockholders of the corporation issuing cash or securities in the consolidation, merger or share exchange would be entitled for the purpose of electing directors or where the Current Directors immediately after the effective time of the consolidation, merger or share exchange would not constitute a majority of the Board of Directors of the corporation issuing cash or securities in the consolidation, merger or share exchange, or

(e) any person or group acquires all or substantially all of the Company’s assets.

Notwithstanding the foregoing, however, a Change in Control shall not be deemed to occur merely by reason of an acquisition of Company securities by, or any consolidation, merger or exchange of securities with, any entity that, immediately prior to such acquisition, consolidation, merger or exchange of securities, was a “subsidiary”, as such term is defined below. For these purposes, the term “subsidiary” means (a) any corporation of which 95% of the capital stock of such corporation is owned, directly or indirectly, by the Company and (b) any unincorporated entity in respect of which the

Company has, directly or indirectly, an equivalent degree of ownership.

5. Termination of Employment Following Change in Control. Prior to a Change in Control, Employee's employment shall remain at will and may be terminated by the Company for any reason without notice or Cause. From and after a Change in Control, Employee shall be entitled to the benefits provided in Subsection 6(d) hereof upon the subsequent termination of his employment during the Term or extended Term unless such termination is because of Employee's death or Retirement, by the Company for Cause or Disability, or by Employee other than for Good Reason.

(a) Disability; Retirement. If, as a result of Employee's incapacity due to physical or mental illness, Employee shall have been absent from the full-time performance of his duties with the Company for six (6) consecutive months, and within thirty (30) days after written Notice of Termination is given, Employee shall not have returned to the full-time performance of Employee's duties, the Company may terminate Employee's employment for "Disability." Any question as to the existence of Employee's Disability upon which Employee and the Company cannot agree shall be determined by a qualified independent physician selected by Employee (or, if Employee is unable to make such selection, it shall be made by any adult member of Employee's immediate family), and approved by the Company. The determination of such physician made in writing to the Company and to Employee shall be final and conclusive for all purposes of this Agreement. Termination by the Company or Employee of his employment based on "Retirement" shall mean termination in accordance with the Company's retirement policy, generally applicable to its salaried employees or in accordance with any retirement arrangement established with his consent with respect to Employee.

(b) Cause. Termination by the Company of Employee's employment for "Cause" shall mean termination upon:

(i) the willful and continued failure by Employee to substantially perform his duties with the Company (other than any such failure resulting from his incapacity due to physical or mental illness or any such actual or anticipated failure resulting from termination by Employee for Good Reason) after a written demand for substantial performance is delivered to Employee by the Board, which demand specifically identifies the manner in which the Board believes that Employee has not substantially performed his duties, or

(ii) the willful engaging by Employee in conduct which is demonstrably and materially injurious to the Company, monetarily or otherwise. For purposes of this Subsection, no act, or failure to act, on Employee's part shall be deemed "willful" unless done, or omitted to be done, by Employee not in good faith and without reasonable belief that his action or omission was in the best interest of the Company. Notwithstanding the foregoing, Employee shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to Employee a copy of a resolution duly adopted by the affirmative vote (which cannot be delegated) of not less than a majority of the members of the Board who are not officers of the Company at a meeting of the Board called and held for such purposes (after reasonable notice to Employee and an opportunity for Employee, together with his counsel, to be heard before the Board), finding that in the good faith opinion of the Board Employee was guilty of conduct set forth above in clauses (i) or (ii) of the first sentence of this Subsection and specifying the particulars thereof in detail.

(c) Good Reason. Employee shall be entitled to terminate his employment for Good Reason. For purposes of this Agreement, "Good Reason" shall mean, without Employee's express written consent, any of the following:

(i) a material adverse alteration in the nature or status of Employee's position, duties or responsibilities from those in effect immediately prior to a Change in Control, other than any such alteration primarily attributable to the fact that the Company may no longer be a public company or may be a subsidiary of another entity;

(ii) a reduction in Employee's annual base salary as in effect immediately prior to the Change in Control or as the same may be increased from time to time;

(iii) a change in the principal place of Employee's employment, as in effect at the time of a Change in Control, to a location more than fifty (50) miles from such principal place of employment, excluding required travel on the Company's business to an extent substantially consistent with Employee's present business travel obligations;

(iv) the failure by the Company, without Employee's consent, to pay to Employee any portion of his current compensation, or to pay to Employee any portion of any deferred compensation, within ten (10) days of the date any such compensation payment is due;

(v) the failure by the Company to continue in effect any compensation plan in which Employee participates, or any substitute plans adopted prior to the Change in Control, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan in connection with the Change in Control, or the failure by the Company to continue Employee's participation therein on the same basis, both in terms of the amount of benefits provided and the level of Employee's participation relative to other participants, as existed at the time of the Change in Control;

(vi) the failure by the Company to continue to provide Employee with benefits at least as favorable to those enjoyed by Employee under any of the Company's pension, life insurance, medical, health and accident, disability, deferred compensation or savings plans in which Employee were participating at the time of the Change in Control, the taking of any action by the Company which would directly or indirectly materially reduce any of such benefits or deprive Employee of any material fringe benefit enjoyed by Employee at the time of the Change in Control, or the failure by the Company to provide Employee with the number of paid vacation days to which Employee is entitled on the basis of the Company's practice with respect to Employee as in effect at the time of the Change in Control;

(vii) the failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 8 hereof; or

(viii) any purported termination of Employee's employment which is not effected pursuant to a Notice of Termination satisfying the requirements of Subsection (d) below (and, if applicable, the requirements of Subsection (b) above); for purposes of this Agreement, no such purported termination shall be effective;

provided, that the events described in clauses (i) through (viii) of this Subsection (c) shall constitute Good Reason only if (1) the Employee delivers written notice to the Company of the existence of the event or condition which constitutes Good Reason within sixty (60) days of the initial occurrence of such event or condition (such notice shall constitute the Notice of Termination as required by Subsection (d) below), (2) the Company fails to cure such event within thirty (30) days after receipt of such notice from Employee; and (3) Employee actually

terminates his employment no later than thirty (30) days after the Company has failed to cure the condition within the 30-day period specified above.

(d) Notice of Termination. Prior to a Change in Control, Employee may be terminated with or without notice. From and after a Change in Control, any purported termination of Employee's employment by the Company or by Employee shall be communicated by written notice to the other party hereto in accordance with Section 9 hereof ("Notice of Termination"). Such Notice of Termination shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Employee's employment under the provisions so indicated.

(e) Date of Termination, Etc. Prior to a Change in Control, "Date of Termination" shall mean the date Employee's employment is terminated. From and after a Change in Control, "Date of Termination" shall mean:

(i) if Employee's employment is terminated for Disability, 30 days after Notice of Termination is given (provided that Employee shall not have returned to the full-time performance of Employee's duties during such 30 day period);

(ii) if Employee's employment is terminated pursuant to Subsection 5(b) or for any other reason (other than Disability or pursuant to Subsection 5(c)), the date specified in the Notice of Termination (which, in the case of a termination pursuant to Subsection 5(b) above shall not be less than 10 days from the date such Notice of Termination is given); or

(iii) if Employee's employment is terminated pursuant to Subsection 5(c), the date that Employee actually terminates his employment with the Company, but no later than thirty (30) days after the Company has failed to cure the condition as set forth in Subsection 5(c) above.

From and after a Change in Control, the party receiving such Notice of Termination may notify the other party within 30 days after any Notice of Termination is given (or in the event of a termination pursuant to Subsection 5(c), within 30 days of the expiration of the 30-day period during which the Company failed to cure the condition specified in the Notice of Termination) that a dispute exists concerning the termination, provided that such notice is given in good faith and the party giving such notice pursues the resolution of such dispute with reasonable diligence.

6. Compensation Upon Termination or During Disability. From and after a Change in Control, upon termination of Employee's employment or during a period of Disability, Employee shall be entitled to the following benefits:

(a) During any period that Employee fails to perform his full-time duties with the Company as a result of Employee's Disability, Employee shall continue to receive his base salary at the rate in effect at the commencement of any such period, together with all compensation payable to Employee under the Company's disability plan or other plan during such period, until this Agreement is terminated pursuant to Subsection 5(a) hereof. Thereafter, Employee's benefits shall be determined in accordance with the Company's long-term disability plan as in effect immediately prior to a Change in Control.

(b) If Employee's employment shall be terminated by the Company for Cause or by Employee other than for Good Reason, Disability, death or Retirement, the Company shall pay Employee's full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given and any amounts to be paid to Employee pursuant to the Company's retirement and other benefits plans of the Company then in effect, and the Company shall have no further obligations to Employee under this Agreement.

(c) If Employee's employment shall be terminated by the Company or by Employee for Retirement, or by reason of his death, Employee's benefits shall be determined in accordance with the Company's retirement, benefit and insurance programs then in effect.

(d) After the occurrence of a Change in Control, if Employee's employment by the Company is terminated by the Company other than for Cause and other than because of Employee's death, Disability or Retirement or by Employee for Good Reason then, effective as of the Date of Termination, in lieu of any severance benefits which Employee otherwise would be eligible to receive under the Company's severance plan or policy as in effect immediately prior to the Change in Control, Employee shall be entitled to the benefits provided below:

(i) The Company shall pay Employee his full base salary through the Date of Termination at the rate in effect at the time the Notice of Termination is given, plus all other amounts to which Employee is entitled under any compensation or benefit plan of the Company (excluding any severance benefits under the Company's severance plan or policy) at the time such payments are due under the terms of such plans.

(ii) In lieu of any further salary payments to Employee for periods subsequent to the Date of Termination, the Company shall pay to Employee, not later than the fifth day following the Date of Termination, a lump sum payment equal to three times Employee's annual base salary.

(iii) The Company shall also pay to Employee all legal fees and expenses incurred by Employee as a result of such termination (including all such fees and expenses, if any, incurred in contesting or disputing any such termination or in seeking to obtain or enforce any right or benefit provided by this Agreement).

(iv) Notwithstanding any other provision of this Agreement, if (1) Employee is a "Disqualified Individual" (as defined in Section 280G(c) of the Internal Revenue Code of 1986, as amended, and any applicable regulations thereunder (the "Code")) and (2) the payment provided for in this Section 6, individually or together with any other payments which Employee has the right to receive from the Company (including without limitation the payments under Section 6 and the acceleration of vesting of equity awards under the Company's equity incentive plans) would constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Code) (the "Parachute Payments") which will be subject to the excise tax imposed under Section 4999 of the Code (the "Excise Tax"), then the total amounts received by Employee from the Company which constitute Parachute Payments shall be reduced to an amount equal, in the aggregate, to one dollar (\$1.00) less than three (3) times Employee's base amount (as defined in Section 280G of the Code) so that no portion of the Parachute Payments received by Employee shall be subject to the Excise Tax, if and only if (i) such reduction in the Parachute Payments produces a better net after-tax position (taking into account any applicable Excise Tax under Section 4999 of the Code and any applicable income tax) than the total payment provided for herein and (ii) there are no other amounts receivable by Employee from the Company which, by their terms, may not be reduced

such that no portion of such amounts received by Employee shall be subject to the Excise Tax.

(e) Except as specifically provided in this Section 6, Employee shall not be required to mitigate the amount of any payment provided for in this Section 6 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 6 be reduced by any compensation earned by Employee as the result of employment by another employer or by retirement benefits after the Date of Termination, or otherwise.

(f) In addition to all other amounts payable to Employee under this Section 6, Employee shall be entitled to receive all benefits payable to Employee under any other plan or agreement relating to retirement benefits in accordance with the terms of such plan or agreement.

7. Section 409A.

(a) This Section 7 is intended to help ensure that compensation paid or delivered to Employee pursuant to this Agreement either is paid in compliance with, or is exempt from, Section 409A of the Code and the rules and regulations promulgated thereunder (collectively, "Section 409A"). However, the Company does not warrant that all compensation paid or delivered to Employee will be exempt from, or paid in compliance with, Section 409A.

(b) Notwithstanding anything herein to the contrary, this Agreement is intended to be interpreted and applied so that the payments and benefits set forth herein shall either be exempt from the requirements of Section 409A, or shall comply with the requirements of Section 409A, and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted in a manner to be consistent with such intent. For purposes of Section 409A, each payment under this Agreement (including any installment payments) shall be designated a "separate payment" within the meaning of Section 409A.

(c) For the purposes of determining when amounts otherwise payable on account of Employee's termination of employment under this Agreement will be paid, which amounts become due because of Employee's termination of employment, "termination of employment" or words of similar import, as used in this Agreement, shall refer to Employee's "separation from service" within the meaning of Section 409A and Treas. Reg. Section 1.409A-1(h). Notwithstanding any provision in this Agreement or elsewhere to the contrary, if on the Date of Termination, Employee is deemed to be a "specified employee" within the meaning of Section 409A, any payments or benefits due upon a termination of Employee's employment under any arrangement that constitutes a "deferral of compensation" within the meaning of Section 409A (whether under this Agreement, any other plan, program, payroll practice or any equity grant) and which do not otherwise qualify under the exemptions under Treas. Reg. § 1.409A-1(b)(4) (including, without limitation, the short-term deferral exemption and the permitted payments under Treas. Reg. § 1.409A-1(b)(9)(iii)(A)), shall be delayed and paid or provided to Employee in a lump sum (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) on the earlier of (i) the date which is six months and one day after Employee's "separation from service" (as such term is defined in Section 409A of the Code) for any reason other than death, and (ii) the date of Employee's death, and any remaining payments and benefits shall be paid or provided in accordance with the normal payment dates specified for such payment or benefit.

(d) With respect to any expense, reimbursement or in-kind benefit provided pursuant to this Agreement that constitutes a "deferral of compensation" within the meaning of Section 409A, (i) the expenses eligible for reimbursement or in-kind benefits provided to Employee must be incurred during the Term (or applicable survival period), (ii) the amount of expenses eligible for reimbursement or in-kind benefits provided to Employee during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to Employee in any other calendar year, (iii) the reimbursements for expenses for which Employee is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, and (iv) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

8. Successors; Binding Agreement.

(a) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Such assumption and agreement shall be obtained prior to the effectiveness of any such succession. As used in this Agreement, "Company" shall mean the Company as herein before defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Prior to a Change in Control, the term "Company" shall also mean any affiliate of the Company to which Employee may be transferred and Company shall cause such successor employer to be considered the "Company" bound by the terms of this Agreement and this Agreement shall be amended to so provide. Following a Change in Control the term "Company" shall not mean any affiliate of the Company to which Employee may be transferred unless Employee shall have previously approved of such transfer in writing, in which case the Company shall cause such successor employer to be considered "Company" bound by the terms of this Agreement and this Agreement shall be amended to so provide.

(b) This Agreement shall inure to the benefit of and be enforceable by Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If Employee should die while any amount would still be payable to Employee hereunder if Employee had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to Employee's devisee, legatee or other designee or, if there is no such designee, to Employee's estate.

9. Notice. For the purpose of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the attention of the Board with a copy to the Secretary of the Company, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

10. Miscellaneous. No provision of this Agreement shall be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by Employee and such officer as may be specifically designated by the Board. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement. THE VALIDITY, INTERPRETATION, CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

11. Validity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

12. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

13. Arbitration. THIS AGREEMENT IS SUBJECT TO ARBITRATION UNDER THE TEXAS ARBITRATION ACT. Any dispute or controversy between Employee and Company, including those arising under or in connection with Employee's employment with Company and/or this Agreement shall be settled exclusively by binding arbitration in San Antonio, Texas in accordance with the rules of the American Arbitration Association then in effect. Employee and Company agree that the arbitrator does not have authority (i) to render a decision which contains a reversible error of state or federal law, or (ii) to apply a cause of action or remedy not expressly provided for under existing state or federal law. Judgment may be entered on the arbitrator's award in any court having jurisdiction; provided, however, that Employee shall be entitled to seek specific performance of his right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection with this Agreement.

14. Entire Agreement. This Agreement contains the entire agreement by the parties with respect to the matters covered herein and supersedes any prior agreement (including, without limitation, any prior employment or severance agreement), plan, condition, practice, custom, usage and obligation with respect to such matters insofar as any such prior agreement, plan, condition, practice, custom, usage or obligation might have given rise to any enforceable right. Without limiting the generality of the foregoing, Employee shall not be entitled to any payments under the Abraxas Petroleum Corporation Severance Plan, effective December 31, 2008, as it may be modified, amended, restated or replaced or any similar plan or arrangement.

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EXECUTED as of the date first above written.

ABRAXAS PETROLEUM CORPORATION

By:
Name:
Title:

Employee Signature