

**8-K - 2012-12-21**

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**8-K**

8-K 1 lucas8k122012.htm LUCAS ENERGY INC FORM 8-K FOR DECEMBER 20 2012

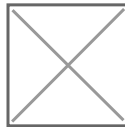
UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): **December 20, 2012**



**Lucas Energy, Inc.**

(Exact name of registrant as specified in its charter)

**Nevada**

(State or other jurisdiction of incorporation)

**001-32508**

(Commission File  
Number)

**20-2660243**

(I.R.S. Employer Identification  
No.)

**3555 Timmons Lane, Suite 1550, Houston, Texas**

(Address of principal executive offices)

**77027**

(Zip Code)

Registrant's telephone number, including area code (713) 528-1881

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:

- .. 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))

## **Item 2.01 Completion of Acquisition or Disposition of Assets.**

On November 21, 2012, Lucas Energy, Inc. (the “Company”), entered into a Purchase Agreement with Sundown Energy, LP (the “Purchaser”), and agreed to sell the Purchaser the Company’s 0.77% net royalty interest in the oil and gas properties located on approximately 51.915 acres of land within the Baker Deforest Unit, located in Gonzales and Dewitt Counties, Texas, including the Baker Deforest Unit #1H, #2H, #3H, #4H and #12H wells. The Purchaser paid \$4 million in connection with the sale, which was the highest of five bids the Company had received. The closing occurred on December 19, 2012, but was effective as of October 1, 2012.

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

Effective December 20, 2012, the Company’s Board of Directors agreed to amend and restate Anthony C. Schnur’s employment agreement with the Company in connection with his December 12, 2012 appointment as Chief Executive Officer of the Company. The amended and restated employment agreement clarifies that Mr. Schnur now serves as the Chief Executive Officer of the Company, provided that he will continue to also serve as the Chief Financial Officer, Treasurer and Secretary of the Company on an interim basis until a suitable replacement can be found and approved by the Board of Directors.

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

Effective December 20, 2012, the Company’s Board of Directors voted unanimously to adopt Amended and Restated Bylaws (the “Restated Bylaws”). The Company’s Board of Directors believed that such prior Bylaws and related provisions (many of which date back to the Company’s original incorporation as a Texas company in 2004) were outdated and were inconsistent with a company of the size and operations of the Company. Additionally, the Board of Directors believes that the Restated Bylaws are clearer and more stockholder friendly than the prior Bylaws, including reinstating one of the amendments which was previously adopted by the Company effective October 1, 2012 (as described below).

Significant changes affected by the Restated Bylaws include:

- Reducing the required ownership percentage of stockholders which is required to call a special meeting of stockholders to at least 10% of all shares entitled to vote at the proposed special meeting (down from 30%)(the Company’s Bylaws prior to October 1, 2012, only required stockholders to hold 10% or more of the outstanding shares in order to call a special meeting, whereas the amendments made on October 1, 2012, increased this number to 30% of the shares entitled to vote – the current Restated Bylaws, return this number back to 10%);
- Extending the time period that the Company is required to call a special meeting after such stockholder request to ninety days (previously this was ten days) to provide sufficient time for the Company to fully comply with Securities and Exchange Commission and NYSE MKT rules and requirements in connection with the calling of special meetings, and to also allow sufficient time for the setting of a record date for such meetings;
- Clarifying the notice requirements for stockholder nominations and proposals to be heard at the Company’s annual meetings of stockholders, which require that a stockholder’s notice must be received at the principal executive offices of the Company not earlier than the close of business on the day which falls 120 days prior to the one year anniversary of the Company’s last annual meeting of stockholders and not later than the close of business on the day which falls 90 days prior to the one year anniversary of the Company’s last annual meeting of stockholders, unless the Company’s annual meeting date occurs more than 30 days before or 30 days after the one year anniversary of the Company’s last annual meeting of stockholders. In that case, the Company must receive proposals not earlier than the close of business on the 120th day prior to the date of the annual meeting and not later than the close of business on the later of the 90th day prior to the date of the annual meeting or, if the first public announcement of the date of the annual meeting is less than 100 days prior to the date of the meeting, the 10th day following the day on which the Company first makes a public announcement of the date of the annual meeting (previously these requirements were not specified in the Bylaws, provided that the Company has been following these notice requirements for the past several annual meetings, which guidelines have been previously described and disclosed in the Company’s proxy statement filings);

- Clarifying that votes cast by stockholders at any meeting of stockholders include votes cast against any proposal and exclude abstentions and broker non-votes, provided that votes cast against any proposal, abstentions and broker non-votes are counted in determining a quorum at any meeting (previously this was not disclosed in the Bylaws, provided that this is the standard way votes are counted and the Company has historically counted votes this way);
- Providing a requirement that the Company is required to promptly disclose to stockholders (which disclosure can be in the form of a Form 8-K filing) the taking of corporate action without a meeting by less than the unanimous written consent of the stockholders (previously the Bylaws did not include this requirement, provided that such action requires the filing of an Information Statement with the Securities and Exchange Commission and the mailing of such Information Statement to all of the Company's stockholders regardless under the rules and regulations of the Securities and Exchange Commission);
- The right of the Chairman of the Board of Directors or any two Directors to call a meeting of the Board of Directors (previously the Bylaws required at least two Directors to call a meeting of the Board of Directors regardless of whether one of such Directors was the Chairman);
- The obligation of the Director (or where applicable and allowed, a specified officer) calling a meeting of the Board of Directors to provide at least three day's prior notice of such Board Meeting if by mail or 24 hours prior notice if by facsimile, email or personal delivery (previously the Bylaws required at least 10 days prior written notice if by mail and two days if by facsimile or if personally delivered);
- The requirement that the Company comply with all Corporate Governance listing requirements of the NYSE MKT (or the NASDAQ Stock Market if the Company later lists on NASDAQ)(previously the Bylaws did not contain any such requirement, although the Company is required to comply with NYSE MKT listing rules as required by the NYSE MKT regardless of whether such requirement is spelled out in its Bylaws or not);
- Provides for more detailed indemnification rights as to current or former directors, officers, delegated persons and persons serving at the request of the Company, including where applicable and allowed pursuant to the Restated Bylaws, the advancement of expenses (previously the Bylaws were unclear as to whether they provided for advancement of expenses in connection with indemnification, did not describe in detail the steps and requirements for such indemnification and solely provided for indemnification of present and former officers and Directors);
- Specifically provides the Board of Directors the right to declare dividends, if allowed under state law and the Company's Articles of Incorporation (previously the Bylaws were silent as to this issue; however, state law provides for the declaration of dividends in the event allowed under state law regardless of whether this right is specifically described in the Bylaws);
- Allows for notice to stockholders to be made electronically, where applicable, and where allowed under state law and the Articles of Incorporation (previously the Bylaws did not specifically provide for electronic notice);

- Provides for the right for the Company to cease attempting to provide notice to any stockholder to whom notice has been attempted to be given by the Company in connection with two consecutive actions and which notices have been returned as undeliverable (the prior Bylaws did not specifically provide for this right); and
- Provide for the Company to be exempt from the “Controlling Interest Statutes” of Section 78.378 through 78.2793 of the Nevada Revised Statutes (the “NRS”), which, notwithstanding the fact that the Company does not believe that such statutes would have applied to the Company regards, because the Company has less than 100 stockholders of record located in the state of Nevada, would have required any applicable purchaser of the Company’s common stock (generally anyone who acquires a “controlling interest” in the Company, as defined in the NRS) to deliver a formal statement to the Company requesting a stockholders meeting and providing for the stockholders of the Company to determine the voting rights conferred to the shares purchased by such “controlling shareholder”, along with certain other rights and obligations (the prior Bylaws did not include such a provision, which the Company believes is unnecessary and resource prohibitive for a company of its size).

The above description of the Restated Bylaws is qualified in its entirety by the form of Restated Bylaws filed herewith as Exhibit 3.1.

## **Item 8.01 Other Events.**

### Change in Board of Directors Committees

Effective December 20, 2012, J. Fred Hofheinz resigned as the Chairman of the Company (provided that Mr. Hofheinz remains a member of the Board of Directors) and the Board of Directors appointed Ryan J. Morris as Chairman of the Company to fill the vacancy left by such resignation. The Board of Directors also updated the committee memberships of the Board of Directors as follows:

- The Audit Committee now includes: Ken Daraie, J. Fred Hofheinz, and Peter K. Grunebaum, with Mr. Daraie serving as Chairman of the Committee;
- The Compensation Committee now includes: Ryan J. Morris, Mr. Daraie, Mr. Krusen, and Joshua D. Young, with Mr. Krusen serving as the Chairman of the Committee; and
- The Nominating Committee and Governance Committee now includes: Mr. Morris, Mr. Young and Mr. Daraie, with Mr. Morris serving as Chairman of the Committee.

### Grant of Director Options

Additionally, effective December 20, 2012, the Board of Directors approved the grant to each of the Directors of the Company of options to purchase 50,000 shares of the Company’s common stock (300,000 options in aggregate), which have a term of two years, an exercise price equal to the closing sales price of the Company’s common stock on December 24, 2012, and vest at the rate of 1/12<sup>th</sup> of such options over each of the following 12 months, in all cases subject to the terms and conditions of the Company’s 2012 Stock Incentive Plan.

### Status of Previously Announced Legal Proceedings

On December 20, 2012, the Company and Seidler Oil & Gas, L.P. (“Seidler”), which previously filed a lawsuit against the Company alleging various claims in connection with the Company’s Hagen #4H and #5H wells, agreed to stay such lawsuit proceedings for a period of sixty (60) days to allow for the discussion of a settlement between the parties.

Although the Company believes that the claims asserted by Knight Capital Americas LLC (as successor in interest to Knight Capital America, L.P. (“Knight”)) are without merit, the Company has provided a proposal to Knight, in an effort to settle the lawsuit previously filed by Knight against the Company in connection with Knight’s allegations that the Company failed to pay fees in connection with its right of first refusal to provide broker/dealer services in connection with a subsequently completed fund raise undertaken by the Company.

Additionally, the Company is in the process of attempting to reopen settlement discussions with Nordic Oil USA I, LP (“Nordic”), in connection with the Company’s previously announced default in the payment of the \$22 million note payable to Nordic (due in November 2012) and Nordic’s subsequent filing of a lawsuit against the Company.

**Item 9.01 Financial Statements And Exhibits.**

**EXHIBIT    DESCRIPTION**  
**NO.**

3.1*	Amended and Restated Bylaws (Adopted December 20, 2012)
10.1*	Amended and Restated Employment Agreement with Anthony C. Schnur (December 20, 2012)
99.1*	Press Release

\* Filed herewith

**Signature**

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.

**LUCAS ENERGY, INC.**

By: /s/ Anthony C. Schnur  
Name: Anthony C. Schnur  
Title: Chief Executive Officer

Date: December 20, 2012

## **EXHIBIT INDEX**

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**EX-3.1**

EX-3.1 2 ex3-1.htm AMENDED AND RESTATED BYLAWS

**Exhibit 3.1**

**AMENDED AND RESTATED BYLAWS  
OF  
LUCAS ENERGY, INC.  
a Nevada corporation**

**December 20, 2012**

**ARTICLE 1.  
DEFINITIONS**

1.1 Definitions. Unless the context clearly requires otherwise, in these Amended and Restated Bylaws:

- (a) "***Articles of Incorporation***" means the Articles of Incorporation of Lucas Energy, Inc., as filed with the Secretary of State of the State of Nevada and includes all amendments thereto and restatements thereof subsequently filed.
- (b) "***Board***" means the board of directors of the Company and/or an authorized Committee of the Board.
- (c) "***Bylaws***" means these Amended and Restated Bylaws as adopted by the Board and includes amendments subsequently adopted by the Board or by the Stockholders.
- (d) "***Company***" means Lucas Energy, Inc., a Nevada corporation.
- (e) "***Nevada Law***" means the Nevada Revised Statutes, as amended from time to time.
- (f) "***Section***" refers to sections of these Bylaws.
- (g) "***Stockholder***" means stockholders of record of the Company.

1.2 Offices. The title of an office refers to the person or persons who at any given time perform the duties of that particular office for the Company.

**ARTICLE 2.  
OFFICES**

2.1 Principal Office. The Company may locate its principal office within or without the state of incorporation as the Board may determine.

2.2 Registered Office. The registered office of the Company required by law to be maintained in the state of incorporation may be, but need not be, the same as the principal place of business of the Company. The Board may change the address of the registered office from time to time.

2.3 Other Offices. The Company may have offices at such other places, either within or without the state of incorporation, as the Board may designate or as the business of the Company may require from time to time.

### **ARTICLE 3. MEETINGS OF STOCKHOLDERS**

3.1 Annual Meetings. The Stockholders of the Company shall hold their annual meetings for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings at such time, date and place as the Board shall determine by resolution.

3.2 Special Meetings. The Board, the Chairman of the Board, the President or a committee of the Board duly designated and whose powers and authority include the power to call meetings may call special meetings of the Stockholders of the Company at any time for any purpose or purposes. Special meetings of the Stockholders of the Company may also be called by the holders of at least 10% of all shares entitled to vote at the proposed special meeting.

If any person(s) other than the Board or the Chairman call a special meeting, the request shall:

- (i) be in writing;
- (ii) specify the general nature of the business proposed to be transacted; and
- (iii) be delivered personally or sent by registered mail or by facsimile transmission to the Secretary of the Company.

Upon receipt of such a request, the Board shall determine the date, time and place of such special meeting, which must be scheduled to be held on a date that is within ninety (90) days of receipt by the Secretary of the request therefor, and the Secretary of the Company shall prepare a proper notice thereof. No business may be transacted at such special meeting other than the business specified in the notice to stockholders of such meeting.

3.3 Place of Meetings. The Stockholders shall hold all meetings at such places, within or without the State of Nevada, as the Board or a committee of the Board shall specify in the notice or waiver of notice for such meetings.

3.4 Notice of Meetings. Except as otherwise required by law, the Board or a committee of the Board shall give notice of each meeting of Stockholders, whether annual or special, not less than 10 nor more than 60 days before the date of the meeting. The Board or a committee of the Board shall deliver a notice to each Stockholder entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address as it appears on the records of the Company, or by transmitting a notice thereof to him at such address by telegraph, telecopy, cable or wireless. If mailed, notice is given on the date deposited in the United States mail, postage prepaid, directed to the Stockholder at his address as it appears on the records of the Company. An affidavit of the Secretary or an Assistant Secretary or of the Transfer Agent of the Company that he has given notice shall constitute, in the absence of fraud, prima facie evidence of the facts stated therein.

Every notice of a meeting of the Stockholders shall state the place, date and hour of the meeting and, in the case of a special meeting, also shall state the purpose or purposes of the meeting. Furthermore, if the Company will maintain the list at a place other than where the meeting will take place, every notice of a meeting of the Stockholders shall specify where the Company will maintain the list of Stockholders entitled to vote at the meeting.

3.5 Stockholder Notice. Subject to the Articles of Incorporation, the Stockholders who intend to nominate persons to the Board of Directors or propose any other action at an annual meeting of Stockholders must timely notify the Secretary of the Company of such intent. To be timely, a Stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Company not earlier than the close of business on the day which falls 120 days prior to the one year anniversary of the Company's last annual meeting of Stockholders and not later than the close of business on the day which falls 90 days prior to the one year anniversary of the Company's last annual meeting of Stockholders, together with written notice of the shareholder's intention to present a proposal for action at the meeting, unless the Company's annual meeting date occurs more than 30 days before or 30 days after the one year anniversary of the Company's last annual meeting of Stockholders. In that case, the Company must receive proposals not earlier than the close of business on the 120th day prior to the date of the annual meeting and not later than the close of business on the later of the 90th day prior to the date of the annual meeting or, if the first public announcement of the date of the annual meeting is less than 100 days prior to the date of the meeting, the 10th day following the day on which the Company first makes a public announcement of the date of the annual meeting. Such notice must be in writing and must include a (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the meeting; (ii) the name and record address of the Stockholder proposing such business; (iii) the class, series and number of shares of capital stock of the Company which are beneficially owned by the Stockholder; and (iv) any material interest of the Stockholder in such business. The Board of Directors reserves the right to refuse to submit any such proposal to Stockholders at an annual meeting if, in its judgment, the information provided in the notice is inaccurate or incomplete.

3.6 Waiver of Notice. Whenever these Bylaws require written notice, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall constitute the equivalent of notice. Attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. No written waiver of notice need specify either the business to be transacted at, or the purpose or purposes of any regular or special meeting of the Stockholders, directors or members of a committee of the Board.

3.7 Adjournment of Meeting. When the Stockholders adjourn a meeting to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Stockholders may transact any business which they may have transacted at the original meeting. If the adjournment is for more than 30 days or, if after the adjournment, the Board or a committee of the Board fixes a new record date for the adjourned meeting, the Board or a committee of the Board shall give notice of the adjourned meeting to each Stockholder of record entitled to vote at the meeting.

3.8 Quorum. Except as otherwise required by law, the holders of a majority of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes at any meeting of the Stockholders. In the absence of a quorum at any meeting or any adjournment thereof, the holders of a majority of the shares of stock entitled to vote who are present, in person or by proxy, or, in the absence thereof of all the Stockholders, any officer entitled to preside at, or to act as secretary of, such meeting may adjourn such meeting to another place, date or time.

If the chairman of the meeting gives notice of any adjourned special meeting of Stockholders to all Stockholders entitled to vote thereat, stating that the minimum percentage of Stockholders for a quorum as provided by Nevada Law shall constitute a quorum, then, except as otherwise required by law, that percentage at such adjourned meeting shall constitute a quorum and a majority of the votes cast at such meeting shall determine all matters.

Votes cast shall include votes cast against any proposal and shall exclude abstentions and broker non-votes, provided that votes cast against any proposal, abstentions and broker non-votes shall be counted in determining a quorum at any meeting.

3.9 Organization. Such person as the Board may have designated or, in the absence of such a person, the highest ranking officer of the Company who is present shall call to order any meeting of the Stockholders, determine the presence of a quorum, and act as chairman of the meeting. In the absence of the Secretary or an Assistant Secretary of the Company, the chairman shall appoint someone to act as the secretary of the meeting.

3.10 Conduct of Business. The chairman of any meeting of Stockholders shall determine the order of business and the procedure at the meeting, including such regulations of the manner of voting and the conduct of discussion as he deems in order.

3.11 List of Stockholders. At least 10 days before every meeting of Stockholders, the Secretary shall prepare a list of the Stockholders entitled to vote at the meeting or any adjournment thereof, arranged in alphabetical order, showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. The Company shall make the list available for examination by any Stockholder for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting will take place or at the place designated in the notice of the meeting.

The Secretary shall produce and keep the list at the time and place of the meeting during the entire duration of the meeting, and any Stockholder who is present may inspect the list at the meeting. The list shall constitute presumptive proof of the identity of the Stockholders entitled to vote at the meeting and the number of shares each Stockholder holds.

A determination of Stockholders entitled to vote at any meeting of Stockholders pursuant to this Section shall apply to any adjournment thereof.

3.12 Fixing of 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 Stockholders entitled to receive payment of any dividend, or in order to make a determination of Stockholders for any other proper purpose, the Board or a committee of the Board may fix in advance a date as the record date for any such determination of Stockholders. However, the Board shall not fix such date, in any case, more than 60 days nor less than 10 days prior to the date of the particular action.

If the Board or a committee of the Board does not fix a record date for the determination of Stockholders entitled to notice of or to vote at a meeting of Stockholders, the record date shall be at the close of business on the day next preceding the day on which notice is given or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held or the date on which the Board adopts the resolution declaring a dividend.

3.13 Voting of Shares. Except as otherwise required by Nevada Law, the Articles or the Bylaws, (i) at all meetings of stockholders for the election of directors, a plurality of votes cast shall be sufficient to elect such directors; (ii) any other action taken by shareholders voting a majority of the votes cast on such matter at a meeting at which a quorum is present shall be valid and binding upon the Company, except that adoption, amendment or repeal of the Bylaws by Stockholders will require the vote of a majority of the shares entitled to vote; and (iii) broker non-votes and abstentions are considered for purposes of establishing a quorum but not considered as votes cast for or against a proposal or director nominee. Each Stockholder shall have one vote for every share of stock having voting rights registered in his name on the record date for the meeting, except as otherwise provided in any preferred stock designation setting forth the right of preferred stock shareholders. The Company shall not have the right to vote treasury stock of the Company, nor shall another corporation have the right to vote its stock of the Company if the Company holds, directly or indirectly, a majority of the shares entitled to vote in the election of directors of such other corporation. Persons holding stock of the Company in a fiduciary capacity shall have the right to vote such stock. Persons who have pledged their stock of the Company shall have the right to vote such stock unless in the transfer on the books of the Company the pledgor expressly empowered the pledgee to vote such stock. In that event, only the pledgee, or his proxy, may represent such stock and vote thereon.

Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

3.14 Inspectors. At any meeting in which the Stockholders vote by ballot, the chairman may appoint one or more inspectors. Each inspector shall take and sign an oath to execute the duties of inspector at such meeting faithfully, with strict impartiality, and according to the best of his ability. The inspectors shall ascertain the number of shares outstanding and the voting power of each; determine the shares represented at a meeting and the validity of proxies and ballots; count all votes and ballots; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The certification required herein shall take the form of a subscribed, written report prepared by the inspectors and delivered to the Secretary of the Company. An inspector need not be a Stockholder of the Company, and any officer of the Company may be an inspector on any question other than a vote for or against a proposal in which he has a material interest.

3.15 Proxies. A Stockholder may exercise any voting rights in person or by his proxy appointed by an instrument in writing, which he or his authorized attorney-in-fact has subscribed and which the proxy has delivered to the Secretary of the meeting pursuant to the manner prescribed by law.

A proxy is not valid after the expiration of 11 months after the date of its execution, unless the person executing it specifies thereon the length of time for which it is to continue in force (which length may exceed 11 months) or limits its use to a particular meeting. Each proxy is irrevocable if it expressly states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power.

The attendance at any meeting of a Stockholder who previously has given a proxy shall not have the effect of revoking the same unless he notifies the Secretary in writing prior to the voting of the proxy.

3.16 Action by Consent. Any action required to be taken at any annual or special meeting of Stockholders of the Company or any action which may be taken at any annual or special meeting of such Stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Company by delivery to its registered office, its principal place of business, or an officer or agent of the Company having custody of the book in which proceedings of meetings of Stockholders are recorded. Delivery made to the Company's registered office shall be by hand or by certified or registered mail, return receipt requested.

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

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. In the event the Company is a reporting company which files periodic and current reports with the Securities and Exchange Commission (the "Commission"), the filing of a Report on Form 8-K with the Commission describing the items approved by the shareholders in the Consent to Action shall constitute "notice" to those shareholders who have not consented to such action in writing.

3.17 Cumulative Voting. Cumulative voting is expressly forbidden.

#### **ARTICLE 4. BOARD OF DIRECTORS**

4.1 General Powers. The Board shall manage the property, business and affairs of the Company.

4.2 Number. The number of directors who shall constitute the Board shall equal not less than 1 nor more than 10, as the Board or majority stockholders may determine by resolution from time to time.

4.3 Election of Directors and Term of Office. The Stockholders of the Company shall elect the directors at the annual or adjourned annual meeting (except as otherwise provided herein for the filling of vacancies). Each director shall hold office until his death, resignation, retirement, removal, or disqualification, or until his successor shall have been elected and qualified.

4.4 Resignations. Any director of the Company may resign at any time by giving written notice to the Board or to the Secretary of the Company. Any resignation shall take effect upon receipt or at the time specified in the notice. Unless the notice specifies otherwise, the effectiveness of the resignation shall not depend upon its acceptance.

4.5 Removal. Stockholders holding 2/3 of the outstanding shares entitled to vote at an election of directors may remove any director or the entire Board of Directors at any time, with or without cause.

4.6 Vacancies. Any vacancy on the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause may be filled by a majority of the remaining directors, a sole remaining director, or the majority stockholders. Any director elected to fill a vacancy shall hold office until his death, resignation, retirement, removal, or disqualification, or until his successor shall have been elected and qualified.

4.7 Chairman of the Board. At the initial and annual meeting of the Board, the directors may elect from their number a Chairman of the Board of Directors. The Chairman shall preside at all meetings of the Board and shall perform such other duties as the Board may direct. The Board also may elect a Vice Chairman and other officers of the Board, with such powers and duties as the Board may designate from time to time.

4.8 Compensation. The Board may compensate directors for their services and may provide for the payment of all expenses the directors incur by attending meetings of the Board or otherwise.

4.9 Insuring Directors, Officers, and Employees. The Company may purchase and maintain insurance on behalf of any director, officer, employee, or agent of the Company, or on behalf of any person serving at the request of the Company as a director, officer, employee, or agent of another Company, partnership, joint venture, trust, or other enterprise, against any liability asserted against that person and incurred by that person in any such Company, whether or not the Company has the power to indemnify that person against liability for any of those acts.

**ARTICLE 5.**  
**MEETINGS OF DIRECTORS**

5.1 Regular Meetings. The Board may hold regular meetings at such places, dates and times as the Board shall establish by resolution. If any day fixed for a meeting falls on a legal holiday, the Board shall hold the meeting at the same place and time on the next succeeding business day. The Board need not give notice of regular meetings.

5.2 Place of Meetings. The Board may hold any of its meetings in or out of the State of Nevada, at such places as the Board may designate, at such places as the notice or waiver of notice of any such meeting may designate, or at such places as the persons calling the meeting may designate.

5.3 Meetings by Telecommunications. The Board or any committee of the Board may hold meetings by means of conference telephone or similar telecommunications equipment that enable all persons participating in the meeting to hear each other. Such participation shall constitute presence in person at such meeting.

5.4 Special Meetings. The Chairman of the Board, the President (or any Vice President if the President is absent or unable or refuses to act), or any two directors then in office (not including the Chairman) may call a special meeting of the Board. The person or persons authorized to call special meetings of the Board may fix any place, either in or out of the State of Nevada as the place for the meeting.

5.5 Notice of Special Meetings. The person or persons calling a special meeting of the Board shall give written notice to each director of the time, place, date and purpose of the meeting of not less than three business days if by mail and not less than 24 hours if by facsimile (with confirmation of delivery), email or in person before the date of the meeting, or as otherwise provided by law. If mailed, notice is given on the date deposited in the United States mail, postage prepaid, to such director. A director may waive notice of any special meeting, and any meeting shall constitute a legal meeting without notice if all the directors are present or if those not present sign either before or after the meeting a written waiver of notice, a consent to such meeting, or an approval of the minutes of the meeting. A notice or waiver of notice need not specify the purposes of the meeting or the business which the Board will transact at the meeting. Generally, a tentative agenda will be included, but the meeting shall not be confined to any agenda included with the notice.

Upon providing notice, the Secretary or other officer sending notice shall sign and file in the Corporate Record Book a statement of the details of the notice given to each director. If such statement should later not be found in the Corporate Record Book, due notice shall be presumed.

5.6 Waiver by Presence. Except when expressly for the purpose of objecting to the legality of a meeting, a director's presence at a meeting shall constitute a waiver of notice of such meeting.

5.7 Quorum. A majority of the directors then in office shall constitute a quorum for all purposes at any meeting of the Board. In the absence of a quorum, a majority of directors present at any meeting may adjourn the meeting to another place, date or time without further notice. No proxies shall be given by directors to any person for purposes of voting or establishing a quorum at a directors' meetings.

5.8 Conduct of Business. The Board shall transact business in such order and manner as the Board may determine. Except as the law requires otherwise, the Board shall determine all matters by the vote of a majority of the directors present at a meeting at which a quorum is present. The directors shall act as a Board, and the individual directors shall have no power as such. At every meeting of the Board of Directors, the Chairman of the Board, if there is such an officer, and if not, the President, or in the President's absence, a Vice President designated by the President, or in the absence of such designation, a Chairman chosen by a majority of the Directors present, shall preside. The Secretary of the Corporation shall act as Secretary of the Board of Directors' meetings. When the Secretary is absent from any meeting, the Chairman may appoint any person to act as Secretary of that meeting.

5.9 Action by Consent. The Board or a committee of the Board may take any required or permitted action without a meeting if all members of the Board or committee consent thereto in writing and file such consent with the minutes of the proceedings of the Board or committee.

5.10 Transactions With Interested Directors. Any contract or other transaction between the Company and any of its directors (or any corporation or firm in which any of its directors are directly or indirectly interested) shall be valid for all purposes notwithstanding the presence of that director at the meeting during which the contract or transaction was authorized, and notwithstanding the directors' participation in that meeting. This section shall apply only if the contract or transaction is just and reasonable to the Company at the time it is authorized and ratified, the interest of each director is known or disclosed to the Board of Directors, and the Board nevertheless authorizes or ratifies the contract or transaction by a majority of the disinterested directors present. Each interested director is to be counted in determining whether a quorum is present, but shall not vote and shall not be counted in calculating the majority necessary to carry the vote. This section shall not be construed to invalidate contracts or transactions that would be valid in its absence.

**ARTICLE 6.  
COMMITTEES**

6.1 Committees of the Board. The Board may designate, by a vote of a majority of the directors then in office, committees of the Board. The committees shall serve at the pleasure of the Board and shall possess such lawfully delegable powers and duties as the Board may confer.

6.2 Selection of Committee Members. The Board shall elect by a vote of a majority of the directors then in office a director or directors to serve as the member or members of a committee. By the same vote, the Board may designate other directors as alternate members who may replace any absent or disqualified member at any meeting of a committee. In the absence or disqualification of any member of any committee and any alternate member in his place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or they constitute a quorum, may appoint by unanimous vote another member of the Board to act at the meeting in the place of the absent or disqualified member.

6.3 Conduct of Business. Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as the law or these Bylaws require otherwise. Each committee shall make adequate provision for notice of all meetings to members. A majority of the members of the committee shall constitute a quorum, unless the committee consists of one or two members. In that event, one member shall constitute a quorum. A majority vote of the members present shall determine all matters. A committee may take action without a meeting if all the members of the committee consent in writing and file the consent or consents with the minutes of the proceedings of the committee.

6.4 Authority. Any committee, to the extent the Board provides, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company, and may authorize the affixation of the Company's seal to all instruments which may require or permit it. However, no committee shall have any power or authority with regard 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 Company's property and assets, recommending to the Stockholders a dissolution of the Company or a revocation of a dissolution of the Company, or amending these Bylaws of the Company. Unless a resolution of the Board expressly provides, no committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger.

6.5 Minutes. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

6.6 Committees. All Committees and all powers provided to such Committees shall be consistent with Nevada Law, the Articles and the rules and regulations of the principal market or exchange on which the Company's capital stock then trades.

**ARTICLE 7.**  
**OFFICERS**

7.1 Officers of the Company. The officers of the Company shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers, and other officers as the Board may designate and elect from time to time. The same person may hold at the same time any two or more offices.

7.2 Election and Term. The Board shall elect the officers of the Company. Each officer shall hold office until his death, resignation, retirement, removal or disqualification, or until his successor shall have been elected and qualified.

7.3 Compensation of Officers. The Board shall fix the compensation of all officers of the Company. No officer shall serve the Company in any other capacity and receive compensation, unless the Board authorizes the additional compensation.

7.4 Removal of Officers and Agents. The Board may remove any officer or agent it has elected or appointed at any time, with or without cause.

7.5 Resignation of Officers and Agents. Any officer or agent the Board has elected or appointed may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, or the Secretary of the Company. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified. Unless otherwise specified in the notice, the Board need not accept the resignation to make it effective.

7.6 Bond. The Board may require by resolution any officer, agent, or employee of the Company to give bond to the Company, with sufficient sureties conditioned on the faithful performance of the duties of his respective office or agency. The Board also may require by resolution any officer, agent or employee to comply with such other conditions as the Board may require from time to time.

7.7 President. The President shall be the chief operating officer of the Company and, subject to the Board's control, shall supervise and direct all of the business and affairs of the Company. When present, he shall sign (with or without the Secretary, an Assistant Secretary, or any other officer or agent of the Company which the Board has authorized) deeds, mortgages, bonds, contracts or other instruments which the Board has authorized an officer or agent of the Company to execute. However, the President shall not sign any instrument which the law, these Bylaws, or the Board expressly require some other officer or agent of the Company to sign and execute. In general, the President shall perform all duties incident to the office of President and such other duties as the Board may prescribe from time to time.

7.8 Vice Presidents. In the absence of the President or in the event of his death, inability or refusal to act, the Vice Presidents in the order of their length of service as Vice Presidents, unless the Board determines otherwise, shall perform the duties of the President. When acting as the President, a Vice President shall have all the powers and restrictions of the Presidency. A Vice President shall perform such other duties as the President or the Board may assign to him from time to time.

7.9 Chief Financial Officer. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director.

The Chief Financial Officer shall deposit all moneys and other valuables in the name and to the credit of the Company with such depositories as the Board may designate. The Chief Financial Officer shall disburse the funds of the Company as may be ordered by the Board, shall render to the Chief Executive Officer or, in the absence of a Chief Executive Officer, any president and directors, whenever they request it, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Company, and shall have other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

The Chief Financial Officer may be the Treasurer of the Company.

7.10 Secretary. The Secretary shall (a) keep the minutes of the meetings of the Stockholders and of the Board in one or more books for that purpose, (b) give all notices which these Bylaws or the law requires, (c) serve as custodian of the records and seal of the Company, (d) affix the seal of the Company to all documents which the Board has authorized execution on behalf of the Company under seal, (e) maintain a register of the address of each Stockholder of the Company, (f) sign, with the President, a Vice President, or any other officer or agent of the Company which the Board has authorized, certificates for shares of the Company, (g) have charge of the stock transfer books of the Company, and (h) perform all duties which the President or the Board may assign to him from time to time.

7.11 Assistant Secretaries. In the absence of the Secretary or in the event of his death, inability or refusal to act, the Assistant Secretaries in the order of their length of service as Assistant Secretary, unless the Board determines otherwise, shall perform the duties of the Secretary. When acting as the Secretary, an Assistant Secretary shall have the powers and restrictions of the Secretary. An Assistant Secretary shall perform such other duties as the President, Secretary or Board may assign from time to time.

7.12 Treasurer. The Treasurer shall (a) have responsibility for all funds and securities of the Company, (b) receive and give receipts for moneys due and payable to the Company from any source whatsoever, (c) deposit all moneys in the name of the Company in depositories which the Board selects, and (d) perform all of the duties which the President or the Board may assign to him from time to time.

7.13 Assistant Treasurers. In the absence of the Treasurer or in the event of his death, inability or refusal to act, the Assistant Treasurers in the order of their length of service as Assistant Treasurer, unless the Board determines otherwise, shall perform the duties of the Treasurer. When acting as the Treasurer, an Assistant Treasurer shall have the powers and restrictions of the Treasurer. An Assistant Treasurer shall perform such other duties as the Treasurer, the President, or the Board may assign to him from time to time.

7.13 Delegation of Authority. Notwithstanding any provision of these Bylaws to the contrary, the Board may delegate the powers or duties of any officer to any other officer or agent.

7.14 Action with Respect to Securities of Other Corporations. Unless the Board directs otherwise, the President shall have the power to vote and otherwise act on behalf of the Company, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which the Company holds securities. Furthermore, unless the Board directs otherwise, the President shall exercise any and all rights and powers which the Company possesses by reason of its ownership of securities in another corporation.

7.15 Vacancies. The Board may fill any vacancy in any office because of death, resignation, removal, disqualification or any other cause in the manner which these Bylaws prescribe for the regular appointment to such office.

7.16 Corporate Governance Compliance. Without otherwise limiting the powers of the Board set forth herein and provided that shares of capital stock of the Company are listed for trading on either the NASDAQ Stock Market ("**NASDAQ**") or the New York Stock Exchange ("**NYSE**") (including the NYSE MKT.), the Company shall comply with the corporate governance rules and requirements of the NASDAQ or the NYSE, as applicable.

## **ARTICLE 8. CONTRACTS, LOANS, DRAFTS, DEPOSITS AND ACCOUNTS**

8.1 Contracts. The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Company. The Board may make such authorization general or special.

8.2 Loans. Unless the Board has authorized such action, no officer or agent of the Company shall contract for a loan on behalf of the Company or issue any evidence of indebtedness in the Company's name.

8.3 Drafts. The President, any Vice President, the Treasurer, any Assistant Treasurer, and such other persons as the Board shall determine shall issue all checks, drafts and other orders for the payment of money, notes and other evidences of indebtedness issued in the name of or payable by the Company.

8.4 Deposits. The Treasurer shall deposit all funds of the Company not otherwise employed in such banks, trust companies, or other depositories as the Board may select or as any officer, assistant, agent or attorney of the Company to whom the Board has delegated such power may select. For the purpose of deposit and collection for the account of the Company, the President or the Treasurer (or any other officer, assistant, agent or attorney of the Company whom the Board has authorized) may endorse, assign and deliver checks, drafts and other orders for the payment of money payable to the order of the Company.

8.5 General and Special Bank Accounts. The Board may authorize the opening and keeping of general and special bank accounts with such banks, trust companies, or other depositories as the Board may select or as any officer, assistant, agent or attorney of the Company to whom the Board has delegated such power may select. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

## **ARTICLE 9. CERTIFICATES FOR SHARES AND THEIR TRANSFER**

9.1 Certificates for Shares. Shares of the capital stock of the Company may be certificated or uncertificated, as provided under Nevada Law. Each stockholder, upon written request to the transfer agent or registrar of the Company, shall be entitled to a certificate of the capital stock of the Company in such form as may from time to time be prescribed by the Board of Directors. The Secretary, transfer agent, or registrar of the Company shall number the certificates representing shares of the stock of the Company in the order in which the Company issues them. The President or any Vice President and the Secretary or any Assistant Secretary shall sign the certificates in the name of the Company. Any or all certificates may contain facsimile signatures. In case any officer, transfer agent, or registrar who has signed a certificate, or whose facsimile signature appears on a certificate, ceases to serve as such officer, transfer agent, or registrar before the Company issues the certificate, the Company may issue the certificate with the same effect as though the person who signed such certificate, or whose facsimile signature appears on the certificate, was such officer, transfer agent, or registrar at the date of issue. The Secretary, transfer agent, or registrar of the Company shall keep a record in the stock transfer books of the Company of the names of the persons, firms or corporations owning the stock represented by the certificates, the number and class of shares represented by the certificates and the dates thereof and, in the case of cancellation, the dates of cancellation. The Secretary, transfer agent, or registrar of the Company shall cancel every certificate surrendered to the Company for exchange or transfer. Except in the case of a lost, destroyed, stolen or mutilated certificate, the Secretary, transfer agent, or registrar of the Company shall not issue a new certificate in exchange for an existing certificate until he has canceled the existing certificate.

9.2 Transfer of Shares. A holder of record of shares of the Company's stock, or his attorney-in-fact authorized by power of attorney duly executed and filed with the Secretary, transfer agent or registrar of the Company, may transfer his shares only on the stock transfer books of the Company. Such person shall furnish to the Secretary, transfer agent, or registrar of the Company proper evidence of his authority to make the transfer and shall properly endorse and surrender for cancellation his existing certificate or certificates for such shares. Whenever a holder of record of shares of the Company's stock makes a transfer of shares for collateral security, the Secretary, transfer agent, or registrar of the Company shall state such fact in the entry of transfer if the transferor and the transferee request. When a transfer of shares is requested and there is reasonable doubt as to the right of the person seeking the transfer, the Company or its transfer agent, before recording the transfer of the shares on its books or issuing any certificate there for, may require from the person seeking the transfer reasonable proof of that person's right to the transfer. If there remains a reasonable doubt of the right to the transfer, the Company may refuse a transfer unless the person gives adequate security or a bond of indemnity executed by a corporate surety or by two individual sureties satisfactory to the Company as to form, amount, and responsibility of sureties. The bond shall be conditioned to protect the Company, its officers, transfer agents, and registrars, or any of them, against any loss, damage, expense, or other liability for the transfer or the issuance of a new certificate for shares.

9.3 Lost Certificates. The Board may direct the Secretary, transfer agent, or registrar of the Company to issue a new certificate to any holder of record of shares of the Company's stock claiming that he has lost such certificate, or that someone has stolen, destroyed or mutilated such certificate, upon the receipt of an affidavit from such holder to such fact. When authorizing the issue of a new certificate, the Board, in its discretion may require as a condition precedent to the issuance that the owner of such certificate give the Company a bond of indemnity in such form and amount as the Board may direct.

9.4 Regulations. The Board may make such rules and regulations, not inconsistent with these Bylaws, as it deems expedient concerning the issue, transfer and registration of certificates for shares of the stock of the Company. The Board may appoint or authorize any officer or officers to appoint one or more transfer agents, or one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

9.5 Holder of Record. The Company may treat as absolute owners of shares the person in whose name the shares stand of record as if that person had full competency, capacity and authority to exercise all rights of ownership, despite any knowledge or notice to the contrary or any description indicating a representative, pledge or other fiduciary relation, or any reference to any other instrument or to the rights of any other person appearing upon its record or upon the share certificate. However, the Company may treat any person furnishing proof of his appointment as a fiduciary as if he were the holder of record of the shares.

9.6 Treasury Shares. Treasury shares of the Company shall consist of shares which the Company has issued and thereafter acquired but not canceled. Treasury shares shall not carry voting or dividend rights.

9.7 Consideration For Shares. Shares may be issued for such consideration as may be fixed from time to time by the Board of Directors, but not less than the par value stated in the Articles.

## **ARTICLE 10. INDEMNIFICATION**

10.1 Definitions. In this Article:

(a) "**Indemnitee**" means (i) any present or former director, advisory director or officer of the Company, (ii) any person who while serving in any of the capacities referred to in clause (i) hereof served at the Company's request as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and (iii) any person nominated or designated by (or pursuant to authority granted by) the Board of Directors or any committee thereof to serve in any of the capacities referred to in clauses (i) or (ii) hereof.

(b) "**Official Capacity**" means (i) when used with respect to a director, the office of director of the Company, and (ii) when used with respect to a person other than a director, the elective or appointive office of the Company held by such person or the employment or agency relationship undertaken by such person on behalf of the Company, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

(c) "**Proceeding**" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

10.2 Indemnification. The Company shall indemnify every Indemnitee against all judgments, penalties (including excise and similar taxes), fines, amounts paid in settlement and reasonable expenses actually incurred by the Indemnitee in connection with any Proceeding in which he was, is or is threatened to be named defendant or respondent, or in which he was or is a witness without being named a defendant or respondent, by reason, in whole or in part, of his serving or having served, or having been nominated or designated to serve, in any of the capacities referred to in Section 10.1, if it is determined in accordance with Section 10.4 that the Indemnitee (a) conducted himself in good faith, (b) reasonably believed, in the case of conduct in his Official Capacity, that his conduct was in the Company's best interests and, in all other cases, that his conduct was at least not opposed to the Company's best interests, and (c) in the case of any criminal proceeding, had no reasonable cause to believe that his conduct was unlawful; provided, however, that in the event that an Indemnitee is found liable to the Company or is found liable on the basis that personal benefit was improperly received by the Indemnitee the indemnification (i) is limited to reasonable expenses actually incurred by the Indemnitee in connection with the Proceeding and (ii) shall not be made in respect of any Proceeding in which the Indemnitee shall have been found liable for willful or intentional misconduct in the performance of his duty to the Company. Except as provided in the immediately preceding proviso to the first sentence of this Section 10.2, no indemnification shall be made under this Section 10.2 in respect of any Proceeding in which such Indemnitee shall have been (a) found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the Indemnitee's Official Capacity, or (b) found liable to the Company. The termination of any Proceeding by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, is not of itself determinative that the Indemnitee did not meet the requirements set forth in clauses (a), (b) or (c) in the first sentence of this Section 10.2. An Indemnitee shall be deemed to have been found liable in respect of any claim, issue or matter only after the Indemnitee shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. Reasonable expenses shall, include, without limitation, all court costs and all fees and disbursements of attorneys for the Indemnitee. The indemnification provided herein shall be applicable whether or not negligence or gross negligence of the Indemnitee is alleged or proven.

10.3 Successful Defense. Without limitation of Section 10.2 and in addition to the indemnification provided for in Section 10.2, the Company shall indemnify every Indemnitee against reasonable expenses incurred by such person in connection with any Proceeding in which he is a witness or a named defendant or respondent because he served in any of the capacities referred to in Section 10.1, if such person has been wholly successful, on the merits or otherwise, in defense of the Proceeding.

10.4 Determinations. Any indemnification under Section 10.2 (unless ordered by a court of competent jurisdiction) shall be made by the Company only upon a determination that indemnification of the Indemnitee is proper in the circumstances because he has met the applicable standard of conduct. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who, at the time of such vote, are not named defendants or respondents in the Proceeding; (b) if such a quorum cannot be obtained, then by a majority vote of a committee of the Board of Directors, duly designated to act in the matter by a majority vote of all directors (in which designated directors who are named defendants or respondents in the Proceeding may participate), such committee to consist solely of two (2) or more directors who, at the time of the committee vote, are not named defendants or respondents in the Proceeding; (c) by special legal counsel selected by the Board of Directors or a committee thereof by vote as set forth in clauses (a) or (b) of this Section 10.4 or, if the requisite quorum of all of the directors cannot be obtained therefor and such committee cannot be established, by a majority vote of all of the directors (in which directors who are named defendants or respondents in the Proceeding may participate); or (d) by the shareholders in a vote that excludes the shares held by directors that are named defendants or respondents in the Proceeding. Determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, determination as to reasonableness of expenses must be made in the manner specified in clause (c) of the preceding sentence for the selection of special legal counsel. In the event a determination is made under this Section 10.4 that the Indemnitee has met the applicable standard of conduct as to some matters but not as to others, amounts to be indemnified may be reasonably prorated.

10.5 Advancement of Expenses. Reasonable expenses (including court costs and attorneys' fees) incurred by an Indemnitee who was or is a witness or was, is or is threatened to be made a named defendant or respondent in a Proceeding shall be paid by the Company at reasonable intervals in advance of the final disposition of such Proceeding, and without making any of the determinations specified in Section 10.4, after receipt by the Company of (a) a written affirmation by such Indemnitee of his good faith belief that he has met the standard of conduct necessary for indemnification by the Company under this Article and (b) a written undertaking by or on behalf of such Indemnitee to repay the amount paid or reimbursed by the Company if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorized in this Article. Such written undertaking shall be an unlimited obligation of the Indemnitee but need not be secured and it may be accepted without reference to financial ability to make repayment. Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by an Indemnitee in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not named a defendant or respondent in the Proceeding.

10.6 Employee Benefit Plans. For purposes of this Article, the Company shall be deemed to have requested an Indemnitee to serve an employee benefit plan whenever the performance by him of his duties to the Company also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall be deemed fines. Action taken or omitted by an Indemnitee with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the Company.

10.7 Other Indemnification and Insurance. The indemnification provided by this Article shall (a) not be deemed exclusive of, or to preclude, any other rights to which those seeking indemnification may at any time be entitled under the Company's Articles of Incorporation, any law, agreement or vote of shareholders or disinterested directors, or otherwise, or under any policy or policies of insurance purchased and maintained by the Company on behalf of any Indemnitee, both as to action in his Official Capacity and as to action in any other capacity, (b) continue as to a person who has ceased to be in the capacity by reason of which he was an Indemnitee with respect to matters arising during the period he was in such capacity, (c) inure to the benefit of the heirs, executors and administrators of such a person and (d) not be required if and to the extent that the person otherwise entitled to payment of such amounts hereunder has actually received payment therefor under any insurance policy, contract or otherwise.

10.8 Notice. Any indemnification of or advance of expenses to an Indemnitee in accordance with this Article shall be reported in writing to the shareholders of the Company with or before the notice or waiver of notice of the next shareholders' meeting or with or before the next submission to shareholders of a consent to action without a meeting and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

10.9 Construction. The indemnification provided by this Article shall be subject to all valid and applicable laws, including, without limitation, the Nevada General Corporation Law, and, in the event this Article or any of the provisions hereof or the indemnification contemplated hereby are found to be inconsistent with or contrary to any such valid laws, the latter shall be deemed to control and this Article shall be regarded as modified accordingly, and, as so modified, to continue in full force and effect.

10.10 Continuing Offer, Reliance, etc. The provisions of this Article (a) are for the benefit of, and may be enforced by, each Indemnitee of the Company, the same as if set forth in their entirety in a written instrument duly executed and delivered by the Company and such Indemnitee and (b) constitute a continuing offer to all present and future Indemnitees. The Company, by its adoption of these Bylaws, (a) acknowledges and agrees that each Indemnitee of the Company has relied upon and will continue to rely upon the provisions of this Article in becoming, and serving in any of the capacities referred to in Section 10.1 of this Article, (b) waives reliance upon, and all notices of acceptance of, such provisions by such Indemnitees and (c) acknowledges and agrees that no present or future Indemnitee shall be prejudiced in his right to enforce the provisions of this Article in accordance with its terms by any act or failure to act on the part of the Company.

10.11 Effect of Amendment. No amendment, modification or repeal of this Article or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitees to be indemnified by the Company, nor the obligation of the Company to indemnify any such Indemnitees, under and in accordance with the provisions of the Article as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

## **ARTICLE 11. TAKEOVER OFFERS; ACQUISITION OF CONTROLLING INTEREST**

11.1 Takeover Offers. In the event the Company receives a takeover offer, the Board of Directors shall consider all relevant factors in evaluating such offer, including, but not limited to, the terms of the offer, and the potential economic and social impact of such offer on the Company's stockholders, employees, customers, creditors and community in which it operates.

11.2 Nevada Controlling Interest Statutes. Pursuant to Nevada Revised Statutes (“**NRS**”) Section 78.378, the Company shall not be governed by the provisions of NRS 78.378 to 78.3793, inclusive, of the NRS, and such sections shall not apply to the Company or to an acquisition of a controlling interest by any shareholder of the Company.

## **ARTICLE 12. DIVIDENDS**

12.1 General. The Board, subject to any restrictions contained in either (i) Nevada Law, or (ii) the Articles, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the Company’s capital stock.

12.2 Dividend Reserve. The Board may set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

## **ARTICLE 13. NOTICES**

13.1 General. Whenever these Bylaws require notice to any Stockholder, director, officer or agent, such notice does not mean personal notice. A person may give effective notice under these Bylaws in every case by depositing a writing in a post office or letter box in a postpaid, sealed wrapper, or by dispatching a prepaid telegram addressed to such Stockholder, director, officer or agent at his address on the books of the Company. Unless these Bylaws expressly provide to the contrary, the time when the person sends notice shall constitute the time of the giving of notice.

13.2 Waiver of Notice. Whenever the law or these Bylaws require notice, the person entitled to said notice may waive such notice in writing, either before or after the time stated therein.

13.3 Electronic Notice. Without limiting the manner by which notice otherwise may be given effectively to Stockholders pursuant to the Nevada Law, the Articles or these Bylaws, any notice to Stockholders given by the Company under any provision of the Nevada Law, the Articles or these Bylaws shall be effective if given by a form of electronic transmission consented to by the Stockholder to whom the notice is given. Any such consent shall be revocable by the Stockholder by written notice to the Company. Any such consent shall be deemed revoked if:

- (i) the Company is unable to deliver by electronic transmission two consecutive notices given by the Company in accordance with such consent; and
- (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Company or to the transfer agent, or other person

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

- (i) if by facsimile telecommunication, when directed to a number at which the Stockholder has consented to receive notice;
- (ii) if by electronic mail, when directed to an electronic mail address at which the Stockholder has consented to receive notice;
- (iii) if by a posting on an electronic network together with separate notice to the Stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and
- (iv) if by any other form of electronic transmission, when directed to the Stockholder.

An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Company that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

13.4 Undeliverable Notices. Whenever notice is required to be given, under any provision of the Nevada Law, the Articles or these Bylaws, to any stockholder to whom (a) notice of two (2) consecutive annual meetings, or (b) all, and at least two (2) payments (if sent by first-class mail) of dividends or interest on securities during a twelve (12) month period, have been mailed addressed to such person at such person's address as shown on the records of the Company and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Company a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the Company is such as to require the filing of an amendment to the Articles with the Secretary of State of Nevada, the amendment need not state that notice was not given to persons to whom notice was not required to be given pursuant to Nevada Law.

#### **ARTICLE 14. MISCELLANEOUS**

14.1 Facsimile Signatures. In addition to the use of facsimile signatures which these Bylaws specifically authorize, the Company may use such facsimile signatures of any officer or officers, agents or agent, of the Company as the Board or a committee of the Board may authorize.

14.2 Corporate Seal. The Board may provide for a suitable seal containing the name of the Company, of which the Secretary shall be in charge. The Treasurer, any Assistant Secretary, or any Assistant Treasurer may keep and use the seal or duplicates of the seal if and when the Board or a committee of the Board so directs.

14.3 Fiscal Year. The Board shall have the authority to fix and change the fiscal year of the Company.

14.4 Invalid Provisions. If any provision of these Bylaws is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of the Stockholders would not be materially and adversely affected thereby, such provision shall be fully separable, and these Bylaws shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of these Bylaws shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of these Bylaws, a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

**ARTICLE 15.**  
**AMENDMENTS**

15.1 Subject to the provisions of the Articles, the Stockholders or the Board may amend or repeal these Bylaws at any shareholders or directors meeting, subject to the voting and approval requirements of the shareholders and the directors, as applicable, set forth herein for general Company matters. All amendments shall be upon advice of counsel as to legality, except in emergency. Bylaw changes shall take effect upon adoption unless otherwise specified.

The undersigned hereby certifies that the foregoing constitutes a true and correct copy of the Bylaws of the Company as adopted by the Board of Directors on the \_\_\_\_th day of December 2012.

Executed as of this 20th day of December 2012.

Chief Executive Officer

/s/ Anthony C. Schnur  
Anthony C. Schnur



**EX-10.1**

EX-10.1 3 ex10-1.htm EMPLOYMENT AGREEMENT

**Exhibit 10.1**

**AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

**This Amended and Restated Employment Agreement** (this "Agreement") is entered into this 20<sup>th</sup> day of December 2012, to be effective as of the 12<sup>th</sup> day of December 2012 by and between Lucas Energy, Inc. ("Company"), and Anthony C. Schnur ("Executive").

**WITNESSETH:**

**WHEREAS**, Executive was appointed on November 1, 2012 as the Chief Financial Officer, Secretary and Treasurer of the Company;

**WHEREAS**, effective November 1, 2012, the Company and the Executive entered into an Employment Agreement (the "Prior Agreement"), which this Agreement amends, replaces and supersedes in its entirety effective as of the Effective Date; and

**WHEREAS**, the Company wishes to assure itself of the services of Executive for the period provided in this Agreement, and Executive is willing to perform services for the Company for such period, upon the terms and conditions hereinafter provided.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

**1. Term.**

The term of employment under this Agreement shall commence and this Agreement shall be effective as of December 12, 2012 (the "Effective Date", provided that the Prior Agreement shall be deemed to have been in effect and to have governed the relationship of the parties from November 1, 2012 until the Effective Date), and shall terminate on October 31, 2014, unless sooner terminated in accordance with the terms hereof (the "Term"). In addition, this initial employment period shall automatically renew for additional one year periods, unless the Company or Executive gives written notice to the other of non-renewal of this Employment Agreement within a 30 day period immediately prior to the end of the then-current employment period ending October 31st. Should the Company notice the Executive of non-renewal, the Executive shall be entitled to the benefits as outlined herein in Section 5(c).

**2. Employment; Duties.**

During the Term, Executive shall be employed by Company, and the Executive shall serve, as the Company's Chief Executive Officer and shall have such duties, responsibilities and authority as shall be consistent with that position. Notwithstanding the above, the Executive shall serve as the interim Chief Financial Officer, Treasurer and Corporate Secretary until such time as a suitable replacement has been appointed by the Company's Board of Directors.

**3. Compensation; Benefits.**

During the Term, Executive shall receive an annual salary ("Base Salary") comprised of \$310,000.00 to be paid as follows: \$290,000.00 in cash and \$20,000.00 in stock. The cash portion of the Base Salary shall be payable in equal semi-monthly installments. The shares granted under the Base Salary shall be payable in quarterly installments at the end of each quarter based on the stock price on the last day of each quarter. Executive will be eligible for an annual bonus of up to 30% of the Base Salary in cash and stock with a minimum of the awarded bonus being in cash, and the remainder in cash and/or stock as determined by the Company's Board of Directors.

Upon execution of the Prior Agreement, Executive received a sign-on bonus of 150,000, 5 year stock options to purchase the Company's common stock at a strike price equal to \$1.74 per share, the closing price of the stock on the day the Prior Agreement was executed, with 50,000 options vesting immediately and 50,000 options vesting over each of the following two anniversaries of the grant date, subject to the Company's 2012 Stock Incentive Plan.

The Executive and the Board will by mutual agreement determine the goals by which the annual bonus is to be determined. At least annually, and no later than the 1st day of November of each year, the Board shall review the Base Salary, bonus, and other compensation of Executive based upon performance and other factors deemed appropriate by the Compensation Committee and make such increases, supplemental bonus payments, or other incentive awards as he deems fit.

In addition to the Base Salary, bonus and other compensation described in this Section 3, Executive shall be entitled to receive any fringe benefits (whether subsidized in part, or paid for in full by Company) including, but not limited to, medical, dental, life and disability insurance, and 401(k) Savings and Retirement Plan which Company now, or in the future, pays or subsidizes for any of its professional/technical or management employees, or employees in the same class as Executive.

#### **4. Termination.**

(a) Death. The Term and Executive's employment hereunder shall terminate upon Executive's death.

(b) Disability. In the event Executive incurs a Disability for a continuous period exceeding forty-five (45) days, the Company may, at its election, terminate the Term and Executive's employment by giving Executive a notice of termination as provided in Section 5(e). The term "Disability" as used in this Agreement shall mean the inability of Executive to substantially perform his duties under this Agreement, as a result of a physical or mental illness or personal injury he has incurred, as determined by an independent physician selected with the approval of the Company and Executive or his personal representative.

(c) Cause. The Company may terminate this Agreement and the Term and discharge Executive for Cause by giving Executive a notice of termination as provided in Section 4(e). "Cause" shall mean:

(i) Executive's gross and willful misappropriation or theft of the Company's or any of its subsidiary's funds or property;

(ii) Executive's conviction of, or plea of guilty or nolo contendere to, any felony or crime involving dishonesty or moral turpitude; or

(iii) Executive's complete and total abandonment of his duties hereunder for a period of thirty consecutive days (other than for reason of Disability).

(d) Good Reason. Executive may terminate his employment and the Term at any time for Good Reason by giving written notice as provided in Section 5(e), which shall set forth in reasonable detail the facts and circumstances constituting Good Reason. "Good Reason" shall mean the occurrence of any of the following during the Term:

(i) without the consent of Executive, the Company materially reduces Executive's title, duties or responsibilities under Section 2 without the same being corrected within thirty (30) days after being given written notice thereof;

(ii) the Company fails to pay any regular semi-monthly installment of Base Salary to Executive and such failure to pay continues for a period of more than 30 days;

(iii) the Company breaches Section 8 without the same being corrected within thirty (30) days after being given written notice thereof; or

(iv) the refusal to assume this Agreement by any successor or assign of the Company as provided in Section 9.

(e) Notice of Termination. Any termination of this Agreement by the Company (other than for Cause under Section 5(c)) or by Executive shall be communicated in writing to the other party at least thirty (30) days before the date on which such termination is proposed to take effect. Any termination of this Agreement by the Company for Cause under Section 5(c) shall be communicated in writing to the Executive and such termination shall be effective immediately upon such notice. With respect to any termination of this Agreement by the Company for Cause or by the Executive for Good Reason, such notice shall set forth in detail the facts and circumstances alleged to provide a basis for such termination.

## **5. Payments Upon Termination.**

(a) Death or Disability. If Executive's employment shall be terminated by reason of death or Disability, the Company shall pay Executive's estate or Executive the portion of the Base Salary which would have been payable to Executive through the date his employment is terminated; plus, any other amounts earned, accrued or owing as of the date of death or Disability of Executive but not yet paid to Executive under Section 3. In the event of the death or Disability of the Executive, then any payment due under this Section 5(a) shall be made to Executive's estate, heirs, executors, administrators, or personal or legal representatives, as the case may be.

(b) Cause and Voluntary Termination. If Executive's employment shall be terminated for Cause or the Executive terminates his employment (other than for Good Reason, death or Disability), then without waiving any rights or remedies by reason thereof:

(i) the Company shall pay Executive his Base Salary and all amounts actually earned, accrued or owing as of the date of termination but not yet paid to Executive under Section 3 through the date of termination; and

(ii) except as otherwise provided in this subsection (b), the Company shall have no further obligations to Executive under this Agreement.

(c) Other Than Cause. If Executive's employment is terminated by the Company (other than as a result of death, Disability or Cause as specified in Section 5(a) or (b) above) or is terminated by Executive for Good Reason, Executive shall be entitled to the following:

(i) a lump sum payment in an amount equal to product of (A) the Base Salary under this Agreement and bonus paid to Executive during the immediately preceding twelve month period ending on the date of termination of employment, multiplied by (B) one hundred percent (100%); except that if Executive's termination of employment by the Company or the Executive is within 6 months before or 24 months following the occurrence of a Change of Control (as defined in Section 6 below), such payment shall be equal to product of (A) the Base Salary under this Agreement and the maximum Bonus under this Agreement, multiplied by (B) two hundred percent (200%); and all stock options shall immediately vest and become cashless.

(ii) all amounts earned, accrued or owing through the date his employment is terminated but not yet paid to Executive under Section 3;

(iii) continued participation in all employee benefit plans, programs or arrangements available to the Company executives in which Executive was participating on the date of termination until the earliest of:

(A) the second anniversary of the date of Executive's termination of employment, provided that if Executive's termination of employment by the Company or the Executive is within 6 months before or 24 months following the occurrence of a Change of Control, then Executive shall be entitled to continue to participate in such employee benefit plans, programs or arrangements until the third anniversary of the date of Executive's termination of employment;

(B) the date this Agreement would have expired but for the occurrence of the date of termination; or

(C) the date, or dates, the Executive receives coverage and benefits under the plans, programs and arrangements of a subsequent employer (such coverages and benefits to be determined on a coverage-by-coverage, or benefit-by-benefit, basis); provided that if Executive is precluded from continuing his participation in any employee benefit plan, program or arrangement as provided in this clause (iii), the Company shall provide him with similar benefits provided under the plan, program or arrangement in which he is unable to participate for the period specified in this clause (iii).

The payment of the lump sum amount under Section 5(c)(i) shall be made on or before the earlier of the date ending on the expiration of three months following the date of termination of Executive's employment or the death of the Executive. To the extent any payment under Section 5(c)(i) is deferred compensation within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, then such payment shall be made on or before the earlier of the date ending on the expiration of six months following the date of termination of Executive's employment or the death of the Executive. Within three years following Executive's termination of employment, Executive or Executive's estate, heirs, executors, administrators, or personal or legal representatives, as the case may be, shall be entitled to exercise all options granted to him that are vested and exercisable pursuant to this Agreement or otherwise and all such options not exercised within such three year period shall be forfeited. All options and restricted stock that are not vested and exercisable pursuant to this Agreement or otherwise as of the date of, or as a result of, Executive's termination of employment shall be forfeited. In the event of the death or Disability of the Executive, then any payment due under this Section 5(c) shall be made to Executive's estate, heirs, executors, administrators, or personal or legal representatives, as the case may be.

**6. Change of Control.** For purposes of this Agreement, a "Change of Control" shall mean the consummation or occurrence of one or more of the following:

(a) the acquisition by any individual, entity or group of more than forty percent (40%) of the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that the following acquisitions shall not constitute a Change of Control: (A) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, (B) any acquisition by Executive, by any group of persons consisting of relatives within the second degree of consanguinity or affinity of Executive or by any affiliate of Executive or (C) any acquisition by an entity pursuant to a reorganization, merger or consolidation, unless such reorganization, merger or consolidation constitutes a Change of Control under clause (b) of this Section 6;

(b) the consummation of a reorganization, merger or consolidation, unless following such reorganization, merger or consolidation sixty percent (60%) or more of the combined voting power of the then-outstanding voting securities of the entity resulting from such reorganization, merger or consolidation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Voting Securities immediately prior to such reorganization, merger or consolidation;

(c) the (i) approval by the stockholders of the Company of a complete liquidation or dissolution of the Company or (ii) sale or other disposition (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company, unless the successor entity existing immediately after such sale or disposition is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Voting Securities immediately prior to such sale or disposition; or

(d) the Board adopts a resolution to the effect that, for purposes hereof, a Change of Control has occurred.

## **7. Indemnification.**

(a) The Company shall indemnify and hold Executive harmless to the maximum extent permitted by law against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees incurred by Executive, in connection with the defense of, or as a result of, any action or proceeding (or any appeal from any action or proceeding) in which Executive is made or is threatened to be made a party by reason of the fact that Executive is or was an officer or Director of the Company, regardless of whether such action or proceeding is one brought by or in the right of the Company, to procure a judgment in its favor (or other than by or in the right of the Company).

(b) Notwithstanding anything in the Company's Articles of Incorporation, the by-laws or this Agreement to the contrary, if so requested by Executive, the Company shall advance any and all Expenses (as defined below) to Executive ("Expense Advance"), within fifteen days following the date of such request and the receipt of a written undertaking by or on behalf of Executive to repay such Expense Advance if a judgment or other final adjudication adverse to Executive (as to which all rights of appeal therefrom have been exhausted or lapsed) establishes that Executive, with respect to such Claim, is not eligible for indemnification. "Expenses" shall include attorneys' fees and all other costs, charges and expenses paid or incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness in or participate in any Claim relating to any indemnifiable event. A "Claim" shall include any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative or other, including without limitation, an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, whether predicated on foreign, federal, state or local law and whether formal or informal.

## **8. Binding Agreement; Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of Executive and the Company and their respective heirs, legal representatives and permitted successors and assigns. If the Company shall at any time be merged or consolidated into or with any other entity, the provisions of this Agreement shall survive any such transaction and shall be binding on and inure to the benefit and responsibility of the entity resulting from such merger or consolidation (and this provision shall apply in the event of any subsequent merger or consolidation), and the Company, upon the occasion of the above-described transaction, shall include in the appropriate agreements the obligation that the payments herein agreed to be paid to or for the benefit of Executive, his beneficiaries or estate, shall be paid.

## **9. Dispute Resolution.**

Any controversy or claim arising with regard to this Agreement shall be settled by expedited arbitration in accordance with the provisions of the Texas Arbitration Act. The controversy or claim shall be submitted to an arbitrator appointed by the presiding judge of the Harris County, Texas Judicial District Court. The decision of the arbitrator shall be final and binding upon the parties hereto and shall be delivered in writing signed by the arbitrator to each of the parties hereto. Any appeal arising out of the ruling of any arbitrator shall be determined in a court of competent jurisdiction in Houston, Texas, or the federal court for Houston, Texas, and each party waives any claim to have the matter heard in any other local, state, or federal jurisdiction. The prevailing party in the arbitration proceeding or in any appeal shall be entitled to recover attorney's fees, court costs and all related costs from the non-prevailing party. If the controversy or claim arises with regard to any severance or separation payment required under Section 6 of this Agreement and the arbitrator rules in favor of Executive with respect thereto, then:

(a) any award or sums due and owing to Executive under the terms of this Agreement shall be increased by an amount equal to the product of one month of Executive's Base Salary in effect immediately prior to the termination of this Agreement, multiplied by (i) if such award or sums is payable under Section 6(c), then the number of thirty (30) day periods or part thereof that has elapsed after the date ending six months after the date of Executive's termination or separation or (ii) otherwise, the number of thirty (30) day periods or part thereof that has elapsed after the date of Executive's termination;

(b) if the Company fails to comply with any such ruling of the arbitrator, or if the Company unsuccessfully appeals any such ruling of the arbitrator, then any award or sums due and owing to Executive under the terms of this Agreement shall be increased by an amount equal to the product of one month of Executive's Base Salary in effect immediately prior to the termination of this Agreement, multiplied by the number of thirty (30) day periods or part thereof that has elapsed after the date of the arbitrator's initial decision or determination; and

(c) If the arbitrator in such initial arbitration proceeding, or any court in any appeal thereof determine that Company acted in bad faith, or frivolously, in claiming "Cause" as its reason for termination of this Agreement, or in failing to offer to the Executive the severance or separation payment pursuant to Section 6 of this Agreement, then the Executive shall be entitled to receive and Company shall be ordered to pay to Executive as a penalty an amount equal to \$100,000.00 in addition to the payments required under Section 6 of this Agreement and any other amounts due under this Agreement.

## **10. Survivorship.**

The respective rights and obligations of the parties hereunder shall survive any termination of this Agreement to the extent necessary to the intended preservation of such rights and obligations and to the extent that any performance is required following termination of this Agreement. Without limiting the foregoing, Section 5 and Sections 7 through 20 shall expressly survive the termination of this Agreement.

## **11. Nonassignability.**

Neither this Agreement nor any right or interest hereunder shall be assignable by Executive, his beneficiaries, dependents or legal representatives without the Company's prior written consent; provided, however, that nothing in this Section 12 shall preclude (a) Executive from designating a beneficiary to receive any benefit payable hereunder upon his death, or (b) the executors, administrators or other legal representatives of Executive or his estate from assigning any rights hereunder to the person or persons entitled thereto.

**12. Amendments to this Agreement.**

Except for increases in the Base Salary and other compensation made as provided in Section 3, this Agreement may not be modified or amended except by an instrument in writing signed by the Executive and the Company. No increase in the Base Salary or other compensation made as provided in Section 3 will operate as a cancellation or termination of this Agreement.

**13. Waiver.**

No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel against the enforcement of any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

**14. Severability.**

If, for any reason, any provision of this Agreement is held invalid, illegal or unenforceable such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement not held so invalid, illegal or unenforceable, and each such other provision shall, to the full extent consistent with law, continue in full force and effect. In addition, if any provision of this Agreement shall be held invalid, illegal or unenforceable in part, such invalidity, illegality or unenforceability shall in no way affect the rest of such provision not held so invalid, illegal or unenforceable and the rest of such provision, together with all other provisions of this Agreement, shall, to the full extent consistent with law, continue in full force and effect. If any provision or part thereof shall be held invalid, illegal or unenforceable, to the fullest extent permitted by law, a provision or part thereof shall be substituted therefor that is valid, legal and enforceable.

**15. Notices.**

Any notice, request, or other communication required or permitted pursuant to this Agreement shall be in writing and shall be deemed duly given when received by the party to whom it shall be given or three days after being mailed by certified, registered, or express mail, postage prepaid, addressed as follows:

If to Company:

Attn: Ryan J. Morris, Chairman of the Board  
3550 Timmons Lane, Ste. 1550,  
Houston, Texas 77027

If to Executive:

Mr. Anthony C. Schnur  
9 Silverstrand Place,  
The Woodlands, Texas 77381

or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

**16. Headings.**

The headings of Sections are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

**17. Governing Law.**

This Agreement has been executed and delivered in the State of Texas, and its validity, interpretation, performance and enforcement shall be governed by the laws of Texas, without giving effect to any principles of conflicts of law.

**18. Withholding.**

All amounts paid pursuant to this Agreement shall be subject to withholding for taxes (federal, state, local or otherwise) to the extent required by applicable law.

**19. Counterparts.**

This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one original Agreement.

**20. Entire Agreement.**

This Agreement contains the entire understanding between the parties hereto and supersedes any prior employment agreement between the Company and Executive, except that this Agreement shall not affect or operate to reduce any benefit or compensation inuring to Executive of a kind elsewhere provided and not expressly provided for in this Agreement.

**IN WITNESS WHEREOF**, Company has caused its duly authorized officer and directors to execute and attest to this Agreement, and Executive has placed his signature hereon, effective as of the Effective Date.

COMPANY:

By: /s/ Ryan J. Morris  
Ryan J. Morris  
Chairman of the Board of Directors

EXECUTIVE:

By: /s/ Anthony C. Schnur  
Anthony C. Schnur



**EX-99.1**

EX-99.1 4 ex99-1.htm PRESS RELEASE

Exhibit 99.1



**Lucas Energy Announces Completion of \$4 Million Asset Sale and Provides Updates On Previous Announcements**

***For Immediate Release***

HOUSTON, TEXAS - (GlobeNewswire) – December 21, 2012 – Lucas Energy, Inc. (NYSE MKT:LEI), an independent oil and gas company (the "Company" or "Lucas"), today announced that the Company has completed the sale of a 0.77% net royalty interest in certain assets owned by the Company within the Baker Deforest Unit, located in Gonzales and Dewitt Counties, Texas, for \$4 million.

On December 20, 2012, Ryan J. Morris was appointed as Chairman of the Board of Directors (J. Fred Hofheinz resigned as Chairman, but still remains on the Board as a Director).

Additionally, on December 20, 2012, the Company amended and restated its Bylaws, to among other things, make such Bylaws more stockholder friendly. The amendments include reducing the required ownership percentage of stockholders which is required to call a special meeting of stockholders to at least 10% of all shares entitled to vote at the proposed special meeting (down from 30%). The Company believes that these changes increase its shareholders ability to participate in the direction of the Company, and further bring the Company's Bylaws in line with similarly sized companies.

A more detailed description of the asset sale and the changes affected by the amendments to the Bylaws can be found in the Company's Form 8-K filing, filed with the Securities and Exchange Commission on December 21, 2012.

The Company would also like to update the marketplace as to the current status of certain previously reported lawsuits and other proceedings affecting the Company.

Specifically, the Company is pleased to report that it has: negotiated a 60 day stay of the lawsuit filed by Seidler Oil & Gas, L.P., to allow for the discussion of a settlement between the parties; provided a proposal for settlement to Knight Capital Americas LLC (as successor in interest to Knight Capital America, L.P.), in an effort to settle the lawsuit previously filed by Knight against the Company; and that the Company is currently in the process of attempting to reopen settlement discussions with Nordic Oil USA I, LP ("Nordic"), in connection with the Company's previously announced default in the payment of the \$22 million note payable to Nordic (due in November 2012) and Nordic's subsequent filing of a lawsuit against the Company.

Finally, while the Company appreciates all of its shareholders and their input, a significant number of shareholders, brokers and other parties have contacted the Company over the past several days, and while the Company is working to provide as much information as possible in more frequent communications, the Company is simply unable to timely respond due to its current focus on addressing operating and efficiency issues. The Company appreciates your understanding and patience.

### **About Lucas Energy, Inc.**

Lucas Energy, Inc., a Nevada corporation, is an independent oil and gas company based in Houston, Texas. The Company acquires underdeveloped oil and gas properties, restores production to the properties, and looks for underlying value. Currently, the Company is active in the Austin Chalk, Eagle Ford, Eaglebine, and Buda trends. Our goal for the current year is production and revenue growth, and expansion of our asset base using joint ventures.

For more information on this and other activities of the Company, please visit the Lucas Energy web site at [www.lucasenergy.com](http://www.lucasenergy.com).

### **Company Website:**

[www.lucasenergy.com](http://www.lucasenergy.com)

### **Contact:**

Anthony C. Schnur, CEO  
tschnur@lucasenergy.com  
(713) 528-1881

### **Forward-Looking Statements**

This Press Release includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Act") and Section 21E of the Securities Act of 1934, as amended (the "Exchange Act"). In particular, the words "believes," "expects," "intends," "plans," "anticipates," or "may," and similar conditional expressions are intended to identify forward-looking statements and are subject to the safe harbor created by these Acts. Any statements made in this news release about an action, projection, event or development, are forward-looking statements. Such statements are based upon assumptions that in the future may prove not to have been accurate and are subject to significant risks and uncertainties. Although the Company believes that the expectations reflected in the forward-looking statements are reasonable, it can give no assurance that its forward-looking statements will prove to be correct. Such statements are subject to a number of assumptions, risks and uncertainties, many of which are beyond the control of the Company. Statements regarding future drilling and production are subject to all of the risks and uncertainties normally incident to the exploration and development of oil and gas. These risks include, but are not limited to, completion risk, dry hole risk, price volatility, reserve estimation risk, regulatory risk, potential inability to secure oilfield service risk as well as general economic risks and uncertainties, as disclosed in the Company's SEC filings including its Form 10-K and Form 10-Q's. Investors are cautioned that any forward-looking statements are not guarantees of future performance and actual results or developments may differ materially from those projected. The forward-looking statements in this press release are made as of the date hereof. The Company takes no obligation to update or correct its own forward-looking statements, except as required by law, or those prepared by third parties that are not paid for by the Company. The Company's SEC filings are available at <http://www.sec.gov>.

