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**ATTORNEYS FOR PROSPERITY BANK**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**In re:**

**SCANROCK OIL & GAS, INC. *et al.*,<sup>1</sup>**

**Debtors.**

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**Case No. 25-90001-mxm11**

**Chapter 11**

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**CORNERSTONE INVESTMENT FCV LP,**

**Plaintiffs,**

**vs.**

**PROSPERITY BANK; O'RYAN  
PRODUCTION & EXPLORATION, LTD.;  
O'RYAN FAMILY LIMITED  
PARTNERSHIP,**

**Defendants.**

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**Adv. No. 25-09033-mxm**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if any, are: Scanrock Oil & Gas, Inc. (0380); O'Ryan Family Limited Partnership (1913); O'Ryan Production & Exploration Ltd. (9950) ("O'Ryan P&E"); Ryan C. Hoerauf, Inc. (0493); Smackover Oil Treaters, Ltd. (9529); O'Ryan Ponderosa, LLC (1476); EON Production, LLC (0136) and O'Ryan Ranches, Ltd. (7184), O'Ryan Ranches, LLC (6467); and O'Ryan Oregon Ranches, LLC (collectively, the "Debtors"). The location of the Debtors' service address is 8180 Lakeview Center, Ste. 300, Odessa, TX 79765.

**PROSPERITY BANK'S ANSWER TO COMPLAINT AND ORIGINAL  
COUNTERCLAIM**

**[This document relates to Docket No. 1]**

Prosperity Bank ("Prosperity" or "Defendant"), by and through its undersigned counsel, files its Answer (the "Answer") to the *Complaint* (the "Complaint") filed by Cornerstone Investment FCV LP ("Cornerstone" or "Plaintiff")<sup>2</sup> as follows:<sup>3</sup>

**PRELIMINARY STATEMENT**

1. Prosperity denies that Cornerstone owns the Purchases Shares. Prosperity denies that Cornerstone bought them from O'Ryan P&E in December in December 2024 for \$4,612,406.00. Prosperity admits that the Debtor used those proceeds to their benefit; however, Prosperity denies Prosperity used the proceeds for Prosperity's benefit. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 1 of the Complaint and such allegations are deemed denied.

2. Prosperity lacks knowledge or information sufficient to form a belief about Cornerstone's knowledge of bankruptcy and such allegations are deemed denied. Prosperity admits that it asserted a lien on the Purchased Shares even though the Debtor acknowledged that they no longer own them. Prosperity denies that the alleged lien, or at least Prosperity's belief in its existence, arose from an unauthorized pledge of the PBM Shares by O'Ryan P&E to secure a sizeable loan from Prosperity's predecessor. Prosperity denies that the Pledge Agreement was hidden from Cornerstone or PBM. Prosperity lacks knowledge or information sufficient to form a

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<sup>2</sup> Capitalized terms not defined herein have the meanings ascribed to such terms by the Complaint.

<sup>3</sup> Prosperity submits that the allegations in the first paragraph (that is not numbered) of the Complaint is merely a preamble, to which no response is required. To the extent a response is required, Prosperity admits that Plaintiff is seeking relief from this Court, but denies that it is entitled to such relief.

belief about the truth of the remaining allegations contained in paragraph 2 of the Complaint and such allegations are deemed denied.

3. Prosperity denies that the sale of the Purchased Shares was valid. Prosperity admits the allegations in Paragraph 3 of the Complaint.

4. Prosperity denies that it has no Lien. Prosperity denies that O’Ryan P&E executed the purported pledge in knowing contravention of clear restrictions in the governing stockholders’ agreement, which rendered the pledge void *ab initio*. Prosperity denies that it knew of the restrictions or should have known of these restrictions. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 4 of the Complaint and such allegations are deemed denied.

5. Prosperity denies that it was not satisfied with its over-collateralized position and the protections it already obtained from this Court in the chapter 11 proceedings or that Prosperity has decided to mount a cash grab. Prosperity admits that in the bankruptcy cases, Prosperity claimed the proceeds from the Purchased Shares were its cash collateral and allowed a small portion of those proceeds to be used to fund the costs of these cases. Prosperity admits that Prosperity claims the Purchased Shares were not sold and that the Retained Shares remain subject to its lien. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 5 of the Complaint and such allegations are deemed denied.

6. Prosperity denies that the protections and benefits it already secured through the bankruptcy, including in the Final Cash Collateral Order, Plan, and Confirmation Order, are not enough. Prosperity denies the fact that it was permitted to secure valuable concessions from the

Debtors, including in the form of stipulations and security interests on additional collateral. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 6 of the Complaint and such allegations are deemed denied.

7. Prosperity lacks knowledge or information sufficient to form a belief about the truth regarding whether Cornerstone brings this action to vindicate its interests and prevent the Defendants from receiving a windfall and such allegations are deemed denied. Prosperity denies the remaining allegations contained in Paragraph 7 of the Complaint.

#### **JURISDICTION AND VENUE**

8. Prosperity admits that Count I of the Complaint and Counts I and II of its Counterclaim are within the Court's post-confirmation subject matter jurisdiction. Prosperity is unable to admit or deny whether the other Counts are at this time and therefore, they are deemed denied and such allegations are deemed denied.

9. Subject to the jurisdictional issues raised in Paragraph 9, Prosperity admits the allegations in Paragraph 9 of the Complaint.

10. Prosperity admits that Cornerstone consents to entry of a final order or judgment by this Court even if it is later determined that this Court cannot enter a final order or judgment consistent with Article III of the United States Constitution. Prosperity denies the remaining allegations in Paragraph 10 of the Complaint.

#### **PARTIES**

11. Prosperity admits the allegations in Paragraph 11 of the Complaint.

12. Prosperity denies the allegations in Paragraph 12 of the Complaint.

13. Prosperity admits the allegations in Paragraph 13 of the Complaint.

### **BACKGROUND**

#### **I. O’Ryan P&E Acquires the PBM Shares Subject to Transfer Restrictions.**

14. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 14 of the Complaint and such allegations are deemed denied.

15. Prosperity admits the allegations in Paragraph 15 of the Complaint.

16. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 16 of the Complaint and such allegations are deemed denied.<sup>4</sup>

17. The Original Stockholder’s Agreement says what it says. Cornerstone’s characterization that agreement beyond its express terms is denied.

#### **II. O’Ryan P&E Pledges the Shares in Violation of the Stockholders’ Agreement**

18. Prosperity admits the allegations in Paragraph 18 of the Complaint.<sup>5</sup>

19. Prosperity admits that O’Ryan P&E executed the Pledge Agreement. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 19 of the Complaint and such allegations are deemed denied.

20. Prosperity admits that although the Pledge Agreement includes a form to be signed by PBM, as issuer, acknowledging and consenting to the Purported Pledge, PBM never signed to form. Prosperity denies that Lone Star failed to follow its own procedures requiring that this

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<sup>4</sup> Prosperity currently has no reason to believe “Exhibit A” attached to the Complaint is not a true and correct copy of the Original Stockholders’ Agreement, and it is consistent with what PBM produced to Prosperity in discovery.

<sup>5</sup> Prosperity admits that a true and correct copy of the Pledge Agreement is attached to the Complaint as “Exhibit B.”

acknowledgment be executed, which would have prevented the Purported Pledge. Prosperity denies that PBM was not notified of the pledge. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 20 of the Complaint and such allegations are deemed denied.

21. Prosperity denies the allegations in Paragraph 21 of the Complaint.

### **III. The O’Ryan Loans Mature and Prosperity Agrees to Forbear**

22. Prosperity admits the allegations in Paragraph 22 of the Complaint.

23. Prosperity admits the allegations in Paragraph 23 of the Complaint.

### **IV. While in Forbearance, O’Ryan P&E Sells the Purchased Shares to Cornerstone, Concealing the Purported Pledge**

24. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 24 of the Complaint and such allegations are deemed denied.

25. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 25 of the Complaint and such allegations are deemed denied.

26. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 26 of the Complaint and such allegations are deemed denied.<sup>6</sup>

27. Prosperity admits that O’Ryan Family LP received the Cornerstone Share Sale Proceeds. Prosperity lacks knowledge or information sufficient to form a belief about the truth of

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<sup>6</sup> Prosperity currently has no reason to believe “Exhibit C” attached to the Complaint is not a true and correct copy of the Stockholder Election Form, and it is consistent with what PBM produced to Prosperity in discovery.

the remaining allegations contained in paragraph 27 of the Complaint and such allegations are deemed denied.<sup>7</sup>

28. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 28 of the Complaint and such allegations are deemed denied.<sup>8</sup>

29. Prosperity denies the allegations contained in paragraph 29 of the Complaint.

**V. O’Ryan P&E and Affiliates file for Bankruptcy without Notifying Cornerstone**

30. Prosperity denies that it and Lonestar concealed the Purported Pledge. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 30 of the Complaint and such allegations are deemed denied.

31. Prosperity denies that the Notice of Disposition was the first time PBM was notified of the Purported Pledge. Prosperity admits the remaining allegations in Paragraph 31 of the Complaint.

32. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations as to why the Debtor Defendants and certain affiliates filed the above-captioned cases seeking bankruptcy protection and therefore such allegations are deemed denied; however, Prosperity does admit that the Debtor Defendants did seek bankruptcy protection.

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<sup>7</sup> Prosperity admits that a true and correct copy of the O’Ryan P&E Schedules A/B is attached to the Complaint as “Exhibit D.”

<sup>8</sup> Prosperity currently has no reason to believe “Exhibit D” attached to the Complaint is not a true and correct copy of the 2024 Stockholders’ Agreement, and it is consistent with what PBM produced to Prosperity in discovery.

**A. The Defendants Acknowledge the Share Sale but Fail to Disclose Key Details in the Bankruptcy Proceeding**

33. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations regarding whether or not O’Ryan P&E was less than fully forthright in the bankruptcy proceeding, therefore such allegations are deemed denied; however, Prosperity admits to the remaining allegations of Paragraph 33 of the Complaint.

34. Prosperity denies the allegations in Paragraph 34 of the Complaint.

**B. Prosperity Invokes the Purposed Pledge in the Bankruptcy Proceedings to Obtain Protections for its Alleged Lien on the Debtors' Cash**

35. Prosperity denies that it had any duty to provide notice to any party of the bankruptcy proceedings. Prosperity denies the remaining allegations in Paragraph 35 of the Complaint.

36. Prosperity admits that it designated a copy of the stock certificate attached as Exhibit F as an exhibit.<sup>9</sup> Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations as to what may have happened if Prosperity looked at other certificates issued by PBM, therefore such allegations are deemed denied. Whether or not Prosperity should have known of any “irregularity” is a legal conclusion to which no response is required, however to the extent a response is required such legal conclusions are denied. Prosperity denies the remaining allegations in Paragraph 36 of the Complaint.<sup>10</sup>

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<sup>9</sup> Prosperity denies that a true and correct copy of the *Lender’s Witness and Exhibit List*, Ex. L (“PB Materials Holdings, Inc. Stock Certificate”), submitted by Prosperity to the Court at Docket No. 78-12, is attached to the Complaint as “Exhibit F.” Exhibit F is incomplete.

<sup>10</sup> Prosperity lacks knowledge or information sufficient to form a belief about the truth of the whether or not a true and correct copy of the Stock Certificates No. 1-3, 12 issued by PBM, are attached to the Complaint as Exhibit “G” and such allegations are deemed denied.

37. Whether or not Prosperity had a duty to inquire further before asserting a lien is a legal conclusion to which no response is required, however to the extent a response is required such legal conclusions are denied. Prosperity denies the remaining allegations in Paragraph 37 of the Complaint.

38. Prosperity denies that the Defendants omitted this information as part of an effort to obtain approval of stipulations between them as to the validity of Prosperity's asserted lien and at the same time, the Defendants sought to benefit from Cornerstone's purchase, for valuable consideration, of the Purchased Shares. Prosperity admits to the remaining allegations of Paragraph 38 of the Complaint.

39. The Cash Collateral Order says what it says. Prosperity admits there was litigation regarding the Cash Collateral Order. Prosperity denies the remaining allegations in Paragraph 39 of the Complaint.

**C. The Court Confirms the Chapter 11 Plan**

40. Prosperity denies that the operative plan was filed at Docket No. 431. Prosperity denies that Cornerstone was required to be provided notice and Prosperity lacks knowledge or information sufficient to form a belief as to whether or not Cornerstone received notice and such allegations are deemed denied, Prosperity admits the remaining allegations in Paragraph 40 of the Complaint with respect to the Plan filed at Docket No. 535.

**D. Cornerstone Only Later Learns of the Bankruptcy Proceedings**

41. Prosperity lacks knowledge or information sufficient to form a belief about the allegations in Paragraph 41 of the Complaint, but reserves all rights with respect to whether or not the Debtors were required to provide Cornerstone notice.

42. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 42 of the Complaint and such allegations are deemed denied.

43. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 43 of the Complaint and such allegations are deemed denied.

44. Prosperity denies the allegations in Paragraph 44 of the Complaint.

45. Prosperity denies that if Cornerstone is not entitled to such declarations, it should be granted leave to late file claims against the Debtor Defendants and other related relief, including revocation or alteration of the Confirmation Order. Prosperity admits that Cornerstone asserts certain claims and requests for relief in the Complaint. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 45 of the Complaint and such allegations are deemed denied.

### **CAUSES OF ACTION**

#### **I. DECLARATION THAT CORNERSTONE SHARE SALE WAS VALID**

**(28 U.S.C. §§ 2201, 2022; Fed. R. Bankr. P. 7001(b))**

46. Prosperity submits that Paragraph 46 of the Complaint simply incorporates the preceding paragraphs of the Complaint, and no response is required; however, to the extent a response is required, Prosperity hereby incorporates all preceding paragraphs as if fully answered herein, and otherwise denies the allegation in Paragraph 46 of the Complaint.

47. Prosperity admits the allegations in Paragraph 47 of the Complaint.

48. Prosperity admits that its employees largely like cake and, if provided said cake will eat said cake and denies the remaining portion of the last sentence of Paragraph 48. Prosperity admits the remaining allegations in Paragraph 48 of the Complaint.

49. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations that as consideration for the Purchased Shares, Cornerstone paid the Cornerstone Share Sale Proceeds to the Debtor Defendants in exchange for title to the Purchased Shares free and clear of encumbrances. and such allegations are deemed denied. Prosperity admits the remaining allegations in Paragraph 49 of the Complaint.

50. Prosperity admits that a resolution of this issue is necessary and appropriate at this time and the Plan is now in the process of being consummated. Prosperity denies remaining allegations in Paragraph 50 of the Complaint.

51. Prosperity lacks knowledge or information sufficient to form a belief about the allegations in Paragraph 51 of the Complaint and such allegations are deemed denied.

52. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 52 of the Complaint and such allegations are deemed denied.

53. Prosperity denies that the Debtor's schedules speak to the validity of the sale. Prosperity admits the remaining allegations in Paragraph 53 of the Complaint.

54. Prosperity admits the allegations in Paragraph 54 of the Complaint as that is the relief sought by Cornerstone, but denies that such relief is proper.

55. Prosperity admits allegations in Paragraph 55 of the Complaint.

## **II. DECLARATION THAT PROSPERITY'S PURPORTED LIEN IS INVALID**

**(28 U.S.C. §§ 2201, 2022; Fed. R. Bankr. P. 7001(b))**

56. Prosperity submits that Paragraph 56 of the Complaint simply incorporates the preceding paragraphs of the Complaint, and no response is required; however, to the extent a response is required, Prosperity hereby incorporates all preceding paragraphs as if fully answered herein, and otherwise denies the allegation in Paragraph 56 of the Complaint.

57. Prosperity admits that there is an actual, present, a justiciable controversy between Cornerstone and the Defendants regarding the validity of Prosperity purported lien on the PBM Shares, including the Purchased Shares and the Retained Shares. Prosperity denies the remaining allegations in Paragraph 57 of the Complaint.

58. Paragraph 58 of the Complaint is a conclusion of law, which no response is required, however to the extent a response is required such legal conclusions are denied. Paragraph 58 is one sentence describing a robust area of law and Prosperity reserves all rights with respect to the same.

59. Prosperity admits the allegations in Paragraph 59 of the Complaint.

60. Prosperity denies the allegations in Paragraph 60 of the Complaint.

61. The Pledge Agreement between Lone Star, predecessor in interest to Prosperity, and O'Ryan P&E says what it says. Prosperity denies that the restrictions (or any provisions) of the Original Stockholder's Agreement are binding; among other things, the agreement terminated by its own terms on October 2, 2023, with no provisions, rights or obligations surviving its termination. Prosperity denies the remaining allegations in Paragraph 61 of the Complaint.

62. Prosperity admits that Cornerstone seeks certain relief from this Court. Prosperity denies that the remaining allegations in Paragraph 62 of the Complaint are a conclusion of law, which no response is required, however to the extent a response is required such legal conclusions are denied.

**III. LEAVE TO LATE FILE CLAIMS AGAINST DEBTOR DEFENDANTS**

**(11 U.S.C. §§ 105(a), 501, 502; Fed. R. Bankr. P. 3003(c), 9006(b)(1)); Fifth Amendment to the United States Constitution)  
(*In the Alternative*)**

63. Prosperity submits that Paragraph 63 of the Complaint simply incorporates the preceding paragraphs of the Complaint, and no response is required; however, to the extent a response is required, Prosperity hereby incorporates all preceding paragraphs as if fully answered herein, and otherwise denies the allegation in Paragraph 63 of the Complaint.<sup>11</sup>

64. Prosperity denies that the documents listed constitute the full agreement between O’Ryan P&E and Cornerstone, if any agreement existed. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 64 of the Complaint and such allegations are deemed denied.

65. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 65 of the Complaint and such allegations are deemed denied.

66. Paragraph 66 of the Complaint is a conclusion of law, which no response is required, however to the extent a response is required such legal conclusions are denied.

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<sup>11</sup> Prosperity lacks knowledge or information sufficient to form a belief about the truth of the whether or not a true and correct copy of the proposed proofs of claim are attached to the Complaint as Exhibit “H” and such allegations are deemed denied.

67. Paragraph 67 of the Complaint is a conclusion of law, which no response is required, however to the extent a response is required such legal conclusions are denied.

68. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 68 of the Complaint and such allegations are deemed denied.

69. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 69 of the Complaint and such allegations are deemed denied.

70. Prosperity lacks knowledge or information sufficient to form a belief about the allegations in Paragraph 70 of the Complaint and such allegations are deemed denied.

71. Prosperity admits the allegations in Paragraph 71 of the Complaint.

72. Paragraph 72 of the Complaint is a conclusion of law, which no response is required, however to the extent a response is required such legal conclusions are denied.

73. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 73 of the Complaint and such allegations are deemed denied.

74. Prosperity admits the allegations in Paragraph 74 of the Complaint as that is the relief requested by Cornerstone.

#### **IV. RELIEF FROM THE CONFIRMATION ORDER AND RELATED RULINGS**

**(11 U.S.C. §§ 105(a), 1112(b), 1144; Fed. R. Civ. P. 60(b); Fed. R. Bankr. P. 9024)  
(*In the Alternative*)**

75. Prosperity submits that Paragraph 75 of the Complaint simply incorporates the preceding paragraphs of the Complaint, and no response is required; however, to the extent a

response is required, Prosperity hereby incorporates all preceding paragraphs as if fully answered herein, and otherwise denies the allegation in Paragraph 75 of the Complaint.

76. Prosperity admits the allegations in Paragraph 76 of the Complaint.

77. Prosperity admits the allegations in Paragraph 77 of the Complaint.

78. Prosperity denies that the Debtor Defendants failed to disclose the Pledge before the sale. Prosperity lacks knowledge or information sufficient to form a belief about what the Debtor Defendants disclosed to Cornerstone and such allegations are deemed denied. Prosperity admits the remaining allegations in Paragraph 78 of the Complaint.

79. Prosperity denies the allegations in Paragraph 79 of the Complaint.

80. Prosperity admits that the Debtor Defendants used the Cornerstone Sale Proceeds. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 80 of the Complaint and such allegations are deemed denied.

81. Prosperity denies allegations in Paragraph 81 of the Complaint.

82. Prosperity denies the allegations in Paragraph 82 of the Complaint.

83. Prosperity lacks knowledge or information sufficient to form a belief about the truth of what Cornerstone would have done in any circumstances and such allegations are deemed denied. Prosperity denies the remaining allegations in Paragraph 83 of the Complaint.

84. Prosperity denies the allegations in Paragraph 84 of the Complaint.

85. Prosperity denies the allegations in Paragraph 85 of the Complaint.

86. Prosperity lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 86 of the Complaint and such allegations are deemed denied.

#### **PRAYER FOR RELIEF**

87. Prosperity denies allegations contained in the Section titled "Prayer for Relief" of the Complaint. To the extent any allegation is not specifically addressed herein such allegations are denied.

#### **RULE 9(B)**

88. Rule 8, which governs pleading requirements, is incorporated into Bankruptcy Rule 7008. In relevant part, Rule 8(a)(2) requires that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

89. Further, with respect to allegations of fraud or mistake, Rule 9(b), made applicable here by Bankruptcy Rule 7009, imposes a *heightened* pleading standard. *See* Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). When the Rule 9(b) pleading standard applies, the complaint must contain factual allegations stating the "time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what [that person] obtained thereby." *See Life Partners Creditors' Tr. v. Cowley (In re Life Partners Holdings, Inc.)*, 926 F.3d 103, 117 (5th Cir. 2019) (citing *Tuchman v. DSC Commc'ns Corp.*, 14 F.3d 1061, 1068 (5th Cir. 1994)). Essentially, the Plaintiff "must plead the who, what, when, where, and why as to the fraudulent conduct." *See id.* at 117. Accordingly, the Plaintiff's allegations related to fraud require the heightened pleading standard of Rule 9(b).

90. Here, Counts III and IV of the Complaint allege actual fraud with respect to non-disclosure of the Pledge (ignoring that the Pledge was expressly identified and disclosed in a financing statement on file with the Texas Secretary of State since April 12, 2019) and the Debtors' bankruptcy case (ignoring that PBM, Cornerstone's majority owned and controlled affiliate, was involved in the bankruptcy case). But in light of these facts establishing disclosure, Cornerstone has pled its fraud claims in the most generic manner possible; for example, ¶ 67 of the Complaint: "The Purported Pledge constituted a breach of the Original Stockholder Agreement, was void *ad initio*, and **on information and belief, was part of a fraud orchestrated by Hoerauf and perpetuated through the Debtor Defendants.**" Cornerstone has utterly failed to meet the applicable pleading standard with respect to Counts III and IV.

#### **AFFIRMATIVE DEFENSES**<sup>12</sup>

91. Cornerstone's claims are subject to dismissal, in part, because Counts III and IV of the Complaint do not meet the applicable pleading standard.

92. Cornerstone's claims are barred, whole or in part, because any purported transfer of PBM stock from O'Ryan P&E to Cornerstone was done in violation of PBM's bylaws and, thus, was an *ultra vires* act.

93. Cornerstone's claims are barred, whole or in part, because of lack of subject-matter jurisdiction.

94. Cornerstone's claims are barred, whole or in part, because of Prosperity's lack of actual knowledge of restrictions in the Original Stockholder's Agreement.

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<sup>12</sup> Prosperity raises these items for completeness. Prosperity does not admit that Prosperity bears the burden with respect to such defenses or that Cornerstone is not required to address the items as part of its claims.

95. Cornerstone's claims are barred, whole or in part, because of ratification and confirmation of the Pledge Agreement.

96. Cornerstone's claims are barred, whole or in part, because of termination of the Original Stockholder's Agreement.

97. Cornerstone's claims are barred, whole or in part, because Cornerstone lacks standing to enforce the Original Stockholder's Agreement.

98. Cornerstone's claims are barred, in whole or in part, because of estoppel, including quasi-estoppel.

#### **CONSENT TO FINAL ORDERS OR JUDGMENT**

99. Prosperity consents to the entry of final orders or judgment by the Bankruptcy Court if it is determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

#### **RESERVATION OF RIGHTS**

100. Prosperity hereby reserves all of its rights against Cornerstone or any other party under the Bankruptcy Code and applicable law, including, but not limited to, the right to amend or supplement this Answer as allowable under applicable law and the orders of this Court, and to assert further motions for relief, responses, replies, counterclaims, crossclaims, and/or defenses or affirmative defenses as the evidence may allow or that may be determined through pre-trial discovery.

### **COUNTERCLAIM**

Prosperity files this *Counterclaim* (this "Counterclaim") against Cornerstone and respectfully states as follows:

### **JURISDICTION AND VENUE**

101. This Court has subject-matter jurisdiction over the Bankruptcy Case and Counter Claim pursuant to 28 U.S.C. §§ 157 and 1334, although such jurisdiction is narrowed by confirmation of the Plan. This is a core matter under 28 U.S.C. §§ 157(b)(2)(H) and (K). Alternatively, Cornerstone has consented to entry of final order or judgment by this Court even if it is later determined that this Court cannot enter a final order or judgment consistent with Article III of the United States Constitution.

102. Venue of this Adversary Proceeding in this District is proper under 28 U.S.C. § 1409.

103. Prosperity hereby consents to the Court's entry of a final judgment resolving these Counterclaims.

### **PARTIES**

104. Cornerstone is a Delaware limited partnership and may be served by its registered agent 251 Little Falls Drive, Wilmington, Delaware, 19808.

105. Prosperity is a Texas state chartered bank.

### **FACTUAL BACKGROUND**

106. At all times relevant herein, O’Ryan P&E, a Texas limited partnership and one of the Debtors in the related bankruptcy case, owned 64,000 shares of common stock in PBM. PBM

is a construction and oilfield materials company based in Odessa, Texas, with locations throughout west Texas and eastern New Mexico.

107. Certificate #4 was issued by PBM to O’Ryan P&E (the "PBM Stock Certificate") reflecting its ownership of 64,000 shares of common stock in PBM. A true and correct copy of the PBM Stock Certificate (front and back) is attached as Exhibit 1.<sup>13</sup>

108. At all times relevant herein, Prosperity held a lien on the PBM Stock Certificate and related stock rights. Dated February 28, 2019 although effective as of February 4, 2018, O’Ryan P&E, as pledgor, and Lone Star Bank of West Texas ("Lone Star")<sup>14</sup>, as pledgee, executed an Amended and Restated Pledge Agreement (the "Pledge Agreement") wherein O’Ryan P&E “hereby grants to Pledgee for the benefit of Pledgee, a continuing security interest in all of the capital stock, securities and membership interest and partnership interest, if any, limited liability company interests, if any, or other equity interests (collectively, the "Equity Interests") of Pledgor, including, without limitation, all Equity Interests identified on Exhibit “A”, attached hereto and made a part hereof. . .” Exhibit A to the Pledge Agreement specifically references “Any and all of Pledgor’s Shares of Stock (represented by Stock Certificate No. 4 for 64,000 shares) in PB Materials Holdings, Inc. a Delaware corporation. . .” O’Ryan P&E surrendered the PBM Stock Certificate to Prosperity in connection with the Pledge Agreement.

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<sup>13</sup> In its Complaint, Cornerstone attached only the front of the PBM Stock Certificate as Exhibit L. This was to support their intimation that there was no legend on the back of the PBM Stock Certificate and that Prosperity should have been on notice of an irregularity (Complaint ¶ 36). As the Court can clearly see, there is a legend on the back of the PBM Stock Certificate, which Cornerstone was aware of because it was allowed to review and copy the original certificate. Cornerstone ignores this simply because the legend does not say what Cornerstone wants it to say.

<sup>14</sup> On April 1, 2024, Lone Star Bank of West Texas merged into and became a part of Prosperity.

109. The PBM Stock Certificate is currently in Prosperity's possession and has been all times relevant herein.

110. On April 12, 2019, Lone Star filed with the Texas Secretary of State a UCC-1 financing statement specifically and expressly identifying the PBM Stock Certificate and O'Ryan P&E's interest in the PBM stock as collateral, and filed a continuation for that UCC financing statement with the Texas Secretary of State on October 20, 2023 (collectively, the "Prosperity Financing Statement").<sup>15</sup> A true and correct copy of the Prosperity Financing Statement is attached as Exhibit 2.

111. On December 2, 2024, Prosperity and O'Ryan P&E (along with other borrower parties) entered into a Forbearance Agreement (the "Forbearance Agreement"). In connection with the Forbearance Agreement, O'Ryan P&E agreed "the terms and provisions of the Loan Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. Each of the Loan Parties and the Lender agrees that the Loan Agreement and the other Loan Documents shall continue to be legal, valid, binding, and enforceable in accordance with their respective terms." The Pledge Agreement is included in the definition of Loan Documents.<sup>16</sup> A true and correct copy of the Forbearance Agreement is attached as Exhibit 3.

112. Four weeks after making this agreement with Prosperity in order to obtain forbearance on a defaulted \$48 million loan, Cornerstone attempted to purchase, and O'Ryan P&E

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<sup>15</sup> In its Complaint, Cornerstone alleges that Prosperity's lien is invalid because of restrictions in a shareholder agreement (which Prosperity disputes). But as acknowledged by Cornerstone itself, that shareholder agreement terminated on **October 2, 2023**, several weeks before Lone Star filed its continuation. Complaint Exhibit E, p. 1.

<sup>16</sup> Like the continuation, the Forbearance Agreement and its ratification and confirmation of the Pledge Agreement happened after the shareholder agreement terminated on October 2, 2023.

attempted to sell, 58,000 shares (roughly 90%) of the PBM stock reflected by the PBM Stock Certificate (the “Cornerstone Transaction”). Prosperity was not aware of and did not consent to this attempted sale, and Prosperity did not surrender the PBM Stock Certificate in its possession in connection with this attempted sale. The Prosperity Financing Statement was also on file with the Texas Secretary of State when the Cornerstone Transaction closed, but was ignored by all parties in the Cornerstone Transaction.

113. Prosperity believes the Cornerstone Transaction may have been a scheme whereby, although presented as a broader transaction, Cornerstone actually bought out the interests of small stockholders of PBM in financial distress, including O’Ryan P&E. As noted, PBM is based in Odessa, Texas, and Ryan Hoerauf is a prominent businessman in Odessa, Texas (a town of about 115,000 people). It was likely commonly known that Mr. Hoerauf’s businesses were in financial difficulty in late 2024, and in fact, they filed for bankruptcy in this Court about a month later. Notably, the value provided for the PBM stock in the Cornerstone Transaction was between 45% to 20% of its true value. Further, the Cornerstone Transaction was not a third party transaction, but rather was an insider transaction. According to SEC filings made right after the Cornerstone Transaction closed, Stephen Toy is the manager member of Cornerstone. Stephen Toy is also the Secretary of PBM, and is even the officer that signed the PBM Stock Certificate on behalf of PBM. Prosperity reserves all rights in this regard, and intends to seek discovery on this point.

114. Since the Cornerstone Transaction closed, Cornerstone has exercised exclusive control over O’Ryan P&E’s PBM stock, to the exclusion of Prosperity’s rights in that stock. Upon information and belief, Cornerstone has voted the shares reflected by the PBM Stock Certificate

and otherwise controlled the stock rights reflected by PBM Stock Certificate (including the 6,000 shares that Cornerstone undoubtedly did not acquire).

115. For example, on September 29, 2025, counsel for Prosperity sent correspondence to counsel for PBM requesting all information and all distributions to which it is entitled both as the holder of the PBM Stock Certificate and pursuant to the Pledge Agreement (the “Notice Letter”). PBM (under the control of Cornerstone, its majority owner) ignored the Notice Letter. Prosperity believes that, after the Notice Letter was sent, PBM, its board and its shareholders have considered a merger or other acquisition, from which Prosperity was excluded. There may also have been distributions (stock or cash) made which Prosperity is entitled to receive as holder of the PBM Stock Certificate and under the Pledge Agreement, but Cornerstone took or controlled these distributions instead.

### **COUNTERCLAIMS**

#### ***Count 1: Declaratory Judgment – Invalid Transfer Pursuant to the Bylaws of PBM***

116. Prosperity incorporates the preceding paragraphs as if set forth fully herein.

117. A true and correct copy of the Bylaws of PBM that were in place when the Cornerstone Transaction closed (the “Bylaws”) are attached as Exhibit 4.

118. The Bylaws in place at the time of the Cornerstone Transaction: (i) confirm that shares of PBM are represented by certificates, and (ii) require that stock certificates be surrendered in order to effect a valid, recognized transfer of PBM stock.

119. The relevant sections of the Bylaws are below (emphasis added):

Section 7.1 Entitlement to Certificates. **The shares of the Company shall be represented by certificates**, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated

shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company.

Section 7.7 Transfer of Stock. The transfer of stock and certificates which represent the stock of the Company shall be governed by Article 8 of the Subtitle 1 of the Title 6 of the Delaware Code (the Uniform Commercial Code), as amended from time to time. **Registration of transfers of shares of the Company shall be made only on the books of the Company** upon request of the registered holder thereof, or of his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the Company, and **upon the surrender of the certificate or certificates for such shares properly endorsed or accompanied by a stock power duly executed**. However, the Board may make such additional rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for stock of the Company.

120. As admitted by Cornerstone in its Complaint, PBM's stock shares are certificated, meaning the shares are reflected by physical stock certificates. Cornerstone attached several examples of PBM stock certificates to its Complaint. As also admitted by Cornerstone, Prosperity is holding the PBM Stock Certificate issued to O'Ryan P&E. As also admitted by Cornerstone, it is the majority shareholder of PBM and, thus, bound by the Bylaws. *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934 (Del. Ch. 2013).

121. In contravention of PBM's Bylaws, O'Ryan P&E did not surrender, nor did Cornerstone require O'Ryan P&E to surrender, its stock certificate. This would have been impossible because Prosperity is holding the certificate and O'Ryan P&E and Cornerstone hid the attempted transfer from Prosperity. Corporate actions taken in violation of a corporation's mandatory bylaws are void. *Klaassen v. Allegro Dev. Corp.*, 2013 Del. Ch. LEXIS 247; 2013 WL 5739680 (Del. Ch. Oct. 11, 2013).

122. Thus, the Court should enter judgment declaring that no valid transfer of the PBM shares was made to Cornerstone; rather pursuant to PBM's Bylaws, the PBM shares are still owned

by O’Ryan P&E, not Cornerstone, and Cornerstone (as the majority shareholder of PBM bound by the Bylaws) must recognize O’Ryan P&E as the owner until and unless Prosperity surrenders the stock certificate in its possession so that Cornerstone may effect a transfer as required by the Bylaws.

***Count 2: Declaratory Judgment – Cornerstone is Not a Protected Purchaser Under Delaware Law***

123. Prosperity incorporates the preceding paragraphs as if set forth fully herein.

124. For certificated securities, Delaware law (expressly incorporated by the Bylaws) requires delivery of the stock certificate to a purchaser and that the purchaser acquire possession of the certificate in order to effect a transfer without adverse claims, or what is called a protected purchaser. 6 DE Code §§ 8-106, 8-301 and 8-303.

125. As admitted by Cornerstone in its Complaint, the PBM shares are certificated, meaning the shares are reflected by physical stock certificates. Cornerstone attached several examples of the PBM Stock certificates to its Complaint. As also admitted by Cornerstone, Prosperity is holding the PBM Stock Certificate issued to O’Ryan P&E, and Cornerstone did not acquire possession of the certificate nor was the certificate delivered to it.

126. By virtue of the Prosperity Financing Statement on file at the time, Cornerstone also had notice of an adverse claim to the PBM stock. 6 DE Code § 8-303

127. Thus, the Court should enter judgment declaring that Cornerstone is not a protected purchaser under Delaware law, but rather took whatever interest it has in the PBM stock (if any) subject to any and all claims that could have been asserted against O’Ryan P&E, including pursuant to the Bankruptcy Code (e.g. § 544) and by creditors or the Plan Agent as allowed by the Plan and Confirmation Order.

***Count 3: Fraudulent Transfer – Actual Intent to Hinder, Delay, or Defraud a Secured Creditor***

128. Prosperity incorporates the preceding paragraphs as if set forth fully herein.

129. In the alternative to Count I:

130. Texas Business and Commerce Code § 24.005 provides that:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (1) with actual intent to hinder, delay, or defraud any creditor of the debtor

131. Prosperity is a fully secured creditor of O’Ryan P&E and was at the time O’Ryan P&E transferred the PBM stock to Cornerstone. Among other things, Prosperity holds and held a lien on O’Ryan P&E’s PBM stock.

132. O’Ryan P&E transferred the PBM stock to Cornerstone with actual intent to hinder, delay or defraud Prosperity, a secured creditor, and Prosperity’s exercise of remedies against the PBM stock, which was Prosperity’s collateral. The context of the transfer as well as several “badges of fraud” demonstrate O’Ryan P&E’s actual intent to hinder, delay, or defraud Prosperity and its exercise of remedies against its collateral.

133. O’Ryan P&E’s transaction with Cornerstone was concealed (admitted by Cornerstone in ¶30 of Complaint).

134. O’Ryan P&E’s transfer to Cornerstone was for less than reasonably equivalent value. Cornerstone admits in the Complaint that it paid \$4,612,406.00 for the PBM stock in December 2024 (¶1 of Complaint), and that in early December 2025 (less than one year later), the PBM stock is worth “upwards of \$25 million” (¶44 of Complaint). In six years of financial statements signed under oath by Ryan Hoerauf (O’Ryan P&E’s principal and a board member of

PBM) and provided to Prosperity, the value of the PBM stock was represented to be: \$14,968,200 (2018); \$14,968,200 (2019); \$14,968,200 (2020); \$9,990,333 (2021); \$12,800,000 (2022); \$12,800,000 (2023).

135. The proceeds from the sale of the PBM stock were not paid to O’Ryan P&E, the owner of the stock, but to an affiliated insider (admitted by Cornerstone in ¶27 of Complaint).

136. The proceeds from the sale of the PBM stock were not used to pay obligations of O’Ryan P&E (the stock’s owner), but rather were almost immediately used to pay obligations of affiliated insiders, and even, personal expenses of insider Ryan Hoerauf.

137. At the time of the Cornerstone Transaction, a UCC financing statement was on file clearly demonstrating Prosperity’s lien on the PBM stock. O’Ryan P&E and Cornerstone both ignored this filing in connection with the transfer of the PBM stock to Cornerstone.

138. Cornerstone and O’Ryan P&E failed to follow the Bylaws of PBM by failing to surrender the physical stock certificate, which was held by Prosperity (admitted by Cornerstone in ¶18 of Complaint). Rather, they tried to effect a transfer without surrendering the certificate, which they knew was impossible without alerting Prosperity of the sale.

139. O’Ryan P&E transferred the PBM stock while it was insolvent.

140. O’Ryan P&E transferred the PBM stock while it was in default of its obligations to Prosperity (admitted by Cornerstone in ¶23 of Complaint).

141. O’Ryan P&E ratified and confirmed its pledge of the PBM stock to Prosperity multiple times including in the Forbearance Agreement (acknowledged by Cornerstone in ¶ 23 of Complaint). Yet O’Ryan P&E and Cornerstone ignored this pledge and transferred the PBM stock to Cornerstone weeks after the Forbearance Agreement was entered.

142. The Cornerstone Transaction documents do not contain rudimentary seller representations regarding the PBM stock, such as ownership of the PBM stock, ability to transfer the PBM stock or no liens on the PBM stock. This is a recognition by O’Ryan P&E that it was selling, and by Cornerstone that it was buying, a highly distressed and liened asset at a fraction of its value.

143. Cornerstone was not a protected purchaser of the PBM stock under Delaware law, which again is a recognition by O’Ryan P&E that it was selling, and by Cornerstone that it was buying, a highly distressed and liened asset at a fraction of its value.

144. The transfer of the PBM stock was of substantially all of O’Ryan P&E’s assets.

145. Pursuant to Texas Business and Commerce Code § 24.008, Prosperity, as a secured creditor, may avoid the transfer of the PBM stock to Cornerstone to the extent necessary to satisfy its claim.

146. Thus, the Court should enter judgment against Cornerstone avoiding the transfer of the PBM stock, or for the value of the PBM stock.

#### ***Count 4: Conversion***

147. Prosperity incorporates the preceding paragraphs as if set forth fully herein.

148. Conversion is the wrongful exercise of dominion or control over the property of another in denial of, or inconsistent with, the other's rights in the property. The essence of conversion of property is wrongful deprivation. Conversion may be direct or constructive. Depriving a party of the value of a stock certificate or related stock rights constitutes conversion. Further, unauthorized interference with a possessory interest in personal property, regardless of title, gives rise to conversion. *Sandor Pet. Corp. v. Williams*, 321 S.W.2d 614, 619 (Tex. Civ. App.

—Eastland, 1959, writ ref'd n.r.e.); *Robinson v. Nat'l Autotech, Inc.*, 117 S.W.3d 37, 40-41 (Tex. App.—Dallas, 2003, pet. denied).

149. Possession of the PBM Stock Certificate conveys significant legal rights on Prosperity under Texas and Delaware law and PBM's Bylaws, and Cornerstone has wrongfully deprived Prosperity of those rights, including possibly distributions. Likewise, the ability to control O'Ryan's PBM stock rights pursuant to the Pledge Agreement conveys significant legal rights on Prosperity under Texas and Delaware law and PBM's Bylaws, and Cornerstone has wrongfully deprived Prosperity of those rights, including possibly distributions.

150. Based on (among other things) Prosperity's Financing Statement disclosing its lien in the PBM Stock Certificate, O'Ryan P&E's inability to surrender the certificate at closing of the Cornerstone Transaction and the Notice Letter, Cornerstone knew or should have known of Prosperity's possession of the PBM Stock Certificate and Prosperity's rights under the Pledge Agreement.

151. Thus, the Court should enter judgment against Cornerstone for the value any property or rights related to the PBM Stock Certificate or under the Pledge Agreement that were converted by Cornerstone (including any distributions) and other damages as established by Prosperity, including attorneys' fees and other costs.

### **PRAYER**

Prosperity respectfully requests that the Court: (i) enter a take nothing judgment against Cornerstone and in favor of Prosperity; (ii) deny any and all relief requested by Plaintiff in the Complaint; (iii) dismiss the Complaint with prejudice; (iv) enter judgment declaring that no valid transfer of the PBM shares was made to Cornerstone and that O'Ryan P&E is still the owner of

such shares; (vi) enter judgment declaring that Cornerstone is not a protected purchaser under Delaware law; (vii) alternatively, enter judgment against Cornerstone avoiding the transfer of the PBM stock, or for the value of the PBM stock (viii) enter judgment against Cornerstone for the value any rights related to the PBM Stock Certificate or under the Pledge Agreement that were converted by Cornerstone and other damages as established by Prosperity, including attorney's fees and other costs; and (ix) grant any such other and further relief to which Prosperity may be justly entitled, both at law and in equity.

**DATED: January 20, 2026.**

Respectfully submitted,

**WINSTEAD PC**

Respectfully submitted,

By: /s/ Phillip Lamberson

Phillip Lamberson

Texas Bar No. 00794134

Annmarie Chiarello

Texas Bar No. 24097496

**WINSTEAD PC**

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E-mail: [achiarello@winstead.com](mailto:achiarello@winstead.com)

**ATTORNEYS FOR PROSPERITY BANK**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2026, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District. Service will also be made as required and allowed by Federal Rule of Bankruptcy Procedure 7004.

/s/ Annmarie Chiarello

One of Counsel

4917-1982-6824v.9

INCORPORATED UNDER THE LAWS

2018

OF THE STATE OF DELAWARE

NUMBER

4

SHARES

\*\*64,000\*\*

# PB MATERIALS HOLDINGS, INC.

TOTAL AUTHORIZED ISSUE  
4,000,000 SHARES COMMON STOCK, \$ .0001 PAR VALUE

SEE LEGEND ON REVERSE OF THIS CERTIFICATE

**This Certificate**

\*\*\*O'Ryan Production and Exploration, Ltd.\*\*\*  
\*\*\*Sixty-Four Thousand\*\*\*

registered holder of THE COMMON STOCK OF PB MATERIALS HOLDINGS, INC. *Shares*

*transferrable only on the books of the Corporation by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this *11th* day of *September* A.D. 20*18*

*Stephen Toy*  
Stephen Toy, Secretary

*For Value Received, \_\_\_\_\_ hereby sell, assign and transfer  
unto \_\_\_\_\_*

*\_\_\_\_\_ Shares  
represented by the within Certificate, and do hereby  
irrevocably constitute and appoint*

*\_\_\_\_\_ Attorney  
to transfer the said Stock on the books of the within named  
Corporation with full power of substitution in the premises.*

*Dated \_\_\_\_\_, 20\_\_\_\_.*

*In presence of \_\_\_\_\_*

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT  
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE  
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT  
ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

|                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A. NAME & PHONE OF CONTACT AT FILER (optional).<br><b>James R. Leeton, Jr. (432) 683-5501</b>                                                              |
| B. E-MAIL CONTACT AT FILER (optional)                                                                                                                      |
| C. SEND ACKNOWLEDGMENT TO: (Name and Address)<br><b>James R. Leeton, Jr.<br/>Morgan Leeton, PC<br/>400 W. Illinois, Suite 120<br/>Midland, Texas 79701</b> |

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TEXAS  
SECRETARY OF STATE

SOS



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THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

|                                                                             |                          |                       |                               |                             |
|-----------------------------------------------------------------------------|--------------------------|-----------------------|-------------------------------|-----------------------------|
| 1a. ORGANIZATION'S NAME<br><b>O'Ryan Production &amp; Exploration, Ltd.</b> |                          |                       |                               |                             |
| OR                                                                          | 1b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME   | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX                      |
| 1c. MAILING ADDRESS<br><b>One Mission Boulevard</b>                         |                          | CITY<br><b>Odessa</b> | STATE<br><b>TX</b>            | POSTAL CODE<br><b>79765</b> |
|                                                                             |                          |                       | COUNTRY<br><b>USA</b>         |                             |

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

|                         |                          |                     |                               |              |
|-------------------------|--------------------------|---------------------|-------------------------------|--------------|
| 2a. ORGANIZATION'S NAME |                          |                     |                               |              |
| OR                      | 2b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX       |
| 2c. MAILING ADDRESS     |                          | CITY                | STATE                         | POSTAL CODE  |
|                         |                          |                     | <b>TX</b>                     | <b>79762</b> |
|                         |                          |                     | COUNTRY<br><b>USA</b>         |              |

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

|                                                                      |                          |                       |                               |                             |
|----------------------------------------------------------------------|--------------------------|-----------------------|-------------------------------|-----------------------------|
| 3a. ORGANIZATION'S NAME<br><b>Lone Star State Bank of West Texas</b> |                          |                       |                               |                             |
| OR                                                                   | 3b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME   | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX                      |
| 3c. MAILING ADDRESS<br><b>2975 JBS Parkway</b>                       |                          | CITY<br><b>Odessa</b> | STATE<br><b>TX</b>            | POSTAL CODE<br><b>79762</b> |
|                                                                      |                          |                       | COUNTRY<br><b>USA</b>         |                             |

4. COLLATERAL: This financing statement covers the following collateral:

The Debtors' interest in (a) all accounts, receivables, accounts receivable, general intangibles, book debts and contract rights in and to and/or derived from the capital stock, shares of stock and security interest in the Corporation ("Ownership Interest") described in Exhibit "A," attached hereto and made a part hereof; (b) all chattel paper (including electronic chattel paper), notes, drafts, acceptances, supporting obligations, Commercial Tort Claims and contracts, contract rights, accounts, general intangibles, letter of credit rights, supporting obligations and payment intangibles or any other rights to the payment of money or other monies due or to become due (of whatever type, nature, item or category) insofar as same relate to the Ownership Interest described in Exhibit "A;" (c) all of Debtor's rights in, to and under all instruments and other documents evidencing obligations for or representing payment insofar as same relate to the Ownership Interest described in Exhibit "A;" and (d) all monies due or to become due to Debtor insofar as same relate to the Ownership Interest; in each case of whatever nature, now owned by Debtor or existing or hereafter acquired, created or arising (hereinafter sometimes collectively called "the Accounts," or singly "the Account" and hereinafter collectively called "the Collateral") and all products and proceeds of the Collateral.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

**SOS-TX (Lone Star State/O'Ryan 03/2019) - Pledge Agt**

**EXHIBIT "A"**

Attached to and made a part of the following documents:

- (1) Amended and Restated Pledge Agreement effective February 4, 2018, from O'RYAN PRODUCTION & EXPLORATION, LTD., as Pledgor, for the benefit of LONE STAR STATE BANK OF WEST TEXAS, as Secured Party; and
- (2) UCC-1 Financing Statement from O'RYAN PRODUCTION & EXPLORATION, LTD., as Debtor, for the benefit of LONE STAR STATE BANK OF WEST TEXAS, as Secured Party.
  - a. Any and all of Pledgor's Shares of Stock (represented by Stock Certificate No. 4 for 64,000 shares) in PB Materials Holdings, Inc., a Delaware corporation, created under that certain Certificate of Formation dated \_\_\_\_\_ and Bylaws dated \_\_\_\_\_, by and between PB Materials Holdings, Inc., O'Ryan Production & Exploration, Ltd. and others ("PB Materials Holdings, Inc.");
  - b. Any and all moneys, profits, income, surplus, compensation, return of capital and distributions due and to become due to the Pledgor now or in the future by way of distribution to the Pledgor as owner of the Pledged Equity;
  - c. Any and all moneys, profits, income, surplus, compensation, return of capital and distributions due or to become due to the Pledgor now or in the future by virtue of the Pledgor's ownership of the Pledged Equity;
  - d. Any property of PB Materials Holdings, Inc. to which the Pledgor now or in the future may be entitled as owner of the Pledged Equity by way of distribution, return of capital or otherwise;
  - e. Any claim which the Pledgor may have in the future acquire as owner of the Pledged Equity against PB Materials Holdings, Inc. and its property; and
  - f. To the extent not otherwise included, all proceeds of any and all of the foregoing;

whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds).

**A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)**

JOHN JAMES

## B. E-MAIL CONTACT AT SUBMITTER (optional)

**C. SEND ACKNOWLEDGMENT TO: (Name and Address)**

**\*\*CT Lien Solutions**  
2929 Allen Parkway, Ste. 3300  
Houston, TX 77019  
USA

**SEE BELOW FOR SECURED PARTY CONTACT INFORMATION**

**FILING NUMBER: 23-00454156**

FILING DATE: 10/20/2023 03:35 PM

**DOCUMENT NUMBER: 1296952850001**

**FILED: Texas Secretary of State**

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### FORBEARANCE AGREEMENT

This FORBEARANCE AGREEMENT (this “Agreement”), dated as of December 2, 2024 (the “Forbearance Effective Date”) to be effective as set forth below, is among O’RYAN FAMILY LIMITED PARTNERSHIP, a Texas limited partnership (“O’Ryan FLP”), O’RYAN PRODUCTION & EXPLORATION, LTD., a Texas limited partnership (“O’Ryan P&E”), SMACKOVER OIL TREATERS, LTD., a Texas limited partnership (“Smackover”), AMBER HOERAUF TRUST, created under that certain Trust Agreement dated July 1, 1997, by and between Ryan C. Hoerauf and Deborah A. Hoerauf, as Grantors and Ryan C. Hoerauf, as Trustee (“Amber Trust”), MATHEW HOERAUF TRUST, created under that certain Trust Agreement dated July 1, 1997, by and between Ryan C. Hoerauf and Deborah A. Hoerauf, as Grantors and Ryan C. Hoerauf, as Trustee (“Mathew Trust”), SCANROCK OIL & GAS, INC., a Texas corporation (“Scanrock”), RYAN C. HOERAUF, INC., a Texas corporation (“RCH Inc”), O’RYAN RANCHES, LTD., a Texas limited partnership (“Texas Ranches”), O’RYAN OREGON RANCHES, LLC, a Texas limited liability company (“Oregon Ranches”), O’RYAN RANCHES, LLC, an Oregon limited liability company (“Ranches”), EON Production, LLC, a Texas limited liability company (“EON”), O’RYAN PONDEROSA, LLC, a Texas limited liability company (“Ponderosa”), RYAN PROPERTIES, INC., a Texas corporation (“Properties”), and RYAN C. HOERAUF, an individual (“Hoerauf”), and together with O’Ryan FLP, O’Ryan P&E, Smackover, Amber Trust, Mathew Trust, Scanrock, RCH Inc, Texas Ranches, Oregon Ranches, Ranches, EON, Ponderosa and Properties, individually and collectively as the context may require, the “Borrower”), THE RYAN C. HOERAUF 2008 DELAWARE TRUST (the “Guarantor”), and PROSPERITY BANK, successor by merger to Lone Star State Bank of West Texas (the “Lender”).

### RECITALS:

A. The Borrower and the Lender have previously entered into that certain Restated Loan Agreement dated as of April 1, 2023 (as the same has been or may be amended, restated or otherwise modified from time to time, the “Loan Agreement”).

B. In connection with the Loan Agreement, the Borrower executed and delivered to the Lender that certain Promissory Note (Revolving Line of Credit Note), dated as of April 1, 2023, payable to the order of the Lender in the original principal amount of \$48,973,536.40 (as the same has been or may be amended, restated or otherwise modified from time to time, the “Note”).

C. The Specified Defaults (as hereinafter defined) have occurred and are continuing under the Loan Agreement. The Borrower has requested that the Lender agree to forbear from exercising its rights and remedies with respect to the Specified Defaults as hereinafter set forth, and the Lender, subject to the terms and conditions contained herein, has agreed to such forbearance, to be effective as of the date hereof (unless otherwise expressly provided herein).

D. Each of the Borrower, the Guarantor and the Lender acknowledges that the terms of this Agreement constitute a modification to, and not a novation or extinguishment of, the Loan Agreement and the other Loan Documents.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto hereby agree as follows:

ARTICLE I  
Definitions

Section 1.1 Definitions. All capitalized terms not otherwise defined herein shall have the same meanings as in the Loan Agreement. As used herein, the following terms shall have the following meanings:

“Forbearance Period” means the period beginning as of the date hereof through and including the Forbearance Termination Date.

“Forbearance Termination Date” has the meaning given such term in Section 2.3.

“Loan Parties” means, collectively, the Borrower and the Guarantor, and “Loan Party” means any one of them individually.

“New Mexico Sale” means the Borrower’s sale of certain properties in Lea County, New Mexico.

“Oregon Sale” means the Borrower’s proposed sale of approximately 42,426 acres of property in Crook County, Oregon (the “Oregon Ranch”), as further described in the Oregon Sale LOI.

“Oregon Sale LOI” means that certain letter of intent dated as of September 17, 2024 between KEVGAP, LLC, a Washington limited liability company (the “Oregon Buyer”), and the Borrower.

“Specified Defaults” means, collectively: (a) the failure by the Borrower to pay the Loans and all other Obligations in full on the maturity date set forth in Section 8(b) of the Note, which is a default under Section 10 of the Note and Section 8 of the Loan Agreement, and (b) the recent failures by the Borrower to comply with the debt service coverage ratio set forth in Section 6 of the Loan Agreement, which is a default under Section 8 of the Loan Agreement, and (c) the failure by the Borrower to pay all taxes as set forth in Section 5 of the Loan Agreement, including but not limited to the Tax Default, which is a default under Section 8 of the Loan Agreement.

“Tax Default” means the failure by Borrower to pay to the Tax Lien Holder, taxes assessed as and when required as evidenced by the Tax Warrant.

“Tax Lien Holder” means collectively, Malakoff Independent School District, Navarro County, Kerens Independent School District, Navarro County Emergency Service District #01, Navarro College, Kaufman County, Kemp Independent School District, Mabank Independent School District, Trinity Valley Community College (Kaufman County), Rusk County, Mount Enterprise Independent School District, Rusk County Emergency Services District #01, Rusk County Groundwater Conservation District, and Cayuga Independent School District.

“Tax Plan” means that certain tax settlement agreement executed by and between Borrower and the Tax Lien Holder, a copy of which has been delivered to the Lender on or before the Forbearance Effective Date.

“Tax Warrant” means that certain Tax Warrant filed in the 173<sup>rd</sup> Judicial District of Henderson County, Texas relating to unpaid and delinquent taxes owing with respect to the property described therein.

ARTICLE II  
Forbearance

Section 2.1 No Waiver. This Agreement shall not be construed as a consent to or waiver of the Specified Defaults, any other default or event of default which may now exist or hereafter occur, or any violation of any term, covenant or provision of the Loan Agreement or any other Loan Document. All rights and remedies of the Lender are hereby expressly reserved with respect to the Specified Defaults and any other default or event of default which may now exist or hereafter occur. This Agreement does not affect or diminish the right of the Lender to require strict performance by each Loan Party of each provision of each Loan Document to which such Loan Party is a party, except as expressly provided herein. All terms and provisions of and all rights and remedies of the Lender under the Loan Documents shall continue in full force and effect and are hereby confirmed and ratified in all respects.

Section 2.2 Forbearance. Subject to the terms and conditions contained herein, the Lender hereby agrees to forbear from the exercise of any of its rights and remedies under the Loan Agreement and the other Loan Documents in connection with the Specified Defaults during the Forbearance Period.

(a) Forbearance Limited to Specified Defaults. The Lender's forbearance shall be limited solely to the exercise of its rights and remedies arising under the Loan Documents as a result of the Specified Defaults, and the Lender shall not be deemed to have waived any rights or remedies it may have with respect to any other existing breach, default or event of default occurring under the Loan Documents during the Forbearance Period, or any breach of this Agreement.

(b) Notice Requirements Satisfied. Each Loan Party acknowledges that all notice requirements embodied in the Loan Documents and imposed upon the Lender in connection with the Specified Defaults, and the exercise of its remedies therefor (together with any applicable cure and/or grace periods) have been satisfied (or shall be deemed to have been satisfied by this Agreement) without exception, and that upon the occurrence of the Forbearance Termination Date the Lender shall, with respect to the Specified Defaults, have the full right and power to exercise all remedies granted to it thereunder without further notice to any Loan Party and subject to no other conditions precedent.

(c) No New Events of Default. During the Forbearance Period, there shall occur no default or event of default under any Loan Document or this Agreement (other than the Specified Defaults), nor shall there be a breach or failure of any warranty, representation or covenant as described in this Agreement.

(d) Agreement in the Nature of Forbearance Only. Each Loan Party hereby acknowledges that the Lender's obligations under this Agreement are in the nature of a conditional forbearance only, that the Lender has not made any agreement or commitment to modify or extend the Loan Documents beyond the Forbearance Period, and that, upon the termination of the Forbearance Period, the Lender shall have the immediate and unconditional right to exercise its remedies under the Loan Documents.

(e) No New Advances. Pursuant to the Loan Documents, the Lender has, and from and after the date hereof the Lender shall continue to have, no further commitment or obligation to make any further Loans or to provide any further financing or loans to the Borrower.

Section 2.3 Termination of the Forbearance Period. The Forbearance Period shall end on the first date on which any of the following occurs (such date, the "Forbearance Termination Date"):

- (a) End of Forbearance Period. March 31, 2025;
- (b) Breach. A breach by any Loan Party of any of the conditions, covenants, agreements, terms, representations and/or warranties set forth in this Agreement or any other Loan Document (other than the Specified Defaults);
- (c) New Event of Default. The occurrence of any default or event of default under any one or more of the Loan Documents (other than the Specified Defaults);
- (d) Creditor Enforcement Action. One or more creditors of any Loan Party takes any enforcement action against any Loan Party;
- (e) Bankruptcy. A proceeding shall be commenced by or against any Loan Party seeking liquidation, reorganization, bankruptcy or other relief with respect to its debts under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or any of its assets;
- (f) Proceeding by any Loan Party. Any Loan Party or any of its affiliates initiates any judicial, administrative or arbitration proceeding against the Lender;
- (g) Oregon Sale. The termination of the negotiations between the Borrower and the Oregon Buyer with respect to the Oregon Sale, or the termination of the Oregon Sale LOI prior to the consummation of the transactions contemplated thereby; or
- (h) Noncompliance with Tax Plan. The failure of Borrower to make required payments under, or otherwise comply with the terms of, the Tax Plan.

Upon the occurrence of the Forbearance Termination Date, the Lender's agreement to forbear shall terminate automatically without further act or action by the Lender, and the Lender shall be entitled to exercise any and all rights and remedies available under the Loan Documents and this Agreement, at law, in equity, or otherwise, without any further lapse of time, expiration of applicable grace periods, or requirements of notice, all of which are hereby expressly waived by the Borrower.

Section 2.4 Conditions of Forbearance. The Lender's agreement to forbear from exercising any of its rights and remedies as a result of the Specified Defaults shall be subject to and conditioned upon each of the following:

- (a) Interest. On the first day of each calendar month during the Forbearance Period, the Borrower shall continue to make payments of all accrued and unpaid interest as of such date in accordance with the Note.
- (b) Reporting. During the Forbearance Period, in addition to all other reporting requirements set forth in the Loan Agreement, the Borrower shall deliver, or cause to be delivered, to the Lender each of the following, in form and substance satisfactory to the Lender in its sole discretion:
  - (i) on Wednesday of each week or as otherwise reasonably requested by the Lender, a report setting forth the current status of the transactions contemplated by the Oregon Sale LOI and any other material actions being pursued by the Borrower at such time (provided, that nothing in this clause (b)(i) or elsewhere in this Agreement shall be

construed as a consent or waiver by the Lender in respect of such actions to the extent otherwise restricted by any Loan Document);

(ii) promptly upon receipt or the Lender's request therefor, as applicable, (A) copies of any marketing materials that are provided to potential buyers in connection with the Borrower's efforts to consummate the Oregon Sale or any other material disposition, (B) access to any data room populated with due diligence materials pertinent to the foregoing (and the Lender shall have access to any such data room at all times), (C) copies of any bona fide sale offer made to the Borrower, along with all other information regarding such offers or the amendment or modification of such offers, and (D) copies of any executed purchase and sale agreements, or amendments or modifications to any such sale agreements, in connection with any of the foregoing;

(iii) promptly after payment of the same, or as otherwise reasonably requested by the Lender, evidence reasonably satisfactory to the Lender that all first lien indebtedness described in Section 2.4(d) below is paid current;

(iv) promptly upon receipt, all notices provided to Borrower by the Tax Lien Holder relating to the Tax Default or Tax Plan; and

(v) promptly upon the Lender's request therefor, evidence, in form and substance acceptable to Lender, from the Tax Lien Holder (or its duly authorized counsel), stating that Borrower is in compliance with the terms and conditions of the Tax Plan.

(c) Oregon Sale.

(i) The Borrower shall continue to work with the Oregon Buyer to consummate the Oregon Sale.

(ii) On or before December 15, 2024, or by a later date as determined by Lender in its sole discretion, the Borrower shall deliver to the Lender copies of a fully-executed purchase and sale agreement for the Oregon Sale (the "Oregon PSA") in accordance with the terms set forth in the Oregon Sale LOI, which Oregon PSA shall: (A) be conditioned only upon satisfactory documentation and customary closing conditions, (B) result in net cash proceeds to the Borrower in an amount not less than \$50,000,000, (C), have terms and conditions that are reasonably capable of being met by the Loan Parties given the Loan Parties' current asset base and current financial condition, current market conditions and other current circumstances, and (D) be on terms which are otherwise acceptable and be in form and substance satisfactory to the Lender in its sole discretion.

(iii) The Borrower shall keep the Lender fully apprised of all matters with respect to the Oregon Sale including, without limitation, (A) reductions to the purchase price made for any reason, including the amount of the reduction and the reason therefor, (B) property being excluded from the sale contemplated by the Oregon Sale LOI for any reason, (C) all modifications, amendments, renewals, extensions of the Oregon Sale LOI or the Oregon PSA (copies of which shall be provided to, and shall be in form and substance satisfactory to, the Lender), (D) the occurrence of any event, which, with the giving of notice or lapse of time, will entitle the Oregon Buyer to terminate the Oregon Sale LOI or the Oregon PSA, or (E) the existence of any fact that entitles the Oregon Buyer to the return of the escrow deposit paid to Borrower.

(iv) Notwithstanding anything set forth in any Loan Document, excluding federal and state income and real estate taxes not to exceed \$2,000,000.00 in the aggregate all net cash proceeds of the Oregon Sale shall be paid over to the Lender for application to the Obligations as the Lender may determine in its sole discretion; provided, notwithstanding the foregoing, the Borrower may pay a portion of the proceeds of the Oregon Sale over to any holders of any indebtedness described in Section 2.4(d) below but solely to the extent that (A) such indebtedness was in existence on the Forbearance Effective Date and (B) such payment is required pursuant to the terms governing such indebtedness.

(d) First Lien Indebtedness. During the Forbearance Period, the Borrower shall not permit any indebtedness that is secured by a lien on the Oregon Ranch that is prior to the Lender's lien to become past due by more than 30 days.

(e) New Mexico Sale Proceeds. Notwithstanding anything set forth in any Loan Document, all net cash proceeds of the New Mexico Sale shall (i) be deposited in an account of the Borrower maintained with the Lender and (ii) be used only as set forth in Exhibit A, or as otherwise agreed by the Lender in its sole discretion.

(f) Debt Service Coverage Ratio. The failure by the Borrower to comply with the debt service coverage ratio set forth in Section 6 of the Loan Agreement during the Forbearance Period shall not result in any default or event of default under the Loan Agreement or any other Loan Document.

(g) General Prohibitions. Notwithstanding the terms set forth in the Loan Agreement or any other Loan Document, during the Forbearance Period and thereafter so long as any Obligations remain outstanding, the Borrower shall not: (i) make or pay any dividends or any other payments or distributions on account of their equity interests, (ii) grant, suffer or permit to exist any contractual or noncontractual lien on or security interest on any Loan Party's property, other than any such liens existing on the date hereof or liens in favor of the Lender, or (iii) incur any additional indebtedness (other than any indebtedness expressly approved by the Lender).

### ARTICLE III Conditions

Section 3.1 Conditions Precedent. The effectiveness of this Agreement is subject to the satisfaction, in the opinion of the Lender, of the following conditions precedent:

(a) The Lender shall have received (i) this Agreement duly executed by the Loan Parties, and (ii) such other documents, instruments and certificates as reasonably requested by the Lender;

(b) The Lender shall have received the results of lien searches showing all financing statements and other documents or instruments on file against the Borrower in such filing offices as the Lender shall request, which searches shall (i) be as of a date no more than 30 days prior to the Forbearance Effective Date and (ii) except for the Specified Defaults, reflect no liens or encumbrances against any Collateral other than liens in favor of the Lender and other liens permitted by the Loan Documents;

(c) No default or event of default under any Loan Document (other than the Specified Defaults) shall have occurred and be continuing;

(d) All of the representations and warranties contained in the Loan Agreement and in the other Loan Documents shall be true and correct on and as of the Forbearance Effective Date with the same force and effect as if such representations and warranties had been made on and as of such date, except to the extent such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date;

(e) The Lender shall have received payment or evidence of payment of (i) all accrued and unpaid interest as of the Forbearance Effective Date and (ii) all costs, expenses and fees related to the Loan Documents and this Agreement, including without limitation, the reasonable fees and expenses of counsel for the Lender; and

(f) Lender shall have received a fully executed copy of the Tax Plan, in form and substance acceptable to Lender in its sole discretion.

#### ARTICLE IV Ratifications, Representations and Warranties

Section 4.1 Ratifications. The terms and provisions set forth in this Agreement shall modify and supersede all inconsistent terms and provisions set forth in the Loan Agreement and the other Loan Documents, and except as expressly modified and superseded by this Agreement, the terms and provisions of the Loan Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. Each of the Loan Parties and the Lender agrees that the Loan Agreement and the other Loan Documents shall continue to be legal, valid, binding and enforceable in accordance with their respective terms.

Section 4.2 Representations and Warranties. Each Loan Party hereby represents and warrants to Lender that (a) the execution, delivery and performance of this Agreement and any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite corporate or other action on the part of such Loan Party and will not violate the organizational documents of such Loan Party, (b) the representations and warranties contained in the Loan Agreement and each other Loan Document are true and correct on and as of the date hereof as though made on and as of the date hereof (except for such representations and warranties as are limited by their express terms to a specific date in which case they are true and correct as of such earlier date), (c) as of the date of this Agreement, no default or event of default (other than the Specified Defaults) has occurred and is continuing, and (d) except with respect to the Specified Defaults, each Loan Party is in full compliance with all covenants and agreements contained in the Loan Agreement and each other Loan Document.

#### ARTICLE V Miscellaneous

Section 5.1 Survival of Representations and Warranties. All representations and warranties made in this Agreement or any other Loan Document furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and no investigation by the Lender or any closing shall affect the representations and warranties or the right of the Lender to rely upon them.

Section 5.2 Severability. Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

Section 5.3 Applicable Law. This Agreement and all other Loan Documents executed pursuant hereto shall be governed by and construed in accordance with the laws of the State of Texas and the applicable laws of the United States of America.

Section 5.4 Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the Lender, the Borrower and the Guarantor and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of the Lender.

Section 5.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. Signatures transmitted by facsimile, email or other electronic medium shall be effective as originals.

Section 5.6 Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

Section 5.7 RELEASE.

(a) EACH LOAN PARTY HEREBY UNCONDITIONALLY AND IRREVOCABLY REMISES, ACQUITS, AND FULLY AND FOREVER RELEASES AND DISCHARGES THE LENDER AND ALL AFFILIATES AND SUBSIDIARIES OF THE LENDER, THEIR RESPECTIVE OFFICERS, SERVANTS, EMPLOYEES, AGENTS, ATTORNEYS, PRINCIPALS, DIRECTORS AND SHAREHOLDERS, AND THEIR RESPECTIVE HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “RELEASED BANK PARTIES”) FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, OBLIGATIONS, REMEDIES, SUITS, DAMAGES AND LIABILITIES (COLLECTIVELY, THE “LOAN PARTY CLAIMS”) OF ANY NATURE WHATSOEVER, WHETHER NOW KNOWN, SUSPECTED OR CLAIMED, WHETHER ARISING UNDER COMMON LAW, IN EQUITY OR UNDER STATUTE, WHICH SUCH LOAN PARTY EVER HAD OR NOW HAS AGAINST THE RELEASED BANK PARTIES WHICH MAY HAVE ARISEN AT ANY TIME ON OR PRIOR TO THE DATE OF THIS AGREEMENT AND WHICH WERE IN ANY MANNER RELATED TO ANY OF THE LOAN DOCUMENTS OTHER THAN THIS AGREEMENT OR THE ENFORCEMENT OR ATTEMPTED ENFORCEMENT BY THE LENDER OF RIGHTS, REMEDIES OR RECOURSES RELATED THERETO.

(b) EACH LOAN PARTY COVENANTS AND AGREES NEVER TO COMMENCE, VOLUNTARILY AID IN ANY WAY, PROSECUTE OR CAUSE TO BE COMMENCED OR PROSECUTED AGAINST ANY OF THE RELEASED BANK PARTIES ANY ACTION OR OTHER PROCEEDING BASED UPON ANY OF THE LOAN PARTY CLAIMS WHICH MAY HAVE ARISEN AT ANY TIME ON OR PRIOR TO THE DATE OF THIS AGREEMENT AND WERE IN ANY MANNER RELATED TO ANY OF THE LOAN DOCUMENTS.

(c) Each Loan Party acknowledges, warrants, and represents to the Lender that:

(i) Such Loan Party has read and understands the effect of this Section 5.7. Such Loan Party has had the assistance of independent counsel of its own choice, or has had the opportunity to retain such independent counsel, in reviewing, discussing, and considering all the terms of this Section 5.7; and if counsel was retained, counsel for such

Loan Party has read and considered this Section 5.7 and advised such Loan Party to execute the same. Before execution of this Agreement, such Loan Party has had adequate opportunity to make whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of this Section 5.7.

(ii) Such Loan Party is not acting in reliance on any representation, understanding, or agreement not expressly set forth herein. Such Loan Party acknowledges that the Lender has not made any representation with respect to this Section 5.7 except as expressly set forth herein.

(iii) Such Loan Party has executed this Agreement and this Section 5.7 as its free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of any person or entity.

(iv) Such Loan Party is the sole owner of the claims released by this Section 5.7, and such Loan Party has not heretofore conveyed or assigned any interest in any such claims to any other person or entity.

(d) Such Loan Party understands that this Section 5.7 was a material consideration in the agreement of the Lender to enter into this Agreement.

(e) It is the express intent of each Loan Party that the release and discharge set forth in this Section 5.7 be construed as broadly as possible in favor of the Released Bank Parties so as to foreclose forever the assertion by any Loan Party of any claims released hereby against the Released Bank Parties.

(f) If any term, provision, covenant, or condition of this Section 5.7 is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of the provisions shall remain in full force and effect. The agreements of each Loan Party set forth in this Section 5.7 shall survive termination of this Agreement.

Section 5.8 ENTIRE AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of Page Intentionally Left Blank]

Executed as of the date first written above.

BORROWERS:

O'RYAN FAMILY LIMITED PARTNERSHIP,  
a Texas Limited Partnership

By: Ryan Properties, Inc.,  
a Texas Corporation, as General Partner

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
President

O'RYAN PRODUCTION & EXPLORATION, LTD.,  
a Texas Limited Partnership

By: Ryan E & P Management, Inc.,  
its General Partner

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
President

SMACKOVER OIL TREATERS, LTD.,  
a Texas Limited Partnership

By: O'Ryan Mission, Inc.,  
its General Partner

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
President

AMBER HOERAUF TRUST

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
Trustee

MATHEW HOERAUF TRUST

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
Trustee

SCANROCK OIL & GAS, INC.,  
a Texas Corporation

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
President

RYAN PROPERTIES, INC.,  
a Texas Corporation

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
President

RYAN C. HOERAUF, INC.,  
a Texas Corporation

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
President

O'RYAN RANCHES, LTD.,  
a Texas Limited Partnership

By: Ryan Properties, Inc.  
as General Partner

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
President

EON PRODUCTION, LLC  
a Texas Limited Liability Company

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
Manager

O'RYAN PONDEROSA, LLC  
a Texas Limited Liability Company

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
Manager

O'RYAN OREGON RANCHES, LLC,  
a Texas Limited Liability Company

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
Manager

O'RYAN RANCHES, LLC,  
an Oregon Limited Liability Company

By: O'Ryan Family Limited Partnership,  
its Managing Member

By: Ryan Properties, Inc.,  
as General Partner

By: Ryan C Hoerauf  
Ryan C. Hoerauf,  
President

Ryan C Hoerauf  
RYAN C. HOERAUF, individually

GUARANTOR:

THE RYAN C. HOERAUF 2008 DELAWARE TRUST

By: JTC Trust Company (DE) Limited,  
its Trustee

By: Laura Barone  
Name: Laura Barone  
Title: Senior Trust Officer

LENDER:

PROSPERITY BANK,  
successor by merger to Lone Star State Bank of West  
Texas

By: \_\_\_\_\_

Name: Dan L. Montgomery  
Title: Chief Credit Officer

EXHIBIT A  
New Mexico Sale Proceeds

**ORYAN OIL AND GAS  
LEA COUNTY SETTLEMENT - \$2,600,000  
USE OF PROCEEDS SUMMARY  
CONFIDENTIAL**

|                                   | <b><u>LEA COUNTY SETTLEMENT - USE OF PROCEEDS</u></b> |                                 |                                      |                                  |                     |
|-----------------------------------|-------------------------------------------------------|---------------------------------|--------------------------------------|----------------------------------|---------------------|
|                                   | <b><u>Bank<br/>Debt</u></b>                           | <b><u>Rework<br/>HSU #5</u></b> | <b><u>Rework<br/>Cedar Creek</u></b> | <b><u>Prior<br/>Payables</u></b> | <b><u>Total</u></b> |
| <b><u>OCTOBER</u></b>             |                                                       |                                 |                                      |                                  |                     |
| Payroll Taxes                     |                                                       |                                 |                                      | \$107,800                        | \$107,800           |
| Property Taxes                    |                                                       |                                 |                                      | \$36,000                         | \$36,000            |
| Legal and Accounting              |                                                       |                                 |                                      | \$39,500                         | \$39,500            |
| Other Vendor Payables             |                                                       |                                 |                                      | \$164,500                        | \$164,500           |
| Totals October                    | \$0                                                   | \$0                             | \$0                                  | \$347,800                        | \$347,800           |
| <b><u>NOVEMBER</u></b>            |                                                       |                                 |                                      |                                  |                     |
| <b><u>Bank Loan Payments:</u></b> |                                                       |                                 |                                      |                                  |                     |
| Lonestar LOC                      | \$364,700                                             |                                 |                                      |                                  | \$364,700           |
| NW Ag Debt Payments               | \$163,600                                             |                                 |                                      |                                  | \$163,600           |
| <b><u>Rework Expenditures</u></b> |                                                       |                                 |                                      |                                  |                     |
| Cedar Creek                       |                                                       |                                 | \$202,000                            |                                  | \$202,000           |
| HSU #5                            |                                                       | \$114,000                       |                                      |                                  | \$114,000           |
| Totals November                   | \$528,300                                             | \$114,000                       | \$202,000                            | \$0                              | \$844,300           |
| <b><u>DECEMBER</u></b>            |                                                       |                                 |                                      |                                  |                     |
| <b><u>Bank Loan Payments:</u></b> |                                                       |                                 |                                      |                                  |                     |
| Lonestar LOC                      | \$352,900                                             |                                 |                                      |                                  | \$352,900           |
| NW Ag Debt Payments               | \$128,600                                             |                                 |                                      |                                  | \$128,600           |
| <b><u>Rework Expenditures</u></b> |                                                       |                                 |                                      |                                  |                     |
| Cedar Creek                       |                                                       |                                 | \$202,000                            |                                  | \$202,000           |
| HSU #5                            |                                                       | \$114,000                       |                                      |                                  | \$114,000           |
| Contingency Costs (15%)           |                                                       | \$34,200                        | \$60,600                             |                                  | \$94,800            |
| Totals December                   | \$481,500                                             | \$148,200                       | \$262,600                            | \$0                              | \$892,300           |
| <b><u>JANUARY</u></b>             |                                                       |                                 |                                      |                                  |                     |
| <b><u>Bank Loan Payments:</u></b> |                                                       |                                 |                                      |                                  |                     |
| Lonestar LOC                      | \$364,700                                             |                                 |                                      |                                  | \$364,700           |
| NW Ag Debt Payments               | \$128,600                                             |                                 |                                      |                                  | \$128,600           |
| Total January                     | \$493,300                                             | \$0                             | \$0                                  | \$0                              | \$493,300           |
| <b>Total Use of Proceeds</b>      | <b>\$1,503,100</b>                                    | <b>\$262,200</b>                | <b>\$464,600</b>                     | <b>\$347,800</b>                 | <b>\$2,577,700</b>  |



## Audit Trail

DigiSigner Document ID: 4cb803e9-020d-4429-9257-00002917811b

### Signer

Email: ryan@oryanoilandgas.com  
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### Signature

Ryan C Hoerauf

Ryan C Hoerauf

Ryan C Hoerauf

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Ryan C Hoerauf

| Event            | User                           | Time                    | IP Address      |
|------------------|--------------------------------|-------------------------|-----------------|
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BYLAWS

OF

PB MATERIALS HOLDINGS, INC.

Incorporated under the laws of the State of Delaware

(the “*Company*”)

(Adopted as of September 11, 2013)

BYLAWS  
OF  
PB MATERIALS HOLDINGS, INC.

**ARTICLE I.**  
**OFFICES**

Section 1.1 Registered Office. The registered office of PB Materials Holdings, Inc. (the “**Company**”) within the State of Delaware shall be 2711 Centreville Road, Suite 400 City of Wilmington, County of New Castle. The name of the registered agent of the Company at such address is Corporation Service Company.

Section 1.2 Additional Offices. The Company may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and without the State of Delaware, as the Board of Directors of the Company (the “**Board**”) may from time to time determine or as the business and affairs of the Company may require.

**ARTICLE II.**  
**STOCKHOLDERS MEETINGS**

Section 2.1 Annual Meetings. Annual meetings of stockholders shall be held at such place, date and hour as shall be fixed by the Board and designated by the Board and stated in the notice of the meeting or waiver of notice thereof, at which the stockholders shall elect the directors of the Company and transact such other business as may properly be brought before the meeting. However, no annual meeting need be held if all actions, including the election of directors, required by the General Corporation Law of the State of Delaware (the “**DGCL**”) to be taken at a stockholders’ annual meeting are taken by written consent in lieu of meeting pursuant to Section 2.5.5 of this Article II.

Section 2.2 Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by law or by the Company’s certificate of incorporation (the “**Certificate**”), (i) may be called by the chairman of the Board or the president and (ii) shall be called by the president or secretary at the request in writing of a majority of the Board or stockholders owning capital stock of the Company representing a majority of the votes of all capital stock of the Company entitled to vote thereat. Such request of the Board or the stockholders shall state the purpose or purposes of the proposed meeting.

Section 2.3 Notices. Written notice of each stockholders’ meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote thereat by or at the direction of the officer calling such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which said meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in said notice and any matters reasonably related thereto. Notice of any meeting of stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy, or who shall, in person or by his attorney thereunto authorized, waive such notice in writing, either

before or after such meeting. Except as otherwise provided in these bylaws (the “**Bylaws**”) or required by the DGCL, neither the business to be transacted at, nor the purpose of, any meeting of the stockholders need be specified in any such notice or waiver of notice. Notice of any adjourned meeting of stockholders shall not be required to be given, except when expressly required by law.

Section 2.4 Quorum. Except where otherwise provided by the Certificate or these Bylaws, the presence at a stockholders’ meeting of the holders, present in person or represented by proxy, of capital stock of the Company representing a majority of the votes of all capital stock of the Company entitled to vote thereat shall constitute a quorum at such meeting for the transaction of business except as otherwise provided by law, the Certificate or these Bylaws. If a quorum shall not be present or represented at any meeting of the stockholders, a majority of the stockholders entitled to vote thereat, present in person or represented by proxy, or, in the absence of all the stockholders entitled to vote thereat, any officer of the Company entitled to preside at, or act as secretary of, such meeting, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such reconvened meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the reconvened meeting, a notice of said meeting shall be given to each stockholder entitled to vote at said meeting. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 2.5 Organization. Unless otherwise determined by the Board, at each meeting of the stockholders, one of the following officers of the Company shall act as chairman of the meeting and preside thereat, in the following order of precedence:

- i. the chairman, if any;
- ii. the president;
- iii. any executive vice president;
- iv. any director, officer or stockholder of the Company designated by the Board to act as chairman of such meeting and to preside thereat if the chairman or the president shall be absent from such meeting; or
- v. a stockholder of record who shall be chosen chairman of such meeting by a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat.

The secretary of the Company or, if he shall be presiding over such meeting in accordance with the provisions of this Section 2.5 or if he shall be absent from such meeting, the person (who shall be an assistant secretary of the Company, if an assistant secretary has been appointed and is present) whom the chairman of such meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

Section 2.6 Order of Business. The order of business at each meeting of the stockholders shall be determined by the chairman of such meeting, but such order of business may be changed by a majority in voting interest of those present in person or by proxy at such meeting and entitled to vote thereat.

Section 2.7 Voting of Shares.

Section 2.7.1. Voting Lists. The officer or agent who has charge of the stock ledger of the Company shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any such stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. The original stock transfer books shall be prima facie evidence as to who are the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders. Failure to comply with the requirements of this section shall not affect the validity of any action taken at said meeting.

Section 2.7.2. Votes Per Share. Unless otherwise provided in the Certificate or these Bylaws, each stockholder shall be entitled to one vote in person or by proxy at every stockholders meeting for each share of common stock held by such stockholder.

Section 2.7.3. Control of Vote. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. A person whose stock is pledged shall be entitled to vote, unless, in the transfer by the pledgor on the books of the Company, he has expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent such stock and vote thereon. If shares or other securities having voting power stand in the record of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the secretary shall be given written notice to the contrary and furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- i. if only one votes, his act binds all;
- ii. if more than one votes, the act of the majority so voting binds all; and
- iii. if more than one votes, but the vote is evenly split on any particular matter, such shares shall be voted in the manner provided by law.

If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purposes of this Section 2.7 shall be a majority or even-split in interest.

Section 2.7.4. Proxies. Every stockholder entitled to vote at a meeting or to express consent or dissent without a meeting or a stockholder's duly authorized attorney-in-fact may authorize another person or persons to act for him by proxy. Each proxy shall be in writing, executed by the stockholder giving the proxy or by his duly authorized attorney. No proxy shall be voted on or after three (3) years from its date, unless the proxy provides for a longer period. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it, or his legal representatives or assigns, except in those cases where an irrevocable proxy permitted by statute has been given.

Section 2.7.5. Required Vote. When a quorum is present at any meeting, the vote of the holders, present in person or represented by proxy, of capital stock of the Company representing a majority of the votes of all capital stock of the Company entitled to vote thereat shall decide any question brought before such meeting, unless the question is one upon which, by express provision of law or the Certificate or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 2.7.6. Method of Vote. Unless demanded by a stockholder present in person or by proxy at any meeting and entitled to vote thereon, the vote on any question need not be by ballot. Upon a demand by any such stockholder for a vote by ballot upon any question, such vote by ballot shall be taken. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted.

Section 2.7.7. Consents in Lieu of Meeting. Any action required by the DGCL to be or which may be taken at any meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent 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, as permitted by the DGCL. Prompt, written notice of the action taken by means of any such consent which is other than unanimous shall be given to those stockholders who have not consented in writing.

### **ARTICLE III. DIRECTORS**

Section 3.1 Purpose. The business of the Company shall be managed by or under the direction of the Board, which may exercise all such powers of the Company and do all such lawful acts and things as are not by law, the Certificate or these Bylaws directed or required to be exercised or done by the stockholders.

Section 3.2 Number. The number of directors constituting the Board shall never be less than two and shall be determined by resolution of the Board. Directors need not be stockholders. Each director shall hold office until his successor is elected and qualified, or until his earlier death or resignation or removal in the manner hereinafter provided.

Section 3.3 Election. At each meeting of the stockholders for the election of directors at which a quorum is present, the persons receiving the greatest number of votes, up to the

number of directors to be elected, of the stockholders present in person or by proxy and entitled to vote thereon shall be the directors; provided, however, that for purposes of such vote no stockholder shall be allowed to cumulate his votes. Unless an election by ballot shall be demanded as provided in Section 2.7 of Article II, election of directors may be conducted in any manner approved at such meeting, except as hereinafter provided, and each director shall hold office until his successor has been duly elected and qualified. Directors need not be stockholders.

Section 3.4 Vacancies. Vacancies and newly-created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until their successors are duly elected and qualified. If there are no directors in office, then an election of directors may be held in the manner provided by law. No decrease in the size of the Board shall serve to shorten the term of an incumbent director.

Section 3.5 Removal and Resignation. Unless otherwise restricted by law, the Certificate or these Bylaws, any director or the entire Board may be removed, with or without cause, by a majority vote of the shares entitled to vote at an election of directors, or by written consent of the stockholders. Any director may resign at any time by giving written notice to the Board, the chairman, if any, the president or the secretary.

Section 3.6 Compensation. Unless otherwise restricted by the Certificate or these Bylaws, the Board shall have the authority to fix the compensation of directors. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board and may be paid either a fixed sum for attendance at each meeting of the Board or a stated salary as director. No such payment shall preclude any director from serving the Company in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation for attending committee meetings.

#### **ARTICLE IV.**

##### **BOARD MEETINGS**

Section 4.1 Annual Meetings. The Board shall meet as soon as practicable after the adjournment of each annual stockholders' meeting at the place of the annual stockholders' meeting, unless it shall have transacted all such business by written consent pursuant to Section 4.5 of this Article IV. No notice to the directors shall be necessary to legally convene this meeting, provided a quorum is present.

Section 4.2 Regular Meetings. Regularly scheduled, periodic meetings of the Board may be held without notice at such times and places as shall from time to time be determined by resolution of the Board and communicated to all directors.

Section 4.3 Special Meetings. Special meetings of the Board (i) may be called by the chairman of the board or president and (ii) shall be called by the president or secretary on the written request of two or more directors. Notice of each special meeting of the Board shall be given, either personally or as hereinafter provided, to each director at least 24 hours before the meeting if such notice is delivered personally or by means of telephone, telegram, telex or facsimile transmission and delivery; two days before the meeting if such notice is delivered by a

recognized express delivery service; and three days before the meeting if such notice is delivered through the United States mail. Any and all business may be transacted at a special meeting which may be transacted at a regular meeting of the Board. Except as may be otherwise expressly provided by law, the Certificate or these Bylaws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting.

Section 4.4 Quorum, Required Vote. A majority of the total number of directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by law, the Certificate or these Bylaws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 4.5 Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate or these Bylaws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting, without prior notice and without a vote, if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

## **ARTICLE V.**

### **COMMITTEES OF DIRECTORS**

Section 5.1 Establishment; Standing Committees. The Board may by resolution establish, name or dissolve one or more committees, each committee to consist of one or more of the directors. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have power to change the members of any such committee at any time, to fill vacancies and to discharge any such committee, either with or without cause, at any time.

Section 5.2 Available Powers. Any committee established pursuant to Section 5.1 hereof, but only to the extent provided in the resolution of the Board establishing such committee or otherwise delegating specific power and authority to such committee and as limited by law, the Certificate and these Bylaws, 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 seal of the Company to be affixed to all papers which may require it.

Section 5.3 Unavailable Powers. No committee of the Board shall have the power or authority to amend the Certificate (except in connection with the issuance of capital stock as provided in the previous section); recommend a dissolution of the Company or a revocation of such a dissolution; amend these Bylaws of the Company; or, unless the resolution establishing such committee or the certificate of incorporation expressly so provides, declare a dividend, authorize the issuance of stock or adopt a certificate of merger.

Section 5.4 Alternate Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

Section 5.5 Procedures. Time, place and notice, if any, of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members designated by the Board shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by law, the Certificate or these Bylaws. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present.

## ARTICLE VI. OFFICERS

Section 6.1 Elected Officers. The Board shall elect a president, a secretary and a treasurer (collectively, the “**Required Officers**”) having the respective duties enumerated below and may elect such other officers having the titles and duties set forth below which are not reserved for the Required Officers or such other titles and duties as the Board may by resolution from time to time establish.

Section 6.1.1. Chairman of the Board. If elected, the chairman of the Board shall preside when present at all meetings of the stockholders and the Board. The chairman of the Board shall advise and counsel the President and other officers and shall exercise such powers and perform such duties as shall be assigned to or required of the chairman of the Board from time to time by the Board or these Bylaws.

Section 6.1.2. President. The president shall be the chief executive officer of the Company, shall have general supervision of the affairs of the Company and general control of all of its business subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board. In the absence (or inability or refusal to act) of the chairman of the Board, the president (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

Section 6.1.3. Vice Presidents. In the absence (or inability or refusal to act) of the president, any vice president (in the order designated by the Board) shall perform the duties and have the powers of the president. Any one or more of the vice presidents may be given an additional designation of rank or function.

Section 6.1.4. Secretary. The secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board

and shall perform such other duties as may be prescribed by the Board, the chairman of the Board or president. The secretary shall have custody of the corporate seal of the Company and the secretary, or any assistant secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature, the signature of the treasurer, or, if elected, by the signature of any assistant secretary or assistant treasurer. The Board may give general authority to any other officer to affix the seal of the Company and to attest the affixing thereof by his or her signature. The secretary shall keep, or cause to be kept, at the principal executive office of the Company or at the office of the Company's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

Section 6.1.5. Assistant Secretaries. The assistant secretary or, if there be more than one, the assistant secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the secretary, perform the duties and have the powers of the secretary.

Section 6.1.6. Treasurer. The treasurer shall perform all duties commonly incident to that office (including, without limitation, the care and custody of the funds and securities of the Company which from time to time may come into the treasurer's hands and the deposit of the funds of the Company in such banks or trust companies as the Board or the president may authorize).

Section 6.1.7. Assistant Treasurers. The assistant treasurer or, if there shall be more than one, the assistant treasurers in the order determined by the Board shall, in the absence (or inability or refusal to act) of the treasurer, perform the duties and exercise the powers of the treasurer.

Section 6.2 Election. All officers shall be elected by the Board and shall hold office for such term as may be prescribed by the Board. Each elected officer shall hold office until his successor has been elected or appointed and qualified or until his earlier death or resignation or removal in the manner hereinafter provided

Section 6.3 Appointed Officers. The Board may also appoint or delegate the power to appoint such other officers, assistant officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary, and the titles and duties of such appointed officers may be as described in Section 6.1 hereof for elected officers; provided that the officers and any officer possessing authority over or responsibility for any functions of the Board shall be elected officers. Each appointed officer shall hold office until his successor has been elected or appointed and qualified or until his earlier death or resignation or removal in the manner hereinafter provided.

Section 6.4 Multiple Officeholders, Stockholder and Director Officers. Any number of offices may be held by the same person, unless the Certificate or these Bylaws otherwise provide. Officers need not be stockholders or residents of the State of Delaware. Officers, such

as the chairman of the board, possessing authority over or responsibility for any function of the Board must be directors.

Section 6.5 Compensation, Vacancies. The compensation of elected officers shall be set by the Board. The Board shall fill any vacancy in the offices of president, secretary or treasurer, and may fill any vacancy in any other office. The compensation of appointed officers and the filling of vacancies in appointed offices may be delegated by the Board to the same extent as permitted by these Bylaws for the initial filling of such offices.

Section 6.6 Additional Powers and Duties. In addition to the foregoing especially enumerated powers and duties, the several elected and appointed officers of the Company shall perform such other duties and exercise such further powers as may be provided by law, the Certificate or these Bylaws or as the Board may from time to time determine or as may be assigned to them by any competent committee or superior officer.

Section 6.7 Removal. Any officer may be removed, either with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board.

## **ARTICLE VII.**

### **SHARE CERTIFICATES**

Section 7.1 Entitlement to Certificates. The shares of the Company shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company.

Section 7.2 Multiple Classes of Stock. If the Company shall be authorized to issue more than one class of capital stock or more than one series of any class, a statement of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall, unless the Board shall by resolution provide that such class or series of stock shall be uncertificated, be set forth in full or summarized on the face or back of the certificate which the Company shall issue to represent such class or series of stock; provided that, to the extent allowed by law, in lieu of such statement, the face or back of such certificate may state that the Company will furnish a copy of such statement without charge to each requesting stockholder.

Section 7.3 Signatures. Each certificate representing capital stock of the Company shall be signed by or in the name of the Company by (1) the chairman of the board, the president or a vice president; and (2) the treasurer, an assistant treasurer, the secretary or an assistant secretary of the Company. The signatures of the officers of the Company may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to hold such office before such certificate is issued, it may be issued by the Company with the same effect as if he held such office on the date of issue.

Section 7.4 Issuance and Payment. Subject to the provisions of applicable law, the Certificate or these Bylaws, shares may be issued for such consideration and to such persons as the Board may determine from time to time. Shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate is issued.

Section 7.5 Addresses of Stockholders. Each stockholder shall designate to the secretary an address at which notices of meetings and all other corporate notices may be served or mailed to him, and, if any stockholder shall fail to designate such address, corporate notices may be served upon him by mail directed to him at his post-office address, if any, as the same appears on the share record books of the Company or at his last known post-office address.

Section 7.6 Lost Certificates. The Board may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Company a bond in such sum as it may direct as indemnity against any claim that may be made against the Company with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 7.7 Transfer of Stock. The transfer of stock and certificates which represent the stock of the Company shall be governed by Article 8 of Subtitle 1 of Title 6 of the Delaware Code (the Uniform Commercial Code), as amended from time to time. Registration of transfers of shares of the Company shall be made only on the books of the Company upon request of the registered holder thereof, or of his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the Company, and upon the surrender of the certificate or certificates for such shares properly endorsed or accompanied by a stock power duly executed. However, the Board may make such additional rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for stock of the Company.

Section 7.8 Record; Registered Stockholders. A record in one or more counterparts shall be kept of the name of the person, firm or Company owning the shares represented by each certificate for stock of the Company issued, the number of shares represented by each such certificate, the date thereof and, in the case of cancellation, the date of cancellation. The Company shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, vote and be held liable for calls and assessments and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any person other than such registered owner, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

## **ARTICLE VIII. INDEMNIFICATION**

Section 8.1 General Right. As provided in the Certificate, to the fullest extent permitted by the DGCL as the same exists or may hereafter be amended, a director of the Company shall not be liable to the Company or its stockholders for breach of fiduciary duty as a director.

Section 8.2 Right to Indemnification. Without limitation of any right conferred by Section 8.1 of this Article VIII, each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “**proceeding**”), by reason of the fact that he or she is or was an incorporator, resident agent, director or officer of the Company or, while an incorporator, resident agent, director or officer of the Company, is or was serving at the request of the Company as such an incorporator, resident agent, director or officer, or as an employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter a “**Covered Person**”), whether the basis of such proceeding is alleged action in an official capacity as an incorporator, resident agent, director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Company to the fullest extent authorized or permitted by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than permitted prior thereto), against all expenses, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person in connection therewith and such indemnification shall continue as to a Covered Person who has ceased to be a director, officer or employee and shall inure to the benefit of the Covered Person’s heirs, testators, intestates, executors and administrators; provided, however, that such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Company, and with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided, further, however, that no indemnification shall be made in the case of an action, suit or proceeding by or in the right of the Company in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director, officer, employee or agent is liable to the Company, unless a court having jurisdiction shall determine that, despite such adjudication, such person is fairly and reasonably entitled to indemnification; provided, further; that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification and advancement of expenses, the Company shall indemnify a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

Section 8.3 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.2, a Covered Person shall also have the right to be paid by the Company the expenses (including, without limitation, attorneys’ fees) incurred in defending, testifying, or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an “**advancement of expenses**”); provided, however, that, if the DGCL requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Company (and not in any other capacity in which service was or is rendered by such Covered Person, including, without limitation, service to an employee benefit plan) shall be

made only upon delivery to the Company of an undertaking (hereinafter an “*undertaking*”), by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “*final adjudication*”) that such Covered Person (i) breached his fiduciary duty to the Company or (ii) is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

Section 8.4 Right of Indemnitee to Bring Suit. If a claim under Section 8.2 or Section 8.3 is not paid in full by the Company within sixty (60) days after a written claim therefor has been received by the Company, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the Covered Person may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Company to recover an advancement of expenses pursuant to the terms of an undertaking, the Covered Person shall also be entitled to be paid the expense of prosecuting or defending such suit. In any suit brought by (a) the Covered Person to enforce a right to indemnification hereunder (but not in a suit brought by a Covered Person to enforce a right to an advancement of expenses) it shall be a defense that, and (b) the Company to recover an advancement of expenses pursuant to the terms of an undertaking, the Company shall be entitled to recover such expenses upon a final adjudication that, the Covered Person has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Company (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Company (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Covered Person has not met such applicable standard of conduct, shall create a presumption that the Covered Person has not met the applicable standard of conduct or, in the case of such a suit brought by the Covered Person, shall be a defense to such suit. In any suit brought by the Covered Person to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Company to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Covered Person is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Company.

Section 8.5 Non-Exclusivity of Rights. The rights provided to Covered Persons pursuant to this Article VIII shall not be exclusive of any other right that any Covered Person may have or hereafter acquire under applicable law, the Certificate, these Bylaws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.6 Insurance. The Company may maintain insurance, at its expense, to protect itself and/or any person who is or was a director, officer, employee or agent of the Company or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.7 Indemnification of Other Persons. This Article VIII shall not limit the right of the Company to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to persons other than Covered Persons. Without limiting the foregoing, the Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company and to any other person who is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Covered Persons under this Article VIII.

Section 8.8 Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Company or by changes in applicable law, or the adoption of any other provision of these Bylaws inconsistent with this Article VIII, shall, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Company to provide broader indemnification rights to Covered Persons on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.9 Certain Definitions. For purposes of this Article VIII, (a) references to “other enterprise” shall include any employee benefit plan; (b) references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “serving at the request of the Company” shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Company.”

Section 8.10 Contract Rights. The rights provided to Covered Persons pursuant to this Article VIII (a) shall be contract rights based upon good and valuable consideration, pursuant to which a Covered Person may bring suit as if the provisions of this Article VIII were set forth in a separate written contract between the Covered Person and the Company, (b) shall fully vest at the time the Covered Person first assumes his or her position as a director or officer of the Company, (c) are intended to be retroactive and shall be available with respect to any act or omission occurring prior to the adoption of this Article VIII, (d) shall continue as to a Covered Person who has ceased to be a director or officer of the Company, and (e) shall inure to the benefit of the Covered Person’s heirs, executors and administrators.

Section 8.11 Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

**ARTICLE IX.**  
**INTERESTED DIRECTORS, OFFICERS AND STOCKHOLDERS**

Section 9.1 Validity. Any contract or other transaction between the Company and any of its directors, officers or stockholders (or any corporation or firm in which any of them are directly or indirectly interested) shall be valid for all purposes notwithstanding the presence of such director, officer or stockholder at the meeting authorizing such contract or transaction, or his participation or vote in such meeting or authorization.

Section 9.2 Disclosure, Approval. The foregoing shall, however, apply only if the material facts of the relationship or the interest of each such director, officer or stockholder is known or disclosed:

(A) to the Board and it nevertheless in good faith authorizes or ratifies the contract or transaction by a majority of the directors present, each such interested director to be counted in determining whether a quorum is present but not in calculating the majority necessary to carry the vote; or

(B) to the stockholders and they nevertheless in good faith authorize or ratify the contract or transaction by a majority of the shares present, each such interested person to be counted for quorum and voting purposes.

Section 9.3 Nonexclusive. This provision shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

**ARTICLE X.**  
**MISCELLANEOUS**

Section 10.1 Place of Meetings. All stockholders, directors and committee meetings shall be held at such place or places, within or without the State of Delaware, as shall be designated from time to time by the Board or such committee and stated in the notices thereof. If no such place is so designated, said meetings shall be held at the principal business office of the Company.

Section 10.2 Fixing Record Dates.

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

any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Company may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is otherwise required, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by delivery to its registered office in the State of Delaware, 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. If no record date has been fixed by the Board and prior action by the Board is required, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

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

Section 10.3 Means of Giving Notice. Whenever under law, the Certificate or these Bylaws, notice is required to be given to any director or stockholder, such notice may be given in writing and delivered personally, through the United States mail, by a recognized express delivery service (such as Federal Express) or by means of telegram, telex or facsimile transmission, addressed to such director or stockholder at his address or telex or facsimile transmission number, as the case may be, appearing on the records of the Company, with postage and fees thereon prepaid. Such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail or with an express delivery service or when transmitted, as the case may be. Notice of any meeting of the Board may be given to a director by telephone and shall be deemed to be given when actually received by the director.

Section 10.4 Waiver of Notice. Whenever any notice is required to be given under law, the Certificate or these Bylaws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be filed with the corporate records. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 10.5 Attendance via Communications Equipment. Unless otherwise restricted by the DGCL, the Certificate or these Bylaws, members of the Board, any committee thereof or the stockholders may hold a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can effectively communicate with each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 10.6 Dividends. Dividends on the capital stock of the Company, paid in cash, property, or securities of the Company and as may be limited by the DGCL and applicable provisions of the Certificate (if any), may be declared by the Board at any regular or special meeting.

Section 10.7 Reserves. Before payment of any dividend, there may be set aside out of any funds of the Company available for dividends such sum or sums as the Board from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, for equalizing dividends, for repairing or maintaining any property of the Company or for such other purpose as the Board shall determine to be in the best interest of the Company; and the Board may modify or abolish any such reserve in the manner in which it was created.

Section 10.8 Reports to Stockholders. The Board shall present at each annual meeting of stockholders, and at any special meeting of stockholders when called for by vote of the stockholders, a statement of the business and condition of the Company.

Section 10.9 Contracts and Negotiable Instruments. Except as otherwise provided by law or these Bylaws, any contract or other instrument relative to the business of the Company may be executed and delivered in the name of the Company and on its behalf by the chairman of the board or the president; and the Board may authorize any other officer or agent of the Company to enter into any contract or execute and deliver any contract in the name and on behalf of the Company, and such authority may be general or confined to specific instances as the Board may by resolution determine. All bills, notes, checks or other instruments for the payment of money shall be signed or countersigned by such officer, officers, agent or agents and in such manner as are permitted by these Bylaws and/or as, from time to time, may be prescribed by resolution (whether general or special) of the Board. Unless authorized to do so by these Bylaws or by the Board, no officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement, or to pledge its credit, or to render it liable pecuniarily for any purpose or to any amount.

Section 10.10 Fiscal Year. The fiscal year of the Company shall be the calendar year unless otherwise determined by the Board.

Section 10.11 Seal. The Board may provide a corporate seal, which shall be in the form of a circle and shall bear the full name of the Company, the year of incorporation of the Company and the words and figures "Corporate Seal - Delaware."

Section 10.12 Books and Records. The Company shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its stockholders, Board and committees and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders and the number and class of the shares held by each.

Section 10.13 Resignation. Any director, committee member, officer or agent may resign by giving written notice to the chairman of the board, the president or the secretary. The resignation shall take effect at the time specified therein, or immediately if no time is specified. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 10.14 Surety Bonds. Such officers and agents of the Company (if any) as the president or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Company, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Company, in such amounts and by such surety companies as the president or the Board may determine. The premiums on such bonds shall be paid by the Company and the bonds so furnished shall be in the custody of the secretary.

Section 10.15 Proxies in Respect of Securities of Other Corporations. The chairman of the board, if any, the president, any vice president or the secretary may from time to time appoint an attorney or attorneys or an agent or agents for the Company to exercise, in the name and on behalf of the Company, the powers and rights which the Company may have as the holder of stock or other securities in any other corporation to vote or consent in respect of such stock or other securities, and the chairman of the board, the president, any vice president or the secretary may instruct the person or persons so appointed as to the manner of exercising such powers and rights; and the chairman of the board, the president, any vice president or the secretary may execute or cause to be executed, in the name and on behalf of the Company and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in order that the Company may exercise such powers and rights.

Section 10.16 Amendments. The Board shall have the power to adopt, amend, alter or repeal the Bylaws by the vote of the Board or by the directors' written consent pursuant to Section 4.5 of Article IV. The Bylaws also may be adopted, amended, altered or repealed by the vote of the holders of a majority of the shares then entitled to vote or by the stockholders' written consent pursuant to Section 2.7.7 of Article II.