

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

FORM T-3

FOR APPLICATIONS FOR QUALIFICATION OF INDENTURES
UNDER THE TRUST INDENTURE ACT OF 1939

Gulfport Energy Corporation
(Issuer)

Gator Marine Ivanhoe, Inc.
Gator Marine, Inc.
Gulfport Appalachia, LLC
Gulfport Midstream Holdings, LLC
Grizzly Holdings, Inc.
Gulfport Midcon, LLC
Jaguar Resources LLC
Mule Sky LLC
Puma Resources, Inc.
Reorganized Gulfport Holdco, Inc.
Westhawk Minerals LLC
(Guarantors)

(Name of Applicants)
Gulfport Energy Corporation
3001 Quail Springs Parkway
Oklahoma City, Oklahoma
(Address of principal executive offices)

Securities to be Issued under the Indenture to be Qualified

Title of Class	Amount
8.0% Senior 1145 Notes due 2026	\$500,000,000 aggregate principal amount

Approximate date of proposed public offering: As soon as practicable on or after the Effective Date under the Plan (as defined herein).

Name and registered address of agent for service:

Patrick K. Craine
General Counsel and Corporate Secretary
Gulfport Energy Corporation
3001 Quail Springs Parkway
Oklahoma City, Oklahoma 73134
(405) 252-4600

With a copy to:

Sean T. Wheeler
Michael W. Rigdon
Kirkland & Ellis LLP
609 Main Street
Houston, Texas 77002
Tel: (713) 836-3600
Fax: (713) 836-3601

The Applicants hereby amend this Application for Qualification on such date or dates as may be necessary to delay its effectiveness until (i) the 20th day after the filing of an amendment which specifically states that it shall supersede this Application for Qualification, or (ii) such date as the Securities and Exchange Commission, acting pursuant to Section 307(c) of the Trust Indenture Act of 1939 (the "Trust Indenture Act"), may determine upon the written request of the Applicants.

GENERAL

I. General Information.

Gulfport Energy Corporation is a corporation incorporated in the State of Delaware (the "Issuer" or the "Company"). The guarantors identified below (the "Guarantors" and, together with the Issuer, the "Applicants") have the following forms of organization or incorporation and jurisdictions of formation.

Guarantor	Form	Jurisdiction
Gator Marine Ivanhoe, Inc.	Corporation	Delaware
Gator Marine, Inc.	Corporation	Delaware
Gulfport Appalachia, LLC	Limited liability company	Delaware
Gulfport Midstream Holdings, LLC	Limited liability company	Delaware
Grizzly Holdings, Inc.	Corporation	Delaware
Gulfport Midcon, LLC	Limited liability company	Delaware
Jaguar Resources LLC	Limited liability company	Delaware
Mule Sky LLC	Limited liability company	Delaware
Puma Resources, Inc.	Corporation	Delaware

Reorganized Gulfport Holdco, Inc.	Corporation	Delaware
Westhawk Minerals LLC	Limited liability company	Delaware

The Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and its Debtor Subsidiaries, dated as of April 14, 2021 (the “Plan”) contemplates, among other things, the issuance of \$500,000,000 aggregate principal amount of the Issuer’s 8.0% Senior 1145 Notes due 2026 (the “New Notes”), on a pro rata basis, to holders of the 6.625% senior notes due 2023, 6.000% senior notes due 2024, 6.375% senior notes due 2025 and 6.375% senior notes due 2026, in each case, issued by Debtor Gulfport Energy Corporation, a Delaware corporation (collectively, the “Old Notes”). The Old Notes will be cancelled upon effectiveness of the Plan.

Prior to the Effective Date, as defined below, the entity currently known as Gulfport Energy Corporation intends to merge with and into a subsidiary of a newly formed subsidiary of Gulfport Energy Corporation, Reorganized Gulfport Holdco, with Gulfport Energy Corporation as the surviving entity. In connection with the merger, Gulfport Energy Corporation intends to change its name to Gulfport Energy Operating Corporation, and Reorganized Gulfport Holdco will change its name to Gulfport Energy Corporation (the “Parent Guarantor”) and will be a guarantor of the notes. On a post-restructuring basis, therefore, Gulfport Energy Operating Corporation will be the name of the issuer of the New Notes. The transactions described in this paragraph are referred to herein as the “Reorganization.”

2. Securities Act Exemption Applicable.

The Applicants hereby acknowledge that under Section 306(c) of the Trust Indenture Act, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer or sell through the use or medium of any prospectus or otherwise any security which is not registered under the Securities Act of 1933, as amended, and to which Section 306(c) is applicable notwithstanding the provisions of Section 304 of the Trust Indenture Act, unless such security has been or is to be issued under an indenture and an application for qualification has been filed as to such indenture, or while the application is the subject of a refusal order or stop order or (prior to qualification) any public proceeding or examination under Section 307(c) of the Trust Indenture Act. The failure to file an application for qualification of an indenture on a timely basis could result in an enforcement or other action by the Securities and Exchange Commission.

An application for qualification with respect to the Indenture was not filed until after the solicitation of votes with respect to the Plan of Reorganization had commenced. It was not certain prior to solicitation what the parties would determine to be the terms of the indenture governing the notes, and whether such notes would ultimately be issued pursuant to the exemption provided under Section 1145 of the Bankruptcy Code (as defined below) or Section 4(a)(2) of the Securities Act. Therefore, the Company believes it would have been premature to file the Form T-3 prior to those details being determined. The Applicants believe that the purposes behind the requirement to file a Form T-3 (namely the provision of adequate disclosure to the persons being asked to make an investment decision in respect of the securities in question through the qualification of the indentures) was served prior to the filing of this Form T-3 with respect to the New Notes. The holders of the substantial majority of the Old Notes were at all times adequately represented by counsel during the offering of the New Notes. Moreover, these holders actively negotiated for the terms of the New Notes contained in the Disclosure Statement and Plan of Reorganization. Furthermore, the holders of Old Notes had and continue to have access to a significant amount of information regarding the Applicants by virtue of both (i) having been creditors of the Company for an extensive period of time and (ii) having had access to the reports and other information that had been filed with the Securities and Exchange Commission by the Company, which is required to file reports with the Securities and Exchange Commission and is current in its reporting obligations. The Applicants also believe that the Indenture governing the New Notes contains terms and conditions that are in line with market standard terms and conditions to which investors have become accustomed for transactions of this type. The Indenture was filed with the U.S. Bankruptcy Court for the Southern District of Texas, Houston Division.

Pursuant to the terms of the Plan, under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), the Issuer will issue the New Notes under the indenture to be qualified hereby (the “Indenture”), to all Holders (as defined in the Plan) of Allowed General Unsecured Claims (as defined in the Plan) and Allowed Notes Claims (as defined in the Plan).

The Plan will become effective on the date on which all conditions to the effectiveness of the Plan have been satisfied or waived (the “Effective Date”).

The issuance of the New Notes is exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to the exemption provided by Section 1145(a)(1) of the Bankruptcy Code. Section 1145(a)(1) of the Bankruptcy Code exempts an offer and sale of securities under a plan of reorganization from registration under the Securities Act and state securities laws if three principal requirements are satisfied: (i) the securities must be offered and sold under a plan of reorganization and must be securities of the debtor, an affiliate participating in a joint plan with the debtor or a successor to the debtor under the plan of reorganization; (ii) the recipients of the securities must hold a prepetition or administrative expense claim against the debtor or an interest in the debtor; and (iii) the securities must be issued entirely in exchange for the recipient’s claim against or interest in the debtor, or principally in such exchange and partly for cash or property. The Applicants believe that the issuance of the New Notes will satisfy the aforementioned requirements. See “Article IV Means For Implementation of This Plan – E. Exemption from Registration Requirements” of the Plan.

AFFILIATIONS

3. Affiliates.

The following describes the Company’s wholly-owned direct, or wholly-owned indirect, subsidiaries as of the the date of this Application:

Name of Entity	Record Owner	Ownership Percentage
Gator Marine Ivanhoe, Inc.	Gulfport Energy Corporation	100%
Gator Marine, Inc.	Gulfport Energy Corporation	100%
Gulfport Appalachia, LLC	Gulfport Energy Corporation	100%
Gulfport Midstream Holdings, LLC	Gulfport Energy Corporation	100%
Grizzly Holdings, Inc.	Gulfport Energy Corporation	100%
Grizzly Oil Sands ULC	Grizzly Holdings, Inc.	24.9%
Gulfport Midcon, LLC	Gulfport Energy Corporation	100%
Jaguar Resources LLC	Gulfport Energy Corporation	100%
Mule Sky LLC	Gulfport Energy Corporation	100%
Puma Resources, Inc.	Gulfport Energy Corporation	100%
Reorganized Gulfport Holdco	Gulfport Energy Corporation	100%
Tatex Thailand II, LLC	Gulfport Energy Corporation	23.5%
Westhawk Minerals LLC	Gulfport Energy Corporation	100%
Windsor Midstream LLC	Gulfport Energy Corporation	22.5%

As a result of the Reorganization and at the time of the Effective Date, Gulfport Energy Corporation will change its name to Gulfport Energy Operating Corporation, and Gulfport Energy Operating Corporation will be the record owner of each of the subsidiaries attributable to Gulfport Energy Corporation listed above, other than Reorganized Gulfport Holdco, which will adopt the name Gulfport Energy Corporation and will be a publicly traded company with the ownership outlined in Item 5 "Principal Owners of Voting Securities."

Certain directors and officers of the Applicants may be deemed to be "affiliates" of the Applicants by virtue of their positions with the Applicants. See Item 4, "Directors and Executive Officers."

Certain persons may be deemed to be "affiliates" of the Applicants by virtue of their holdings of the voting securities of the Applicants. See Item 5, "Principal Owners of Voting Securities."

MANAGEMENT AND CONTROL

4. Directors and Executive Officers.

The names of the directors and executive officers of the Issuer, as of the date hereof, are set forth below. The mailing address for each director and executive officer is: c/o 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134 and each person's telephone number is (405) 252-4600.

Name	Office
Alvin Bledsoe	Chairman
David M. Wood	President, Chief Executive Officer and Director
Deborah G. Adams	Director
Valerie Jochen	Director
Samantha Holroyd	Director
C. Doug Johnson	Director
Ben T. Morris	Director
John W. Somerhalder II	Director
Donnie Moore	Chief Operating Officer
Quentin R. Hicks	Chief Financial Officer
Patrick K. Craine	General Counsel and Corporate Secretary
Lester Zitkus	Senior Vice President, Land
Michael Sluiter	Senior Vice President, Reservoir Engineering

The persons chosen to become directors and executive officers of the Parent Guarantor as of the Effective Date are set forth below. The mailing address for each director and executive officer is: c/o 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134 and each person's telephone number is (405) 252-4600.

Name	Office
Tim Cutt	Director and Interim Chief Financial Officer
Guillermo Martinez	Director
Jason Martinez	Director
David Wolf	Director
David Reganato	Director
David M. Wood	President, Chief Executive Officer and Director
Donnie Moore	Chief Operating Officer
Patrick K. Craine	General Counsel and Corporate Secretary
Lester Zitkus	Senior Vice President, Land
Michael Sluiter	Senior Vice President, Reservoir Engineering

5. Principal Owners of Voting Securities.

(a) There are no persons known to the Issuer to own 10 percent or more of the voting securities of the Issuer as of the date of this Application.

(b) The following table sets forth certain information regarding each person known to the Issuer to own 10 percent or more of the voting securities of the Guarantors as of the date of this Application.

Guarantor Name	Name and Complete Mailing Address	Title of Class Owned	Amount Owned	Percentage of Voting Securities Owned
Gator Marine Ivanhoe, Inc.	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Common Stock	1,000	100%
Gator Marine, Inc.	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Common Stock	1,000	100%
Gulfport Appalachia, LLC	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Limited Liability Company Interest	1	100%
Gulfport Midstream Holdings, LLC	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Limited Liability Company Interest	1	100%
Grizzly Holdings, Inc.	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Common Stock Preferred Stock	100,000 10,000	100%
Gulfport Midcon, LLC	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Limited Liability Company Interest	1	100%

Jaguar Resources LLC	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Limited Liability Company Interests	100	100%
Mule Sky LLC	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Limited Liability Company Interest	1	100%
Puma Resources, Inc.	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Common Stock	1,000	100%
Reorganized Gulfport Holdco	Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Common Stock	1,000	100%
Westhawk Minerals LLC	Gulfport Energy Operating Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Limited Liability Company Interest	1	100%

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As a result of the Reorganization and at the time of the Effective Date, Gulfport Energy Corporation will change its name to Gulfport Energy Operating Corporation, and Gulfport Energy Operating Corporation will be the holder of each of the subsidiaries attributable to Gulfport Energy Corporation listed above, other than Reorganized Gulfport Holdco, which will adopt the name Gulfport Energy Corporation and will be a publicly traded company with the ownership outlined below.

The following table sets forth certain information regarding each person that the Issuer expects will own 10 percent or more of the voting securities of the Issuer as of the Effective Date.

Name and Complete Mailing Address	Title of Class Owned	Amount Owned	Percentage of Voting Securities Owned
Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	Common Stock	1,000	100%

The following table sets forth certain information regarding each person that the Issuer expects will own 10 percent or more of the voting securities of the Parent Guarantor as of the Effective Date.

Name and Complete Mailing Address	Title of Class Owned	Amount Owned	Percentage of Voting Securities Owned
Silver Point Capital, L.P. on behalf of accounts managed or advised by it or its wholly owned subsidiaries	Common Stock	6,207,510	27.4%
MacKay Shields LLC on behalf of accounts it manages and advises	Common Stock	3,397,587	10.6%

UNDERWRITERS

6. Underwriters.

(a) Within three years prior to the date of the filing of this Application, no person acted as an underwriter of any securities of the Applicants that are currently outstanding on the date of this Application.

(b) There is no proposed principal underwriter for the New Notes that are to be issued in connection with the Indenture that is to be qualified under this Application.

CAPITAL SECURITIES

7. Capitalization.

(a) The following tables set forth certain information with respect to each authorized class of securities of the Issuer as of the date of this Application.

Title of Class	Amount Authorized	Amount Outstanding
Common Stock, \$.01 par value per share	200,000,000	160,762,186
Preferred Stock, \$.01 par value per share	5,000,000	0
6.625% senior notes due 2023	\$ 350,000,000	\$ 324,600,000
6.000% senior notes due 2024	\$ 650,000,000	\$ 579,600,000
6.375% senior notes due 2025	\$ 600,000,000	\$ 507,900,000
6.375% senior notes due 2026	\$ 450,000,000	\$ 374,600,000

It is expected that, upon consummation of the Plan, the Issuer's capital structure shall be comprised of the New Notes, New Common Stock (as defined in the Plan), and the New Preferred Stock (as defined in the Plan). The New Notes will be guaranteed by each of the Guarantors.

The Old Notes will be cancelled and discharged pursuant to the Plan.

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INDENTURE SECURITIES

8. Analysis of Indenture Provisions.

The New Notes will be subject to the new Indenture to be entered into among the Company, the Parent Guarantor, the Guarantors and UMB Bank, Nation Association, as trustee (the "Trustee"). The following is a general description of certain provisions expected to be included in the Indenture, and the description is qualified in its entirety by reference to the form of Indenture filed as Exhibit T3C.1 herewith. The Issuer has not entered into the Indenture as of the date of this filing, and the terms of the Indenture are subject to change before it is executed. The expected terms of the New Notes are described in the term sheet relating to the New Notes, which is included as part of Exhibit I to the Restructuring Support Agreement approved as part of the Plan. Capitalized terms used below and not defined herein have the meanings ascribed to them in the Indenture. References to articles and sections below are to the applicable articles and sections of the Indenture, unless otherwise noted.

(a) Events of Default; Withholding of Notice

An "Event of Default" occurs if:

- (1) the Company defaults in any payment of interest on any Security when the same becomes due and payable, and such default continues for a period of 30 days;
- (2) the Company defaults in the payment of the principal of any Security when the same becomes due and payable at its Stated Maturity, upon optional redemption, upon required purchase, upon declaration of acceleration or otherwise;
- (3) the Company fails to comply with its obligations in Section 5.01;
- (4) an "Event of Default," as defined under the Private Placement Securities Indenture, shall have occurred under Section 6.01(4) of the Private Placement Securities Indenture, and shall not have been waived or rescinded pursuant to the terms of the Private Placement Securities Indenture;
- (5) the Company or any Applicable Guarantor fails to comply for 60 days after notice with its other agreements contained in the Indenture;
- (6) an "Event of Default," as defined under the Private Placement Securities Indenture, shall have occurred under Section 6.01(6) of the Private Placement Securities Indenture, and shall not have been waived or rescinded pursuant to the terms of the Private Placement Securities Indenture;
- (7) the Company, any Applicable Guarantor or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
 - (A) commences a voluntary case;
 - (B) consents to the entry of an order for relief against it in an involuntary case;
 - (C) consents to the appointment of a Custodian of it or for any substantial part of its property; or
 - (D) makes a general assignment for the benefit of its creditors;or takes any comparable action under any foreign laws relating to insolvency;
- (8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
 - (A) is for relief against the Company or any Significant Subsidiary in an involuntary case;
 - (B) appoints a Custodian of the Company or any Significant Subsidiary or for any substantial part of its property; or
 - (C) orders the winding up or liquidation of the Company or any Significant Subsidiary;or any similar relief is granted under any foreign laws and, in each case, the order or decree remains unstayed and in effect for 60 days;

- (9) an "Event of Default," as defined under the Private Placement Securities Indenture, shall have occurred under Section 6.01(9) of the Private Placement Securities Indenture, and shall not have been waived or rescinded pursuant to the terms of the Private Placement Securities Indenture;
- (10) (i) any Parent Guarantee or (ii) any Subsidiary Guarantee with respect to any Subsidiary Guarantor whose assets have a net book value of more than \$15.0 million, in either of case (i) or (ii), ceases to be in full force and effect (other than in accordance with the terms of such Applicable Guarantee or the Indenture) or any Applicable Guarantor denies or disaffirms its obligations under its Applicable Guarantee; or
- (11) the occurrence of an Event of Default under the Private Placement Indenture.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

A Default under clauses (4) and (5) shall not constitute an Event of Default until the Trustee or the holders of 30% in principal amount of the outstanding Securities notify the Company of the Default and the Company does not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied, and state that such notice is a "Notice of Default".

If a Default occurs, is continuing and is known to the Trustee, the Trustee shall send to each Securityholder notice of the Default within 90 days after it occurs. Except in the case of a Default in the payment of principal of or interest on any Security (including payments pursuant to the mandatory purchase provisions of such Security), the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is not opposed to the interests of the Securityholders.

(b) The authentication and delivery of the indenture securities and the application of the proceeds thereof

Two Officers shall sign the Securities for the Company by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under the Indenture.

On the Issue Date, the Trustee shall authenticate and deliver \$500,000,000 of 8.0% Senior 1145 Notes due 2026 and, at any time and from time to time thereafter, the Trustee shall authenticate and deliver Securities for original issue in an aggregate principal amount specified in such order, in each case upon a written order of the Company signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company. Such order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated and, in the case of an issuance of Additional Securities pursuant to Section 2.13 after the Issue Date, shall certify that such issuance is in compliance with Section 4.03.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate the Securities. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in the Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

There will be no proceeds to the Issuer from the issuance of the New Notes.

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(c) The release or the release and substitution of any property subject to the lien of the indenture

(12) None.

The New Notes will be unsecured.

(d) Satisfaction and discharge of the Indenture

The Indenture will be satisfied and discharged and will cease to be of further effect as to all New Notes issued thereunder, when:

- (1) either:
- (A) all New Notes that have been authenticated, except lost, destroyed or wrongfully taken New Notes that have been replaced and New Notes for whose payment money has been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or
 - (B) all New Notes that have not been delivered to the Trustee for cancellation have become due and payable, whether at maturity or as a result of the sending of a notice of redemption or will become due and payable within one year or are to be called for redemption within one year and the Company has irrevocably deposited or caused to be deposited with the Trustee or the Paying Agent, as applicable, as trust funds in trust solely for the benefit of the Holders, cash sufficient to pay at maturity or upon redemption all outstanding New Notes, including interest thereon to maturity or such redemption date;
- (2) the Company has paid or caused to be paid all sums payable by it under the Indenture; and
- (3) the Company has delivered an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge of the Indenture have been satisfied.
- (e) Evidence required to be furnished by the obligor upon the indenture securities to the trustee as to compliance with the conditions and covenants provided for in such indenture

If a Default occurs, is continuing and is known to the Trustee, the Trustee shall send to each Securityholder notice of the Default within 90 days after it occurs.

Upon request to the Trustee to take or refrain from taking any action under any provision of the Indenture, the Company will generally furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in the Indenture and relating to such action have been complied with, and an Opinion of Counsel stating that, in the opinion of such counsel to the Company, all such conditions precedent have been complied with.

9. Other Obligors.

Other than the Applicants, no other person is an obligor with respect to the New Notes.

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CONTENTS OF APPLICATION FOR QUALIFICATION

This Application for Qualification comprises:

- (a) Pages numbered 1 to 10, consecutively.
- (b) The Statement of Eligibility and Qualification on Form T-1 of the trustee under the Indenture to be qualified.
- (c) The following exhibits in addition to those filed as part of the Statement of Eligibility and Qualification of the trustee:

Exhibit T3A.1.1 [Restated Certificate of Incorporation of Gulfport Energy Corporation](#)

Exhibit T3A.1.2 [Certificate of Amendment No. 1 to the Restated Certificate of Incorporation of Gulfport Energy Corporation](#)

Exhibit T3A.1.3 [Certificate of Amendment No. 2 to the Restated Certificate of Incorporation of Gulfport Energy Corporation](#)

Exhibit T3A.1.4 [Certificate of Designation of Series B Junior Participating Preferred Stock of Gulfport Energy Corporation](#)

Exhibit T3B.1 [Second Amended and Restated Bylaws of Gulfport Energy Corporation](#)

Exhibit T3A.2 [Certificate of Incorporation of Gator Marine Ivanhoe, Inc.](#)

Exhibit T3B.2 [By-Laws of Gator Marine Ivanhoe, Inc.](#)

- Exhibit T3A.3 [Certificate of Incorporation of Gator Marine, Inc.](#)
- Exhibit T3B.3 [By-Laws of Gator Marine, Inc.](#)
- Exhibit T3A.4.1 [Certificate of Formation of Gulfport Appalachia, LLC](#)
- Exhibit T3A.4.2 [Certificate of Amendment to the Certificate of Formation of Gulfport Appalachia, LLC](#)
- Exhibit T3A.4.3 [Certificate of Amendment to the Certificate of Formation of Gulfport Appalachia, LLC](#)
- Exhibit T3B.4 [Amended and Restated Limited Liability Company Agreement of Gulfport Appalachia, LLC](#)
- Exhibit T3A.5 [Certificate of Formation of Gulfport Midstream Holdings, LLC](#)
- Exhibit T3B.5 [Limited Liability Company Agreement of Gulfport Midstream Holdings, LLC](#)
- Exhibit T3A.6 [Certificate of Incorporation of Grizzly Holdings, Inc.](#)
- Exhibit T3B.6 [By-Laws of Grizzly Holdings, Inc.](#)

- Exhibit T3A.7.1 [Certificate of Formation of Gulfport Midcon, LLC](#)
- Exhibit T3A.7.2 [Certificate of Amendment to the Certificate of Formation of Gulfport Midcon, LLC](#)
- Exhibit T3B.7 [Limited Liability Company Agreement of Gulfport Midcon, LLC](#)
- Exhibit T3A.8 [Certificate of Formation of Jaguar Resources LLC](#)
- Exhibit T3B.8 [Limited Liability Company Agreement of Jaguar Resources LLC](#)
- Exhibit T3A.9 [Certificate of Formation of Mule Sky LLC](#)
- Exhibit T3B.9 [Limited Liability Company Agreement of Mule Sky LLC](#)
- Exhibit T3A.10 [Certificate of Incorporation of Puma Resources, Inc.](#)
- Exhibit T3B.10 [By-Laws of Puma Resources, Inc.](#)
- Exhibit T3A.11 [Certificate of Incorporation of Reorganized Gulfport Holdco, Inc.](#)
- Exhibit T3B.11 [By-Laws of Reorganized Gulfport Holdco, Inc.](#)
- Exhibit T3A.12 [Certificate of Formation of Westhawk Minerals LLC](#)
- Exhibit T3B.12 [Limited Liability Company Agreement of Westhawk Minerals LLC](#)
- Exhibit T3C.1 [Form of Indenture of Gulfport Energy Corporation, the subsidiary guarantors executing the signature pages thereto, the initial parent guarantor and UMB Bank, Nation Association, as trustee, for the 8.0% Senior 1145 Notes due 2026.](#)
- Exhibit T3D.1 Not Applicable.
- Exhibit T3E.1 [Disclosure Statement for Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and its Debtor Subsidiaries.](#)
- Exhibit T3F.1 [Cross-reference sheet showing the location in the Indenture of the provisions inserted therein pursuant to Section 310 through 318\(a\), inclusive, of the Trust Indenture Act of 1939 \(included in Exhibit T3C.1 hereto\).](#)
- Exhibit 25.1 [Statement of Eligibility and Qualification on Form T-1 of the trustee under the Indenture to be qualified.](#)

SIGNATURES

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Energy Corporation, a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Gulfport Energy Corporation

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gator Marine Ivanhoe, Inc., a corporation organized and existing under the laws of the State of Delaware, has

duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Gator Marine Ivanhoe, Inc.

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gator Marine, Inc., a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Gator Marine, Inc.

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Appalachia, LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Gulfport Appalachia, LLC

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Energy Operating Corporation, a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Gulfport Energy Operating Corporation

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Midstream Holdings, LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Gulfport Midstream Holdings, LLC

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Grizzly Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Grizzly Holdings, Inc.

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Midcon, LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Gulfport Midcon, LLC

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Jaguar Resources LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Jaguar Resources LLC

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Mule Sky LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Mule Sky LLC

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Puma Resources, Inc., a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Puma Resources, Inc.

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Westhawk Minerals LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 7, 2021.

(SEAL)

Westhawk Minerals LLC

By: /s/ Patrick K. Craine
Name: Patrick K. Craine
Title: General Counsel and Corporate Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:20 PM 04/25/2006
FILED 01:22 PM 04/25/2006
SRV 060381099 - 2764773 FILE

RESTATED CERTIFICATE OF INCORPORATION

OF

GULFPORT ENERGY CORPORATION

Gulfport Energy Corporation (the "**Corporation**"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "**DGCL**"), does hereby certify as follows:

1. The name of the Corporation is "Gulfport Energy Corporation." The Corporation was originally incorporated under the name "WRT Energy Corporation" and the date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was June 20, 1997.
2. This Restated Certificate of Incorporation (the "**Certificate**") was duly adopted by a majority of the Board of Directors of the Corporation in accordance with the provisions of Section 245(b) of the DGCL.
3. The Certificate restates and integrates the provisions of the certificate of incorporation of the Corporation.
4. The text of the certificate of incorporation of the Corporation is hereby restated and integrated in its entirety to read as follows:

**ARTICLE I
NAME**

The name of the corporation is Gulfport Energy Corporation (the "**Corporation**").

**ARTICLE II
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL"), within or without the State of Delaware.

**ARTICLE III
DURATION**

The duration of the Corporation shall be in perpetuity, or such maximum period as may be authorized by the laws of Delaware.

**ARTICLE IV
AUTHORIZED CAPITAL**

The Corporation is hereby authorized to issue a total of sixty million (60,000,000) shares of capital stock which shall be subdivided into classes as follows:

(a) Fifty-five million (55,000,000) shares of the Corporation's capital stock shall be denominated as Common Stock, have a par value of \$0.01 per share, and have the rights, powers and preferences set forth in this paragraph. The holders of Common Stock shall share ratably, with all other classes of common equity, in any dividends that may, from time to time, be declared by the Board of Directors. No dividends may be paid with respect to the Corporation's Common Stock, however, until dividend distributions to the holders of Preferred Stock, if any, have been paid in accordance with the certificate or certificates of designation relating to such Preferred Stock. The holders of Common Stock shall share ratably, with all other classes of common equity, if any, in any assets of the Corporation that are available for distribution to the holders of common equity securities of the Corporation upon the dissolution or liquidation of the Corporation. The holders of Common Stock shall be entitled to cast one vote per share on all matters that are submitted for a vote of the stockholders. There are no redemption or sinking fund provisions that are applicable to the Common Stock of the Corporation. Subject only to the requirements of the DGCL and the foregoing limits, the Board of Directors is expressly authorized to issue shares of Common Stock without stockholder approval, at any time and from time to time, to such persons and for such consideration as the Board of Directors shall deem appropriate under the circumstances.

(b) Five million (5,000,000) shares of the Corporation's authorized capital stock shall be denominated as Preferred Stock, par value of \$0.01 per share. Shares of Preferred Stock may be issued from time to time in one or more series as the Board of Directors, by resolution or resolutions, may from time to time determine, each of said series to be distinctively designated. The voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions thereof, if any, of each such Series of Preferred Stock may differ from those of any and all other series of Preferred Stock at any time outstanding, and the Board of Directors is hereby expressly granted authority to fix or alter, by resolution or resolutions, the designation, number, voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, of each such series of Preferred Stock, including, but without limiting the generality of the foregoing, the following:

- (i) The distinctive designation of, and the number of shares of Preferred Stock that shall constitute, each series of Preferred Stock, which number (except as otherwise provided by the Board of Directors in the resolution establishing such series) may be increased or decreased (but not below the number of shares of such series then outstanding) from time to time by the Board of Directors without prior approval of the holders of such series;
- (ii) The rights in respect of dividends, if any, of such series of Preferred Stock, the extent of the preference or relation, if any, of such dividends payable on any other class or classes or any other series of the same or other class or classes of capital

stock of the Corporation, and whether such dividends shall be cumulative or non-cumulative;

- (iii) The right, if any, of the holders of such series of Preferred Stock to convert the same into, or exchange the same for, shares of any other class or classes or of any other series of the same or any other class or classes of capital stock of the Corporation and the terms and conditions of such conversion or exchange, including, without limitation, whether or not the number of shares of such other class or series into which shares of such series may be converted or exchanged shall be adjusted in the event of any stock split, stock dividend, subdivision, combination, reclassification or other transaction or series of transactions affecting the class or series into which such series of Preferred Stock may be converted or exchanged;
- (iv) Whether or not shares of such series of Preferred Stock shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, shares of such series of Preferred Stock may be redeemed;
- (v) The rights, if any, of the holder of such series of Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or in the event of any merger or consolidation of or sale of assets by the Corporation;
- (vi) The terms of sinking fund or redemption or repurchase account, if any, to be provided for shares of such series of Preferred Stock;
- (vii) The voting powers, if any, of the holders of any series of Preferred Stock generally or with respect to any particular matter, which may be less than, equal to or greater than one vote per share, and which may, without limiting the generality of the foregoing, include the right, voting as a series by itself or together with the holders of any other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation (which, without limiting the generality of the foregoing, may include a specified number or portion of the then-existing number of authorized directorships of the Corporation, or a specified number or portion of directorships in addition to the then-existing number of authorized directorships of the Corporation), generally or under such specific circumstances and on such conditions, as shall be provided in the resolution or resolutions of the Board of Directors adopted pursuant hereto; and
- (viii) Such other powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as the Board of Directors shall determine.

Upon the creation of any new class or series of Preferred Stock of the Corporation, the Board of Directors shall prepare and file with the records of the Corporation and pursuant to the

applicable provisions of the DGCL a certificate setting forth the rights and preferences of such class or series of Preferred Stock, which certificate as so filed shall be deemed an amendment to this Certificate of Incorporation and shall not require the consent of any stockholder.

(c) In addition to the Common Stock and Preferred Stock described above, the Board of Directors is authorized to cause the issuance of any options, rights, warrants or appreciation rights relating to any equity or debt security of the Corporation and which may have rights or preference junior or senior to any equity or debt security of the Corporation from time to time on terms and conditions established in the sole and complete discretion of the Board of Directors. If and to the extent required by the DGCL, upon the creation of any new class or series of additional securities of the Corporation, the Board of Directors shall prepare and file with the records of Corporation a certificate setting forth the rights and preferences of such class or series of additional securities of the Corporation, which certificate shall be deemed an amendment to this Certificate of Incorporation and shall not require the consent of any stockholder.

(d) Except to the extent that such rights are specifically enumerated in a certificate setting forth the rights and preferences of a specific class or series of Preferred Stock or other securities of the Corporation, no stockholder shall have any preemptive, preferential or other right, including, without limitation, with respect to (i) the issuance or sale of additional Common Stock of the Corporation, (ii) the issuance or sale of additional Preferred Stock of the Corporation, (iii) the issuance of any obligation and/or evidence of indebtedness of the Corporation which is or may be convertible into or exchangeable for, or accompanied by any rights to receive, purchase or subscribe to, any shares of Common Stock, Preferred Stock or other securities of the Corporation, (iv) the issuance of any right of subscription to, or right to receive, any warrant or option for the purchase of any Common Stock, Preferred Stock or other securities of the Corporation or (v) the issuance or sale of any other equity or debt securities that may be issued or sold by the Corporation from time to time.

(e) Notwithstanding anything in this Certificate of Incorporation to the contrary, the Board of Directors shall be prohibited from authorizing or issuing any equity securities that have no voting rights.

ARTICLE V RIGHTS AND POWERS OF STOCKHOLDERS

(a) Meetings of stockholders may be held within or without the State of Delaware, at such date and time as is requested by the person or persons calling the meeting, within the limits fixed by law. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation.

(b) At any annual or special meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting in accordance with this Article V. To be properly brought before an annual meeting business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (c) otherwise properly brought before the meeting by a stockholder. For business

to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the meeting, provided, however, that in the event that less than seventy (70) days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (c) the number of shares of the Corporation which are beneficially owned by the stockholder and (d) any material interest of the stockholder in such business. To be properly brought before a special meeting of stockholders, business must have been specified in the notice of meeting (or supplement thereto) given by or at the direction of the Board of Directors. Notwithstanding anything in the By-laws to the contrary, no business shall be conducted at any annual or special meeting except in accordance with the procedures set forth in this Article V. The chairman of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting in accordance with the provisions of this Article V, and if he should so determine, he shall so declare at the meeting and any such business not properly brought before the meeting shall not be transacted.

(c) Only persons who are nominated in accordance with the procedures set forth in this Article V shall be eligible for election as directors of the Corporation. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Article V. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the meeting, provided, however, that in the event that less than seventy (70) days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (i) the name, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) the number of shares, if any, of the Corporation which are beneficially owned by such person and (iv) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including without limitation such persons' written consent to being named in the proxy statement as a nominee and to serving as a director if elected); and (b) as to the stockholder giving the notice (i) the name and address, as they appear on the

Corporation's books, of such stockholder and (ii) the number of shares of the Corporation which are beneficially owned by such stockholder. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed herein, and if he should so determine, he shall so declare at the meeting and the defective nomination shall be disregarded.

ARTICLE VI DIRECTORS

(a) The business and affairs of the Corporation shall be conducted and managed by, or under the direction of, the Board of Directors. The exact number of directors of the Corporation shall be fixed by the Board of Directors as provided in the By-laws.

(b) The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the DGCL (including, without limitation, paragraph (7) of subsection (b) of Section 102 thereof), as the same may be amended and supplemented from time to time. If the DGCL hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended DGCL. Any repeal or modification of this paragraph by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

(c) The election of directors of the Corporation need not be by written ballot, unless the By-laws of the Corporation otherwise provide.

ARTICLE VII REGISTERED OFFICE AND AGENT

The address of the Corporation's registered office in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, County of New Castle. Corporation Service Company is the Corporation's registered agent at this address.

ARTICLE VIII AMENDMENTS TO THE CERTIFICATE OF INCORPORATION AND BY-LAWS

(a) The Corporation reserves the right to amend, alter, change or repeal, from time to time, any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation of powers.

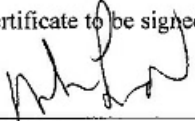
(b) The Board shall have the power to make, adopt, alter, amend and repeal from time to time the By-laws of this Corporation, subject to the right of the stockholders entitled to vote with respect thereto to adopt, amend and repeal by-laws.

ARTICLE IX
SECTION 203 – BUSINESS COMBINATIONS WITH INTERESTED STOCKHOLDERS

The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its Chairman of the Board, this 20th day of April, 2006.

By: 
Mike Liddell
Chairman of the Board

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:43 PM 10/02/2009
FILED 02:20 PM 10/02/2009
SRV 090905950 - 2764773 FILE

**Certificate of Amendment No. 1 of
the Restated Certificate of Incorporation of
Gulfport Energy Corporation**

(Pursuant to Section 242 of the General Corporation Law of the State of Delaware)

Gulfport Energy Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is Gulfport Energy Corporation.

2. Article IV of the Corporation's Restated Certificate of Incorporation is hereby amended by striking the introductory sentence of Article IV and the first sentence of paragraph (a) of Article IV in their entirety and replacing them with the following:

"The Corporation is hereby authorized to issue a total of one hundred five million (105,000,000) shares of capital stock which shall be subdivided into classes as follows:

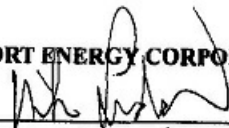
(a) One hundred million (100,000,000) shares of the Corporation's capital stock shall be denominated as Common Stock, have a par value of \$0.01 per share, and have the rights, powers and preferences set forth in this paragraph."

3. The above-referenced amendment was duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, Gulfport Energy Corporation has caused this Certificate of Amendment to be executed as of October 2, 2009.

GULFPORT ENERGY CORPORATION

By: _____


Name: MIKE LIDDELL
Office: CHAIRMAN OF THE BOARD

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:19 PM 07/19/2013
FILED 07:15 PM 07/19/2013
SRV 130900218 - 2764773 FILE

**Certificate of Amendment No. 2 to
the Restated Certificate of Incorporation of
Gulfport Energy Corporation**

(Pursuant to Section 242 of the General Corporation Law of the State of Delaware)

Gulfport Energy Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is Gulfport Energy Corporation.

2. Article IV of the Corporation's Restated Certificate of Incorporation is hereby amended by striking the introductory sentence of Article IV and the first sentence of paragraph (a) of Article IV in their entirety and replacing them with the following:

"The Corporation is hereby authorized to issue a total of two hundred and five million (205,000,000) shares of capital stock which shall be subdivided into classes as follows:

(a) two hundred million (200,000,000) shares of the Corporation's capital stock shall be denominated as Common Stock, have a par value of \$0.01 per share, and have the rights, powers and preferences set forth in this paragraph."

3. The above-referenced amendment was duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, Gulfport Energy Corporation has caused this Certificate of Amendment to be executed as of July 19, 2013.

GULFPORT ENERGY CORPORATION

By: Michael G. Moore

Name: Michael G. Moore

Title: Vice President, Chief Financial Officer and Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:25 PM 04/30/2020
FILED 04:25 PM 04/30/2020
SR 20203323260 - File Number 2764773

CERTIFICATE OF DESIGNATION
OF
SERIES B JUNIOR PARTICIPATING PREFERRED STOCK
OF
GULFPORT ENERGY CORPORATION

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

The undersigned hereby certifies that the following resolution was duly adopted by the board of directors of Gulfport Energy Corporation, a Delaware corporation (the "Corporation"), on April 30, 2020:

RESOLVED, that pursuant to the authority vested in the board of directors of the Corporation (the "Board") by the Restated Certificate of Incorporation of the Corporation (as may be amended from time to time, the "Charter"), the Board hereby creates, authorizes and provides for the issue of a series of Preferred Stock, par value \$0.01 per share, of the Corporation, to be designated "Series B Junior Participating Preferred Stock" (hereinafter referred to as the "Series B Preferred Stock"), initially consisting of 200,000 shares, and to the extent that the designations, powers, preferences and relative and other special rights and the qualifications, limitations or restrictions of the Series B Preferred Stock are not stated and expressed in the Charter, hereby fixes and herein states and expresses such designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions thereof, as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series B Junior Participating Preferred Stock," and the number of shares constituting such series shall be 200,000. Such number of shares may be increased or decreased by resolution of the Board; *provided, however*, that no decrease shall reduce the number of shares of Series B Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series B Preferred Stock.

Section 2. Dividends and Distributions.

(a) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock (as defined in the Charter) ranking prior and superior to the shares of Series B

Preferred Stock with respect to dividends, the holders of shares of Series B Preferred Stock, in preference to the holders of common stock, par value \$0.01 per share, of the Corporation (the "Common Stock") shall be entitled to receive, when, as and if declared by the Board out of funds legally available for the purpose, quarterly dividends payable in cash on the last business day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series B Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (i) \$1,000 or (ii) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, plus 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series B Preferred Stock. In the event the Corporation at any time after April 30, 2020 (the "Rights Declaration Date") (x) declares any dividend on Common Stock payable in shares of Common Stock, (y) subdivides the outstanding Common Stock or (z) combines the outstanding Common Stock into a smaller number of shares, then in each case the amount to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event under clause (ii) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The Corporation shall declare a dividend or distribution on the Series B Preferred Stock as provided in Section 2(a) immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); *provided, however*, that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior to and superior to the shares of Series B Preferred Stock with respect to dividends, a dividend of \$1.00 per share on the Series B Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(c) Dividends shall begin to accrue and be cumulative on outstanding shares of Series B Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series B Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series B Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series B Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board may fix a record date for the determination of holders of shares of Series B Preferred Stock entitled to

receive payment of a dividend or distribution declared thereon, which record date shall be no more than sixty (60) days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series B Preferred Stock shall have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series B Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation at any time after the Rights Declaration Date (i) declares any dividend on Common Stock payable in shares of Common Stock, (ii) subdivides the outstanding Common Stock or (iii) combines the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided herein or by law, the holders of shares of Series B Preferred Stock and the holders of shares of Common Stock shall vote collectively as one class on all matters submitted to a vote of stockholders of the Corporation.

(c) Except as set forth herein or as otherwise provided by law, holders of Series B Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(a) Whenever quarterly dividends or other dividends or distributions payable on the Series B Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series B Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of capital stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Preferred Stock, except dividends paid ratably on the Series B Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any capital stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Preferred Stock other than (A) such redemptions or purchases that may be deemed to occur upon the exercise of stock options, warrants or similar rights or grant, vesting or lapse of restrictions on the grant of any performance shares, restricted stock, restricted stock units

or other equity awards to the extent that such shares represent all or a portion of (x) the exercise or purchase price of such options, warrants or similar rights or other equity awards or (y) the amount of withholding taxes owed by the holder of such award in respect of such grant, exercise, vesting or lapse of restrictions; (B) such purchases necessary to satisfy the issuance of any shares upon the exercise or satisfy the vesting and settlement of any options, warrants or similar rights or other equity awards pursuant to the terms of the Corporation's equity plans maintained for the benefit of its employees, directors and other service providers; or (C) the repurchase, redemption or other acquisition or retirement for value of any such shares from employees, directors, former directors, consultants or former consultants of the Corporation or their respective estate, spouse, former spouse or family member, pursuant to the terms of the agreement pursuant to which such shares were acquired; *provided*, that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any capital stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series B Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series B Preferred Stock, or any shares of capital stock ranking on a parity with the Series B Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under Section 4(a), purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series B Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up.

(a) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of capital stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock unless, prior thereto, the holders of shares of Series B Preferred Stock shall have received \$1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series B Liquidation Preference"). Following the payment of the full amount of the Series B Liquidation Preference, no additional distributions shall be made to the holders of shares of Series B Preferred Stock unless, prior thereto, the holders of shares of Common Stock have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series B Liquidation Preference by

(ii) 1,000 (as appropriately adjusted as set forth in Section 6(c) below to reflect such events as stock splits, reverse stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the “Adjustment Number”). Following the payment of the full amount of the Series B Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series B Preferred Stock and Common Stock, respectively, and the payment of liquidation preferences of all other shares of capital stock which rank prior to or on a parity with Series B Preferred Stock, holders of Series B Preferred Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively.

(b) In the event, however, that there are not sufficient assets available to permit payment in full of the Series B Liquidation Preference and the liquidation preferences of all other series of Preferred Stock, if any, which rank on a parity with the Series B Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(c) In the event the Corporation at any time after the Rights Declaration Date (i) declares a dividend on Common Stock payable in shares of Common Stock, (ii) subdivides outstanding Common Stock or (iii) combines the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, Etc. In case the Corporation enters into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series B Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, for which or into which each share of Common Stock is exchanged or changed. In the event the Corporation at any time after the Rights Declaration Date (i) declares any dividend on Common Stock payable in shares of Common Stock, (ii) subdivides the outstanding Common Stock or (iii) combines the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series B Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series B Preferred Stock shall not be redeemable.

Section 9. Ranking. The Series B Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, whether or not upon the dissolution, liquidation or winding up of the Corporation, unless the terms of any such series provides otherwise.


Section 10. Amendment. The Charter shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series B Preferred Stock so as to affect them adversely without the affirmative vote of the holders of two-thirds of the outstanding shares of Series B Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. Series B Preferred Stock may be issued in fractions of a share that entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and have the benefit of all other rights of holders of Series B Preferred Stock.

* * * * *

IN WITNESS WHEREOF, the Corporation has executed this Certificate of Designation as of April 30, 2020.

GULFPORT ENERGY CORPORATION

By: 
Name: Patrick K Crinic
Title: EVA- GC

[Signature Page to Certificate of Designation]

SECOND AMENDED AND RESTATED BYLAWS

OF

GULFPORT ENERGY CORPORATION

A DELAWARE CORPORATION

(THE "CORPORATION")

ADOPTED AS OF JANUARY 26, 2020

BYLAWS OF GULFPORT ENERGY CORPORATION

ARTICLE I
OFFICES

Section 1.1 Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2 Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "**Board**") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II
STOCKHOLDERS MEETINGS

Section 2.1 Annual Meetings. The annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting.

Section 2.2 Special Meetings. Except as otherwise required by applicable law or provided in the Corporation's Restated Certificate of Incorporation, as the same may be amended or restated from time to time (the "**Certificate of Incorporation**"), special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board, Chief Executive Officer or the Board pursuant to a resolution adopted by a majority of the Whole Board (as defined below). Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). "**Whole Board**" shall mean the total number of directors the Corporation would have if there were no vacancies.

Section 2.3 Notices. Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat by the Corporation not less than 10 nor more than 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 the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any

special meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement (as defined in Section 2.7(c)) given before the date previously scheduled for such meeting.

Section 2.4 Quorum. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. 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. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

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Section 2.5 Voting of Shares.

(a) Voting Lists. The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxyholders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxyholder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary of the Corporation until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority.

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

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

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

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(d) Required Vote.

(i) Uncontested Election. Except as provided in Section 2.5(d)(ii) and subject to the rights of any holders of one or more series of preferred stock of the Corporation ("**Preferred Stock**"), voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, each director shall be elected by a vote of the majority of the votes cast at any meeting for the election of directors at which a quorum is present. For purposes of this Section 2.5(d)(i), a majority of the votes cast means that the number of shares voted "for" a director must exceed the number of votes cast "against" that director. In an uncontested election, any incumbent director who is not elected because he or she does not receive a majority of the votes cast shall immediately tender his or her resignation for consideration by the Board. The Board will evaluate whether to accept or reject such resignation, or whether other action should be taken; provided, however, that the Board will act on such resignation and publicly disclose its decision to accept or reject such resignation and the rationale behind such decision within 90 days from the date of the certification of the director election results. The Board may fill any vacancy resulting from the non-election or resignation of a director as provided in these Bylaws.

(ii) Contested Election. Subject to the rights of any holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, in a contested election, each director shall be elected by a plurality of the votes cast, which shall mean that the directors receiving the largest number of "for" votes will be elected in such contested election, at any meeting for the election of directors at which a quorum is present. For purposes of this Section 2.5(d)(ii), a contested election means an election in which (i) as of the last day for giving notice of a stockholder nominee, a stockholder has nominated a candidate for director in accordance with the requirements of these Bylaws, and (ii) as of the date that notice of the annual meeting is given, the Board considers that a stockholder-nominated director candidacy has created a bona fide election contest.

(iii) All Other Matters. Except as set forth in Section 2.5(d)(i) and Section 2.5(d)(ii), all other matters shall be determined by the vote of a majority of

the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these Bylaws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) Inspectors of Election. The Board may appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at any meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6 Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

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Section 2.7 Advance Notice for Business

(a) Annual Meetings of Stockholders. At any annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting in accordance with Article V of the Certificate of Incorporation and this Section 2.7(a). To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the meeting by or at the direction of the Board or (iii) otherwise properly brought before the meeting by a stockholder of the Corporation (x) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.7(a) and on the record date for the determination of stockholders entitled to vote at such annual meeting and (y) who complies with the notice procedures set forth in Article V of the Certificate of Incorporation and this Section 2.7(a). Notwithstanding anything in this Section 2.7(a) to the contrary, only persons nominated for election as a director at an annual meeting pursuant to Article V of the Certificate of Incorporation and Section 3.2 will be considered for election at such meeting.

(i) In addition to any other applicable requirements, for business (other than nominations) to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than 60 days nor more than 90 days prior to the meeting, provided, however, that in the event that less than 70 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described in this Section 2.7(a).

(ii) To be in proper written form, a stockholder's notice to the Secretary with respect to any business (other than nominations) must set forth as to each such matter that such stockholder proposes to bring before the annual meeting (A) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (B) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (C) the class or series and number of shares of the Corporation which are owned beneficially and of record by the stockholder and by the beneficial owner, if any, on whose behalf the proposal is made, (D) any material interest of the stockholder and the beneficial owner, if any, on whose behalf the proposal is made, (E) the text of any resolutions proposed for consideration and in the event such business includes a proposal to amend these Bylaws, the language of the proposed amendment, (F) a description of all arrangements or understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and (G) a representation that such stockholder intends to appear in person at the annual meeting to bring such business before the meeting.

(iii) The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 2.7(a), and if he should so determine, he shall so declare at the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.7(a), if the stockholder (or a qualified representative of the stockholder) does not appear in person at the annual meeting of stockholders of the Corporation to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(iv) In addition to the provisions of this Section 2.7(a), a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 2.7(a) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

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(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only pursuant to Section 3.2.

(c) Public Announcement. For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

Section 2.8 Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter

upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these Bylaws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.9 Consents in Lieu of Meeting Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders of the Corporation, unless the Board approves in advance the taking of such action by means of written consent of stockholders, in which case such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum voting power that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation to its registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary of the Corporation. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation by delivery to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. An electronic transmission consenting to the action to be taken and transmitted by a stockholder, proxyholder or a person or persons authorized to act for a stockholder or proxyholder shall be deemed to be written, signed and dated for purposes hereof if such electronic transmission sets forth or is delivered with information from which the Corporation can determine that such transmission was transmitted by a stockholder or proxyholder (or by a person authorized to act for a stockholder or proxyholder) and the date on which such stockholder, proxyholder or authorized person transmitted such transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and delivered to the Corporation by delivery either to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary of the Corporation. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the limitations on delivery in the previous sentence, consents given by electronic transmission may be otherwise delivered to the Corporation's principal place of business or to the Secretary if, to the extent, and in the manner provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders were delivered to the Corporation as provided in this [Section 2.9](#).

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ARTICLE III DIRECTORS

Section 3.1 Powers; Number. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware. The number of directors constituting the Board shall not be less than five nor more than eleven, the exact number of directors to be such number as may be set from time to time within the limits set forth above by resolution adopted by affirmative vote of a majority of the Whole Board.

Section 3.2 Advance Notice for Nomination of Directors

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of holders of one or more series of Preferred Stock to elect directors. Nominations of persons for election to the Board at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in the Corporation's notice of such special meeting, may be made (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation (x) who is a stockholder of record on the date of the giving of the notice provided for in this [Section 3.2](#) and on the record date for the determination of stockholders entitled to vote for the election of directors at such meeting and (y) who complies with the notice procedures set forth in Article V of the Certificate of Incorporation and this [Section 3.2](#) and.

(b) For a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 60 days nor more than 90 days prior to the meeting; provided, however, that in the event that less than 70 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. In no event shall the public announcement of an adjournment of an annual meeting or special meeting commence a new time period for the giving of a stockholder's notice as described in this [Section 3.2](#).

(c) Notwithstanding anything in paragraph (b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is greater than the number of directors whose terms expire on the date of the annual meeting and there is no public announcement by the Corporation naming all of the nominees for the additional directors to be elected or specifying the size of the increased Board before the close of business on the 90th day prior to the anniversary date of the immediately preceding annual meeting of stockholders, a stockholder's notice required by Article V of the Certificate of Incorporation and this [Section 3.2](#) shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase that are to be filled by election at such annual meeting, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the date on which such public announcement was first made by the Corporation.

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(d) To be in proper written form, a stockholder's notice to the Secretary shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) the

class or series and number of shares, if any, of the Corporation which are owned beneficially and of record by such person and (D) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including without limitation such persons' written consent to being named in the proxy statement as a nominee and to serving as a director if elected); and (ii) as to the stockholder giving the notice (A) the name and address, as they appear on the Corporation's books, of such stockholder and the name and address of the beneficial owner, if any, on whose behalf the nomination is made, (B) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, (C) a description of all arrangements or understandings relating to the nomination to be made by such stockholder among such stockholder, the beneficial owner, if any, on whose behalf the nomination is made, each proposed nominee and any other person or persons (including their names), (D) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (E) any other information relating to such stockholder and the beneficial owner, if any, on whose behalf the nomination is made that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed herein, and if he should so determine, he shall so declare at the meeting and the defective nomination shall be disregarded.

(e) Except as otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of one or more series of Preferred Stock to nominate and elect directors, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in Article V of the Certificate of Incorporation and in this Section 3.2. If the Board or the chairman of the meeting of stockholders determines that any nomination was not made in accordance with the provisions of this Section 3.2, then such nomination shall not be considered at the meeting in question. Notwithstanding the foregoing provisions of this Section 3.2, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(f) In addition to the provisions of this Section 3.2, a stockholder shall also comply with all of the applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 3.2 shall be deemed to affect any rights of the holders of Preferred Stock to elect directors pursuant to the Certificate of Incorporation.

Section 3.3 Compensation. Unless otherwise restricted by the Certificate of Incorporation 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 other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

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 the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

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

Section 4.3 Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or Chief Executive Officer and (b) shall be called by the Chairman of the Board, Chief Executive Officer or Secretary on the written request of at least a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, 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. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4 Quorum; Required Vote. A majority of the Whole Board 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 applicable law, the Certificate of Incorporation 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 of Incorporation 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 if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6 Organization. The Board shall elect a Chairman of the Board from among the directors. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V COMMITTEES OF DIRECTORS

Section 5.1 Establishment. The Board may designate 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 the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2 Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3 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.

Section 5.4 Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) 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 applicable law, the Certificate of Incorporation, these Bylaws or the Board. 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. Unless the Board otherwise provides and except as provided in these Bylaws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these Bylaws.

ARTICLE VI OFFICERS

Section 6.1 Officers. The officers of the Corporation elected by the Board shall be a Chief Executive Officer, a President, a Treasurer, a Secretary and such other officers (including without limitation a Chief Financial Officer, Vice Presidents, Assistant Secretaries and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chairman of the Board, Chief Executive Officer or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these Bylaws or as may be prescribed by the Board or, if such officer has been appointed by the Chairman of the Board, Chief Executive Officer or President, as may be prescribed by the appointing officer.

(a) [reserved].

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation 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 Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

(c) President. The President shall be the chief operating officer of the Corporation and shall, subject to the authority of the Chief Executive Officer and the Board, have general management and control of the day-to-day business operations of the Corporation and shall consult with and report to the Chief Executive Officer. The President shall put into operation the business policies of the Corporation as determined by the Chief Executive Officer and the Board and as communicated to the President by the Chief Executive Officer and the Board. The President shall make recommendations to the Chief Executive Officer on all operational matters that would normally be reserved for the final executive responsibility of the Chief Executive Officer. In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer, the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

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(d) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents 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.

(e) Secretary.

(i) 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, Chief Executive Officer or the President. The Secretary shall have custody of the corporate seal of the Corporation 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 or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation'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.

(f) 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.

(g) 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 Corporation which from time to time may come into the Treasurer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board, the Chief Executive Officer or the President may authorize).

(h) 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 Term of Office. The elected officers of the Corporation shall be elected annually by the Board at its first meeting held after each annual meeting of stockholders. All officers elected by the Board shall hold office until the next annual meeting of the Board and until their successors are duly elected and qualified or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chief Executive Officer or President may also be removed, with or without cause, by the Chief Executive Officer or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chief Executive Officer or President may be filled by the Chief Executive Officer or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3 Other Officers. The Board may delegate the power to appoint such other 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 or desirable.

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

ARTICLE VII SHARE CERTIFICATES

Section 7.1 Entitlement to Certificates. The shares of the Corporation 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 Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed in accordance with Section 7.3 representing the number of shares registered in certificate form. The Corporation shall not have power to issue a certificate representing shares in bearer form.

Section 7.2 Multiple Classes of Stock If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights to be set forth in full or summarized on the face or back of any certificate which the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3 Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chief Executive Officer, the President or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4 Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, 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 or upon the books and records of the Corporation in the case of partly paid uncertificated shares, 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 representing certificated shares or said uncertificated shares are issued.

Section 7.5 Lost, Destroyed or Wrongfully Taken Certificates

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6 Transfer of Stock

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an indorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the indorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the indorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such indorsement or instruction or such other reasonable assurance that the indorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7 Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8 Effect of the Corporation's Restriction on Transfer:

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

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(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

Section 7.9 Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII INDEMNIFICATION

Section 8.1 Right to Indemnification. 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 a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation 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 (hereinafter a "**Covered Person**"), whether the basis of such proceeding is alleged action in an official capacity as a 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 Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, 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 with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation 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 8.2 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, a Covered Person shall also have the right to be paid by the Corporation 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 Delaware General Corporation Law ("**DGCL**") requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (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 Corporation 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 is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

Section 8.3 Right of Indemnitee to Bring Suit If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation 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 Corporation 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 (a) any suit brought by 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) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation 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 Corporation (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 Corporation (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 Corporation 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 Corporation.

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Section 8.4 Non-Exclusivity of Rights The rights provided to Covered Persons pursuant to this Article VIII shall not be exclusive of any other right which any Covered Person may have or hereafter acquire under applicable law, the Certificate of Incorporation, these Bylaws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or

another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6 Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation 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 Corporation 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 Corporation and to any other person who is or was serving at the request of the Corporation 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 8.7 Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these Bylaws inconsistent with this Article VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation 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 8.8 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 Corporation” 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 Corporation” for purposes of Section 145 of the DGCL.

Section 8.9 Contract Rights. The rights provided to Covered Persons pursuant to this Article VIII shall be contract rights and such rights shall continue as to a Covered Person who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Covered Person’s heirs, executors and administrators.

Section 8.10 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 MISCELLANEOUS

Section 9.1 Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these Bylaws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2 Fixing Record Dates

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix 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 60 nor less than 10 days before the date of such meeting. 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 business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business 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 Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or 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 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.

(c) In order that the Corporation 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 10 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 Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or the Secretary of the Corporation. Delivery made to the Corporation’s registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is otherwise 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.

Section 9.3 Means of Giving Notice

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these Bylaws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees 22 thereon prepaid, addressed to the director at the director’s address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director’s address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) **Notice to Stockholders.** Whenever under applicable law, the Certificate of Incorporation or these Bylaws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) **Electronic Transmission.** "**Electronic transmission**" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) **Notice to Stockholders Sharing Same Address.** Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) **Exceptions to Notice Requirements.** Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

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Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting which shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4 Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, 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, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. 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 was not lawfully called or convened.

Section 9.5 Meeting Attendance via Remote Communication Equipment

(a) **Stockholder Meetings.** If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) **Board Meetings.** Unless otherwise restricted by applicable law, the Certificate of Incorporation, or these Bylaws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear 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 was not lawfully called or convened.

Section 9.6 Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7 Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

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Section 9.8 Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chief Executive Officer, the President or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chief Executive Officer, President or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9 Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10 Seal. The seal of the Corporation shall be in such form as shall from time to time be adopted by the Board. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11 Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12 Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chief Executive Officer, the President or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13 Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chief Executive Officer, 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 Corporation, 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 Corporation, in such amounts and by such surety companies as the Chief Executive Officer, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14 Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chief Executive Officer, President or any Vice President. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15 Amendments. The Board shall have the power to adopt, amend, alter or repeal the Bylaws. The affirmative vote of a majority of the Whole Board shall be required to adopt, amend, alter or repeal the Bylaws. The Bylaws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by applicable law or the Certificate of Incorporation, the affirmative vote of the holders of at least 66 2/3% of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the Bylaws.

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:57 PM 09/02/2010
FILED 06:41 PM 09/02/2010
SRV 100882417 - 4867759 FILE

**CERTIFICATE OF INCORPORATION
OF
GATOR MARINE IVANHOE, INC.**

THE UNDERSIGNED, acting as the incorporator of a corporation under and in accordance with the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended from time to time (the "DGCL"), hereby adopts the following Certificate of Incorporation for such corporation:

**ARTICLE I
NAME**

The name of the corporation is Gator Marine Ivanhoe, Inc. (the "*Corporation*").

**ARTICLE II
PURPOSE**

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE III
REGISTERED AGENT**

The street address of the initial registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400 in the City of Wilmington, County of New Castle, and the name of the Corporation's initial registered agent at such address is Corporation Service Company.

**ARTICLE IV
CAPITALIZATION**

The total number of shares of capital stock that the Corporation is authorized to issue is 1,000 shares, all of which shares shall be Common Stock having a par value of \$0.01 per share.

**ARTICLE V
INCORPORATOR**

The name and mailing address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
Irina V. Maistrenko	c/o Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201

ARTICLE VI
DIRECTORS

Section 6.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Certificate or the By-Laws (the "By-Laws") of the Corporation, the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the Board that would have been valid if such By-Laws had not been adopted.

Section 6.2 Election. Unless and except to the extent that the By-Laws shall so require, the election of directors need not be by written ballot.

Section 6.3 Initial Directors. Upon the filing of this Certificate, the powers of the incorporator shall terminate. The names and mailing addresses of the persons who are to serve as the initial directors until the first annual meeting of stockholders of the Corporation and such director's successor is elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Mike Liddell	c/o Gulfport Energy Corporation 14313 North May Avenue, Suite 100 Oklahoma City, Oklahoma 73134
James D. Palm	c/o Gulfport Energy Corporation 14313 North May Avenue, Suite 100 Oklahoma City, Oklahoma 73134
Michael G. Moore	c/o Gulfport Energy Corporation 14313 North May Avenue, Suite 100 Oklahoma City, Oklahoma 73134

ARTICLE VII
BY-LAWS

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.

ARTICLE VIII
LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Limitation of Personal Liability. No person who is or was a director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary

damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted by the DGCL as the same exists or hereafter may be amended. If the DGCL is hereafter amended to authorize corporate action further limiting or eliminating the liability of directors, then the liability of a director to the Corporation or its stockholders shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended. Any repeal or amendment of this Section 8.1 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.2 Indemnification.

(a) Each person who is or was 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 a director or officer, employee or agent of the Corporation or, while a director or officer, employee or agent of the Corporation, is or was serving at the request of the Corporation 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 (hereinafter a "**Covered Person**"), whether the basis of such proceeding is alleged action in an official capacity as a 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 Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, 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 with such proceeding, and such right to indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however*, that, except for proceedings to enforce rights to indemnification, the Corporation 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. The right to indemnification conferred by this Section 8.2 shall be a contract right that shall fully vest at the time the Covered Person first assumes his or her position as a director or officer, employee or agent of the Corporation and shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition.

(b) The rights conferred on any Covered Person by this Section 8.2 shall not be exclusive of any other rights that any Covered Person may have or hereafter acquire under law, this Certificate, the By-Laws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.2, will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than Covered Persons.

ARTICLE IX
AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate (including any Preferred Stock Designation), in the manner now or hereafter prescribed by this Certificate and the DGCL; and except as set forth in ARTICLE VIII, all rights, preferences and privileges herein conferred upon stockholders, directors or any other persons by and pursuant to this Certificate in its present form or as hereafter amended are granted subject to the right reserved in this Article.

[Signature page follows]

IN WITNESS WHEREOF, the incorporator of the Corporation hereto has caused this Certificate of Incorporation to be duly executed as of September 2, 2010.



Irina V Maistrenko, Incorporator

BY-LAWS

OF

GATOR MARINE IVANHOE, INC.,

a Delaware corporation

(the "*Corporation*")

(Adopted as of September __, 2010)

BY-LAWS
OF
GATOR MARINE IVANHOE, INC.

ARTICLE I.
OFFICES

Section 1.1. **Registered Office.** The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2. **Additional Offices.** The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "*Board*") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II.
STOCKHOLDERS MEETINGS

Section 2.1. **Annual Meetings.** Unless directors are elected by written consent in lieu of an annual meeting as permitted by applicable law or an annual meeting is otherwise not required by applicable law, an annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting. Stockholders may, unless the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "*Certificate of Incorporation*"), provides otherwise, act by written consent to elect directors; provided, however, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 2.2. **Special Meetings.** Except as otherwise required by applicable law or provided in the Certificate of Incorporation, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board or the Chief Executive Officer, by the Board, or by the Secretary at the request in writing of stockholders holding shares representing a majority of the voting power of the outstanding shares entitled to vote on the matter for which such meeting is to be called. The Secretary shall call such a meeting upon receiving such a request. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

Section 2.3. Notices. Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat by the Corporation not less than 10 nor more than 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 the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto).

Section 2.4. Quorum. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present at any meeting of the stockholders, the chairman of the meeting or the stockholders entitled to vote thereat so present, by a majority in voting power thereof, may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. 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. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5. Voting of Shares.

(a) Voting Lists. The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before each meeting of stockholders, a complete list of the stockholders of record entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxyholders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3(c)), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxyholder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority:

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

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

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

(d) Required Vote. Subject to the rights of the holders of one or more series of preferred stock of the Corporation ("*Preferred Stock*"), voting separately by class or series, to

elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation or these By-Laws, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) Inspectors of Election. The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting or by the stockholders present and entitled to vote thereat, by a majority in voting power thereof, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.7. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, such other person as shall be appointed by the Board, or in the

absence of such appointment, a chairman chosen at the meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By-Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Consents in Lieu of Meeting. Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum voting power that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation to its registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation by delivery to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. An electronic transmission consenting to the action to be taken and transmitted by a stockholder, proxyholder or a person or persons authorized to act for a stockholder or proxyholder shall be deemed to be written, signed and dated for purposes hereof if such electronic transmission sets forth or is delivered with information from which the Corporation can determine that such transmission was transmitted by a stockholder or proxyholder (or by a person authorized to act for a stockholder or proxyholder) and the date on which such stockholder, proxyholder or authorized person transmitted such transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and delivered to the Corporation by delivery either to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the limitations on delivery in the previous sentence, consents given by electronic transmission may be otherwise delivered to the Corporation's principal place of business or to the Secretary if, to the extent, and in the manner provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a

consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders were delivered to the Corporation as provided in this Section 2.8.

ARTICLE III. DIRECTORS

Section 3.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2. Number; Term. The number of directors of the Corporation initially shall be three (3). Thereafter the number of directors, other than those who may be elected by the holders of one or more series of Preferred Stock voting separately by class or series, may be determined from time to time by the Board, but no decrease in such number shall have the effect of shortening the term of any incumbent director. Except as otherwise provided in the Certificate of Incorporation, the directors shall be elected at the annual meeting of stockholders to hold office until the next succeeding annual meeting of stockholders. Each director shall hold office for the term for which such director is elected and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3. Newly Created Directorships and Vacancies. Except as otherwise provided in the Certificate of Incorporation, vacancies resulting from death, resignation, retirement, disqualification, removal or other cause and newly created directorships resulting from an increase in the number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority vote of the directors then in office, even if less than a quorum, by a sole remaining director, or by the stockholders. Except as otherwise provided in the Certificate of Incorporation, if the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled only by a majority of the directors elected by such class or classes or series thereof then in office, by a sole remaining director so elected, or by the stockholders of such class or classes or series thereof. Except as otherwise provided in the Certificate of Incorporation, any director elected or chosen in accordance with this Section 3.3 shall hold office until the next annual election of directors and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.4. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, 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 other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses 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 the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

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

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or Chief Executive Officer and (b) shall be called by the Chairman of the Board, Chief Executive Officer or Secretary on the written request of a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By-Laws, 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. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the Board, but in any event not less than one-third of the Whole Board (as defined below), 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 applicable law, the Certificate of Incorporation or these By-Laws. 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. "Whole Board" shall mean the total number of directors that the Corporation would have if there were no vacancies.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V. COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3. 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.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) 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 applicable law, the Certificate of Incorporation, these By-Laws or the Board. 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. Unless the Board otherwise provides and except as provided in these By-Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By-Laws.

ARTICLE VI. OFFICERS

Section 6.1. **Officers.** The officers of the Corporation elected by the Board shall be a Chairman of the Board, a Chief Executive Officer, a Secretary and such other officers (including without limitation a Chief Financial Officer, Vice Presidents, Assistant Secretaries, Treasurer and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chairman of the Board or Chief Executive Officer may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By-Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chairman of the Board or Chief Executive Officer, as may be prescribed by the appointing officer.

(a) Chairman of the Board. 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 Chief Executive Officer 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 By-Laws. The Chairman of the Board must be a director of the Corporation.

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation 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 Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

(c) Vice Presidents. In the absence (or inability or refusal to act) of the Chief Executive Officer, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the Chief Executive Officer. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(d) Secretary.

(i) 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 Chief Executive Officer. The Secretary shall have custody of the corporate seal of the Corporation 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 or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation'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.

(e) 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.

(f) 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 Corporation which from time to time may come into the Treasurer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board or the Chief Executive Officer may authorize).

(g) 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. Term of Office; Removal; Vacancies. The elected officers of the Corporation shall be elected annually by the Board at its first meeting held after each annual meeting of stockholders. All officers elected by the Board shall hold office until the next annual meeting of the Board and until their successors are duly elected and qualified or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chairman of the Board or Chief Executive Officer may also be removed, with or without cause, by the Chairman of the Board or Chief Executive Officer, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chairman of the

Board or Chief Executive Officer may be filled by the Chairman of the Board or Chief Executive Officer, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. **Other Officers.** The Board may delegate the power to appoint such other 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 or desirable.

Section 6.4. **Multiple Officeholders; Stockholder and Director Officers.** Any number of offices may be held by the same person unless the Certificate of Incorporation or these By-Laws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

ARTICLE VII. SHARE CERTIFICATES

Section 7.1. **Entitlement to Certificates.** The shares of the Corporation 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 Corporation. The Corporation shall not have power to issue a certificate representing shares in bearer form.

Section 7.2. **Multiple Classes of Stock.** If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3. **Signatures.** Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, the Chief Executive Officer or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, 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 or upon the books and records of the Corporation in the case of partly paid uncertificated shares, 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 representing certificated shares or said uncertificated shares are issued.

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an indorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the indorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to

uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the indorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such indorsement or instruction or such other reasonable assurance that the indorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction

was contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII. INDEMNIFICATION

Section 8.1. Right to Indemnification. 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 a director or officer, employee or agent of the Corporation or, while a director or officer, employee or agent of the Corporation, is or was serving at the request of the Corporation 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 (hereinafter a "*Covered Person*"), whether the basis of such proceeding is alleged action in an official capacity as a 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 Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, 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 with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation 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 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, a Covered Person shall also have the right to be paid by the Corporation 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 Delaware General Corporation Law ("*DGCL*") requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (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 Corporation 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 is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

Section 8.3. Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation 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 Corporation 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 (a) any suit brought by 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) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation 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 Corporation (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 Corporation (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 Corporation 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 Corporation.

Section 8.4. 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 of Incorporation, these By-Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6. Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation 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 Corporation 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 Corporation and to any other person who is or was serving at the request of the Corporation 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 8.7. Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By-Laws 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 Corporation 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 8.8. 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 Corporation" 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 Corporation" for purposes of Section 145 of the DGCL.

Section 8.9. 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 Corporation, (b) shall fully vest at the time the Covered Person first assumes his or her position as a director or officer, employee or agent of the Corporation, (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, employee or agent of the Corporation, and (e) shall inure to the benefit of the Covered Person's heirs, executors and administrators.

Section 8.10. 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. MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By-Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the

Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2. Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix 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 60 nor less than 10 days before the date of such meeting. 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 business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business 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 Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or 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 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.

(c) In order that the Corporation 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 10 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 Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is otherwise 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.

Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall

be given either (i) in writing and sent by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in, Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly

reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Addresses. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By-Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By-Laws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By-Laws, a written waiver of such

notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. 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 was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation, or these By-Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear 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 was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board, Chief Executive Officer or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The Board may adopt a corporate seal which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, Chief Executive Officer 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 Corporation, 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 Corporation, in such amounts and by such surety companies as the Chairman of the Board, Chief Executive Officer or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, Chief Executive Officer or any Vice President. Any such officer may, in

the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. The Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:11 PM 07/17/2009
FILED 05:03 PM 07/17/2009
SRV 090708802 - 4710799 FILE

**CERTIFICATE OF INCORPORATION
OF
GATOR MARINE, INC.**

THE UNDERSIGNED, acting as the incorporator of a corporation under and in accordance with the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended from time to time (the "DGCL"), hereby adopts the following Certificate of Incorporation for such corporation:

**ARTICLE I
NAME**

The name of the corporation is Gator Marine, Inc. (the "*Corporation*").

**ARTICLE II
PURPOSE**

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE III
REGISTERED AGENT**

The street address of the initial registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400 in the City of Wilmington, County of New Castle, and the name of the Corporation's initial registered agent at such address is Corporation Service Company.

**ARTICLE IV
CAPITALIZATION**

The total number of shares of capital stock that the Corporation is authorized to issue is 1,000 shares, all of which shares shall be Common Stock having a par value of \$0.01 per share.

**ARTICLE V
INCORPORATOR**

The name and mailing address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
Irina V. Maistrenko	c/o Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201

ARTICLE VI
DIRECTORS

Section 6.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Certificate or the By-Laws (the "By-Laws") of the Corporation, the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the Board that would have been valid if such By-Laws had not been adopted.

Section 6.2 Election. Unless and except to the extent that the By-Laws shall so require, the election of directors need not be by written ballot.

Section 6.3 Initial Directors. Upon the filing of this Certificate, the powers of the incorporator shall terminate. The names and mailing addresses of the persons who are to serve as the initial directors until the first annual meeting of stockholders of the Corporation and such director's successor is elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Mike Liddell	c/o Gulfport Energy Corporation 14313 North May Avenue, Suite 100 Oklahoma City, Oklahoma 73134
James D. Palm	c/o Gulfport Energy Corporation 14313 North May Avenue, Suite 100 Oklahoma City, Oklahoma 73134
Michael G. Moore	c/o Gulfport Energy Corporation 14313 North May Avenue, Suite 100 Oklahoma City, Oklahoma 73134

ARTICLE VII
BY-LAWS

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.

ARTICLE VIII
LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Limitation of Personal Liability. No person who is or was a director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary

damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted by the DGCL as the same exists or hereafter may be amended. If the DGCL is hereafter amended to authorize corporate action further limiting or eliminating the liability of directors, then the liability of a director to the Corporation or its stockholders shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended. Any repeal or amendment of this Section 8.1 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.2 Indemnification.

(a) Each person who is or was 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 a director or officer, employee or agent of the Corporation or, while a director or officer, employee or agent of the Corporation, is or was serving at the request of the Corporation 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 (hereinafter a "*Covered Person*"), whether the basis of such proceeding is alleged action in an official capacity as a 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 Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, 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 with such proceeding, and such right to indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however*, that, except for proceedings to enforce rights to indemnification, the Corporation 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. The right to indemnification conferred by this Section 8.2 shall be a contract right that shall fully vest at the time the Covered Person first assumes his or her position as a director or officer, employee or agent of the Corporation and shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition.

(b) The rights conferred on any Covered Person by this Section 8.2 shall not be exclusive of any other rights that any Covered Person may have or hereafter acquire under law, this Certificate, the By-Laws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.2, will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than Covered Persons.

ARTICLE IX
AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate (including any Preferred Stock Designation), in the manner now or hereafter prescribed by this Certificate and the DGCL; and except as set forth in ARTICLE VIII, all rights, preferences and privileges herein conferred upon stockholders, directors or any other persons by and pursuant to this Certificate in its present form or as hereafter amended are granted subject to the right reserved in this Article.

[Signature page follows]

IN WITNESS WHEREOF, the incorporator of the Corporation hereto has caused this Certificate of Incorporation to be duly executed as of July 17, 2009.



Irina V. Maistrenko, Incorporator

BY-LAWS

OF

GATOR MARINE, INC.,

a Delaware corporation

(the "*Corporation*")

(Adopted as of July __, 2009)

BY-LAWS
OF
GATOR MARINE, INC.

ARTICLE I.
OFFICES

Section 1.1. Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2. Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "**Board**") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II.
STOCKHOLDERS MEETINGS

Section 2.1. Annual Meetings. Unless directors are elected by written consent in lieu of an annual meeting as permitted by applicable law or an annual meeting is otherwise not required by applicable law, an annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting. Stockholders may, unless the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "**Certificate of Incorporation**"), provides otherwise, act by written consent to elect directors; provided, however, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 2.2. Special Meetings. Except as otherwise required by applicable law or provided in the Certificate of Incorporation, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board or the Chief Executive Officer, by the Board, or by the Secretary at the request in writing of stockholders holding shares representing a majority of the voting power of the outstanding shares entitled to vote on the matter for which such meeting is to be called. The Secretary shall call such a meeting upon receiving such a request. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

Section 2.3. Notices. Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given in the manner permitted by [Section 9.3](#) to each stockholder entitled to vote thereat by the Corporation not less than 10 nor more than 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 the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto).

Section 2.4. Quorum. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present at any meeting of the stockholders, the chairman of the meeting or the stockholders entitled to vote thereat so present, by a majority in voting power thereof, may adjourn the meeting from time to time in the manner provided in [Section 2.6](#) until a quorum shall attend. 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. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5. Voting of Shares.

(a) **Voting Lists.** The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before each meeting of stockholders, a complete list of the stockholders of record entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this [Section 2.5\(a\)](#) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxyholders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3(c)), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxyholder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority:

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

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

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

(d) Required Vote. Subject to the rights of the holders of one or more series of preferred stock of the Corporation ("***Preferred Stock***"), voting separately by class or series, to

elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation or these By-Laws, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) **Inspectors of Election.** The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting or by the stockholders present and entitled to vote thereat, by a majority in voting power thereof, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.7. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, such other person as shall be appointed by the Board, or in the

absence of such appointment, a chairman chosen at the meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By-Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Consents in Lieu of Meeting. Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum voting power that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation to its registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation by delivery to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. An electronic transmission consenting to the action to be taken and transmitted by a stockholder, proxyholder or a person or persons authorized to act for a stockholder or proxyholder shall be deemed to be written, signed and dated for purposes hereof if such electronic transmission sets forth or is delivered with information from which the Corporation can determine that such transmission was transmitted by a stockholder or proxyholder (or by a person authorized to act for a stockholder or proxyholder) and the date on which such stockholder, proxyholder or authorized person transmitted such transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and delivered to the Corporation by delivery either to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the limitations on delivery in the previous sentence, consents given by electronic transmission may be otherwise delivered to the Corporation's principal place of business or to the Secretary if, to the extent, and in the manner provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a

consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders were delivered to the Corporation as provided in this Section 2.8.

ARTICLE III. DIRECTORS

Section 3.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2. Number; Term. The number of directors of the Corporation initially shall be _____. Thereafter the number of directors, other than those who may be elected by the holders of one or more series of Preferred Stock voting separately by class or series, may be determined from time to time by the Board, but no decrease in such number shall have the effect of shortening the term of any incumbent director. Except as otherwise provided in the Certificate of Incorporation, the directors shall be elected at the annual meeting of stockholders to hold office until the next succeeding annual meeting of stockholders. Each director shall hold office for the term for which such director is elected and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3. Newly Created Directorships and Vacancies. Except as otherwise provided in the Certificate of Incorporation, vacancies resulting from death, resignation, retirement, disqualification, removal or other cause and newly created directorships resulting from an increase in the number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority vote of the directors then in office, even if less than a quorum, by a sole remaining director, or by the stockholders. Except as otherwise provided in the Certificate of Incorporation, if the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled only by a majority of the directors elected by such class or classes or series thereof then in office, by a sole remaining director so elected, or by the stockholders of such class or classes or series thereof. Except as otherwise provided in the Certificate of Incorporation, any director elected or chosen in accordance with this Section 3.3 shall hold office until the next annual election of directors and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.4. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, 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 other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses 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 the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

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

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or Chief Executive Officer and (b) shall be called by the Chairman of the Board, Chief Executive Officer or Secretary on the written request of a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By-Laws, 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. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the Board, but in any event not less than one-third of the Whole Board (as defined below), 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 applicable law, the Certificate of Incorporation or these By-Laws. 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. "Whole Board" shall mean the total number of directors that the Corporation would have if there were no vacancies.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V. COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3. 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.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) 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 applicable law, the Certificate of Incorporation, these By-Laws or the Board. 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. Unless the Board otherwise provides and except as provided in these By-Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By-Laws.

ARTICLE VI. OFFICERS

Section 6.1. Officers. The officers of the Corporation elected by the Board shall be a Chairman of the Board, a Chief Executive Officer, a Treasurer, a Secretary and such other officers (including without limitation a Chief Financial Officer, Vice Presidents, Assistant Secretaries and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chairman of the Board or Chief Executive Officer may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By-Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chairman of the Board or Chief Executive Officer, as may be prescribed by the appointing officer.

(a) Chairman of the Board. 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 Chief Executive Officer 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 By-Laws. The Chairman of the Board must be a director of the Corporation.

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation 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 Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

(c) Vice Presidents. In the absence (or inability or refusal to act) of the Chief Executive Officer, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the Chief Executive Officer. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(d) Secretary.

(i) 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 Chief Executive Officer. The Secretary shall have custody of the corporate seal of the Corporation 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 or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation'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.

(e) 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.

(f) 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 Corporation which from time to time may come into the Treasurer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board or the Chief Executive Officer may authorize).

(g) 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. Term of Office; Removal; Vacancies. The elected officers of the Corporation shall be elected annually by the Board at its first meeting held after each annual meeting of stockholders. All officers elected by the Board shall hold office until the next annual meeting of the Board and until their successors are duly elected and qualified or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chairman of the Board or Chief Executive Officer may also be removed, with or without cause, by the Chairman of the Board or Chief Executive Officer, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chairman of the

Board or Chief Executive Officer may be filled by the Chairman of the Board or Chief Executive Officer, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. Other Officers. The Board may delegate the power to appoint such other 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 or desirable.

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

ARTICLE VII. SHARE CERTIFICATES

Section 7.1. Entitlement to Certificates. The shares of the Corporation 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 Corporation. The Corporation shall not have power to issue a certificate representing shares in bearer form.

Section 7.2. Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, the Chief Executive Officer or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, 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 or upon the books and records of the Corporation in the case of partly paid uncertificated shares, 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 representing certificated shares or said uncertificated shares are issued.

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an indorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the indorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to

uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the indorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such indorsement or instruction or such other reasonable assurance that the indorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction

was contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII. INDEMNIFICATION

Section 8.1. Right to Indemnification. 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 a director or officer, employee or agent of the Corporation or, while a director or officer, employee or agent of the Corporation, is or was serving at the request of the Corporation 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 (hereinafter a "*Covered Person*"), whether the basis of such proceeding is alleged action in an official capacity as a 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 Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, 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 with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation 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 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, a Covered Person shall also have the right to be paid by the Corporation 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 Delaware General Corporation Law ("*DGCL*") requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (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 Corporation 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 is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

Section 8.3. Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation 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 Corporation 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 (a) any suit brought by 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) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation 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 Corporation (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 Corporation (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 Corporation 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 Corporation.

Section 8.4. 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 of Incorporation, these By-Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6. Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation 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 Corporation 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 Corporation and to any other person who is or was serving at the request of the Corporation 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 8.7. Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By-Laws 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 Corporation 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 8.8. 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 Corporation” 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 Corporation” for purposes of Section 145 of the DGCL.

Section 8.9. 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 Corporation, (b) shall fully vest at the time the Covered Person first assumes his or her position as a director or officer, employee or agent of the Corporation, (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, employee or agent of the Corporation, and (e) shall inure to the benefit of the Covered Person’s heirs, executors and administrators.

Section 8.10. 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. MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By-Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the

Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2. Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix 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 60 nor less than 10 days before the date of such meeting. 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 business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business 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 Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or 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 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.

(c) In order that the Corporation 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 10 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 Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is otherwise 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.

Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall

be given either (i) in writing and sent by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in, Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "**Electronic transmission**" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly

reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By-Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By-Laws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By-Laws, a written waiver of such

notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. 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 was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation, or these By-Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear 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 was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board, Chief Executive Officer or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The Board may adopt a corporate seal which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, Chief Executive Officer 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 Corporation, 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 Corporation, in such amounts and by such surety companies as the Chairman of the Board, Chief Executive Officer or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, Chief Executive Officer or any Vice President. Any such officer may, in

the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. The Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.


State of Delaware
Secretary of State
Division of Corporations
Delivered 09:04 AM 09/12/2012
FILED 08:22 AM 09/12/2012
SRV 121021353 - 5211378 FILE

**CERTIFICATE OF FORMATION
OF
PALOMA PARTNERS III, LLC**

1. The name of the limited liability company is Paloma Partners III, LLC (the "**Company**").
2. The registered office of the Company in the State of Delaware is located at 1675 South State Street, Suite B, Dover, Kent County, Delaware 19901. The name of its registered agent at such address is Capitol Services, Inc.
3. The name and address of the organizer of the Company is as follows:

<u>Name</u>	<u>Address</u>
Sarah E. McLean	333 Clay Street, Suite 3300 Houston, Texas 77002

THE UNDERSIGNED, being the organizer hereinbefore named, for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act, does hereby make this certificate, hereby declaring and certifying that this is her act and deed and the facts herein stated are true, and, accordingly, has hereunto set her hand this 12th day of September, 2012.



Sarah E. McLean, Organizer

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:50 PM 09/29/2015
FILED 01:50 PM 09/29/2015
SR 20154306600 - File Number 5211378

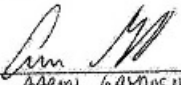
CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF FORMATION
OF
PALOMA PARTNERS III, LLC

The undersigned, desiring to amend the Certificate of Formation of Paloma Partners III, LLC (the "Company"), pursuant to the provisions of the Delaware Limited Liability Company Act, does hereby certify as follows:

1. The name of the Company is Paloma Partners III, LLC.
2. The Certificate of Formation of the Company was originally filed on September 12, 2012 and assigned file number 5211378.
3. Section 1 of the Certificate of Formation of the Company shall be amended as follows, to change the name of the Company:

"The name of the limited liability company is Gulfport Buckeye LLC."

IN WITNESS WHEREOF, the undersigned executed this Amendment to the Certificate of Formation of the Company on this 28th day of September, 2015.

By: 
Name: AARON GAYDOSIK
Title: Authorized Person

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:27 PM 08/15/2017
FILED 01:27 PM 08/15/2017
SR 20175729989 - File Number 5211378

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF FORMATION
OF
GULFPORT BUCKEYE LLC**

The undersigned, desiring to amend the Certificate of Formation of Gulfport Buckeye LLC (the "*Company*"), pursuant to the provisions of the Delaware Limited Liability Company Act, does hereby certify as follows:

1. The name of the Company is Gulfport Buckeye LLC.
2. The Certificate of Formation of the Company was originally filed on September 12, 2012 and assigned file number 5211378.
3. Section 1 of the Certificate of Formation of the Company shall be amended as follows, to change the name of the Company:

"The name of the limited liability company is Gulfport Appalachia, LLC."

IN WITNESS WHEREOF, the undersigned executed this Amendment to the Certificate of Formation of the Company on this 15th day of August, 2017.

By: Keri Crowell
Name: Keri Crowell
Title: Authorized Person

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
PALOMA PARTNERS III, LLC

This Amended and Restated Limited Liability Company Agreement (this "**Agreement**") of Paloma Partners III, LLC, a Delaware limited liability company (the "**Company**"), is entered into by the entity named as Member in Annex A hereto, as the sole member of the Company (the "**Member**"), this 31st day of August, 2015.

1. **Formation.** The Company was formed as a Delaware limited liability company pursuant to the Delaware Limited Liability Company Act (6 Del. C. §§ 18-101, et seq.), as amended from time to time (the "**Delaware Act**"), by filing the Certificate of Formation of the Company with the Secretary of State of the State of Delaware on September 12, 2012.

2. **Name.** The name of the Company is Paloma Partners III, LLC. The business of the Company shall be conducted under such name or such other names that comply with applicable law as the Member may from time to time deem necessary or desirable.

3. **Purpose and Powers.** The purpose of the Company shall be to engage in any lawful business or activity for which limited liability companies may be formed under the Delaware Act. The Company shall possess and may exercise all of the powers and privileges granted by the Delaware Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purposes of the Company.

4. **Registered Office and Registered Agent.** The address of the registered office of the Company in the State of Delaware is Capitol Services Inc., and the name of the registered agent of the Company for service of process on the Company at such address is Capitol Services Inc. 1675 S. State Street, Suite B, Dover, Delaware 19901.

5. **Member.** Simultaneously with its execution of this Agreement, the Member is hereby admitted as the sole member of the Company and agrees to be bound by the terms of this Agreement. The Member shall have the sole limited liability company interest (as defined in the Delaware Act) in the Company (the "**Interest**") and the respective other rights, powers, duties and obligations provided in the Delaware Act, except, to the extent permitted by the Delaware Act, as otherwise provided herein.

6. **Capital Contribution.** The Member shall have the right, but not the obligation, to make capital contributions to the Company as the Member in its sole discretion may determine.

7. **Allocations and Distributions.** The net profits and net losses of the Company, and other items of income, gain, loss, deduction and credit, will be allocated 100 percent to the Member for capital account and federal income tax purposes, and the Company, as a separate

entity, is to be disregarded for federal income tax purposes. Subject to Sections 18-607 and 18-804 of the Delaware Act, the Company shall make such distributions to the Member as the Member determines.

8. Management by Member.

(a) The management and control of the Company shall be vested entirely in the Member. The Member shall have all the rights and powers that are conferred by law or are otherwise necessary, advisable or convenient to the discharge of the Member's duties and to the management of the business and affairs of the Company. No person or entity dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting for such purposes on behalf of the Company.

(b) Without limiting the generality of Section 8(a) hereof, the Member may appoint such officers as it shall deem necessary or advisable who shall hold their offices for such terms, shall have authority (subject to such conditions as may be prescribed by the Member) to sign deeds, mortgages, bonds, contracts or other instruments on behalf of the Company and shall exercise such other powers and perform such other duties as shall be determined from time to time by the Member. Unless otherwise determined by the Member, each such officer shall hold office until his or her successor is chosen and qualified. Any officer appointed by the Member may be removed at any time, with or without cause, upon notice by the Member. Any vacancy occurring in any office of the Company shall be filled by the Member in its sole discretion. Any number of offices may be held by the same person. The initial officers of the Company shall be the persons listed on Schedule A.

9. Transfer of Interest; Admission of Additional Members. The Member may assign its Interest in whole or in part at any time. Upon assignment of the Member's entire Interest to a transferee, the transferee shall automatically be deemed admitted to the Company as a substituted member of the Company, the Member shall simultaneously be deemed to have resigned from the Company as a member of the Company, and the Company shall continue without dissolution (and all applicable references herein to the "Member" shall be read as references to the transferee as the substituted member of the Company); provided, in any event, that the transferee must agree in a document or instrument to be bound by the terms of this Agreement. One or more additional members of the Company may be admitted to the Company with the consent of the Member. Upon the admission to the Company of any additional member(s), the members of the Company shall cause this Agreement to be amended and restated to reflect the admission of such additional member(s) and the initial capital contribution, if any, of such additional member(s) and the intention of the members to cause the Company to be classified as a partnership or corporation for federal income tax purposes, and to include such other provisions as the members may agree to reflect the change of status of the Company from a single member limited liability company to a limited liability company with two or more members.

10. Resignation of Members; Events of Bankruptcy. Except as provided in the mandatory provisions of the Delaware Act and pursuant to the second sentence of Section 9, no right is given to any member of the Company to resign from the Company. The Member shall

not cease to be a member of the Company upon the happening of any of the events specified in Section 18-304 of the Delaware Act.

11. **Dissolution and Term of the Company.** The Company shall dissolve upon any act or event causing the dissolution of the Company under the Delaware Act, unless, if permitted by the Delaware Act, the Company is continued in accordance with the Delaware Act. Subject to an earlier dissolution as described in the preceding sentence, the Company shall have a perpetual existence.

12. **Limitation of Liability and Indemnification of Member.**

(a) Except as otherwise required by the Delaware Act, the Member shall not be liable for the debts, obligations or liabilities of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a member of the Company.

(b) The Member shall not be liable to the Company or to any other member of the Company or other person or entity who may become a party to or bound by this Agreement for any breach of this Agreement or of any duties (including fiduciary duties) arising under or in connection with this Agreement or the Company other than for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

13. **Amendment.** This Agreement may be amended by the Member; provided, however, that any amendment to this Agreement must be in writing and signed by the Member.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law principles.

15. **Severability.** The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Agreement, as applied to any party or to any circumstance, is judicially determined not to be enforceable in accordance with its terms, the court judicially making such determination may modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its modified form, such provision will then be enforceable and will be enforced.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has executed this Limited Liability Company Agreement as of the date first written above.

MEMBER:

GULFPORT ENERGY CORPORATION

By: Michael G. Moore
Name: Michael G. Moore
Title: Chief Executive Officer and President

SCHEDULE A

Initial Officers of the Company

NAME	TITLE
Michael G. Moore	Chief Executive Officer and President
Aaron Gaydosik	Chief Financial Officer
Ross Kirtley	Chief Operating Officer
Paul K. Heerwagen IV	Vice President, Corporate Development
Lester Zitkus	Vice President, Land

CERTIFICATE OF FORMATION

OF

GULFPORT MIDSTREAM HOLDINGS, LLC

This Certificate of Formation of Gulfport Midstream Holdings, LLC (the "**LLC**") is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is Gulfport Midstream Holdings, LLC.

SECOND. The address of the registered office of the LLC in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808.

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Formation to be duly executed as of the 22nd day of January, 2016.

By: /s/ LYNN P. HAUSNER
Name: Lynn P. Hausner
Title: Authorized Person

LIMITED LIABILITY COMPANY AGREEMENT
OF
GULFPORT MIDSTREAM HOLDINGS, LLC

This Limited Liability Company Agreement (this "**Agreement**") of Gulfport Midstream Holdings, LLC (the "**Company**") is entered into by the person or entity named as Member in Annex A hereto, as the sole member of the Company (the "**Member**"), this 22nd day of January, 2016.

1. Formation. Lynn P. Hausner, as an "authorized person" within the meaning of the Delaware Limited Liability Company Act (6 Del. C. §§ 18-101, et seq.), as amended from time to time (the "**Delaware Act**"), has executed, delivered and filed the initial Certificate of Formation of the Company with the Secretary of State of the State of Delaware on January 22, 2016. Upon the Member's execution and delivery of this Agreement, Ms. Hausner's powers as an "authorized person" shall cease, and the Member shall thereupon become the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Delaware Act. Upon the filing of the initial Certificate of Formation of the Company with the Secretary of State of the State of Delaware, and the entering into of this Agreement by the Member, the Member hereby forms a limited liability company under the Delaware Act. The Member shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

2. Name. The name of the Company is Gulfport Midstream Holdings, LLC. The business of the Company shall be conducted under such name or such other names that comply with applicable law as the Member may from time to time deem necessary or desirable.

3. Purpose and Powers. The purpose of the Company shall be to engage in any lawful business or activity for which limited liability companies may be formed under the Delaware Act. The Company shall possess and may exercise all of the powers and privileges granted by the Delaware Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purpose of the Company.

4. Registered Office and Registered Agent. The address of the registered office of the Company in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the name of the registered agent of the Company for service of process on the Company at such address is Corporation Service Company.

5. Member. Simultaneously with its execution of this Agreement, the Member is hereby admitted as the sole member of the Company and agrees to be bound by the terms of this Agreement. The Member shall have the sole limited liability company interest (as defined in the Delaware Act) in the Company (the "**Interest**") and the respective other rights, powers, duties and obligations provided in the Delaware Act, except, to the extent permitted by the Delaware Act, as otherwise provided herein.

6. **Capital Contribution.** The Member has made a contribution to the capital of the Company in the amount set forth opposite the Member's name on Annex A hereto. The Member shall have the right, but not the obligation, to make additional capital contributions to the Company as the Member in its sole discretion may determine.

7. **Allocations and Distributions.** The net profits and net losses of the Company, and other items of income, gain, loss, deduction and credit, will be allocated 100 percent to the Member for capital account and federal income tax purposes, and the Company, as a separate entity, is to be disregarded for federal income tax purposes. Subject to Sections 18-607 and 18-804 of the Delaware Act, the Company shall make such distributions to the Member as the Member determines.

8. **Management by Member.**

(a) The management and control of the Company shall be vested entirely in the Member. The Member shall have all the rights and powers that are conferred by law or are otherwise necessary, advisable or convenient to the discharge of the Member's duties and to the management of the business and affairs of the Company. No person or entity dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting for such purposes on behalf of the Company.

(b) Without limiting the generality of Section 8(a) hereof, the Member may appoint such officers as it shall deem necessary or advisable who shall hold their offices for such terms, shall have authority (subject to such conditions as may be prescribed by the Member) to sign deeds, mortgages, bonds, contracts or other instruments on behalf of the Company and shall exercise such other powers and perform such other duties as shall be determined from time to time by the Member. Unless otherwise determined by the Member, each such officer shall hold office until his or her successor is chosen and qualified. Any officer appointed by the Member may be removed at any time, with or without cause, upon notice by the Member. Any vacancy occurring in any office of the Company shall be filled by the Member in its sole discretion. Any number of offices may be held by the same person. The initial officers of the Company shall be the persons listed on Annex B.

9. **Transfer or Pledge of Interest; Admission of Additional Members.**

(a) The Member may assign its Interest in whole or in part at any time. Upon assignment of the Member's entire Interest to a transferee, the transferee shall automatically be deemed admitted to the Company as a substituted member of the Company, the Member shall simultaneously be deemed to have resigned from the Company as a member of the Company, and the Company shall continue without dissolution (and all applicable references herein to the "Member" shall be read as references to the transferee as the substituted member of the Company); provided, in any event, that the transferee must agree in a document or instrument to be bound by the terms of this Agreement. One or more additional members of the Company may be admitted to the Company with the consent of the Member. Upon the admission to the Company of any additional member(s), the members of the Company shall cause this Agreement to be amended and restated to reflect the admission of such additional member(s) and the initial capital contribution, if any, of such additional member(s) and the intention of the members to

cause the Company to be classified as a partnership or corporation for federal income tax purposes, and to include such other provisions as the members may agree to reflect the change of status of the Company from a single member limited liability company to a limited liability company with two or more members.

(b) Any provision to the contrary contained in this Agreement notwithstanding, the Interest may be pledged to any lender or lenders as collateral for the indebtedness, liabilities and obligations of the Member and/or any of its subsidiaries to such lender or lenders, and any such pledged limited liability company interests shall be subject to such lender's or lenders' rights under any collateral documentation governing or pertaining to such pledge. The pledge of such limited liability company interests shall not, except as otherwise provided in such collateral documentation, cause the Member to cease to be a member of the Company or to have the power to exercise any rights or powers of a member of the Company and, except as provided in such collateral documentation, such lender or lenders shall not have any liability solely as a result of such pledge. Without limiting the foregoing, the right of such lender or lenders to enforce their rights and remedies under such collateral documentation hereby is acknowledged and any such action taken in accordance therewith shall be valid and effective for all purposes under this Agreement (regardless of any restrictions herein contained) and any assignment, sale or other disposition of the Interest by such lender or lenders pursuant to any such collateral documentation in connection with the exercise of any such lender's or lenders' rights and powers shall be valid and effective for all purposes, including, without limitation, under Section 18-702 of the Delaware Act and this Agreement, to transfer all right, title and interest of the Member hereunder to itself or themselves, any other lender or any other person (each an "*Assignee*") in accordance with such collateral documentation and applicable law (including, without limitation, in accordance with such collateral documentation and applicable law, the rights to participate in the management of the business and the business affairs of the Company, to share profits and losses, to receive distributions and to receive allocation of income, gain, loss, deduction, credit or similar item) and such Assignee shall be a member of the Company with all rights and powers of a member of the Company. Such assignment shall not constitute an event of dissolution under Section 11 hereunder. Further, no lender or any such Assignee shall be liable for the obligations of any member assignor to make contributions. The Member approves all of the foregoing and agrees that no further approval shall be required for the exercise of any rights or remedies under such collateral documentation. For purposes of this Agreement, the Interest and any certificate representing the same shall be deemed a security governed by Article VIII of the Uniform Commercial Code.

10. **Resignation of Members; Events of Bankruptcy.** Except as provided in the mandatory provisions of the Delaware Act and pursuant to the second sentence of Section 9, no right is given to any member of the Company to resign from the Company. The Member shall not cease to be a member of the Company upon the happening of any of the events specified in Section 18-304 of the Delaware Act.

11. **Dissolution and Term of the Company.** The Company shall dissolve upon any act or event causing the dissolution of the Company under the Delaware Act, unless, if permitted by the Delaware Act, the Company is continued in accordance with the Delaware Act. Subject to an earlier dissolution as described in the preceding sentence, the Company shall have a perpetual existence.

12. Limitation of Liability and Indemnification of Member.

(a) Except as otherwise required by the Delaware Act, the Member shall not be liable for the debts, obligations or liabilities of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a member of the Company.

(b) The Member shall not be liable to the Company or to any other member of the Company or other person or entity who may become a party to or bound by this Agreement for any breach of this Agreement or of any duties (including fiduciary duties) arising under or in connection with this Agreement or the Company other than for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(c) To the fullest extent permitted by applicable law, the Company shall (i) indemnify and hold harmless any person or entity and such person's or entity's executors, administrators, heirs, legal representatives, successors and assigns (each, a "**Covered Person**") against all expenses, attorneys' fees, court costs, judgments, fines, amounts paid in settlement and other losses incurred or suffered by such Covered Person by reason of the fact that such person or entity is or was a member, manager, officer, authorized person, employee or agent of the Company or is or was serving at the request of the Company as a member, manager, director, officer, authorized person, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, domestic or foreign and (ii) advance expenses incurred by a Covered Person in defending or otherwise participating in any threatened, pending or completed action, suit or proceeding, whether civil criminal, administrative or investigative that such Covered Person was or is a party or was or is treated to be made a party by reason of the fact that such person or entity is or was a member, manager, officer, authorized person, employee or agent of the Company or is or was serving at the request of the Company as a member, manager, director, officer, authorized person, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, domestic or foreign in advance of its final disposition to the fullest extent permitted by applicable law upon receipt of an undertaking by the Covered Person to repay such amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such Covered Person is not entitled to be indemnified by the Company for such expenses under this Section 12 or otherwise.

13. **Amendment.** This Agreement may be amended by the Member; provided, however, that any amendment to this Agreement must be in writing and signed by the Member.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law principles.

15. **Severability.** The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Agreement, as applied to any party or to any circumstance, is judicially determined not to be enforceable in accordance with its terms, the court judicially making such determination may modify the provision in a manner

consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its modified form, such provision will then be enforceable and will be enforced.

16. Effectiveness of Agreement. Pursuant to Section 18-201(d) of the Delaware Act, this Agreement shall be effective as of the date first written above.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has executed this Limited Liability Company Agreement as of the date first written above.

MEMBER:

GULFPORT ENERGY CORPORATION

By: 
Michael G. Moore
Chief Executive Officer and President

[Signature Page to Limited Liability Company Agreement]

Annex A

Member	<u>Capital Contribution</u>
Gulfport Energy Corporation 14313 North May Avenue Suite 100 Oklahoma City, Oklahoma 73134	S100.00

Annex B

Officers

(as of January 22, 2016)

Michael G. Moore	Chief Executive Officer and President
Aaron M. Gaydosik	Chief Financial Officer, Vice President and Assistant Secretary
Keri Crowell	Secretary and Vice President
Paul K. Heerwagen IV	Vice President and Assistant Secretary
Ty Peck	Managing Director of Midstream Operations

CERTIFICATE OF INCORPORATION
OF
GRIZZLY HOLDINGS, INC.

THE UNDERSIGNED, acting as the incorporator of a corporation under and in accordance with the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended from time to time (the "*DGCL*"), hereby adopts the following Certificate of Incorporation for such corporation:

ARTICLE I
NAME

The name of the corporation is Grizzly Holdings, Inc. (the "*Corporation*").

ARTICLE II
PURPOSE

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE III
REGISTERED AGENT

The street address of the initial registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the name of the Corporation's initial registered agent at such address is The Corporation Trust Company.

ARTICLE IV
CAPITALIZATION

Section 4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock which the Corporation is authorized to issue is 110,000 shares, consisting of 100,000 shares of common stock, par value \$0.01 per share (the "*Common Stock*"), and 10,000 shares of preferred stock, par value \$0.01 per share (the "*Preferred Stock*"). The powers, preferences and relative, participating, optional and other special rights of the respective classes of the Corporation's capital stock or the holders thereof and the qualifications, limitations and restrictions thereof are as follows:

Section 4.2 Preferred Stock.

(a) The Preferred Stock may be issued from time to time in one or more series. The Board of Directors (the "*Board*") is hereby expressly authorized to provide for the issuance of shares of Preferred Stock in one or more series and to establish from time to time the number of shares to be included in each such series and to fix the voting powers, if any, designations, powers, preferences and relative, participating, optional and other special rights, if any, of each such series and the qualifications, limitations and restrictions thereof, as shall be stated in the resolution(s) adopted by the Board providing

for the issuance of such series and included in a certificate of designations (a "*Preferred Stock Designation*") filed pursuant to the DGCL.

(b) The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock, without a vote of the holders of the Preferred Stock, or any series thereof, unless a vote of any such holders of Preferred Stock is required pursuant to another provision of this Certificate, including any Preferred Stock Designation.

Section 4.3 Common Stock.

(a) The holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders on which the holders of shares of Common Stock are entitled to vote. Except as otherwise required by law or this Certificate (including any Preferred Stock Designation), at any annual or special meeting of the stockholders the Common Stock shall have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Notwithstanding the foregoing, except as otherwise required by law or this Certificate (including a Preferred Stock Designation), holders of Common Stock shall not be entitled to vote on any amendment to this Certificate (including any amendment to any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate (including any Preferred Stock Designation).

(b) Subject to the rights of the holders of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, and subject to the rights of the holders of Preferred Stock in respect thereof, the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.

ARTICLE V
INCORPORATOR

The name and mailing address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
Melody Medley	14313 N. May Avenue Suite 100 Oklahoma City, OK 73134

ARTICLE VI
DIRECTORS

Section 6.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Certificate or the By-Laws (the "*By-Laws*") of the Corporation, the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the Board that would have been valid if such By-Laws had not been adopted.

Section 6.2 Election. Unless and except to the extent that the By-Laws shall so require, the election of directors need not be by written ballot.

Section 6.3 Initial Directors. Upon the filing of this Certificate, the powers of the incorporator shall terminate. The names and mailing addresses of the persons who are to serve as the initial directors until the first annual meeting of stockholders of the Corporation and such director's successor is elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Mike Liddell	14313 N. May Avenue Suite 100 Oklahoma City, OK 73134
James D. Palm	14313 N. May Avenue Suite 100 Oklahoma City, OK 73134
Michael G. Moore	14313 N. May Avenue Suite 100 Oklahoma City, OK 73134

ARTICLE VII
BY-LAWS

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.

ARTICLE VIII
LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Limitation of Personal Liability. No person who is or was a director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted by the DGCL as the same exists or hereafter may be amended. If the DGCL is hereafter amended to authorize corporate action further limiting or eliminating the liability of directors, then the liability of a director to the Corporation or its stockholders shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended. Any repeal or amendment of this Section 8.1 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.2 Indemnification.

(a) Each person who is or was 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 a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation 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 (hereinafter a "*Covered Person*"), whether the basis of such proceeding is alleged action in an official capacity as a 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 Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, 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 with such proceeding, and such right to indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation 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. The right to indemnification conferred by this Section 8.2 shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition.

(b) The rights conferred on any Covered Person by this Section 8.2 shall not be exclusive of any other rights which any Covered Person may have or hereafter acquire under law, this Certificate, the By Laws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.2, will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

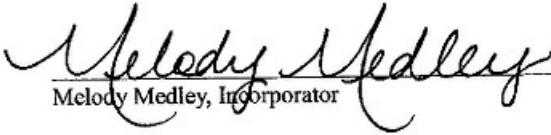
(d) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than Covered Persons.

ARTICLE IX AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate (including any Preferred Stock Designation), in the manner now or hereafter prescribed by this Certificate and the DGCL; and except as set forth in ARTICLE VIII, all rights, preferences and privileges herein conferred upon stockholders, directors or any other persons by and pursuant to this Certificate in its present form or as hereafter amended are granted subject to the right reserved in this Article.

[Signature page follows]

IN WITNESS WHEREOF, the incorporator of the Corporation hereto has caused this Certificate of Incorporation to be duly executed as of August 24, 2006.


Melody Medley, Incorporator

BY-LAWS

OF

Grizzly Holdings, Inc.

a Delaware corporation

(the "*Corporation*")

(Adopted as of August 24, 2006)

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BY-LAWS
OF
GRIZZLY HOLDINGS, INC.

ARTICLE I.
OFFICES

Section 1.1. Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2. Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "**Board**") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II.
STOCKHOLDERS MEETINGS

Section 2.1. Annual Meetings. Unless directors are elected by written consent in lieu of an annual meeting as permitted by applicable law or an annual meeting is otherwise not required by applicable law, an annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting. Stockholders may, unless the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "**Certificate of Incorporation**"), provides otherwise, act by written consent to elect directors; provided, however, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 2.2. Special Meetings. Except as otherwise required by applicable law or provided in the Certificate of Incorporation, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board or the President, by the Board, or by the Secretary at the request in writing of stockholders holding shares representing a majority of the voting power of the outstanding shares entitled to vote on the matter for which such meeting is to be called. The Secretary shall call such a meeting upon receiving such a request. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

Section 2.3. Notices. Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat by the Corporation not less than 10 nor more than 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 the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto).

Section 2.4. Quorum. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present at any meeting of the stockholders, the chairman of the meeting or the stockholders entitled to vote thereat so present, by a majority in voting power thereof, may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. 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. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5. Voting of Shares.

(a) Voting Lists. The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before each meeting of stockholders, a complete list of the stockholders of record entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any

stockholder who is present. If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxyholders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3(c)), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxyholder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority:

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

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

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

(d) **Required Vote.** Subject to the rights of the holders of one or more series of preferred stock of the Corporation ("**Preferred Stock**"), voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation or these By-Laws, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) **Inspectors of Election.** The Board may appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at any meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting or by the stockholders present and entitled to vote thereat, by a majority in voting power thereof, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.7. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, 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) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such

other person as shall be appointed by the Board, or in the absence of such appointment, a chairman chosen at the meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By-Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Consents in Lieu of Meeting. Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum voting power that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation to its registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation by delivery to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. An electronic transmission consenting to the action to be taken and transmitted by a stockholder, proxyholder or a person or persons authorized to act for a stockholder or proxyholder shall be deemed to be written, signed and dated for purposes hereof if such electronic transmission sets forth or is delivered with information from which the Corporation can determine that such transmission was transmitted by a stockholder or proxyholder (or by a person authorized to act for a stockholder or proxyholder) and the date on which such stockholder, proxyholder or authorized person transmitted such transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and delivered to the Corporation by delivery either to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the limitations on delivery in the previous sentence, consents given by electronic transmission may be otherwise delivered to the Corporation's principal place of business or to the Secretary if, to the extent, and in the manner

provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders were delivered to the Corporation as provided in this Section 2.8.

ARTICLE III. DIRECTORS

Section 3.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2. Number; Term. The number of directors of the Corporation initially shall be three. Thereafter the number of directors, other than those who may be elected by the holders of one or more series of Preferred Stock voting separately by class or series, may be determined from time to time by the Board, but no decrease in such number shall have the effect of shortening the term of any incumbent director. Except as otherwise provided in the Certificate of Incorporation, the directors shall be elected at the annual meeting of stockholders to hold office until the next succeeding annual meeting of stockholders. Each director shall hold office for the term for which such director is elected and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3. Newly Created Directorships and Vacancies. Except as otherwise provided in the Certificate of Incorporation, vacancies resulting from death, resignation, retirement, disqualification, removal or other cause and newly created directorships resulting from an increase in the number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority vote of the directors then in office, even if less than a quorum, by a sole remaining director, or by the stockholders. Except as otherwise provided in the Certificate of Incorporation, if the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled only by a majority of the directors elected by such class or classes or series thereof then in office, by a sole remaining director so elected, or by the stockholders of such class or classes or series thereof. Except as otherwise provided in the Certificate of Incorporation, any director elected or chosen in accordance with this Section 3.3 shall hold office until the next annual election of directors and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.4. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, 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 other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses 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 the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

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

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or President and (b) shall be called by the Chairman of the Board, President or Secretary on the written request of a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By-Laws, 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. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the Board, but in any event not less than one-third of the Whole Board (as defined below), 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 applicable law, the Certificate of Incorporation or these By-

Laws. 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. "Whole Board" shall mean the total number of directors that the Corporation would have if there were no vacancies.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, 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) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V. COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may designate 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 the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3. 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.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) 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 applicable law, the Certificate of Incorporation, these By-Laws or the Board. 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. Unless the Board otherwise provides and except as provided in these By-Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By-Laws.

ARTICLE VI. OFFICERS

Section 6.1. Officers. The officers of the Corporation elected by the Board shall be a Chairman of the Board, a President, a Treasurer, a Secretary and such other officers (including without limitation a Chief Financial Officer, Vice Presidents, Assistant Secretaries and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chairman of the Board or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By-Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chairman of the Board or President, as may be prescribed by the appointing officer.

(a) Chairman of the Board. 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 By-Laws. The Chairman of the Board must be a director of the Corporation.

(b) President. The President shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation 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.

(c) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents 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.

(d) Secretary.

(i) 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 Corporation 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 or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation'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.

(e) 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.

(f) 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 Corporation which from time to time may come into the Treasurer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board or the President may authorize).

(g) 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. Term of Office. The elected officers of the Corporation shall be elected annually by the Board at its first meeting held after each annual meeting of stockholders. All officers elected by the Board shall hold office until the next annual meeting of the Board and until their successors are duly elected and qualified or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chairman of the Board or President may also be removed, with or without cause, by the Chairman of the Board or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chairman of the Board or President may be filled by the Chairman of the

Board or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. Other Officers. The Board may delegate the power to appoint such other 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 or desirable.

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

ARTICLE VII. SHARE CERTIFICATES

Section 7.1. Entitlement to Certificates. The shares of the Corporation 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 Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed in accordance with Section 7.3 representing the number of shares registered in certificate form. The Corporation shall not have power to issue a certificate representing shares in bearer form.

Section 7.2. Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights to be set forth in full or summarized on the face or back of any certificate which the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, the President or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or

registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, 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 or upon the books and records of the Corporation in the case of partly paid uncertificated shares, 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 representing certificated shares or said uncertificated shares are issued.

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an indorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the indorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the indorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such indorsement or instruction or such other reasonable assurance that the indorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without

actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII. INDEMNIFICATION

Section 8.1. Right to Indemnification. 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 a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation 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 (hereinafter a "*Covered Person*"), whether the basis of such proceeding is alleged action in an official capacity as a 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 Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, 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 with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation 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 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, a Covered Person shall also have the right to be paid by the Corporation 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 Delaware General Corporation Law ("*DGCL*") requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (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 Corporation 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 is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

Section 8.3. Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation 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 Corporation 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 (a) any suit brought by 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) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation 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 Corporation (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 Corporation (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 Corporation 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 Corporation.

Section 8.4. Non-Exclusivity of Rights. The rights provided to Covered Persons pursuant to this Article VIII shall not be exclusive of any other right which any Covered Person may have or hereafter acquire under applicable law, the Certificate of Incorporation, these By-Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6. Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation 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 Corporation 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 Corporation and to any other person who is or was serving at the request of the Corporation 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 8.7. Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By-Laws inconsistent with this Article VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation 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 8.8. 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 Corporation" 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 Corporation" for purposes of Section 145 of the DGCL.

Section 8.9. Contract Rights. The rights provided to Covered Persons pursuant to this Article VIII shall be contract rights and such rights shall continue as to a Covered Person who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Covered Person's heirs, executors and administrators.

Section 8.10. 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. MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By-Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a

meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2. Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix 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 60 nor less than 10 days before the date of such meeting. 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 business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business 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 Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or 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 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.

(c) In order that the Corporation 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 10 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 Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is otherwise 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.

Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by hand delivery, through the United States mail, or by a

nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in, Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "*Electronic transmission*" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not

limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting which shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By-Laws, a written waiver of such

notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. 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 was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation, or these By-Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear 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 was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the President or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board, President or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The seal of the Corporation shall be in such form as shall from time to time be adopted by the Board. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the President or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, 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 Corporation, 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 Corporation, in such amounts and by such surety companies as the Chairman of the Board, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, President or any Vice President. Any such officer may, in the name of

and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. The Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:00 AM 12/13/2016
FILED 09:00 AM 12/13/2016
SR 20167042233 - File Number 6248103

CERTIFICATE OF FORMATION
OF
SCOOP ACQUISITION COMPANY, LLC

This Certificate of Formation of SCOOP Acquisition Company, LLC (the “**LLC**”) is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is SCOOP Acquisition Company, LLC.

SECOND. The address of the registered office of the LLC in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808.

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Formation to be duly executed as of the 13th day of December, 2016.

By: /s/ RACHEL EVANS
Name: Rachel Evans
Title: Authorized Person

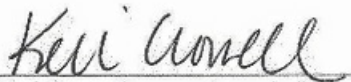
**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF FORMATION
OF
SCOOP ACQUISITION COMPANY, LLC**

The undersigned, desiring to amend the Certificate of Formation of SCOOP Acquisition Company, LLC (the "*Company*"), pursuant to the provisions of the Delaware Limited Liability Company Act, does hereby certify as follows:

1. The name of the Company is SCOOP Acquisition Company, LLC.
2. The Certificate of Formation of the Company was originally filed on December 13, 2016 and assigned file number 6248103.
3. Section FIRST of the Certificate of Formation of the Company shall be amended as follows to change the name of the Company:

"The name of the limited liability company formed hereby is Gulfport MidCon, LLC."

IN WITNESS WHEREOF, the undersigned executed this Certificate of Amendment to the Certificate of Formation of the Company on this 29th day of March, 2017.

By: 
Name: Keri Crowell
Title: Authorized Person

**LIMITED LIABILITY COMPANY AGREEMENT
OF SCOOP ACQUISITION COMPANY, LLC**

This Limited Liability Company Agreement (this “*Agreement*”) of SCOOP Acquisition Company, LLC (the “*Company*”) is entered into by the person or entity named as Member in Annex A hereto, as the sole member of the Company (the “*Member*”), this 13th day of December, 2016.

1. **Formation.** Rachel Evans, as an “authorized person” within the meaning of the Delaware Limited Liability Company Act (6 Del. C. §§ 18-101, *et seq.*), as amended from time to time (the “*Delaware Act*”), has executed, delivered and filed the initial Certificate of Formation of the Company with the Secretary of State of the State of Delaware on December 13, 2016. Upon the Member’s execution and delivery of this Agreement, Ms. Evans’s powers as an “authorized person” shall cease, and the Member shall thereupon become the designated “authorized person” and shall continue as the designated “authorized person” within the meaning of the Delaware Act. Upon the filing of the initial Certificate of Formation of the Company with the Secretary of State of the State of Delaware, and the entering into of this Agreement by the Member, the Member hereby forms a limited liability company under the Delaware Act. The Member shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

2. **Name.** The name of the Company is SCOOP Acquisition Company, LLC. The business of the Company shall be conducted under such name or such other names that comply with applicable law as the Member may from time to time deem necessary or desirable.

3. **Purpose and Powers.** The purpose of the Company shall be to engage in any lawful business or activity for which limited liability companies may be formed under the Delaware Act. The Company shall possess and may exercise all of the powers and privileges granted by the Delaware Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purpose of the Company.

4. **Registered Office and Registered Agent.** The address of the registered office of the Company in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the name of the registered agent of the Company for service of process on the Company at such address is Corporation Service Company.

5. **Member.** Simultaneously with its execution of this Agreement, the Member is hereby admitted as the sole member of the Company and agrees to be bound by the terms of this Agreement. The Member shall have the sole limited liability company interest (as defined in the Delaware Act) in the Company (the “*Interest*”) and the respective other rights, powers, duties and obligations provided in the Delaware Act, except, to the extent permitted by the Delaware Act, as otherwise provided herein.

6. **Capital Contribution.** The Member has made a contribution to the capital of the Company in the amount set forth opposite the Member’s name on Annex A hereto. The Member shall have the right, but not the obligation, to make additional capital contributions to the Company as the Member in its sole discretion may determine.

7. **Allocations and Distributions.** The net profits and net losses of the Company, and other items of income, gain, loss, deduction and credit, will be allocated 100 percent to the Member for capital account and federal income tax purposes, and the Company, as a separate entity, is to be disregarded for federal income tax purposes. Subject to Sections 18-607 and 18-804 of the Delaware Act, the Company shall make such distributions to the Member as the Member determines.

8. Management by Member.

(a) The management and control of the Company shall be vested entirely in the Member. The Member shall have all the rights and powers that are conferred by law or are otherwise necessary, advisable or convenient to the discharge of the Member’s duties and to the management of the business and affairs of the Company. No person or entity dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting for such purposes on behalf of the Company.

(b) Without limiting the generality of Section 8(a) hereof, the Member may appoint such officers as it shall deem necessary or advisable who shall hold their offices for such terms, shall have authority (subject to such conditions as may be prescribed by the Member) to sign deeds, mortgages, bonds, contracts or other instruments on behalf of the Company and such authority as is customary for their respective offices (subject to any limitation prescribed by the Member) and shall exercise such other powers and perform such other duties as shall be determined from time to time by the Member. Unless otherwise determined by the Member, each such officer shall hold office until his or her successor is chosen and qualified. Any officer appointed by the Member may be removed at any time, with or without cause, upon notice by the Member. Any vacancy occurring in any office of the Company shall be filled by the Member in its sole discretion. Any number of offices may be held by the same person. The initial officers of the Company shall be the persons listed on Annex B.

9. Transfer or Pledge of Interest; Admission of Additional Members

(a) The Member may assign its Interest in whole or in part at any time. Upon assignment of the Member’s entire Interest to a transferee, the transferee shall automatically be deemed admitted to the Company as a substituted member of the Company, the Member shall simultaneously be deemed to have resigned from the Company as a member of the Company, and the Company shall continue without dissolution (and all applicable references herein to the “Member” shall be read as references to the transferee as the substituted member of the Company); provided, in any event, that the transferee must agree in a document or instrument to be bound by the terms of this Agreement. One or more additional members of the Company may be admitted to the Company with the consent of the Member. Upon the admission to the Company of any additional member(s), the members of the Company shall cause this Agreement to be amended and restated to reflect the admission of such additional member(s) and the initial capital contribution, if any, of such additional member(s) and the intention of the members to cause the Company to be classified as a partnership or corporation for federal income tax purposes, and to include such other provisions as the members may agree to reflect the change of status of the Company from a single member limited liability company to a limited liability company with two or more members.

(b) Any provision to the contrary contained in this Agreement notwithstanding, the Interest may be pledged to any lender or lenders as collateral for the indebtedness, liabilities and obligations of the Member and/or any of its subsidiaries to such lender or lenders, and any such pledged limited liability company interests shall be subject to such lender’s or lenders’ rights under any collateral documentation governing or pertaining to such pledge. The pledge of such limited liability company interests shall not, except as otherwise provided in such collateral documentation, cause the Member to cease to be a member of the Company or to have the power to exercise any rights or powers of a member of the Company and, except as provided in such collateral documentation, such lender or lenders shall not have any liability solely as a result of such pledge. Without limiting the foregoing, the right of such lender or lenders to enforce their rights and remedies under such collateral documentation hereby is acknowledged and any such action taken in accordance therewith shall be valid and effective for all purposes under this Agreement (regardless of any restrictions herein contained) and any assignment, sale or other disposition of the Interest by such lender or lenders pursuant to any such collateral documentation in connection with the exercise of any such lender’s or lenders’ rights and powers shall be valid and effective for all purposes, including, without limitation, under Section 18-702 of the Delaware Act and this Agreement, to transfer all right, title and interest of the Member hereunder to itself or themselves, any other lender or any other person (each an “*Assignee*”) in accordance with such collateral documentation and

applicable law (including, without limitation, in accordance with such collateral documentation and applicable law, the rights to participate in the management of the business and the business affairs of the Company, to share profits and losses, to receive distributions and to receive allocation of income, gain, loss, deduction, credit or similar item) and such Assignee shall be a member of the Company with all rights and powers of a member of the Company. Such assignment shall not constitute an event of dissolution under Section 11 hereunder. Further, no lender or any such Assignee shall be liable for the obligations of any member assignor to make contributions. The Member approves all of the foregoing and agrees that no further approval shall be required for the exercise of any rights or remedies under such collateral documentation. For purposes of this Agreement, the Interest and any certificate representing the same shall be deemed a security governed by Article VIII of the Uniform Commercial Code.

10. **Resignation of Members; Events of Bankruptcy.** Except as provided in the mandatory provisions of the Delaware Act and pursuant to the second sentence of Section 9, no right is given to any member of the Company to resign from the Company. The Member shall not cease to be a member of the Company upon the happening of any of the events specified in Section 18-304 of the Delaware Act.

11. **Dissolution and Term of the Company.** The Company shall dissolve upon any act or event causing the dissolution of the Company under the Delaware Act, unless, if permitted by the Delaware Act, the Company is continued in accordance with the Delaware Act. Subject to an earlier dissolution as described in the preceding sentence, the Company shall have a perpetual existence.

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12. Limitation of Liability and Indemnification of Member.

(a) Except as otherwise required by the Delaware Act, the Member shall not be liable for the debts, obligations or liabilities of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a member of the Company.

(b) The Member shall not be liable to the Company or to any other member of the Company or other person or entity who may become a party to or bound by this Agreement for any breach of this Agreement or of any duties (including fiduciary duties) arising under or in connection with this Agreement or the Company other than for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(c) To the fullest extent permitted by applicable law, the Company shall (i) indemnify and hold harmless any person or entity and such person's or entity's executors, administrators, heirs, legal representatives, successors and assigns (each, a "**Covered Person**") against all expenses, attorneys' fees, court costs, judgments, fines, amounts paid in settlement and other losses incurred or suffered by such Covered Person by reason of the fact that such person or entity is or was a member, manager, officer, authorized person, employee or agent of the Company or is or was serving at the request of the Company as a member, manager, director, officer, authorized person, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, domestic or foreign and (ii) advance expenses incurred by a Covered Person in defending or otherwise participating in any threatened, pending or completed action, suit or proceeding, whether civil criminal, administrative or investigative that such Covered Person was or is a party or was or is treated to be made a party by reason of the fact that such person or entity is or was a member, manager, officer, authorized person, employee or agent of the Company or is or was serving at the request of the Company as a member, manager, director, officer, authorized person, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, domestic or foreign in advance of its final disposition to the fullest extent permitted by applicable law upon receipt of an undertaking by the Covered Person to repay such amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such Covered Person is not entitled to be indemnified by the Company for such expenses under this Section 12 or otherwise.

13. **Amendment.** This Agreement may be amended by the Member; provided, however, that any amendment to this Agreement must be in writing and signed by the Member.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law principles.

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15. **Severability.** The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Agreement, as applied to any party or to any circumstance, is judicially determined not to be enforceable in accordance with its terms, the court judicially making such determination may modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its modified form, such provision will then be enforceable and will be enforced.

16. **Effectiveness of Agreement.** Pursuant to Section 18-201(d) of the Delaware Act, this Agreement shall be effective as of the date first written above.

[Remainder of Page Intentionally Left Blank]

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IN WITNESS WHEREOF, the undersigned has executed this Limited Liability Company Agreement as of the date first written above.

MEMBER:

GULFPORT ENERGY CORPORATION

By: /s/ Michael G. Moore

Name: Michael G. Moore

Title: Chief Executive Officer and President

[Signature Page to Limited Liability Company Agreement]

Annex A

Member	Capital Contribution
Gulfport Energy Corporation 14313 North May Avenue Suite 100 Oklahoma City, Oklahoma 73134	\$ 100.00

A-1

Annex B

Officers

(as of December 13, 2016)

Michael G. Moore	Chief Executive Officer and President
Aaron M. Gaydosik	Chief Financial Officer, Vice President and Assistant Secretary
Keri Crowell	Chief Accounting Officer, Vice President and Secretary
Paul K. Heerwagen IV	Vice President and Assistant Secretary
Ty Peck	Managing Director of Midstream Operations

B-1

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:38 PM 04/09/2007
FILED 02:35 PM 04/09/2007
SRV 070412924 - 4331099 FILE

CERTIFICATE OF FORMATION

OF

JAGUAR RESOURCES LLC


This Certificate of Formation of Jaguar Resources LLC (the "**LLC**") is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is Jaguar Resources LLC.

SECOND. The address of the registered office of the LLC in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808.

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Formation to be duly executed as of the 30th day of March, 2007.

By: 
Name: Benjamin E. Russ
Title: Authorized Person

**LIMITED LIABILITY COMPANY AGREEMENT
OF
JAGUAR RESOURCES LLC**

This Limited Liability Company Agreement (this "*Agreement*") of Jaguar Resources LLC (the "*Company*"), dated as of April 9, 2007, is adopted by Gulfport Energy Corporation, a Delaware corporation (the "*Member*").

Section 1. Formation of the Company. Upon the filing of a Certificate of Formation of the Company with the Secretary of State of the State of Delaware on the date hereof, the Member hereby forms a limited liability company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. Section 18-101. *et seq.*, as amended from time to time (the "*Delaware Act*"). Benjamin E. Russ shall be an authorized person within the meaning of the Delaware Act to file the Certificate of Formation with the Office of the Secretary of State of Delaware.

Section 2. Interests and Admission.

(a) The Company shall be authorized to issue a single class of Limited Liability Company Interests (the "*Interest*"), including any and all benefits to which the holder of such Interest may be entitled in this Agreement, together with all obligations of such person to comply with the terms and provisions of this Agreement. Such Interest may be evidenced by such certificate as approved by the Member. Simultaneously with the execution and delivery of this Agreement and the filing of the Certificate of Formation with the Office of the Secretary of State of the State of Delaware, the Member is admitted as the sole member of the Company in respect of the Interest.

(b) Any provision to the contrary contained in this Agreement notwithstanding, the Interest issued hereunder or covered hereby may be pledged to any lender or lenders as collateral for the indebtedness, liabilities and obligations of the Company and/or any of its subsidiaries to such lender or lenders, and any such pledged limited liability company interests shall be subject to such lender's or lenders' rights under any collateral documentation governing or pertaining to such pledge. The pledge of such limited liability company interests shall not, except as otherwise provided in such collateral documentation, cause a Member to cease to be a Member or to have the power to exercise any rights or powers of a Member and, except as provided in such collateral documentation, such lender or lenders shall not have any liability solely as a result of such pledge. Without limiting the foregoing, the right of such lender or lenders to enforce their rights and remedies under such collateral documentation hereby is acknowledged and any such action taken in accordance therewith shall be valid and effective for all purposes under this Agreement (regardless of any restrictions herein contained) and any assignment, sale or other disposition of the Interest by such lender or lenders pursuant to any such collateral documentation in connection with the exercise of any such lender's or lenders' rights and powers shall be valid and effective for all purposes, including, without limitation, under Section 18-702 of the Delaware Act and this Agreement, to transfer all right, title and interest of the applicable Member hereunder to itself or themselves, any other lender or any other person (each an "*Assignee*") in accordance with such collateral documentation and applicable law (including, without limitation, in accordance with such collateral documentation and applicable law, the rights to participate in the management of the business and the business affairs of the Company,

to share profits and losses, to receive distributions and to receive allocation of income, gain, loss, deduction, credit or similar item) and such Assignee shall be a Member of the Company with all rights and powers of a Member. Such assignment shall not constitute an event of dissolution under Section 10 hereunder. Further, no lender or any such Assignee shall be liable for the obligations of any Member assignor to make contributions. All Members approve all of the foregoing and all Members agree that no farther approval shall be required for the exercise of any rights or remedies under such collateral documentation. For purposes of this Agreement, each Interest and the certificate representing the same shall be deemed a security or securities governed by Article VIII of the Uniform Commercial Code.

Section 3. Registered Office and Registered Agent. The registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808, and the registered agent for service of process on the Company in the State of Delaware is Corporation Service Company. The Member may from time to time change the registered office of the Company to such other place or the registered agent of the Company to such other person as the Member deems appropriate.

Section 4. Company Purposes. The purpose of the Company is to engage in any lawful business or activity for which limited liability companies may be formed under the Delaware Act.

Section 5. Capital Contributions. The Member has contributed to the Company such property, services or money in the amount set forth opposite the Member's name on Exhibit A hereto in exchange for the Interest set forth opposite the Member's name therein. Additional capital contributions may be made in such amounts as the Member determines to be necessary.

Section 6. Allocation of Items of Company Income, Gain, Deduction and Loss and Distributions. All items of income, gain, loss, deduction, and credit will be allocated 100 percent to the Member, and the Company, as a separate entity, is to be disregarded for income tax purposes. No distribution may be made to the Member if, after giving effect to the distribution, in the judgment of the Member, either (i) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (ii) the fair value of the total assets of the Company would not at least equal its total liabilities. Subject to the foregoing limitation, the Company shall make such distributions to the Member as the Member determines.

Section 7. Management by Member.

(a) The management and control of the Company shall be vested entirely in the Member. The Member shall have all the rights and powers that are conferred by law or are otherwise necessary, advisable, or convenient to the discharge of the Member's duties and to the management of the business and affairs of the Company. No person dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting for such purposes on behalf of the Company.

(b) Without limiting the generality of Section 7(a) hereof, the Member may appoint such officers as it shall deem necessary or advisable who shall hold their offices for such terms, shall have authority (subject to such conditions as may be prescribed by the Member) to sign

deeds, mortgages, bonds, contracts or other instruments on behalf of the Company and shall exercise such other powers and perform such other duties as shall be determined from time to time by the Member. Unless otherwise determined by the Member, each such officer shall hold office until his or her successor is chosen and qualified. Any officer appointed by the Member may be removed at any time, with or without cause, upon notice by the Member. Any vacancy occurring in any office of the Company shall be filled by the Member in its sole discretion. Any number of offices may be held by the same person. The initial officers of the Company shall be the persons listed on Schedule A.

Section 8. Addition of Additional Members; Transfer or Issuance of an Interest; Withdrawal of a Member. No additional members may be admitted without the prior approval of the Member. Except as expressly provided herein, no current or future member may transfer any portion of its Interest in the Company without the unanimous consent of the members (such a transferee being hereinafter referred to as a "*Permitted Transferee*"). A Permitted Transferee shall become a substituted member automatically upon a transfer that complies with this Section 8. Except as provided in mandatory provisions of the Delaware Act and pursuant to the second sentence of this Section 8, no right is given to any member to dissociate from the Company.

Section 9. Events of Bankruptcy. A member does not cease to be a member upon the happening of any of the events specified in Section 18-304 of the Delaware Act except with the written consent of the Member.

Section 10. Dissolution and Term of the Company. The Company shall dissolve upon any act or event requiring dissolution under the Delaware Act. Subject to an earlier dissolution as described in the preceding sentence, the Company shall have a perpetual duration.

Section 11. Limitation of Liability and Indemnification of Member.

(a) The Member shall not be liable for the debts, obligations and liabilities of the Company ("*Company Obligations*"), whether arising in contract, tort, or otherwise, and the Member shall be indemnified to the fullest extent of the Delaware Act by the Company against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained against the Company or against the Member in connection with the Company Obligations.

(b) The Company may purchase and maintain liability, indemnification or other similar insurance on behalf of itself, or for any person who is or was a member, officer, employee or agent of the Company or who is or was serving at the request of the Company as a director, manager, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, limited liability company, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against or incurred by the Company or person serving in such a capacity or arising out of its status as such a person or entity, whether or not the Company would otherwise have the power to indemnify such person against that liability.

(c) The power to indemnify or obtain insurance provided in this Section 11 shall be cumulative of any other power of the Member or any rights to which such a person or entity may be entitled by law, this Agreement, the Certificate of Formation of the company, contract, other agreement, vote or otherwise.

Section 12. Amendment. This Agreement may be amended by the Member; provided, however, that any amendment to this Agreement must be in writing and signed by the Members.

Section 13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Section 14. Consent to Jurisdiction Provision. The Member hereby (i) irrevocably submits to the non-exclusive jurisdiction of any Delaware State court or Federal court sitting in Wilmington, Delaware in any action arising out of this Agreement, and (ii) consents to the service of process by mail. Nothing herein shall affect the right of any party to serve legal process in any manner permitted by law or affect its right to bring any action in any other court.

Section 15. Severability. The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Agreement, as applied to any party or to any circumstance, is judicially determined not to be enforceable in accordance with its terms, the court judicially making such determination may modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its modified form, such provision will then be enforceable and will be enforced.

[SIGNATURE PAGE FOLLOWS]

Executed as of the date first written above.

Gulfport Energy Corporation

By: Michael G. Moore
Michael G. Moore
Vice President and Chief Financial Officer

Exhibit A

<u>Member</u>	<u>Capital Contribution</u>	<u>Interest</u>	<u>Percentage of Issued and Outstanding Interest</u>
Gulfport Energy Corporation	\$100	100	100%

Schedule A

CURRENT OFFICERS

AS OF April 9, 2007

Mike Liddell	Chairman
James D. Palm	Chief Executive Officer
Michael G. Moore	Vice President, Chief Financial Officer and Secretary
Jay Thomas	Vice President
Benjamin E. Russ	General Counsel and Assistant Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:08 AM 02/28/2019
FILED 10:08 AM 02/28/2019
SR 20191550057 - File Number 7301137

CERTIFICATE OF FORMATION

OF

MULE SKY LLC

This Certificate of Formation of Mule Sky LLC (the "**LLC**") is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is Mule Sky LLC.

SECOND. The address of the registered office of the LLC in the State of Delaware is c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808.

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, New Castle, Delaware 19808.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Formation to be duly executed as of the 28th day of February, 2019.

By: /s/ Justin Wood
Name: Justin Wood
Title: Authorized Person

LIMITED LIABILITY COMPANY AGREEMENT

OF

MULE SKY LLC

This Limited Liability Company Agreement (this “*Agreement*”) of Mule Sky LLC (the “*Company*”) is entered into by the person or entity named as Member in Annex A hereto, as the sole member of the Company (the “*Member*”), as of the 28th day of February, 2019.

1. **Formation.** Justin Wood, as an “authorized person” within the meaning of the Delaware Limited Liability Company Act (6 Del. C. §§ 18-101, et seq.), as amended from time to time (the “*Delaware Act*”), has executed, delivered and filed the initial Certificate of Formation of the Company with the Secretary of State of the State of Delaware on February 28, 2019. Upon the Member’s execution and delivery of this Agreement, Mr. Wood’s powers as an “authorized person” shall cease, and the Member shall thereupon become the designated “authorized person” and shall continue as the designated “authorized person” within the meaning of the Delaware Act. Upon the filing of the initial Certificate of Formation of the Company with the Secretary of State of the State of Delaware, and the entering into of this Agreement by the Member, the Member hereby forms a limited liability company under the Delaware Act. The Member shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

2. **Name.** The name of the Company is Mule Sky LLC. The business of the Company shall be conducted under such name or such other names that comply with applicable law as the Member may from time to time deem necessary or desirable.

3. **Purpose and Powers.** The purpose of the Company shall be to engage in any lawful business or activity for which limited liability companies may be formed under the Delaware Act. The Company shall possess and may exercise all of the powers and privileges granted by the Delaware Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purpose of the Company.

4. **Registered Office and Registered Agent.** The address of the registered office of the Company in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the name of the registered agent of the Company for service of process on the Company at such address is Corporation Service Company.

5. **Member.** Simultaneously with its execution of this Agreement, the Member is hereby admitted as the sole member of the Company and agrees to be bound by the terms of this Agreement. The Member shall have the sole limited liability company interest (as defined in the Delaware Act) in the Company (the “*Interest*”) and the respective other rights, powers, duties and obligations provided in the Delaware Act, except, to the extent permitted by the Delaware Act, as otherwise provided herein.

6. **Capital Contribution.** The Member has made a contribution to the capital of the Company in the amount set forth opposite the Member’s name on Annex A hereto. The Member shall have the right, but not the obligation, to make additional capital contributions to the Company as the Member in its sole discretion may determine.

7. **Allocations and Distributions.** The net profits and net losses of the Company, and other items of income, gain, loss, deduction and credit, will be allocated 100 percent to the Member for capital account and federal income tax purposes, and the Company, as a separate entity, is to be disregarded for federal income tax purposes. Subject to Sections 18-607 and 18-804 of the Delaware Act, the Company shall make such distributions to the Member as the Member determines.

8. Management by Member.

(a) The management and control of the Company shall be vested entirely in the Member. The Member shall have all the rights and powers that are conferred by law or are otherwise necessary, advisable or convenient to the discharge of the Member’s duties and to the management of the business and affairs of the Company. No person or entity dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting for such purposes on behalf of the Company.

(b) Without limiting the generality of Section 8(a) hereof, the Member may appoint such officers as it shall deem necessary or advisable who shall hold their offices for such terms, shall have authority (subject to such conditions as may be prescribed by the Member) to sign deeds, mortgages, bonds, contracts or other instruments on behalf of the Company and such authority as is customary for their respective offices (subject to any limitation prescribed by the Member) and shall exercise such other powers and perform such other duties as shall be determined from time to time by the Member. Unless otherwise determined by the Member, each such officer shall hold office until his or her successor is chosen and qualified. Any officer appointed by the Member may be removed at any time, with or without cause, upon notice by the Member. Any vacancy occurring in any office of the Company shall be filled by the Member in its sole discretion. Any number of offices may be held by the same person. The initial officers of the Company shall be the persons listed on Annex B.

9. Transfer or Pledge of Interest; Admission of Additional Members

(a) The Member may assign its Interest in whole or in part at any time. Upon assignment of the Member’s entire Interest to a transferee, the transferee shall automatically be deemed admitted to the Company as a substituted member of the Company, the Member shall simultaneously be deemed to have resigned from the Company as a member of the Company, and the Company shall continue without dissolution (and all applicable references herein to the “Member” shall be read as references to the transferee as the substituted member of the Company); provided, in any event, that the transferee must agree in a document or instrument to be bound by the terms of this Agreement. One or more additional members of the Company may be admitted to the Company with the consent of the Member. Upon the admission to the Company of any additional member(s), the members of the Company shall cause this Agreement to be amended and restated to reflect the admission of such additional member(s) and the initial capital contribution, if any, of such additional member(s) and the intention of the members to cause the Company to be classified as a partnership or corporation for federal income tax purposes, and to include such other provisions as the members may agree to reflect the change of status of the Company from a single member limited liability company to a limited liability company with two or more members.

(b) Any provision to the contrary contained in this Agreement notwithstanding, the Interest may be pledged to any lender or lenders as collateral for the indebtedness, liabilities and obligations of the Member and/or any of its subsidiaries to such lender or lenders, and any such pledged limited liability company interests shall be subject to such lender’s or lenders’ rights under any collateral documentation governing or pertaining to such pledge. The pledge of such limited liability company interests shall not, except as otherwise provided in such collateral documentation, cause the Member to cease to be a member of the Company or to have the power to exercise any rights or powers of a member of the Company and, except as provided in such collateral documentation, such lender or lenders shall not have any liability solely as a result of such pledge. Without limiting the foregoing, the right of such lender or lenders to enforce their rights and remedies under such collateral documentation hereby is acknowledged and any such action taken in accordance therewith shall be valid and effective for all purposes under this Agreement (regardless of any restrictions herein contained) and any assignment, sale or

other disposition of the Interest by such lender or lenders pursuant to any such collateral documentation in connection with the exercise of any such lender's or lenders' rights and powers shall be valid and effective for all purposes, including, without limitation, under Section 18-702 of the Delaware Act and this Agreement, to transfer all right, title and interest of the Member hereunder to itself or themselves, any other lender or any other person (each an "Assignee") in accordance with such collateral documentation and applicable law (including, without limitation, in accordance with such collateral documentation and applicable law, the rights to participate in the management of the business and the business affairs of the Company, to share profits and losses, to receive distributions and to receive allocation of income, gain, loss, deduction, credit or similar item) and such Assignee shall be a member of the Company with all rights and powers of a member of the Company. Such assignment shall not constitute an event of dissolution under Section 11 hereunder. Further, no lender or any such Assignee shall be liable for the obligations of any member assignor to make contributions. The Member approves all of the foregoing and agrees that no further approval shall be required for the exercise of any rights or remedies under such collateral documentation. For purposes of this Agreement, the Interest and any certificate representing the same shall be deemed a security governed by Article VIII of the Uniform Commercial Code.

10. Resignation of Members; Events of Bankruptcy. Except as provided in the mandatory provisions of the Delaware Act and pursuant to the second sentence of Section 9, no right is given to any member of the Company to resign from the Company. The Member shall not cease to be a member of the Company upon the happening of any of the events specified in Section 18-304 of the Delaware Act.

11. Dissolution and Term of the Company. The Company shall dissolve upon any act or event causing the dissolution of the Company under the Delaware Act, unless, if permitted by the Delaware Act, the Company is continued in accordance with the Delaware Act. Subject to an earlier dissolution as described in the preceding sentence, the Company shall have a perpetual existence.

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12. Limitation of Liability and Indemnification of Member.

(a) Except as otherwise required by the Delaware Act, the Member shall not be liable for the debts, obligations or liabilities of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a member of the Company.

(b) The Member shall not be liable to the Company or to any other member of the Company or other person or entity who may become a party to or bound by this Agreement for any breach of this Agreement or of any duties (including fiduciary duties) arising under or in connection with this Agreement or the Company other than for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(c) To the fullest extent permitted by applicable law, the Company shall (i) indemnify and hold harmless any person or entity and such person's or entity's executors, administrators, heirs, legal representatives, successors and assigns (each, a "**Covered Person**") against all expenses, attorneys' fees, court costs, judgments, fines, amounts paid in settlement and other losses incurred or suffered by such Covered Person by reason of the fact that such person or entity is or was a member, manager, officer, authorized person, employee or agent of the Company or is or was serving at the request of the Company as a member, manager, director, officer, authorized person, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, domestic or foreign and (ii) advance expenses incurred by a Covered Person in defending or otherwise participating in any threatened, pending or completed action, suit or proceeding, whether civil criminal, administrative or investigative that such Covered Person was or is a party to or was or is treated to be made a party by reason of the fact that such person or entity is or was a member, manager, officer, authorized person, employee or agent of the Company or is or was serving at the request of the Company as a member, manager, director, officer, authorized person, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, domestic or foreign in advance of its final disposition to the fullest extent permitted by applicable law upon receipt of an undertaking by the Covered Person to repay such amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such Covered Person is not entitled to be indemnified by the Company for such expenses under this Section 12 or otherwise.

13. Amendment. This Agreement may be amended by the Member; provided, however, that any amendment to this Agreement must be in writing and signed by the Member.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law principles.

15. Severability. The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Agreement, as applied to any party or to any circumstance, is judicially determined not to be enforceable in accordance with its terms, the court judicially making such determination may modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its modified form, such provision will then be enforceable and will be enforced.

16. Effectiveness of Agreement. Pursuant to Section 18-201(d) of the Delaware Act, this Agreement shall be effective as of the date first written above.

[Remainder of Page Intentionally Left Blank]

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IN WITNESS WHEREOF, the undersigned has executed this Limited Liability Company Agreement as of the date first written above.

MEMBER:

GULFPORT ENERGY CORPORATION

By: /s/ Keri Crowell

Name: Keri Crowell

Title: Chief Financial Officer

[Signature Page to Limited Liability Company Agreement]

Member	Capital Contribution
Gulfport Energy Corporation 3001 Quail Springs Parkway Oklahoma City, Oklahoma 73134	\$ 100.00

A-1

Annex B

Officers

(as of February 28, 2019)

David M. Wood	Chief Executive Officer and President
Donnie Moore	Chief Operating Officer
Keri Crowell	Chief Financial Officer, Vice President and Secretary
Paul K. Heerwagen IV	Vice President and Assistant Secretary

B-1

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:39 PM 05/12/2009
FILED 06:35 PM 05/12/2009
SRV 090463758 - 4678906 FILE

**CERTIFICATE OF INCORPORATION
OF
PUMA RESOURCES, INC.**

THE UNDERSIGNED, acting as the incorporator of a corporation under and in accordance with the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended from time to time (the "DGCL"), hereby adopts the following Certificate of Incorporation for such corporation:

**ARTICLE I
NAME**

The name of the corporation is Puma Resources, Inc. (the "*Corporation*").

**ARTICLE II
PURPOSE**

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE III
REGISTERED AGENT**

The street address of the initial registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400 in the City of Wilmington, County of New Castle, and the name of the Corporation's initial registered agent at such address is Corporation Service Company.

**ARTICLE IV
CAPITALIZATION**

The total number of shares of capital stock that the Corporation is authorized to issue is 1,000 shares, all of which shares shall be Common Stock having a par value of \$0.01 per share.

**ARTICLE V
INCORPORATOR**

The name and mailing address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
V. Rose Mercer	c/o Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201

ARTICLE VI
DIRECTORS

Section 6.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Certificate or the By-Laws (the "By-Laws") of the Corporation, the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the Board that would have been valid if such By-Laws had not been adopted.

Section 6.2 Election. Unless and except to the extent that the By-Laws shall so require, the election of directors need not be by written ballot.

Section 6.3 Initial Directors. Upon the filing of this Certificate, the powers of the incorporator shall terminate. The names and mailing addresses of the persons who are to serve as the initial directors until the first annual meeting of stockholders of the Corporation and such director's successor is elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Mike Liddell	c/o Gulfport Energy Corporation 14313 North May Avenue, Suite 100 Oklahoma City, Oklahoma 73134
James D. Palm	c/o Gulfport Energy Corporation 14313 North May Avenue, Suite 100 Oklahoma City, Oklahoma 73134
Michael G. Moore	c/o Gulfport Energy Corporation 14313 North May Avenue, Suite 100 Oklahoma City, Oklahoma 73134

ARTICLE VII
BY-LAWS

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.

ARTICLE VIII
LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Limitation of Personal Liability. No person who is or was a director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary

damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted by the DGCL as the same exists or hereafter may be amended. If the DGCL is hereafter amended to authorize corporate action further limiting or eliminating the liability of directors, then the liability of a director to the Corporation or its stockholders shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended. Any repeal or amendment of this Section 8.1 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.2 Indemnification.

(a) Each person who is or was 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 a director or officer, employee or agent of the Corporation or, while a director or officer, employee or agent of the Corporation, is or was serving at the request of the Corporation 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 (hereinafter a "Covered Person"), whether the basis of such proceeding is alleged action in an official capacity as a 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 Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, 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 with such proceeding, and such right to indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however*, that, except for proceedings to enforce rights to indemnification, the Corporation 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. The right to indemnification conferred by this Section 8.2 shall be a contract right that shall fully vest at the time the Covered Person first assumes his or her position as a director or officer, employee or agent of the Corporation and shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition.

(b) The rights conferred on any Covered Person by this Section 8.2 shall not be exclusive of any other rights that any Covered Person may have or hereafter acquire under law, this Certificate, the By-Laws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.2, will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than Covered Persons.

ARTICLE IX
AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate (including any Preferred Stock Designation), in the manner now or hereafter prescribed by this Certificate and the DGCL; and except as set forth in ARTICLE VIII, all rights, preferences and privileges herein conferred upon stockholders, directors or any other persons by and pursuant to this Certificate in its present form or as hereafter amended are granted subject to the right reserved in this Article.

[Signature page follows]

IN WITNESS WHEREOF, the incorporator of the Corporation hereto has caused this Certificate of Incorporation to be duly executed as of May 12, 2009.



V. Rose Mercer, Incorporator

BY-LAWS

OF

PUMA RESOURCES, INC.,

a Delaware corporation

(the "*Corporation*")

(Adopted as of April __, 2009)

BY-LAWS
OF
PUMA RESOURCES, INC.

ARTICLE I.
OFFICES

Section 1.1. Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2. Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "*Board*") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II.
STOCKHOLDERS MEETINGS

Section 2.1. Annual Meetings. Unless directors are elected by written consent in lieu of an annual meeting as permitted by applicable law or an annual meeting is otherwise not required by applicable law, an annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting. Stockholders may, unless the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "*Certificate of Incorporation*"), provides otherwise, act by written consent to elect directors; provided, however, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 2.2. Special Meetings. Except as otherwise required by applicable law or provided in the Certificate of Incorporation, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board or the Chief Executive Officer, by the Board, or by the Secretary at the request in writing of stockholders holding shares representing a majority of the voting power of the outstanding shares entitled to vote on the matter for which such meeting is to be called. The Secretary shall call such a meeting upon receiving such a request. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

Section 2.3. Notices. Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat by the Corporation not less than 10 nor more than 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 the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto).

Section 2.4. Quorum. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present at any meeting of the stockholders, the chairman of the meeting or the stockholders entitled to vote thereat so present, by a majority in voting power thereof, may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. 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. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5. Voting of Shares.

(a) Voting Lists. The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before each meeting of stockholders, a complete list of the stockholders of record entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxyholders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3(c)), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxyholder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority:

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

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

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

(d) Required Vote. Subject to the rights of the holders of one or more series of preferred stock of the Corporation ("**Preferred Stock**"), voting separately by class or series, to

elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation or these By-Laws, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) Inspectors of Election. The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting or by the stockholders present and entitled to vote thereat, by a majority in voting power thereof, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.7. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, such other person as shall be appointed by the Board, or in the

absence of such appointment, a chairman chosen at the meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By-Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Consents in Lieu of Meeting. Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum voting power that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation to its registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation by delivery to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. An electronic transmission consenting to the action to be taken and transmitted by a stockholder, proxyholder or a person or persons authorized to act for a stockholder or proxyholder shall be deemed to be written, signed and dated for purposes hereof if such electronic transmission sets forth or is delivered with information from which the Corporation can determine that such transmission was transmitted by a stockholder or proxyholder (or by a person authorized to act for a stockholder or proxyholder) and the date on which such stockholder, proxyholder or authorized person transmitted such transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and delivered to the Corporation by delivery either to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the limitations on delivery in the previous sentence, consents given by electronic transmission may be otherwise delivered to the Corporation's principal place of business or to the Secretary if, to the extent, and in the manner provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a

consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders were delivered to the Corporation as provided in this Section 2.8.

ARTICLE III. DIRECTORS

Section 3.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2. Number; Term. The number of directors of the Corporation initially shall be _____. Thereafter the number of directors, other than those who may be elected by the holders of one or more series of Preferred Stock voting separately by class or series, may be determined from time to time by the Board, but no decrease in such number shall have the effect of shortening the term of any incumbent director. Except as otherwise provided in the Certificate of Incorporation, the directors shall be elected at the annual meeting of stockholders to hold office until the next succeeding annual meeting of stockholders. Each director shall hold office for the term for which such director is elected and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3. Newly Created Directorships and Vacancies. Except as otherwise provided in the Certificate of Incorporation, vacancies resulting from death, resignation, retirement, disqualification, removal or other cause and newly created directorships resulting from an increase in the number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority vote of the directors then in office, even if less than a quorum, by a sole remaining director, or by the stockholders. Except as otherwise provided in the Certificate of Incorporation, if the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled only by a majority of the directors elected by such class or classes or series thereof then in office, by a sole remaining director so elected, or by the stockholders of such class or classes or series thereof. Except as otherwise provided in the Certificate of Incorporation, any director elected or chosen in accordance with this Section 3.3 shall hold office until the next annual election of directors and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.4. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, 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 other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses 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 the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

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

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or Chief Executive Officer and (b) shall be called by the Chairman of the Board, Chief Executive Officer or Secretary on the written request of a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By-Laws, 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. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the Board, but in any event not less than one-third of the Whole Board (as defined below), 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 applicable law, the Certificate of Incorporation or these By-Laws. 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. "Whole Board" shall mean the total number of directors that the Corporation would have if there were no vacancies.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V. COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3. 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.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) 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 applicable law, the Certificate of Incorporation, these By-Laws or the Board. 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. Unless the Board otherwise provides and except as provided in these By-Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By-Laws.

ARTICLE VI. OFFICERS

Section 6.1. Officers. The officers of the Corporation elected by the Board shall be a Chairman of the Board, a Chief Executive Officer, a Treasurer, a Secretary and such other officers (including without limitation a Chief Financial Officer, Vice Presidents, Assistant Secretaries and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chairman of the Board or Chief Executive Officer may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By-Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chairman of the Board or Chief Executive Officer, as may be prescribed by the appointing officer.

(a) Chairman of the Board. 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 Chief Executive Officer 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 By-Laws. The Chairman of the Board must be a director of the Corporation.

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation 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 Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

(c) Vice Presidents. In the absence (or inability or refusal to act) of the Chief Executive Officer, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the Chief Executive Officer. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(d) Secretary.

(i) 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 Chief Executive Officer. The Secretary shall have custody of the corporate seal of the Corporation 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 or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation'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.

(e) 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.

(f) 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 Corporation which from time to time may come into the Treasurer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board or the Chief Executive Officer may authorize).

(g) 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. Term of Office; Removal; Vacancies. The elected officers of the Corporation shall be elected annually by the Board at its first meeting held after each annual meeting of stockholders. All officers elected by the Board shall hold office until the next annual meeting of the Board and until their successors are duly elected and qualified or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chairman of the Board or Chief Executive Officer may also be removed, with or without cause, by the Chairman of the Board or Chief Executive Officer, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chairman of the

Board or Chief Executive Officer may be filled by the Chairman of the Board or Chief Executive Officer, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. Other Officers. The Board may delegate the power to appoint such other 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 or desirable.

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

ARTICLE VII. SHARE CERTIFICATES

Section 7.1. Entitlement to Certificates. The shares of the Corporation 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 Corporation. The Corporation shall not have power to issue a certificate representing shares in bearer form.

Section 7.2. Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, the Chief Executive Officer or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, 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 or upon the books and records of the Corporation in the case of partly paid uncertificated shares, 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 representing certificated shares or said uncertificated shares are issued.

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an indorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the indorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to

uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the indorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such indorsement or instruction or such other reasonable assurance that the indorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction

was contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII. INDEMNIFICATION

Section 8.1. Right to Indemnification. 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 a director or officer, employee or agent of the Corporation or, while a director or officer, employee or agent of the Corporation, is or was serving at the request of the Corporation 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 (hereinafter a "*Covered Person*"), whether the basis of such proceeding is alleged action in an official capacity as a 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 Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, 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 with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation 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 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, a Covered Person shall also have the right to be paid by the Corporation 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 Delaware General Corporation Law ("*DGCL*") requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (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 Corporation 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 is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

Section 8.3. Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation 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 Corporation 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 (a) any suit brought by 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) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation 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 Corporation (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 Corporation (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 Corporation 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 Corporation.

Section 8.4. 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 of Incorporation, these By-Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6. Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation 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 Corporation 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 Corporation and to any other person who is or was serving at the request of the Corporation 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 8.7. Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By-Laws 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 Corporation 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 8.8. 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 Corporation" 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 Corporation" for purposes of Section 145 of the DGCL.

Section 8.9. 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 Corporation, (b) shall fully vest at the time the Covered Person first assumes his or her position as a director or officer, employee or agent of the Corporation, (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, employee or agent of the Corporation, and (e) shall inure to the benefit of the Covered Person's heirs, executors and administrators.

Section 8.10. 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. MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By-Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the

Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2. Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix 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 60 nor less than 10 days before the date of such meeting. 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 business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business 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 Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or 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 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.

(c) In order that the Corporation 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 10 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 Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is otherwise 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.

Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall

be given either (i) in writing and sent by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in, Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "*Electronic transmission*" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly

reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By-Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By-Laws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By-Laws, a written waiver of such

notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. 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 was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation, or these By-Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear 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 was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board, Chief Executive Officer or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The Board may adopt a corporate seal which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, Chief Executive Officer 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 Corporation, 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 Corporation, in such amounts and by such surety companies as the Chairman of the Board, Chief Executive Officer or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, Chief Executive Officer or any Vice President. Any such officer may, in

the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. The Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.

**CERTIFICATE OF INCORPORATION
OF
REORGANIZED GULFPORT HOLDCO, INC.**

ARTICLE ONE

The name of the corporation is Reorganized Gulfport Holdco, Inc. (hereinafter called the "Corporation").

ARTICLE TWO

The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, Wilmington Delaware 19808, in the County of New Castle, and the name of the Corporation's registered agent at such address is Corporation Service Company.

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE THREE

The total number of shares which the Corporation shall have the authority to issue is One Thousand (1,000) shares, all of which shall be shares of Common Stock, with a par value of \$0.01 (One Cent) per share.

ARTICLE FOUR

The name and mailing address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
Sherie Hollinger	Kirkland & Ellis LLP 609 Main Street Houston, TX 77002

ARTICLE FIVE

The directors shall have the power to adopt, amend or repeal bylaws, except as may otherwise be provided in the bylaws.

ARTICLE SIX

The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

ARTICLE SEVEN

To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this ARTICLE SEVEN shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE EIGHT

The Corporation reserves the right to amend or repeal any provisions contained in this Certificate of Incorporation from time to time and at any time in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred upon stockholders and directors are granted subject to such reservation.

* * * *

I, the undersigned, being the sole incorporator herein before named, for the purpose of forming a corporation in pursuance of the General Corporation Law of the State of Delaware, do make and file this Certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set my hand this 30th day of April, 2021.

/s/ Sherie Hollinger
 Name: Sherie Hollinger
 Title: Sole Incorporator

**BYLAWS
OF
REORGANIZED GULFPORT HOLDCO, INC.**

A Delaware Corporation

1. OFFICES

(a) Registered Office. The registered office of the corporation in the State of Delaware shall be located at 251 Little Falls Drive, Wilmington Delaware 19808, in the County of New Castle. The name of the corporation's registered agent at such address shall be Corporation Service Company. The registered office and/or registered agent of the corporation may be changed from time to time by action of the board of directors.

(b) Other Offices. The corporation may also have offices at such other places, both within and without the State of Delaware, as the board of directors may from time to time determine or the business of the corporation may require.

2. MEETINGS OF STOCKHOLDERS

(a) Place and Time of Meetings. An annual meeting of the stockholders shall be held each year for the purpose of electing directors and conducting such other proper business as may come before the meeting. The date, time and place of the annual meeting may be determined by resolution of the board of directors or as set by the chief executive officer of the corporation.

(b) Special Meetings. Special meetings of stockholders may be called for any purpose (including, without limitation, the filling of board vacancies and newly created directorships), and may be held at such time and place, within or without the State of Delaware, as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Such meetings may be called at any time by two or more members of the board of directors or the chief executive officer and shall be called by the chief executive officer upon the written request of holders of shares entitled to cast not less than fifty percent (50%) of the outstanding shares of any series or class of the corporation's capital stock.

(c) Place of Meetings. The board of directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting called by the board of directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the corporation.

(d) Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either personally or by mail, by or at the direction of the board of directors, the chief executive officer or the secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

(e) Stockholders List. The officer having charge of the stock ledger of the corporation shall make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, 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.

(f) Quorum. Except as otherwise provided by applicable law or by the Certificate of Incorporation, a majority of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. If less than a majority of the outstanding shares are represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time in accordance with Section 7 of this Article, until a quorum shall be present or represented.

(g) Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(h) Vote Required. When a quorum is present, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the question is one upon which by express provisions of an applicable law or of the Certificate of Incorporation a different vote is required, in which case such express provision shall govern and control the decision of such question. Where a separate vote by class is required, the affirmative vote of the majority of shares of such class present in person or represented by proxy at the meeting shall be the act of such class.

(i) Voting Rights. Except as otherwise provided by the General Corporation Law of the State of Delaware or by the Certificate of Incorporation of the corporation or any amendments thereto and subject to Section 3 of Article VI hereof, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

(j) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him, her or it by proxy. Every proxy must be signed by the stockholder granting the proxy or by his, her or its attorney-in-fact. No proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

(k) Action by Written Consent. Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice

and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock having not less than a majority of the shares entitled to vote, or, if greater, not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the state of Delaware, or the corporation's principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested provided, however, that no consent or consents delivered by certified or registered mail shall be deemed delivered until such consent or consents are actually received at the registered office. All consents properly delivered in accordance with this section shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered to the corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

3. DIRECTORS

(a) General Powers. The business and affairs of the corporation shall be managed by or under the direction of the board of directors.

(b) Number, Election and Term of Office. The number of directors which shall constitute the board as of the effective date of these by-laws shall be two (2). Hereafter, the number of directors shall be established from time to time by resolution of the board. The directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors. The directors shall be elected in this manner at the annual meeting of the stockholders, except as provided in Section 4 of this Article III. Each director elected shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

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(c) Removal and Resignation. Any director or the entire board of directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the corporation's Certificate of Incorporation, the provisions of this section shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole. Any director may resign at any time upon written notice to the corporation.

(d) Vacancies. Except as otherwise provided by the Certificate of Incorporation of the corporation or any amendments thereto, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority vote of the holders of the corporation's outstanding stock entitled to vote thereon or by a majority of the members of the board of directors. Each director so chosen shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as herein provided.

(e) Annual Meetings. The annual meeting of each newly elected board of directors shall be held without other notice than this by-law immediately after, and at the same place as, the annual meeting of stockholders.

(f) Other Meetings and Notice. Regular meetings, other than the annual meeting, of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by resolution of the board. Special meetings of the board of directors may be called by or at the request of the chief executive officer or president on at least 24 hours' notice to each director, either personally, by telephone, by mail, or by telegraph; in like manner and on like notice the chief executive officer must call a special meeting on the written request of at least a majority of the directors.

(g) Quorum, Required Vote and Adjournment. A majority of the total number of directors then in office (without regard to any then vacancies on the board) shall constitute a quorum for the transaction of business. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the board of directors. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(h) Committees. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation, which to the extent provided in such resolution or these by-laws shall have and may exercise the powers of the board of directors in the management and affairs of the corporation except as otherwise limited by law. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors.

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Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

(i) Committee Rules. Each committee of the board of directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the board of directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the board of directors as provided in Section 8 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in place of any such absent or disqualified member.

(j) Communications Equipment. Members of the board of directors or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute presence in person at the meeting.

(k) Waiver of Notice and Presumption of Assent. Any member of the board of directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

(l) Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the board

of directors, or of any committee thereof, may be taken without a meeting if all the then 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.

4. OFFICERS

(a) Number. The officers of the corporation shall be elected by the board of directors and may consist of a chairman, a chief executive officer, a president, one or more vice presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary or desirable by the board of directors. Any number of offices may be held by the same person. In its discretion, the board of directors may choose not to fill any office for any period as it may deem advisable.

(b) Election and Term of Office. The officers of the corporation shall be elected annually by the board of directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the board of directors. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

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(c) Removal. Any officer or agent elected by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

(d) Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term by the board of directors then in office.

(e) Compensation. Compensation of all officers shall be fixed by the board of directors, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation.

(f) The Chairman of the Board. The Chairman of the Board, if one shall have been elected, shall be a member of the board, may be an officer of the corporation, and, if present, shall preside at each meeting of the board of directors or stockholders. He shall advise the chief executive officer, and in the chief executive officer's absence, other officers of the corporation, and shall perform such other duties as may from time to time be assigned to him by the board of directors.

(g) The Chief Executive Officer. In the absence of the Chairman of the Board or if a Chairman of the Board shall have not been elected, the chief executive officer shall preside at all meetings of the stockholders and board of directors at which he or she is present; subject to the powers of the board of directors, shall have general charge of the business, affairs and property of the corporation, and control over its officers, agents and employees; and shall see that all orders and resolutions of the board of directors are carried into effect. The chief executive officer shall have such other powers and perform such other duties as may be prescribed by the board of directors or as may be provided in these by-laws.

(h) President; Vice Presidents. The president shall, in the absence or disability of the chief executive officer, act with all of the powers and be subject to all of the restrictions of the chief executive officer. The president shall also perform such other duties and have such other powers as the board of directors, the chief executive officer or these by-laws may, from time to time, prescribe. The vice-president, if any, or if there shall be more than one, the vice-presidents in the order determined by the board of directors shall, in the absence or disability of the president, act with all of the powers and be subject to all the restrictions of the president. The vice-presidents shall also perform such other duties and have such other powers as the board of directors, the president or these by-laws may, from time to time, prescribe.

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(i) The Secretary and Assistant Secretaries. The secretary shall attend all meetings of the board of directors, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose. Under the chief executive officer's supervision, the secretary shall give, or cause to be given, all notices required to be given by these by-laws or by law; shall have such powers and perform such duties as the board of directors, the chief executive officer or these by-laws may, from time to time, prescribe; and shall have custody of the corporate seal of the corporation. The secretary, or an assistant secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his or her signature. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors, the chief executive officer, or secretary may, from time to time, prescribe.

(j) The Treasurer and Assistant Treasurer. The treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; shall deposit all monies and other valuable effects in the name and to the credit of the corporation as may be ordered by the board of directors; shall cause the funds of the corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the chief executive officer and the board of directors, at its regular meeting or when the board of directors so requires, an account of the corporation; shall have such powers and perform such duties as the board of directors, the chief executive officer or these by-laws may, from time to time, prescribe. If required by the board of directors, the treasurer shall give the corporation a bond (which shall be rendered every six years) in such sums and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of the office of treasurer and for the restoration to the corporation, in case of death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in the possession or under the control of the treasurer belonging to the corporation. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors, shall in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. The assistant treasurers shall perform such other duties and have such other powers as the board of directors, the chief executive officer, the president or treasurer may, from time to time, prescribe.

(k) Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, which officers may include officers of any division of the corporation, other than those whose duties are provided for in these by-laws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the board of directors.

(l) Absence or Disability of Officers. In the case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the board of directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

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5. INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

(a) Nature of Indemnity. Each person who was or is made a party to or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or a person of whom he is the legal representative, is or was a director or officer, of the corporation or is or was serving at the request of the corporation as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent, shall be indemnified and held harmless by the corporation to the fullest extent which it is empowered to do so by the General Corporation Law of the State of Delaware, 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 corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment) against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding and such indemnification shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Section 2 hereof, the corporation shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the corporation. The right to indemnification conferred in this Article V shall be a contract right and, subject to Sections 2 and 5 hereof, shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition. The corporation may, by action of its board of directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(b) Procedure for Indemnification of Directors and Officers. Any indemnification of a director or officer of the corporation under Section 1 of this Article V or advance of expenses under Section 5 of this Article V shall be made promptly, and in any event within 30 days, upon the written request of the director or officer. If a determination by the corporation that the director or officer is entitled to indemnification pursuant to this Article V is required, and the corporation fails to respond within sixty days to a written request for indemnity, the corporation shall be deemed to have approved the request. If the corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or if payment in full pursuant to such request is not made within 30 days, the right to indemnification or advances as granted by this Article V shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the corporation. Neither the failure of the corporation (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the corporation (including its board of directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

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(c) Nonexclusivity of Article V. The rights to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article V shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

(d) Insurance. The corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the corporation or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the corporation would have the power to indemnify such person against such liability under this Article V.

(e) Expenses. Expenses incurred by any person described in Section 1 of this Article V in defending a proceeding shall be paid by the corporation in advance of such proceeding's final disposition unless otherwise determined by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the corporation. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(f) Employees and Agents. Persons who are not covered by the foregoing provisions of this Article V and who are or were employees or agents of the corporation, or who are or were serving at the request of the corporation as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the board of directors.

(g) Contract Rights. The provisions of this Article V shall be deemed to be a contract right between the corporation and each director or officer who serves in any such capacity at any time while this Article V and the relevant provisions of the General Corporation Law of the State of Delaware or other applicable law are in effect, and any repeal or modification of this Article V or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

(h) Merger or Consolidation. For purposes of this Article V, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article V with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

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6. CERTIFICATES OF STOCK

(a) Form. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by the chairman of the board, the chief executive officer, the chief financial officer, the president, a vice-president, the secretary or an assistant secretary of the corporation, certifying the number of shares owned by such holder in the corporation. If such a certificate is countersigned (1) by a transfer agent or an assistant transfer agent other than the corporation or its employee or (2) by a registrar, other than the corporation or its employee, the signature of any such chairman of the board, chief executive officer, president, vice-president, secretary, or assistant secretary may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the

books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization, and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates, and record the transaction on its books. The board of directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar, or both in connection with the transfer of any class or series of securities of the corporation.

(b) Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his or her legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

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

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

(e) Fixing a Record Date for Other Purposes. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty 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 of directors adopts the resolution relating thereto.

(f) Subscriptions for Stock. Unless otherwise provided for in the subscription agreement, subscriptions for shares shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation.

7. GENERAL PROVISIONS

(a) Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the board of directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

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(b) Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation, and in such manner, as shall be determined by resolution of the board of directors or a duly authorized committee thereof.

(c) Contracts. The board of directors may authorize any officer or officers, or any agent or agents, of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

(d) Loans. The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

(e) Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors and shall initially be from January 1 to December 31 of each calendar year.

(f) Corporate Seal. The board of directors may provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

(g) Voting Securities Owned By Corporation. Voting securities in any other corporation held by the corporation shall be voted by the chief executive officer, unless the board of directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

(h) Inspection of Books and Records. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in the State of Delaware or at its principal place of business.

(i) Section Headings. Section headings in these by-laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

(j) Inconsistent Provisions. In the event that any provision of these by-laws is or becomes inconsistent with any provision of the Certificate of Incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

8. AMENDMENTS

These by-laws may be amended, altered, or repealed and new by-laws adopted at any meeting of the board of directors by a majority vote. The fact that the power to adopt, amend, alter, or repeal the by-laws has been conferred upon the board of directors shall not divest the stockholders of the same powers.

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:46 PM 02/28/2012
FILED 03:02 PM 02/28/2012
SRV 120243200 5116241 FILE

**CERTIFICATE OF FORMATION
OF
WESTHAWK MINERALS LLC**

The undersigned, an authorized natural person, for the purpose of forming a limited liability company, under the provisions and subject to the requirements of the State of Delaware (particularly Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified, and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

FIRST: The name of the limited liability company (hereinafter called the "Limited Liability Company") Westhawk Minerals LLC.

SECOND: The address of the registered office and the name and the address of the registered agent of the Limited Liability Company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

Executed on February 28, 2012.



Arthur Amron, Authorized Person

Prepared by: CS
Requested by: P. Jacobi

LIMITED LIABILITY COMPANY AGREEMENT
OF
WESTHAWK MINERALS LLC

This Limited Liability Company Agreement (this "**Agreement**") of Westhawk Minerals LLC (the "**Company**") is entered into by the person or entity named as Member in Annex A hereto, as the sole member of the Company (the "**Member**"), this 16th day of July, 2012.

1. Formation. Arthur Amron, as an "authorized person" within the meaning of the Delaware Limited Liability Company Act (6 Del. C. §§ 18-101, et seq.), as amended from time to time (the "**Delaware Act**"), has executed, delivered and filed the initial Certificate of Formation of the Company with the Secretary of State of the State of Delaware on February 28, 2012. Upon the Member's execution and delivery of this Agreement, Mr. Amron's powers as an "authorized person" shall cease, and the Member shall thereupon become the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Delaware Act. Upon the filing of the initial Certificate of Formation of the Company with the Secretary of State of the State of Delaware, and the entering into of this Agreement by the Member, the Member hereby forms a limited liability company under the Delaware Act. The Member shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

2. Name. The name of the Company is Westhawk Minerals LLC. The business of the Company shall be conducted under such name or such other names that comply with applicable law as the Member may from time to time deem necessary or desirable.

3. Purpose and Powers. The purpose of the Company shall be to engage in any lawful business or activity for which limited liability companies may be formed under the Delaware Act. The Company shall possess and may exercise all of the powers and privileges granted by the Delaware Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purpose of the Company.

4. Registered Office and Registered Agent. The address of the registered office of the Company in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the name of the registered agent of the Company for service of process on the Company at such address is Corporation Service Company.

5. Member. Simultaneously with its execution of this Agreement, the Member is hereby admitted as the sole member of the Company and agrees to be bound by the terms of this Agreement. The Member shall have the sole limited liability company interest (as defined in the Delaware Act) in the Company (the "**Interest**") and the respective other rights, powers, duties and obligations provided in the Delaware Act, except, to the extent permitted by the Delaware Act, as otherwise provided herein.

6. Capital Contribution. The Member has made a contribution to the capital of the Company in the amount set forth opposite the Member's name on Annex A hereto. The Member shall have the right, but not the obligation, to make additional capital contributions to the Company as the Member in its sole discretion may determine.

7. Allocations and Distributions. The net profits and net losses of the Company, and other items of income, gain, loss, deduction and credit, will be allocated 100 percent to the Member for capital account and federal income tax purposes, and the Company, as a separate entity, is to be disregarded for federal income tax purposes. Subject to Sections 18-607 and 18-804 of the Delaware Act, the Company shall make such distributions to the Member as the Member determines.

8. Management by Member.

(a) The management and control of the Company shall be vested entirely in the Member. The Member shall have all the rights and powers that are conferred by law or are otherwise necessary, advisable or convenient to the discharge of the Member's duties and to the management of the business and affairs of the Company. No person or entity dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting for such purposes on behalf of the Company.

(b) Without limiting the generality of Section 8(a) hereof, the Member may appoint such officers as it shall deem necessary or advisable who shall hold their offices for such terms, shall have authority (subject to such conditions as may be prescribed by the Member) to sign deeds, mortgages, bonds, contracts or other instruments on behalf of the Company and shall exercise such other powers and perform such other duties as shall be determined from time to time by the Member. Unless otherwise determined by the Member, each such officer shall hold office until his or her successor is chosen and qualified. Any officer appointed by the Member may be removed at any time, with or without cause, upon notice by the Member. Any vacancy occurring in any office of the Company shall be filled by the Member in its sole discretion. Any number of offices may be held by the same person. The initial officers of the Company shall be the persons listed on Annex B.

9. Transfer or Pledge of Interest; Admission of Additional Members.

(a) The Member may assign its Interest in whole or in part at any time. Upon assignment of the Member's entire Interest to a transferee, the transferee shall automatically be deemed admitted to the Company as a substituted member of the Company, the Member shall simultaneously be deemed to have resigned from the Company as a member of the Company, and the Company shall continue without dissolution (and all applicable references herein to the "Member" shall be read as references to the transferee as the substituted member of the Company); provided, in any event, that the transferee must agree in a document or instrument to be bound by the terms of this Agreement. One or more additional members of the Company may be admitted to the Company with the consent of the Member. Upon the admission to the Company of any additional member(s), the members of the Company shall cause this Agreement to be amended and restated to reflect the admission of such additional member(s) and the initial capital contribution, if any, of such additional member(s) and the intention of the members to

cause the Company to be classified as a partnership or corporation for federal income tax purposes, and to include such other provisions as the members may agree to reflect the change of status of the Company from a single member limited liability company to a limited liability company with two or more members.

(b) Any provision to the contrary contained in this Agreement notwithstanding, the Interest may be pledged to any lender or lenders as collateral for the indebtedness, liabilities and obligations of the Member and/or any of its subsidiaries to such lender or lenders, and any such pledged limited liability company interests shall be subject to such lender's or lenders' rights under any collateral documentation governing or pertaining to such pledge. The pledge of such limited liability company interests shall not, except as otherwise provided in such collateral documentation, cause the Member to cease to be a member of the Company or to have the power to exercise any rights or powers of a member of the Company and, except as provided in such collateral documentation, such lender or lenders shall not have any liability solely as a result of such pledge. Without limiting the foregoing, the right of such lender or lenders to enforce their rights and remedies under such collateral documentation hereby is acknowledged and any such action taken in accordance therewith shall be valid and effective for all purposes under this Agreement (regardless of any restrictions herein contained) and any assignment, sale or other disposition of the Interest by such lender or lenders pursuant to any such collateral documentation in connection with the exercise of any such lender's or lenders' rights and powers shall be valid and effective for all purposes, including, without limitation, under Section 18-702 of the Delaware Act and this Agreement, to transfer all right, title and interest of the Member hereunder to itself or themselves, any other lender or any other person (each an "*Assignee*") in accordance with such collateral documentation and applicable law (including, without limitation, in accordance with such collateral documentation and applicable law, the rights to participate in the management of the business and the business affairs of the Company, to share profits and losses, to receive distributions and to receive allocation of income, gain, loss, deduction, credit or similar item) and such Assignee shall be a member of the Company with all rights and powers of a member of the Company. Such assignment shall not constitute an event of dissolution under Section 11 hereunder. Further, no lender or any such Assignee shall be liable for the obligations of any member assignor to make contributions. The Member approves all of the foregoing and agrees that no further approval shall be required for the exercise of any rights or remedies under such collateral documentation. For purposes of this Agreement, the Interest and any certificate representing the same shall be deemed a security governed by Article VIII of the Uniform Commercial Code.

10. Resignation of Members; Events of Bankruptcy. Except as provided in the mandatory provisions of the Delaware Act and pursuant to the second sentence of Section 9, no right is given to any member of the Company to resign from the Company. The Member shall not cease to be a member of the Company upon the happening of any of the events specified in Section 18-304 of the Delaware Act.

11. Dissolution and Term of the Company. The Company shall dissolve upon any act or event causing the dissolution of the Company under the Delaware Act, unless, if permitted by the Delaware Act, the Company is continued in accordance with the Delaware Act. Subject to an earlier dissolution as described in the preceding sentence, the Company shall have a perpetual existence.

12. Limitation of Liability and Indemnification of Member.

(a) Except as otherwise required by the Delaware Act, the Member shall not be liable for the debts, obligations or liabilities of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a member of the Company.

(b) The Member shall not be liable to the Company or to any other member of the Company or other person or entity who may become a party to or bound by this Agreement for any breach of this Agreement or of any duties (including fiduciary duties) arising under or in connection with this Agreement or the Company other than for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(c) To the fullest extent permitted by applicable law, the Company shall (i) indemnify and hold harmless any person or entity and such person's or entity's executors, administrators, heirs, legal representatives, successors and assigns (each, a "**Covered Person**") against all expenses, attorneys' fees, court costs, judgments, fines, amounts paid in settlement and other losses incurred or suffered by such Covered Person by reason of the fact that such person or entity is or was a member, manager, officer, authorized person, employee or agent of the Company or is or was serving at the request of the Company as a member, manager, director, officer, authorized person, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, domestic or foreign and (ii) advance expenses incurred by a Covered Person in defending or otherwise participating in any threatened, pending or completed action, suit or proceeding, whether civil criminal, administrative or investigative that such Covered Person was or is a party or was or is treated to be made a party by reason of the fact that such person or entity is or was a member, manager, officer, authorized person, employee or agent of the Company or is or was serving at the request of the Company as a member, manager, director, officer, authorized person, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, domestic or foreign in advance of its final disposition to the fullest extent permitted by applicable law upon receipt of an undertaking by the Covered Person to repay such amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such Covered Person is not entitled to be indemnified by the Company for such expenses under this Section 12 or otherwise.

13. Amendment. This Agreement may be amended by the Member; provided, however, that any amendment to this Agreement must be in writing and signed by the Member.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law principles.

15. Severability. The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Agreement, as applied to any party or to any circumstance, is judicially determined not to be enforceable in accordance with its terms, the court judicially making such determination may modify the provision in a manner

consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its modified form, such provision will then be enforceable and will be enforced.

16. Effectiveness of Agreement. Pursuant to Section 18-201(d) of the Delaware Act, this Agreement shall be effective as of the date first written above.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has executed this Limited Liability Company Agreement as of the date first written above.

MEMBER:

GULFPORT ENERGY CORPORATION

By: Michael G. Moore
Michael G. Moore
Vice President and Chief Financial Officer

[Signature Page to Limited Liability Company Agreement]

Annex A

<u>Member</u>	<u>Capital Contribution</u>
Gulfport Energy Corporation 14313 North May Avenue Suite 100 Oklahoma City, Oklahoma 73134	\$100.00

Annex B

Current Officers

(as of July 16, 2012)

James D. Palm	President and Chief Executive Officer
Michael G. Moore	Vice President, Chief Financial Officer and Secretary

Gulfport Energy Corporation
Issuer
8.0% Senior 1145 Notes due 2026
INDENTURE
Dated as of [●]
UMB Bank, National Association
Trustee

CROSS-REFERENCE TABLE

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(b)	7.08; 7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	11.03
(c)	11.03
313(a)	7.06
(b)(1)	N.A.
(b)(2)	7.06
(c)	11.02
(d)	7.06
314(a)	4.02; 4.10; 11.02
(b)	N.A.
(c)(1)	11.04
(c)(2)	11.04
(c)(3)	N.A.
(d)	N.A.
(e)	11.05
(f)	4.10
315(a)	7.01
(b)	7.05; 11.02
(c)	7.01
(d)	7.01
(e)	6.11
316(a)(last sentence)	11.0
(a)(1)(A)	6.05

(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
317(a)(1)	6.08
(a)(2)	6.09
(b)	2.04
318(a)	11.01

N.A. means Not Applicable.

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of this Indenture.

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INDENTURE dated as of [●], 2021, among Gulfport Energy Corporation, a Delaware corporation (the “Company”), those Subsidiary Guarantors executing the signature pages hereto and each other Subsidiary Guarantor that from time to time becomes a party to this Indenture (the “(Subsidiary Guarantors)”), the Initial Parent Guarantor and each other Parent Guarantor that from time to time becomes a party to this Indenture (the “Parent Guarantors”) and UMB Bank, National Association, a national banking association, as trustee (the “Trustee”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Securities and any Additional Securities:

ARTICLE 1

Definitions and Incorporation by Reference

Section 1.01 Definitions. “Additional Assets” means: (1) any property, plant or equipment used or useful in a Related Business; (2) the Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or another Restricted Subsidiary; or (3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary; provided, however, that any such Restricted Subsidiary described in clause (2) or (3) above is primarily engaged in a Related Business.

“Additional Securities” means Securities issued under this Indenture after the Issue Date and in compliance with Sections 2.13 and 4.02, it being understood that any Securities issued in exchange for or replacement of any Security issued on the Issue Date shall not be an Additional Security.

“Adjusted Treasury Rate” means, with respect to any redemption date, (i) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated “H.15(519)” or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities,” for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the First Call Date, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date, in each case calculated on the third Business Day immediately preceding the redemption date, in each case, plus 0.50%.

“Affiliate” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. No Person shall be deemed an Affiliate of an oil and gas royalty trust solely by virtue of ownership of units of beneficial interest in such trust.

“Applicable Guarantee” means any Parent Guarantee or Subsidiary Guarantee.

“Applicable Guarantor” means any Parent Guarantor or Subsidiary Guarantor.

“Applicable Premium” means with respect to a Security at any redemption date, the greater of (1) 1.00% of the principal amount of such Security and (2) the excess of (A) the present value at such redemption date of (i) the redemption price of such Security on the First Call Date (such redemption price being described in paragraph 5(a) of the Securities, exclusive of any accrued interest) plus (ii) all required remaining scheduled interest payments due on such Security through the First Call Date (but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Adjusted Treasury Rate, over (B) the principal amount of such Security on such redemption date. The Company will calculate the Applicable Premium and deliver such calculation to the Trustee prior to the applicable redemption date. The Trustee will not be responsible for the calculation of the Applicable Premium.

“ASC” means the Financial Standards Accounting Board’s Accounting Standards Codification.

“Asset Disposition” means an “Asset Sale” (as such term may be amended from time to time in accordance with the provisions of the Private Placement Securities Indenture) under the Private Placement Securities Indenture.

“Average Life” means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing (1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of or redemption or similar payment with respect to such Indebtedness multiplied by the amount of such payment by (2) the sum of all such payments.

“Bankruptcy Cases” means the chapter 11 cases of the Company and certain of its direct and indirect Subsidiaries jointly administered as case number 20-35562 before the Bankruptcy Court.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

“Bankruptcy Law” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

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“Board of Directors” means the board of directors of the Company or any committee thereof duly authorized to act on behalf of such board.

“Business Day” means each day which is not a Legal Holiday.

“Capital Lease Obligation” means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty; provided that Capital Lease Obligation shall be construed as described in the Private Placement Securities Indenture.

“Capital Stock” of any Person means any and all shares, interests (including partnership interests), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“Change of Control” means the occurrence of a “Change of Control” (as such term may be amended from time to time in accordance with the provisions of the Private Placement Securities Indenture) under the Private Placement Securities Indenture.

“Code” means the Internal Revenue Code of 1986, as amended.

“Company” means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor, and, for purposes of any provision contained herein and required by the Trust Indenture Act, each other obligor on the indenture securities.

“Comparable Treasury Issue” means the United States Treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the Securities from the redemption date to the First Call Date, that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a maturity most nearly equal to the First Call Date.

“Comparable Treasury Price” means, with respect to any redemption date, if clause (ii) of the Adjusted Treasury Rate definition is applicable, the average of three, or such lesser number as is obtained by the Quotation Agent, Reference Treasury Dealer Quotations for such redemption date.

“Credit Agreements” means one or more credit facilities, including the Existing Credit Agreement, other revolving credit loans, term loans, receivables financings, debt securities or other forms of debt, convertible debt or exchangeable debt financings or letters of credit and including any promissory notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, any amendments, supplements, modifications or Refinancings thereof and any such credit facilities that replace in any manner (whether upon or after termination or otherwise) or Refinance, restate, amend, supplement or modify any part of the loans, notes or commitments thereunder, including any such Refinanced, restated, amended, supplemented or modified facility that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (provided that such increase in borrowings is permitted under this Indenture) or adds the Company or any of the Applicable Guarantors as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders or creditor or group of creditors; provided further that an instrument (other than the Existing Credit Agreement) must be designated in writing to the Trustee to be a Credit Agreement.

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“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Default” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended.

“Fair Market Value” means, with respect to any asset or property, the price which could be negotiated in an arm’s length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair Market Value will be determined in good faith by an Officer of the Company who has responsibility for such transaction, whose determination will be conclusive, or, if in excess of \$50.0 million, the Board of Directors, whose determination will be conclusive and evidenced by a resolution of such Board of Directors.

“First Call Date” means [], 2024.¹

“Grizzly Holdings” means Grizzly Holdings, Inc., a Delaware corporation, and its successors.

“Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(2) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a correlative meaning.

¹ NTD: At or near the third anniversary of the Issue Date.

“Guaranty Agreement” means a supplemental indenture, substantially in the form attached hereto as Exhibit B, pursuant to which an Applicable Guarantor guarantees the Company’s obligations with respect to the 8.0% Senior 1145 Notes due 2026 on the terms provided for in this Indenture.

“Holder” or “Securityholder” means the Person in whose name a Security is registered on the Registrar’s books.

“Hydrocarbon and Mineral Properties” means all properties, including any interest therein, which contain or are believed to contain Hydrocarbons and Minerals.

“Hydrocarbons and Minerals” means oil, natural gas, other hydrocarbons, sand, minerals and all constituents, elements or compounds thereof, and other products commonly created, recovered or produced in association therewith or refined or processed therefrom.

“Incur” means issue, assume, Guarantee or incur; provided, however, that any Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Restricted Subsidiary. The term “Incurrence” when used as a noun shall have a correlative meaning. “Indebtedness” means, with respect to any Person on any date of determination (without duplication):

(1) the principal in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(2) all Capital Lease Obligations of such Person;

(3) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding any accounts payable or other liability to trade creditors arising in the ordinary course of business);

(4) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers’ acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (1) through (3) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit);

(5) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock of such Person or, with respect to any Preferred Stock of any Restricted Subsidiary of such Person, the principal amount of such Preferred Stock to be determined in accordance with this Indenture (but excluding, in each case, any accrued dividends) (and the term “Incur Indebtedness” and similar terms include issuances of such Disqualified Stock and Preferred Stock);

(6) all obligations of the types referred to in clauses (1) through (5) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, including by means of any Guarantee;

(7) all obligations of the types referred to in clauses (1) through (6) of other Persons secured by any Lien on any property of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the liquidation value of such property and the amount of the obligation so secured;

(8) to the extent not otherwise included in this definition, Hedging Obligations of such Person; and

(9) any guarantee by such Person of production or payment with respect to a Production Payment (but, for the avoidance of doubt, excluding all other obligations associated with such Production Payments, such as guarantees with respect to operation and maintenance of the related oil and gas properties in a prudent manner, delivery of

the associated production (if required) and other such contractual obligations).

Notwithstanding the foregoing, in connection with the purchase by the Company or any Restricted Subsidiary of any business, the term “Indebtedness” will exclude (i) any post-closing payment to which the seller or any of its Affiliates may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing (“Post-Closing Payments”); provided, however, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 60 days thereafter, (ii) accrued expenses and royalties arising in the ordinary course of business, (iii) obligations to satisfy customer prepayment arrangements arising in the ordinary course of business, (iv) asset retirement obligations, (v) obligations in respect of environmental reclamation or site rehabilitation, (vi) workers compensation obligations (including superannuation, pensions and retiree medical care) that are not overdue by more than 90 days, (vii) obligations under farm-in and farm-out agreements or operating agreements, (viii) obligations arising out of the endorsement of negotiable instruments for collection in the ordinary course of business and (ix) customary indemnification obligations. In addition, except as expressly provided in clause (9) above, Production Payments and Reserve Sales shall not constitute “Indebtedness.”

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above; provided, however, that in the case of Indebtedness sold at a discount, the amount of such Indebtedness at any time will be the accreted value thereof at such time.

“Indenture” means this Indenture as amended or supplemented from time to time.

“Initial Parent Guarantor” means [].

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“Investment” in any Person means any direct or indirect advance, loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of the lender) or other extensions of credit (including by way of Guarantee or similar arrangement) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition for value of Capital Stock, Indebtedness or other similar instruments issued by, such Person. Except as otherwise provided for herein, the amount of an Investment shall be its Fair Market Value at the time the Investment is made and without giving effect to subsequent changes in value or write-ups, write-downs or write-offs with respect to such Investment. “Investment” shall be construed in the context of the meaning ascribed thereto in the Private Placement Securities Indenture.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB– (or the equivalent) by Standard & Poor’s.

“Issue Date” means [●], 2021.

“Legal Holiday” means a Saturday, a Sunday or a day on which banking institutions are not required to be open in the State of New York.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“Net Available Cash” from an Asset Disposition means cash payments received therefrom (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to such properties or assets or received in any other non-cash form), in each case net of:

(1) all accounting, engineering, investment banking, brokerage, legal, title and recording tax expenses, commissions, disposal costs, remediation or repair payments, pension or benefit payments or costs, payments related to environmental matters, facilities closure costs, severance payments, restructuring costs and other fees and expenses incurred, and all Federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Disposition, and any relocation expenses incurred or assumed in connection with such Asset Disposition;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law, be repaid out of the proceeds from (or concurrently with) such Asset Disposition;

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(3) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries or to holders of royalty or similar interests as a result of such Asset Disposition;

(4) the deduction of appropriate amounts provided by the seller as a reserve for adjustment in respect of the sale price of the assets that were the subject of such Asset Disposition or as a reserve, in accordance with GAAP, against any liabilities associated with such assets and retained by the Company or any Restricted Subsidiary after such Asset Disposition; and

(5) any portion of the purchase price from an Asset Disposition placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such Asset Disposition or otherwise in connection with that Asset Disposition; provided, however, that upon the termination of that escrow, Net Available Cash will be increased by any portion of funds in the escrow that are released to the Company or any Restricted Subsidiary.

Notwithstanding the foregoing, to the extent that any or all of the Net Available Cash from an Asset Disposition made outside the United States of America is prohibited or delayed from being repatriated to the United States pursuant to applicable local law (or to the extent that the Board of Directors of the Company determines, in good faith, that repatriation of such Net Available Cash would have a material adverse tax consequence to the Company) despite reasonable effort by the Company or such Restricted Subsidiary to exclude or release those funds from such restrictions or to avoid such tax, the portion of such Net Available Cash so affected shall be deemed excluded from Net Available Cash for so long as such restrictions or material adverse tax consequences exist.

“Net Cash Proceeds,” with respect to any issuance or sale of Capital Stock or Indebtedness, means the cash proceeds of such issuance or sale net of attorneys’ fees, accountants’ fees, underwriters’ or placement agents’ fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

Notwithstanding anything to the contrary herein, all references herein to “Net Cash Proceeds” shall be deemed to mean cash in an amount equal to the amount of Net Cash Proceeds, but not necessarily the actual cash received from the relevant issuance or sale. The Company and its Restricted Subsidiaries shall have no obligation to segregate, trace or otherwise identify Net Cash Proceeds (other than the amount thereof), it being agreed that cash is fungible and that the Company’s obligations may be

satisfied by the application of funds from other sources.

“Obligations” means, with respect to any Indebtedness, all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements and other amounts payable pursuant to the documentation governing such Indebtedness.

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“Officer” means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Accounting Officer, any Senior Vice President, any Vice President, the Treasurer or the Secretary of the Company.

“Officer’s Certificate” means a certificate signed by an Officer.

“Oil and Gas Business” means:

- (1) the acquisition, exploration, exploitation, development, production, operation and disposition of interests in Hydrocarbon and Mineral Properties;
- (2) the gathering, marketing, distribution, treating, processing, storage, refining, selling and transporting of any production from Hydrocarbon and Mineral Properties and the marketing of Hydrocarbons and Minerals obtained therefrom and from unrelated Persons;
- (3) any business or activity relating to or arising from exploration for or exploitation, development, production, treatment, processing, storage, refining, transportation, gathering or marketing of Hydrocarbons and Minerals;
- (4) any business relating to oilfield services and any other business providing assets or services used or useful in connection with the activities described in clauses (1) through (3) of this definition, including the sale, leasing, ownership or operation of drilling rigs, fracturing units or other assets used or useful in any such business; and
- (5) any activity necessary, appropriate or incidental to the activities described in the preceding clauses (1) through (4) of this definition.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

“Parent Guarantee” means a Guarantee by a Parent Guarantor of the Company’s obligations with respect to the Securities.

“Parent Guarantor” means each parent company of the Company that executes this Indenture as a guarantor and each other parent company of the Company that thereafter Guarantees the Securities pursuant to the terms of this Indenture, in each case unless and until such parent company is released from its obligations under its Parent Guarantee pursuant to the terms of this Indenture.

“Permitted Grizzly Disposition” means a sale, lease, transfer or other disposition or issuance of any or all (or substantially all) of the Capital Stock or assets of Grizzly Holdings.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

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“Plan of Reorganization” means the plan of reorganization of the Company and certain of its direct and indirect Subsidiaries, as debtors and debtors-in-possession, filed in the Bankruptcy Cases (and any annexes, supplements, exhibits, term sheets, or other attachments thereto), as amended, modified or supplemented prior to the Effective Date (as defined in the Plan), including by the Plan Supplement (as defined in the Plan), in accordance with the terms thereof and as permitted hereunder.

“Principal” or “principal” of a Security means the principal of the Security plus the premium, if any, payable on the Security which is due or overdue or is to become due at the relevant time.

“Private Placement Securities” means the Company’s 8.0% Senior Notes due 2026 governed by the Private Placement Securities Indenture.

“Private Placement Securities Indenture” means that certain indenture, dated as of the Issue Date, among the Company, the guarantors party thereto, UMB Bank, National Association as trustee, relating to the Company’s Private Placement Securities (where, for the avoidance of doubt, \$[] aggregate principal amount of Private Placement Securities were issued on the Issue Date).

“Qualifying Equity Offering” means the issuance after the Issue Date of Capital Stock of the Company (other than Disqualified Stock) to any Person or Persons other than a Subsidiary of the Company.

“Quotation Agent” means the Reference Treasury Dealer appointed by the Company.

“Reference Treasury Dealer” means [J.P. Morgan Securities LLC] and its successors or affiliates and assigns and two other nationally recognized investment banking firms selected by the Company that are primary U.S. Government securities dealers.

“Reference Treasury Dealer Quotations” means with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Quotation Agent, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day immediately preceding such redemption date.

“Refinance” means, in respect of any Indebtedness, to refinance or refund or to issue other Indebtedness in exchange or replacement for, such Indebtedness (whether contemporaneously with the satisfaction of such Indebtedness or within 180 days of such satisfaction). “Refinanced” and “Refinancing” shall have correlative meanings.

“Related Business” means any Oil and Gas Business, any business in which the Company, any of its Restricted Subsidiaries or any Person in which the Company or any Restricted Subsidiary had an Investment was engaged on the Issue Date, and any business or other activities that are reasonably similar, ancillary, incidental, synergistic, complementary or related thereto, or a reasonable extension, derivation, development, innovation or expansion of, any of the foregoing.

“Restricted Subsidiary” means any Subsidiary of the Company that is not an Unrestricted Subsidiary.

“SEC” means the U.S. Securities and Exchange Commission.

“Section 5.01(a) Transaction” has the meaning assigned to it under the Private Placement Securities Indenture.

“Securities” means the Securities issued on the Issue Date and any Additional Securities, treated as a single class.

“Securities Act” means the U.S. Securities Act of 1933, as amended.

“Senior Indebtedness” means with respect to any Person:

(1) Indebtedness of such Person, whether outstanding on the Issue Date or thereafter Incurred; and

(2) all other Obligations of such Person (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to such Person whether or not post-filing interest is allowed in such proceeding) in respect of Indebtedness described in clause (1) above

unless, in the case of clauses (1) and (2), in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such Indebtedness or other Obligations are subordinate in right of payment to the Securities or the Subsidiary Guarantee of such Person, as the case may be; provided, however, that Senior Indebtedness shall not include:

(A) any obligation of such Person to the Company or any Subsidiary of the Company;

(B) any liability for Federal, state, local or other taxes owed or owing by such Person;

(C) any accounts payable or other liability to trade creditors arising in the ordinary course of business;

(D) any Indebtedness or other Obligation of such Person that is subordinate in right of payment to any other Indebtedness or other Obligation of such Person;

or

(E) that portion of any Indebtedness that at the time of Incurrence was Incurred in violation of this Indenture.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “Significant Subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC; provided that in no event will any Restricted Subsidiary that, together with its consolidated Restricted Subsidiaries, accounts for less than 5.0% of the consolidated revenue of the Company, for the Company’s most recently ended four full fiscal quarters for which internal financial statements are available, be considered a Significant Subsidiary.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

“Subsidiary” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Voting Stock is at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person.

Unless otherwise specified, “Subsidiary” means a Subsidiary of the Company.

“Subsidiary Guarantee” means a Guarantee by a Subsidiary Guarantor of the Company’s obligations with respect to the Securities.

“Subsidiary Guarantor” means each Subsidiary of the Company that executes this Indenture as a guarantor and each other Subsidiary of the Company that thereafter Guarantees the Securities pursuant to the terms of this Indenture, in each case unless and until such Subsidiary is released from its obligations under its Subsidiary Guarantee pursuant to the terms of this Indenture.

“Successor Company” has the meaning assigned to it in the Private Placement Securities Indenture.

“Trust Indenture Act” means the Trust Indenture Act of 1939 (15U.S.C. §§77aaa-77bbb) as in effect on the Issue Date.

“Trust Officer” means the Chairman of the Board, the President or any other officer or assistant officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

“Trustee” means UMB Bank, National Association until a successor replaces it and, thereafter, means the successor.

“Unrestricted Subsidiary” means:

(1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors in the manner provided pursuant to the Private Placement Securities Indenture.

“U.S. Government Obligations” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America

(including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer's option.

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

“Wholly Owned Subsidiary” means a Restricted Subsidiary all the Capital Stock of which (other than directors' qualifying shares and shares required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary) is owned by the Company or one or more other Wholly Owned Subsidiaries.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Section</u>
Asset Disposition Offer	4.03(b)
Assuming Parent	5.01
Change of Control Offer	4.04(b)
Change of Control Purchase Price	4.04(b)
Company	Preamble
Guaranteed Obligations	10.01
Net Available Cash	4.03(d)
Offer Amount	4.03(c)(2)
Offer Period	4.03(c)(2)
Paying Agent	2.03
Purchase Date	4.03(c)
Registrar	2.03
Relevant Event	1.04
Trustee	Preamble

Section 1.03 Incorporation by Reference of Trust Indenture Act.

This Indenture is subject to the mandatory provisions of the Trust Indenture Act which are incorporated by reference in and made a part of this Indenture. The following Trust Indenture Act terms have the following meanings:

“Commission” means the SEC;

“indenture securities” means the Securities and the Subsidiary Guarantees;

“indenture security holder” means a Securityholder;

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“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and “obligor” on the indenture securities means the Company, each Subsidiary Guarantor and any other obligor on the indenture securities.

All other Trust Indenture Act terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

Section 1.04 Rules of Construction. Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) “including” means including without limitation;
- (5) words in the singular include the plural and words in the plural include the singular;

(6) Indebtedness shall not be considered subordinate in right of payment to any other Indebtedness solely by virtue of being unsecured, secured with a subset of the collateral securing such other Indebtedness or with different collateral, secured to a lesser extent or secured with lower priority, by virtue of structural subordination, by virtue of maturity date, order of payment or order of application of funds, or by virtue of not being guaranteed by all guarantors of such other Indebtedness, and any subordination in right of payment must be pursuant to a written agreement or instrument;

(7) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP;

(8) the principal amount of any Preferred Stock shall be (A) the maximum liquidation value of such Preferred Stock or (B) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater

(9) for the avoidance of doubt, the term “all or substantially all,” as used herein shall not be read to mean “any” of the assets of the Company or the Applicable Guarantors due to qualitative factors, including as a result of the Company or the relevant Applicable Guarantor being in the “zone of insolvency”;

- (10) all references to the date the Securities were originally issued shall refer to the Issue Date; and

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(11) where a calculation must be made in connection with an acquisition, Asset Disposition or other disposition, Investment or other investment, dividend or other action or event (each, a “Relevant Event”) in order to determine compliance with the covenants and other provisions of this Indenture, such calculation may be made, at the election of the Company, either (i) at the time such Relevant Event is consummated or (ii) at the time the definitive agreements with respect to such Relevant Event are entered into.

ARTICLE 2

The Securities

Section 2.01 Form and Dating. The Securities and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit 1 to the Appendix, which is hereby incorporated in, and expressly made a part of, this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Security shall be dated the date of its authentication. The terms of the Securities set forth in the Appendix and Exhibit A are part of the terms of this Indenture.

Section 2.02 Execution and Authentication. Two Officers shall sign the Securities for the Company by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

On the Issue Date, the Trustee shall authenticate and deliver \$[] million of 8.0% Senior 1145 Notes due 2026 and, at any time and from time to time thereafter, the Trustee shall authenticate and deliver Securities for original issue in an aggregate principal amount specified in such order, in each case upon a written order of the Company signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company. Such order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated and, in the case of an issuance of Additional Securities pursuant to Section 2.13 after the Issue Date, shall certify that such issuance is in compliance with Section 4.03.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate the Securities. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

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Section 2.03 Registrar and Paying Agent. The Company shall cause to be maintained under this Indenture an office or agency where Securities may be presented for registration of transfer or for exchange (the “Registrar”) and an office or agency where Securities may be presented for payment (the “Paying Agent”). The Registrar shall keep a register of the Securities and of their transfer and exchange. There may be one or more co-registrars and one or more additional paying agents. The term “Paying Agent” includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture, which shall incorporate the terms of the Trust Indenture Act. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any Wholly Owned Subsidiary incorporated or organized within The United States of America may act as Paying Agent, Registrar, co-registrar or transfer agent.

The Company initially appoints the Trustee as Registrar and Paying Agent in connection with the Securities.

Section 2.04 Paying Agent To Hold Money in Trust. Prior to each due date of the principal and interest on any Security, the Company shall deposit with the Paying Agent a sum sufficient to pay such principal and interest when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money held by the Paying Agent for the payment of principal of or interest on the Securities and shall notify the Trustee of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon complying with this Section, the Paying Agent shall have no further liability for the money delivered to the Trustee.

Section 2.05 Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee, in writing at least five Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

Section 2.06 Transfer and Exchange. The Securities shall be issued in registered form and shall be transferable only upon the surrender of a Security for registration of transfer. When a Security is presented to the Registrar or a co-registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements of this Indenture are met. When Securities are presented to the Registrar or a co-registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met.

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Section 2.07 Replacement Securities. If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security if the Holder satisfies any other reasonable requirements of the Trustee. If required by the Trustee or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Company and the Trustee to protect the Company, the Trustee, the Paying Agent, the Registrar and any co-registrar from any loss which any of them may suffer if a Security is replaced. The Company and the Trustee may charge the Holder for their expenses in replacing a Security. Every replacement Security is an additional Obligation of the Company.

Section 2.08 Outstanding Securities. Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security, but, in certain circumstances, Section 11.06 provides that certain Securities shall be disregarded.

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or maturing, as the case may be, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

Section 2.09 Temporary Securities. Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities and deliver them in exchange for temporary Securities.

Section 2.10 Cancellation. The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel and destroy all Securities surrendered for registration of transfer, exchange, payment or cancellation and deliver a certificate of such destruction to the Company at the written request of the Company. The Company may not issue new Securities to replace Securities it has redeemed, paid or delivered to the Trustee for cancellation.

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Section 2.11 Defaulted Interest. If the Company defaults in a payment of interest on the Securities, the Company shall pay defaulted interest (plus interest on such defaulted interest to the extent lawful) in any lawful manner. The Company may pay the defaulted interest to the Persons who are Securityholders on a subsequent special record date. The Company shall fix or cause to be fixed any such special record date and payment date to the reasonable satisfaction of the Trustee and shall promptly mail (or, when the Securities are represented by Global Securities, cause the Depository to send electronically pursuant to its applicable procedures) to each Securityholder a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

Section 2.12 CUSIP Numbers, ISINs, etc. The Company in issuing the Securities may use "CUSIP" numbers, ISINs and "Common Code" numbers (in each case if then generally in use) and, if so, the Trustee shall use "CUSIP" numbers, ISINs and "Common Code" numbers in notices of redemption as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall advise the Trustee in writing of any change in any "CUSIP" numbers, ISINs or "Common Code" numbers applicable to the Securities.

Section 2.13 Issuance of Additional Securities. After the Issue Date, the Company shall be entitled, subject to its compliance with Section 4.03, to issue Additional Securities under this Indenture, which Securities shall have identical terms as the Securities issued on the Issue Date, other than with respect to the date of issuance and issue price. All the Securities issued under this Indenture shall be treated as a single class for all purposes of this Indenture including waivers, amendments, redemptions and offers to purchase.

With respect to any Additional Securities, the Company shall set forth in a resolution of the Board of Directors and an Officer's Certificate and, if the Company so elects, a supplemental indenture, a copy of each which shall be delivered to the Trustee, the following information:

(1) the aggregate principal amount of such Additional Securities to be authenticated and delivered pursuant to this Indenture and the provision of Section 4.03 that the Company is relying on to issue such Additional Securities; and

(2) the issue price, the issue date and the CUSIP number of such Additional Securities; provided, however, that a separate CUSIP number will be issued for any Additional Securities if the Securities and the Additional Securities are not fungible for U.S. federal income tax purposes.

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ARTICLE 3

Redemption

Section 3.01 Notices to Trustee. If the Company elects to redeem Securities pursuant to paragraph 5 of the Securities, it shall notify the Trustee in writing of the redemption date, the principal amount of Securities to be redeemed and the paragraph of the Securities or this Indenture pursuant to which the redemption will occur.

The Company shall give each notice to the Trustee provided for in this Section no later than three Business Days prior to the issuance of the redemption notice pursuant to Section 3.03 unless the Trustee consents to a shorter period. Such notice shall be accompanied by an Officer's Certificate and an Opinion of Counsel from the Company to the effect that such redemption will comply with the conditions herein. Any such notice to the Trustee may be canceled at any time prior to notice of such redemption being mailed to any Holder and shall thereby be void and of no effect.

Section 3.02 Selection of Securities to Be Redeemed If fewer than all the Securities are to be redeemed, the Trustee shall select the Securities to be redeemed on a pro rata basis, by lot or by such other means as the Trustee deems fair and appropriate and in accordance with the applicable rules and procedures of the Depository. The Trustee shall make the selection from outstanding Securities not previously called for redemption. Securities and portions of them the Trustee selects shall be in principal amounts of \$2,000 or any greater integral multiple of \$1,000 thereof. Securities of \$2,000 or less shall be redeemed in whole and not in part. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be redeemed.

Section 3.03 Notice of Redemption. At least 10 days but not more than 60 days before a date for redemption of Securities, the Company shall cause a notice of redemption to be sent to each Holder of Securities to be redeemed at such Holder's registered address, except that redemption notices may be sent more than 60 days prior to the redemption date if the notice is issued in connection with a defeasance of the Securities or a satisfaction and discharge of this Indenture. Any inadvertent defect in the notice of redemption, including an inadvertent failure to give notice, to any Holder selected for redemption shall not impair or affect the validity of the redemption of any other Security redeemed in accordance with provisions of this Indenture. The notice shall identify the Securities to be redeemed and shall state:

- (1) the redemption date;
- (2) the redemption price;
- (3) the name and address of the Paying Agent;

(4) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(5) if fewer than all the outstanding Securities are to be redeemed, the identification and principal amounts of the particular Securities to be redeemed;

(6) that, unless the Company defaults in making such redemption payment, interest on Securities (or portion thereof) called for redemption ceases to accrue on and after the redemption date;

(7) the “CUSIP” number, ISIN or “Common Code” number, if any, printed on the Securities being redeemed;

(8) that no representation is made as to the correctness or accuracy of the “CUSIP” number, ISIN, or “Common Code” number, if any, listed in such notice or printed on the Securities; and

(9) if the notice of redemption is subject to one or more conditions precedent as provided in Section 3.04, a statement to that effect and a description of such condition or conditions.

At the Company’s request, the Trustee shall give the notice of redemption in the Company’s name and at the Company’s expense. In such event, the Company shall provide the Trustee with the information required by this Section.

Section 3.04 Effect of Notice of Redemption. Once notice of redemption is sent, Securities called for redemption become due and payable on the redemption date and at the redemption price stated in the notice; provided that notice of any redemption in connection with any Qualifying Equity Offering or other securities offering or any other financing or transaction, including in connection with a transaction (or a series of related transactions) that constitute a Change of Control, may, at the Company’s discretion, be given prior to the completion thereof and be subject to one or more conditions precedent, including completion of the related Qualifying Equity Offering, securities offering, financing, transaction or Change of Control. If a redemption is subject to satisfaction of one or more conditions precedent, the redemption date may be delayed up to 30 Business Days upon notice thereof by the Company to Holders; provided that if such conditions precedent are not satisfied within 30 Business Days of the proposed redemption date, such redemption shall not occur and the notice thereof shall be rescinded, with notice thereof given by the Company to Holders. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price stated in the notice, plus accrued interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the related interest payment date), and such Securities shall be canceled by the Trustee.

Section 3.05 Deposit of Redemption Price. Prior to the redemption date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued interest on all Securities to be redeemed on that date other than Securities or portions of Securities called for redemption which have been delivered by the Company to the Trustee for cancellation.

Section 3.06 Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate for the Holder (at the Company’s expense) a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

Section 3.07 Requirement to Redeem the Securities Pro Rata with Private Placement Securities. The Company shall not redeem any or all of the Private Placement Securities without also redeeming any or all, respectively, of the Securities pro rata on substantially the same terms at substantially the same time.

ARTICLE 4

Covenants

Section 4.01 Payment of Securities. The Company shall promptly pay the principal of and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. Principal and interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal and interest then due.

The Company shall pay interest on overdue principal at the rate specified therefor in the Securities, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

Section 4.02 Other Covenants. The Company and its Restricted Subsidiaries shall comply, other than as prohibited by the Trust Indenture Act, with Sections 4.02, 4.03, 4.04, 4.05, 4.07, 4.08, 4.10, 4.11, 4.12, 4.13 and 4.14 of the Private Placement Securities Indenture, as such Sections and related definitions and other provisions may be amended from time to time in accordance with the provisions of the Private Placement Securities Indenture.

For the avoidance of doubt, other than as prohibited by the Trust Indenture Act:

(a) the Company shall cause the Guarantors (as defined in the Private Placement Securities Indenture) of the Private Placement Securities to be the same as the Guarantors of the Securities;

(b) the Company shall cause any Subsidiary to have the same status under this Indenture as a Restricted Subsidiary or Unrestricted Subsidiary as such Subsidiary possesses under the Private Placement Securities Indenture;

(c) the Company shall cause the Securities to be secured (or not secured) by Liens to the same extent and of the same priority as any Liens securing the Private Placement Securities;

(d) the Company shall cause any Successor Company under the Private Placement Securities Indenture to become the Successor Company under the Securities; and

(e) to the extent that Indebtedness is required under the Private Placement Securities Indenture to be subordinated to the Private Placement Securities, such Indebtedness shall also be required to be subordinated to the Securities.

Section 4.03 Limitation on Sales of Assets and Subsidiary Stock. (a) The Company shall not, and shall not permit any Restricted Subsidiary or, so long as it is an Unrestricted Subsidiary, Grizzly Holdings, to, directly or indirectly, consummate any Asset Disposition unless:

(1) the Company or such Subsidiary receives consideration at the time of such Asset Disposition at least equal to the Fair Market Value, including as to the value of all non-cash consideration (as determined in good faith by the Board of Directors, an Officer or an officer of such Subsidiary with responsibility for such transaction, such determination to be made as of the date of contractually agreeing to such Asset Disposition, which determination shall be conclusive evidence of compliance with this provision) of the shares or assets subject to such Asset Disposition;

(2) at least 75% of the consideration thereof received by the Company or such Subsidiary is in the form of cash or cash equivalents, Hydrocarbon and Mineral Properties, capital assets to be used by the Company or such Subsidiary (or any Restricted Subsidiary) in the Oil and Gas Business, Capital Stock of a Person primarily engaged in a Related Business and, in the case of an Asset Disposition by, or of the Capital Stock of, Grizzly Holdings, other securities or Indebtedness that are by their terms payable within two years of the date of such Asset Disposition in cash or other assets described in this clause (a)(2); and

(3) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Company (or such Subsidiary, as the case may be)

(A) to the extent the Company so elects (or is required by the terms of any Indebtedness), to prepay, repay, purchase, repurchase, redeem, defease or otherwise acquire or retire for value Senior Indebtedness of the Company or any Subsidiary Guarantor or Indebtedness or Preferred Stock of such Subsidiary or of any Restricted Subsidiary that is not a Subsidiary Guarantor (in each case other than Indebtedness owed to the Company or an Affiliate of the Company) within one year (or in the case of an Asset Disposition by, or of the Capital Stock of, Grizzly Holdings, two years) from the later of the date of such Asset Disposition or the receipt of such Net Available Cash;

(B) to the extent the Company so elects, to acquire Additional Assets or make capital expenditures in the Oil and Gas Business within one year (or in the case of an Asset Disposition by, or of the Capital Stock of, Grizzly Holdings, two years) from the later of the date of such Asset Disposition or the receipt of such Net Available Cash; and

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(C) to the extent of the balance of the amount of Net Available Cash after application in accordance with clauses (A) and (B), or, if the Company so elects, at any earlier time, to make an offer to the holders of the Securities (and to holders of other Senior Indebtedness of the Company or a Subsidiary Guarantor designated by the Company) to purchase Securities (and such other Senior Indebtedness) pursuant to and subject to the conditions contained in this Indenture;

provided, however, that in connection with any prepayment, repayment, purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness pursuant to clause (A) or (C) above (other than Indebtedness outstanding pursuant to Credit Agreements), the Company or such Subsidiary shall permanently retire such Indebtedness and shall cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid, purchased or otherwise retired.

Notwithstanding the foregoing provisions of this Section, the Company and such Subsidiaries shall not be required to apply any amount of Net Available Cash in accordance with this Section except to the extent that the aggregate amount of Net Available Cash from all Asset Dispositions which is not applied in accordance with this Section exceeds \$50.0 million.

Pending application of any amount of Net Available Cash pursuant to this Section, such amount may be invested in any manner not prohibited by this Indenture, including to temporarily reduce revolving credit indebtedness.

For the purposes of Section 4.03(a)(2), the following are deemed to be cash or cash equivalents: (i) the release of, pursuant to a novation or other agreement, or the discharge of, the Company or such Subsidiary from all liability on Indebtedness in connection with such Asset Disposition; (ii) with respect to any Asset Disposition of Hydrocarbon and Mineral Properties, any agreement by the transferee (or an Affiliate thereof) to pay all or a portion of the Company's or a Restricted Subsidiary's share of any costs or expenses related to the exploration, development, completion or production of Hydrocarbon and Mineral Properties and activities related thereto; and (iii) any securities, notes or other obligations received by the Company or any Restricted Subsidiary from such transferee that are, within 90 days after the Asset Disposition, converted by the Company or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion.

The requirement of Section 4.03(a)(3)(B) shall be deemed to be satisfied if an agreement (including a lease, whether a capital lease or an operating lease) committing to make the acquisitions or expenditures referred to therein is entered into by the Company or such Subsidiary (or any Restricted Subsidiary) within the time period specified in such clause and the amount of such Net Available Cash is subsequently applied in accordance with such agreement within six months following such agreement.

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Notwithstanding the foregoing, in the event that a Subsidiary that is not a Wholly Owned Subsidiary effects an Asset Disposition and dividends or distributes to all of its stockholders (including the Company or a Restricted Subsidiary) on a pro rata basis any Net Available Cash from such Asset Disposition, the Company or such Restricted Subsidiary need only apply an amount equal to its pro rata share of such Net Available Cash in accordance with Section 4.03(a)(3) above.

(b) In the event of an Asset Disposition that requires the purchase of Securities (and other Senior Indebtedness of the Company or a Subsidiary Guarantor) pursuant to Section 4.03(a)(3)(C), the Company shall make such offer to purchase Securities on or before the 366th day (or in the case of an Asset Disposition by, or of the Capital Stock of, Grizzly Holdings, the 731st day) after the later of the date of such Asset Disposition or the receipt of such Net Available Cash and will purchase Securities tendered pursuant to an offer (an "Asset Disposition Offer") by the Company for the Securities (and such other Senior Indebtedness) at a purchase price of 100% of their principal amount (or, in the event such other Senior Indebtedness was issued with significant original issue discount, 100% of the accreted value thereof) without premium, plus accrued but unpaid interest, subject to the rights of Holders of record on the relevant record date to receive interest due on the relevant interest payment date (or, in respect of such other Senior Indebtedness, such lesser price, if any, as may be provided for by the terms of such Senior Indebtedness) in accordance with the procedures (including prorating in the event of oversubscription) set forth in Section 4.03(c). If the aggregate purchase price of the securities tendered exceeds the Net Available Cash allotted to their purchase, the Company will select the securities to be purchased on a pro rata basis but in round denominations, which in the case of the Securities will be denominations of \$2,000 principal amount or any greater multiple of \$1,000. The Company shall not be required to make an Asset Disposition Offer pursuant to this Section if the amount of Net Available Cash available therefor is less than \$50.0 million (which lesser amount shall be carried forward for purposes of determining whether such an offer is required with

respect to the Net Available Cash from any subsequent Asset Disposition). Upon completion of such an offer to purchase, Net Available Cash shall be deemed to be reduced by the aggregate amount of such offer.

(c) (1) Within 20 days after the Company becomes obligated to make an Asset Disposition Offer, the Company shall deliver to the Trustee, and cause to be sent to each Holder, a written notice stating that the Holder may elect to have its Securities purchased by the Company either in whole or in part (subject to prorating as described in Section 4.06(b) in the event the Asset Disposition Offer is oversubscribed) in denominations of \$2,000 of principal amount or any greater integral multiple of \$1,000 thereof, at the applicable purchase price. The notice shall specify a purchase date not less than 10 days nor more than 60 days after the date of such notice (the "Purchase Date") and shall contain all instructions and materials necessary to tender Securities pursuant to the Asset Disposition Offer, together with the information contained in clause (3).

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(2) Not later than the date upon which written notice of an Asset Disposition Offer is delivered to the Trustee as provided below, the Company shall deliver to the Trustee an Officer's Certificate as to (A) the amount of the Offer (the "Offer Amount"), including information as to any other Senior Indebtedness included in the Asset Disposition Offer, (B) the allocation of the Net Available Cash from the Asset Dispositions pursuant to which such Asset Disposition Offer is being made and (C) the compliance of such allocation with the provisions of Section 4.03(a) and (b). Upon the expiration of the period for which the Asset Disposition Offer remains open (the "Offer Period"), the Company shall deliver to the Trustee for cancellation the Securities or portions thereof which have been properly tendered to and are to be accepted by the Company. The Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust) the aggregate purchase price by 10:00 a.m. New York City time, after which the Trustee shall, on the Purchase Date, mail or deliver payment (or cause the delivery of payment) to each tendering Holder in the amount of the purchase price.

(3) Holders electing to have a Security purchased shall be required to surrender the Security, with an appropriate form duly completed, to the Company at the address specified in the notice at least three Business Days prior to the Purchase Date. Holders shall be entitled to withdraw their election if the Trustee or the Company receives, not later than one Business Day prior to the Purchase Date, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security which was delivered for purchase by the Holder and a statement that such Holder is withdrawing its election to have such Security purchased. Holders whose Securities are purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered.

(4) At the time the Company delivers Securities to the Trustee which are to be accepted for purchase, the Company shall also deliver an Officer's Certificate stating that such Securities are to be accepted by the Company pursuant to and in accordance with the terms of this Section. A Security shall be deemed to have been accepted for purchase at the time the Trustee, directly or through an agent, mails or otherwise sends or delivers payment therefor to the surrendering Holder.

(d) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Securities pursuant to this Section. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section, the Company shall comply with the applicable securities laws and regulations and shall be deemed not to have breached its obligations under this Section by virtue of its compliance with such securities laws or regulations.

Notwithstanding anything to the contrary in this Section, all references herein to "Net Available Cash" shall be deemed to mean cash in an amount equal to the amount of Net Available Cash but not necessarily the actual cash received from the relevant Asset Disposition. The Company and its Subsidiaries shall have no obligation to segregate, trace or otherwise identify Net Available Cash (other than the amount thereof), it being agreed that cash is fungible and that the Company's obligations under this covenant may be satisfied by the application of funds from other sources.

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Section 4.04 Change of Control. (a) Upon the occurrence of a Change of Control, each Holder shall have the right to require the Company to repurchase such Holder's Securities at a purchase price in cash equal to 101% of the principal amount thereof on the date of purchase plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).

(b) Within 30 days following any Change of Control, the Company shall send a notice to each Holder with a copy to the Trustee (the "Change of Control Offer") stating:

(1) that a Change of Control has occurred and that such Holder has the right to require the Company to purchase such Holder's Securities at a purchase price (the "Change of Control Purchase Price") in cash equal to 101% of the principal amount thereof on the date of purchase, plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date);

(2) the circumstances and relevant facts regarding such Change of Control (including information with respect to pro forma historical income, cash flow and capitalization, in each case after giving effect to such Change of Control);

(3) the purchase date (which shall be no earlier than 10 days nor later than 60 days from the date such notice is sent); and

(4) the instructions, as determined by the Company, consistent with this Section, that a Holder must follow in order to have its Securities purchased.

(c) Holders electing to have a Security purchased will be required to surrender the Security, with an appropriate form duly completed, to the Company at the address specified in the notice at least three Business Days prior to the purchase date. Holders will be entitled to withdraw their election if the Trustee or the Company receives, not later than one Business Day prior to the purchase date, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security which was delivered for purchase by the Holder and a statement that such Holder is withdrawing its election to have such Security purchased.

(d) On the purchase date, all Securities purchased by the Company under this Section shall be delivered by the Company to the Trustee for cancellation, and the Company shall pay the purchase price including accrued and unpaid interest, if any, to the Holders entitled thereto. The Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust) the aggregate purchase price by 10:00 a.m. New York City time on the purchase date, after which the Trustee shall mail or deliver payment (or cause the delivery of payment) to each tendering Holder in the amount of the purchase price.

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(e) Notwithstanding the foregoing provisions of this Section, the Company shall not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section applicable to a Change of Control Offer made by the Company and purchases all Securities validly tendered and not withdrawn under such Change of Control Offer or if notice of redemption has been given pursuant to paragraph 6 of the Securities.

(f) Notwithstanding any other provision of this Indenture, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(g) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Securities as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section, the Company shall comply with the applicable securities laws and regulations and shall be deemed not to have breached its obligations under this Section by virtue of its compliance with such securities laws or regulations.

(h) In the event that Holders of not less than 90% in aggregate principal amount of the outstanding Securities accept a Change of Control Offer and the Company (or any third party making such Change of Control Offer in lieu of the Company as described above) purchases all of the Securities tendered by such Holders, the Company shall have the right, upon not less than 10 nor more than 60 days prior notice, given not more than 30 days following the purchase pursuant to the Change of Control Offer described above, to redeem all of the Securities that remain outstanding following such purchase at a redemption price equal to the Change of Control Purchase Price, including interest to the date of redemption (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date).

ARTICLE 5

Successor Company

Section 5.01 When Company May Merge or Transfer Assets. (a) The Company shall not consolidate with or merge with or into, or convey, transfer or lease, in one transaction or a series of related transactions, directly or indirectly, all or substantially all its assets to, any Person, other than in compliance with the Private Placement Securities Indenture. The Successor Company (if not the Company) under the Private Placement Securities Indenture, to the extent required pursuant to the Private Placement Securities Indenture with respect thereto, shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Company under the Securities and this Indenture.

The Successor Company (if not the Company) shall be the successor to the Company and shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, and the predecessor Company, except in the case of a lease, shall be released from the obligation to pay the principal of and interest on the Securities.

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For all purposes of this Indenture, Subsidiaries of any Successor Company will, upon any Section 5.01(a) Transaction, become Restricted Subsidiaries or Unrestricted Subsidiaries as provided pursuant to this Indenture, and all Indebtedness and Liens of the Successor Company and its Subsidiaries that were not Indebtedness or Liens on property or assets, as the case may be, of the Company and its Subsidiaries immediately prior to such Section 5.01(a) Transaction shall be deemed to have been Incurred upon such transaction.

In connection with a Section 5.01(a) Transaction, a direct or indirect parent company (an "Assuming Parent") of the Successor Company may assume the obligations of the Company under the Securities and this Indenture to the extent permitted by the Private Placement Securities Indenture with respect thereto.

(b) The Company shall not permit any Applicable Guarantor to consolidate with or merge with or into, or convey, transfer or lease, in one transaction or a series of related transactions, all or substantially all of its assets to any Person, other than in compliance with the Private Placement Securities Indenture. If the resulting, surviving or transferee Person (if not such Subsidiary), is required to expressly assume, by a Guaranty Agreement, all the obligations of such Applicable Guarantor, if any, under its Applicable Guarantee under the Private Placement Securities Indenture, then such Person shall expressly assume, by a Guaranty Agreement, all the obligations of such Applicable Guarantor, if any, under its Applicable Guarantee under the Securities and this Indenture.

ARTICLE 6

Defaults and Remedies

Section 6.01 Events of Default. An "Event of Default" occurs if:

- (1) the Company defaults in any payment of interest on any Security when the same becomes due and payable, and such default continues for a period of 30 days;
- (2) the Company defaults in the payment of the principal of any Security when the same becomes due and payable at its Stated Maturity, upon optional redemption, upon required purchase, upon declaration of acceleration or otherwise;
- (3) the Company fails to comply with its obligations in Section 5.01;
- (4) an "Event of Default," as defined under the Private Placement Securities Indenture, shall have occurred under Section 6.01(4) of the Private Placement Securities Indenture, and shall not have been waived or rescinded pursuant to the terms of the Private Placement Securities Indenture;

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- (5) the Company or any Applicable Guarantor fails to comply for 60 days after notice with its other agreements contained in this Indenture;
- (6) an "Event of Default," as defined under the Private Placement Securities Indenture, shall have occurred under Section 6.01(6) of the Private Placement Securities Indenture, and shall not have been waived or rescinded pursuant to the terms of the Private Placement Securities Indenture;
- (7) the Company, any Applicable Guarantor or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
 - (A) commences a voluntary case;

- (B) consents to the entry of an order for relief against it in an involuntary case;
- (C) consents to the appointment of a Custodian of it or for any substantial part of its property; or
- (D) makes a general assignment for the benefit of its creditors;

or takes any comparable action under any foreign laws relating to insolvency;

(8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (A) is for relief against the Company or any Significant Subsidiary in an involuntary case;
- (B) appoints a Custodian of the Company or any Significant Subsidiary or for any substantial part of its property; or
- (C) orders the winding up or liquidation of the Company or any Significant Subsidiary;

or any similar relief is granted under any foreign laws and, in each case, the order or decree remains unstayed and in effect for 60 days;

(9) an “Event of Default,” as defined under the Private Placement Securities Indenture, shall have occurred under Section 6.01(9) of the Private Placement Securities Indenture, and shall not have been waived or rescinded pursuant to the terms of the Private Placement Securities Indenture;

(10) (i) any Parent Guarantee or (ii) any Subsidiary Guarantee with respect to any Subsidiary Guarantor whose assets have a net book value of more than \$15.0 million, in either of case (i) or (ii), ceases to be in full force and effect (other than in accordance with the terms of such Applicable Guarantee or this Indenture) or any Applicable Guarantor denies or disaffirms its obligations under its Applicable Guarantee; or

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(11) the occurrence of an Event of Default under the Private Placement Indenture.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

A Default under clauses (4) and (5) shall not constitute an Event of Default until the Trustee or the holders of 30% in principal amount of the outstanding Securities notify the Company of the Default and the Company does not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied, and state that such notice is a “Notice of Default”.

Section 6.02 Acceleration.

(a) If an Event of Default (other than an Event of Default specified in Section 6.01(7) or (8) with respect to the Company) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 30% in principal amount of the outstanding Securities by notice to the Company and the Trustee, may declare the principal of and accrued but unpaid interest on all the Securities to be due and payable. Upon such a declaration, such principal and interest shall be due and payable immediately.

(b) If an Event of Default specified in Section 6.01(7) or (8) with respect to the Company occurs and is continuing, the principal of and interest on all the Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholders.

(c) The Holders of a majority in principal amount of the Securities by notice to the Trustee may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of acceleration. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

(d) In the event of a declaration of acceleration of the Securities solely because an Event of Default described in Section 6.01(6) has occurred and is continuing, the declaration of acceleration of the Securities shall be automatically rescinded and annulled if the event of default or payment default triggering such Event of Default pursuant to Section 6.01(6) shall be remedied or cured by the Company or such Subsidiary or waived by the holders of the relevant Indebtedness within 20 Business Days after the declaration of acceleration with respect thereto and if the rescission and annulment of the acceleration of the Securities would not conflict with any judgment or decree of a court of competent jurisdiction obtained by the Trustee for the payment of amounts due on the Securities.

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Section 6.03 Other Remedies.

(a) If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

(b) The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 Waiver of Past Defaults. The Holders of a majority in principal amount of the Securities by notice to the Trustee may waive an existing Default and its consequences except:

- (a) a Default in the payment of the principal of or interest on a Security;
- (b) a Default arising from the failure to redeem or purchase any Security when required pursuant to this Indenture; or
- (c) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Securityholder affected.

When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

Section 6.05 Control by Majority. The Holders of a majority in principal amount of the outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of other Securityholders or would involve the Trustee in personal liability; provided, however, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

Section 6.06 Limitation on Suits. Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Securityholder may pursue any remedy with respect to this Indenture or the Securities unless:

- (1) such holder has previously given the Trustee notice that an Event of Default is continuing;
- (2) holders of at least 30% in principal amount of the outstanding Securities have requested the Trustee to pursue the remedy;

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(3) such holders have offered the Trustee reasonable security or indemnity against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(5) holders of a majority in principal amount of the outstanding Securities have not given the Trustee a direction inconsistent with such request within such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over another Securityholder. In the event that the Definitive Securities are not issued to any beneficial owner promptly after the Registrar has received a request from the Holder of a Global Security to issue such Definitive Securities to such beneficial owner of its nominee, the Company expressly agrees and acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to this Indenture, the right of such beneficial holder of Securities to pursue such remedy with respect to the portion of the Global Security that represents such beneficial holder's Securities as if such Definitive Securities had been issued.

Section 6.07 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest on the Securities held by such Holder, on or after the respective due dates expressed in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 Collection Suit by Trustee. If an Event of Default specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.07.

Section 6.09 Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Securityholders allowed in any judicial proceedings relative to the Company, its creditors or its property and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.07.

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Section 6.10 Priorities. If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order, pro rata with respect to the Securities and the Private Placement Securities:

FIRST: to the Trustee for amounts due under Section 7.07;

SECOND: to Securityholders for amounts due and unpaid on the Securities for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Company.

Subject to the requirements of the following sentence, the Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section. At least 10 days before such record date, the Company shall cause to be sent to each Securityholder and the Trustee a notice that states the record date, the payment date and amount to be paid.

Section 6.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 20% in aggregate principal amount of the outstanding Securities.

ARTICLE 7

Trustee

Section 7.01 Duties of Trustee. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs. (b) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform on their face to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(f) Money held in trust by the Trustee shall be held uninvested and need not be segregated from other funds except to the extent required by law.

(g) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section and to the provisions of the Trust Indenture Act.

Section 7.02 Rights of Trustee. (a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document. (b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) To the extent permitted under the Trust Indenture Act, the Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(e) The Trustee may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(g) The Trustee shall have no duty to inquire as to the performance of the Company's covenants in Article 4. In addition, the Trustee shall not be deemed to have knowledge of any Default or Event of Default except: (i) any Event of Default occurring pursuant to Section 6.01(1) or 6.01(2); or (ii) any Default or Event of Default of which a Trust Officer shall have received written notification.

(h) In no event shall the Trustee be liable to any person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including lost profits), even if the Trustee has been advised of the likelihood of such loss or damage.

Section 7.03 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

Section 7.04 Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement of the Company in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

Section 7.05 Notice of Defaults. If a Default occurs, is continuing and is known to the Trustee, the Trustee shall send to each Securityholder notice of the Default within 90 days after it occurs. Except in the case of a Default in the payment of principal of or interest on any Security (including payments pursuant to the mandatory purchase provisions of such Security), the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is not opposed to the interests of the Securityholders.

Section 7.06 Reports by Trustee to Holders. As promptly as practicable after each [15] beginning with [15], 2021, and in any event prior to [15] in each year, the Trustee shall mail (or, when the Securities are represented by Global Securities, cause the Depository to send electronically pursuant to its applicable procedures) to each Securityholder a brief report dated as of [15] that complies with Trust Indenture Act § 313(a). The Trustee also shall comply with Trust Indenture Act §313(b).

A copy of each report at the time of its delivery to Securityholders shall be filed with the SEC and each stock exchange (if any) on which the Securities are listed. The Company agrees to notify promptly the Trustee whenever the Securities become listed on any stock exchange and of any delisting thereof.

Section 7.07 Compensation and Indemnity. The Company shall pay to the Trustee from time to time reasonable compensation for its services. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Company shall indemnify the Trustee against any and all loss, liability or expense (including attorneys' fees) incurred by it in connection with the administration of this trust and the performance of its duties hereunder. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee that has been adjudicated to have been the result of the Trustee's own willful misconduct or negligence.

To secure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Securities.

The Company's payment obligations pursuant to this Section shall survive the discharge of this Indenture. When the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(7) or (8) with respect to the Company, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

Section 7.08 Replacement of Trustee.

(a) The Trustee may resign at any time by so notifying the Company. The Holders of a majority in principal amount of the outstanding Securities may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee.

(b) The Company shall remove the Trustee if:

- (A) the Trustee fails to comply with Section 7.10;
- (B) the Trustee is adjudged bankrupt or insolvent;

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(C) a receiver or other public officer takes charge of the Trustee or its property; or

(D) the Trustee otherwise becomes incapable of acting.

(c) If the Trustee resigns, is removed by the Company or by the Holders of a majority in principal amount of the Securities and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

(d) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall send a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

(e) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the outstanding Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) If the Trustee fails to comply with Section 7.10, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(g) Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

Section 7.09 Successor Trustee by Merger.

(a) If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

(b) In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

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Section 7.10 Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of Trust Indenture Act §310(a). The Trustee shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with Trust Indenture Act §310(b); provided, however, that there shall be excluded from the operation of Trust Indenture Act §310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in Trust Indenture Act §310(b)(1) are met.

Section 7.11 Preferential Collection of Claims Against Company. The Trustee shall comply with Trust Indenture Act §311(a), excluding any creditor relationship listed in Trust Indenture Act §311(b). A Trustee who has resigned or been removed shall be subject to Trust Indenture Act § 311(a) to the extent indicated.

Satisfaction and Discharge of Indenture; Defeasance

Section 8.01 **Discharge of Liability on Securities; Defeasance.**(a) When (1) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (2) all outstanding Securities have become due and payable, whether at maturity or as a result of the sending of a notice of redemption pursuant to Article 3 hereof, or will become due and payable within one year or are to be called for redemption within one year, and, in the case of clause (2), the Company irrevocably deposits with the Trustee or the Paying Agent, as applicable, (x) cash in United States dollars or (y) cash in United States dollars, U.S. Government Obligations, or a combination thereof, in such amounts as, in the aggregate, will be sufficient (in the case of clause (y), (A) in the opinion of a nationally recognized firm of independent public accountants or a nationally recognized investment banking firm, or (B) if no such opinion in the immediately preceding clause (A) can be reasonably obtained, in the opinion of the chief financial officer of the Company) to pay at maturity or upon redemption all outstanding Securities, including interest thereon to maturity or such redemption date (other than Securities replaced pursuant to Section 2.07), and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 8.01(c), be satisfied and discharged and cease to be of further effect. The Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company.

(b) Subject to Sections 2.03, 2.06, 2.07, 8.01(c) and 8.02, the Company at any time may terminate (1) all its obligations under the Securities and this Indenture ("legal defeasance option") or (2) its obligations under Section 4.02 and the operation of Sections 6.01(6), 6.01(7), 6.01(8), 6.01(9) and 6.01(10) (but, in the case of Sections 6.01(7) and (8), with respect only to Subsidiaries) ("covenant defeasance option").

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The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Company exercises its legal defeasance option, payment of the Securities may not be accelerated because of an Event of Default with respect thereto. If the Company exercises its covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default specified in Sections 6.01(4), 6.01(6), 6.01(7), 6.01(8), 6.01(9) and 6.01(10) (but, in the case of Sections 6.01(7) and (8), with respect only to Subsidiaries). If the Company exercises its legal defeasance option or its covenant defeasance option, each Applicable Guarantor shall be automatically released from all of its obligations with respect to its Applicable Guarantee.

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding clauses (a) and (b) above, the Company's obligations in Sections 2.03, 2.04, 2.05, 2.06, 2.07, 7.07 and 7.08 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the Company's obligations in Sections 7.07, 8.04 and 8.05 shall survive.

Section 8.02 **Conditions to Defeasance.** The Company may exercise its legal defeasance option or its covenant defeasance option only if:

(1) the Company irrevocably deposits in trust with the Trustee (x) cash in United States dollars or (y) cash in United States dollars, U.S. Government Obligations, or a combination thereof, in such amounts as, in the aggregate, will be sufficient (in the case of clause (y), (A) in the opinion of a nationally recognized firm of independent public accountants or a nationally recognized investment banking firm, or (B) if no such opinion in the immediately preceding clause (A) can be reasonably obtained, in the opinion of the chief financial officer of the Company) for the payment of principal of and interest on the Securities to redemption or maturity, as the case may be;

(2) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion (or, if two or more nationally recognized firms of independent accountants decline to issue such opinion after the Company has made reasonable efforts to obtain such an opinion, a certificate from the Company's chief financial officer expressing such opinion) that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest when due on all the Securities to maturity or redemption, as the case may be;

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(3) 91 days pass after the deposit is made and during the 91-day period no Default specified in Sections 6.01(7) or (8) with respect to the Company occurs which is continuing at the end of the period;

(4) the deposit does not constitute a default under any other agreement binding on the Company (other than a default resulting from the borrowing of funds to be applied to such deposit and any similar concurrent deposit relating to other Indebtedness and, in each case, the granting of any Lien to secure such borrowings in connection therewith);

(5) the Company delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(6) the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of this Indenture there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Securityholders will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and defeasance and will be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred (and, in the case of legal defeasance only, such Opinion of Counsel must be based on a ruling of the Internal Revenue Service or other change in applicable Federal income tax law);

(7) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Securityholders will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit or covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit or covenant defeasance had not occurred; and

(8) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, together stating that all conditions precedent to the defeasance of the Securities as contemplated by this Article 8 have been complied with.

Before or after a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date in accordance with Article 3.

Section 8.03 **Application of Trust Money.** The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities.

Section 8.04 Repayment to Company. The Trustee and the Paying Agent shall promptly turn over to the Company upon request any excess money or securities held by them at any time.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Securityholders entitled to the money must look to the Company for payment as general creditors.

Section 8.05 Indemnity for Government Obligations. The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

Section 8.06 Reinstatement. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and each Applicable Guarantor's obligations under this Indenture, each Applicable Guarantee and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 8; provided, however, that, if the Company has made any payment of interest on or principal of any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

Section 8.07 Requirement to Satisfy and Discharge or Defeasance Securities. The Company will not satisfy and discharge or defease the Private Placement Securities under the Private Placement Securities Indenture without also satisfying and discharging or defeasing, respectively, the Securities under this Article 8 on substantially the same terms at substantially the same time.

ARTICLE 9

Amendments

Section 9.01 Without Consent of Holders. The Company, the Applicable Guarantors and the Trustee may amend this Indenture, the Securities and the Subsidiary Guarantees without notice to or consent of any Securityholder:

(1) to cure any ambiguity, omission, defect or inconsistency;

(2) to provide for the assumption by a successor corporation of the obligations of the Company or any Applicable Guarantor under this Indenture as contemplated by Article 5;

(3) to provide for uncertificated Securities in addition to or in place of certificated Securities (provided that the uncertificated Securities are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Securities are described in Section 163(f)(2)(B) of the Code);

(4) to add Guarantees with respect to the Securities including any Applicable Guarantees, or to secure the Securities;

(5) to add to the covenants of the Company or any Applicable Guarantor for the benefit of the Holders of the Securities or to surrender any right or power conferred upon the Company or any Applicable Guarantor;

(6) to make any change that does not adversely affect the rights of any holder of the Securities in any material respect;

(7) to comply with any requirement of the SEC in connection with the qualification of this Indenture under the Trust Indenture Act;

(8) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Securities; provided, however, that (a) compliance with this Indenture as so amended would not result in Securities being transferred in violation of the Securities Act or any other applicable securities law and (b) such amendment does not materially and adversely affect the rights of Holders to transfer Securities; or

(9) to reflect the issuance of Additional Securities in compliance with the terms of this Indenture.

After an amendment under this Section becomes effective, the Company shall send to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

Section 9.02 With Consent of Holders.

(a) The Company, the Applicable Guarantors and the Trustee may amend this Indenture, the Securities or the Applicable Guarantees with the written consent of the Holders of at least a majority in principal amount of the Securities then outstanding (including consents obtained in connection with a tender offer or exchange for the Securities) and any past default or compliance with any provisions may also be waived with the consent of the Holders of at least a majority in principal amount of the Securities then outstanding. However, without the consent of each Securityholder affected thereby, an amendment or waiver may not:

(A) reduce the amount of Securities whose Holders must consent to an amendment;

(B) reduce the rate of or extend the time for payment of interest on any Security;

(C) reduce the principal of or change the Stated Maturity of any Security;

(D) reduce the amount payable upon the redemption of any Security or change the date on which any Security may be redeemed pursuant to paragraph 5 of the Securities (provided that the foregoing shall not include changing the notice periods for any redemption);

(E) make any Security payable in money other than that stated in the Security;

(F) impair the right of any holder of the Securities to receive payment of principal of and interest on such holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's Securities;

(G) make any change in Section 6.04 or 6.07 or the second sentence of this Section;

(H) make any change in the ranking or priority of any Security that would adversely affect the Securityholders; or

(I) make any change in, or release other than in accordance with this Indenture, any Applicable Guarantee that would adversely affect the Securityholders.

(b) It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

(c) After an amendment under this Section becomes effective, the Company shall send to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

(d) Notwithstanding the preceding, (i) the provisions under this Indenture, including Section 4.03, relative to the obligation to make an offer to repurchase the Securities as a result of an Asset Disposition and (ii) the provisions under this Indenture, including Section 4.04, relative to the Company's obligation to make an offer to repurchase the Securities as a result of a Change of Control, in each case may be waived or modified with the written consent of the holders of a majority in principal amount of the Securities then outstanding.

Section 9.03 Compliance with Trust Indenture Act. Every amendment to this Indenture or the Securities shall comply with the Trust Indenture Act as then in effect.

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Section 9.04 Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment or a waiver by a Holder of a Security shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Securityholder. An amendment or waiver becomes effective upon the execution of such amendment or waiver by the Trustee.

(b) The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Securityholders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

Section 9.05 Notation on or Exchange of Securities. If an amendment changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

Section 9.06 Trustee To Sign Amendments. The Trustee shall sign any amendment authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

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ARTICLE 10

Applicable Guarantees

Section 10.01 Guarantees. (a) Subject to the terms and conditions of this Article 10, each Applicable Guarantor hereby unconditionally and irrevocably guarantees, jointly and severally, to each Holder and to the Trustee and its successors and assigns (i) the full and punctual payment of principal of and interest on the Securities when due, whether at maturity, by acceleration, by redemption or otherwise, and all other monetary obligations of the Company under this Indenture and the Securities and (ii) the full and punctual performance within applicable grace periods of all other obligations of the Company under this Indenture and the Securities (all the foregoing being hereinafter collectively called the "Guaranteed Obligations"). Each Applicable Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from such Applicable Guarantor and that such Applicable Guarantor will remain bound under this Article 10 notwithstanding any extension or renewal of any Obligation.

(b) Each Applicable Guarantor waives presentation to, demand of, payment from and protest to the Company of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Applicable Guarantor waives notice of any default under the Securities or the Guaranteed Obligations. The obligations of each Applicable Guarantor hereunder shall not be affected by (1) the failure of any Holder or the Trustee to assert any claim or demand or to enforce any right or remedy against the Company or any other Person (including any Applicable Guarantor) under this Indenture, the Securities or any other agreement or otherwise; (2) any extension or renewal of any thereof; (3) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Securities or any other agreement; (4) the release of any security held by any Holder or the Trustee for the Guaranteed Obligations or any of them; (5) the failure of any Holder or the Trustee to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (6) except as set forth in Section 10.06, any change in the ownership of such Applicable Guarantor.

(c) Each Applicable Guarantor further agrees that its Applicable Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder or the Trustee to any security held for payment of the Guaranteed Obligations.

(d) Except as expressly set forth in Sections 8.01(b), 10.02 and 10.06, the obligations of each Applicable Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Applicable Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder or the Trustee to assert any claim or demand or to enforce any remedy under this Indenture, the Securities or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Applicable Guarantor or would otherwise operate as a discharge of such Applicable Guarantor as a matter of law or equity.

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(e) Each Subsidiary Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal or of interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Company or otherwise.

(f) In furtherance of the foregoing and not in limitation of any other right which any Holder or the Trustee has at law or in equity against any Applicable Guarantor by virtue hereof, upon the failure of the Company to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Applicable Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders or the Trustee an amount equal to the sum of (A) the unpaid amount of such Guaranteed Obligations, (B) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by law) and (C) all other monetary Guaranteed Obligations of the Company to the Holders and the Trustee.

(g) Each Applicable Guarantor agrees that, as between it, on the one hand, and the Holders and the Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations hereby may be accelerated as provided in Article 6 for the purposes of such Applicable Guarantor's Applicable Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Applicable Guarantor for the purposes of this Section.

(h) Each Applicable Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section.

Section 10.02 Limitation on Liability. Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Subsidiary Guarantor shall not exceed the maximum amount that can be hereby guaranteed without rendering this Indenture, as it relates to such Subsidiary Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

Section 10.03 Successors and Assigns. This Article 10 shall be binding upon each Applicable Guarantor and its successors and assigns and shall inure to the benefit of the successors and assigns of the Trustee and the Holders and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Securities shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

Section 10.04 No Waiver. Neither a failure nor a delay on the part of either the Trustee or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 10 at law, by statute or otherwise.

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Section 10.05 Modification. No modification, amendment or waiver of any provision of this Article 10, nor the consent to any departure by any Applicable Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Applicable Guarantor in any case shall entitle such Applicable Guarantor to any other or further notice or demand in the same, similar or other circumstances.

Section 10.06 Release of Subsidiary Guarantor. A Subsidiary Guarantor will be automatically released from its obligations under this Article 10 (other than any obligation that may have arisen under Section 10.07):

(1) upon any consolidation with or merger with or into, or conveyance, transfer or lease, in one transaction or a series of related transactions, of all or substantially all of its assets to any Person by such Subsidiary Guarantor except as required pursuant to Section 5.01(b)(1);

(2) upon the disposition of all or a portion of the Capital Stock of such Subsidiary Guarantor such that such Subsidiary Guarantor ceases to be a Restricted Subsidiary, if, in connection therewith, the Company provides an Officer's Certificate to the Trustee to the effect that the Company will comply with its obligations, if any, under Section 4.06 in respect of such disposition;

(3) upon the designation of such Subsidiary Guarantor as an Unrestricted Subsidiary;

(4) at such time as such Subsidiary Guarantor is released from its Guarantee under the Private Placement Securities Indenture; or

(5) if the Company exercises its legal defeasance option or its covenant defeasance option in Section 8.01 or if the Company's obligations under this Indenture are discharged in accordance with the terms of this Indenture.

Upon delivery by the Company to the Trustee of an Officer's Certificate and an Opinion of Counsel to the effect that any of the conditions described above has occurred, the Trustee shall execute any supplemental indenture or other documents reasonably requested by the Company in order to evidence the release of any Subsidiary Guarantor from

Section 10.07 Release of Parent Guarantor. A Parent Guarantor (other than the Initial Parent Guarantor) will be automatically released from its obligations under this Article 10 (other than any obligation that may have arisen under Section 10.07):

(1) at such time as such Parent Guarantor would not be required to enter into a Guaranty Agreement pursuant to Section 4.11; or

(2) if the Company exercises its legal defeasance option or its covenant defeasance option in Section 8.01 or if the Company's obligations under this Indenture are discharged in accordance with the terms of this Indenture.

Section 10.08 Contribution. Each Subsidiary Guarantor that makes a payment under its Subsidiary Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under this Indenture to a contribution from each other Subsidiary Guarantor in an amount equal to such other Subsidiary Guarantor's pro rata portion of such payment based on the respective net assets of all the Subsidiary Guarantors at the time of such payment determined in accordance with GAAP.

ARTICLE 11

Miscellaneous

Section 11.01 Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the Trust Indenture Act, the required provision shall control.

Section 11.02 Notices. (a) Any notice or communication shall be in writing and delivered in person or mailed by first-class mail addressed as follows:

if to the Company or any Applicable Guarantor:

Gulfport Energy Corporation
3001 Quail Springs Pkwy.
Oklahoma City, OK 73134
Attention: Chief Financial Officer
Facsimile: (405) 252-4901

with a copy to (which shall not constitute notice)

Kirkland & Ellis LLP
609 Main St.
Houston, TX 77002
Attention: Sean T. Wheeler, P.C.
Michael W. Rigdon
Facsimile: (713) 836-3601

if to the Trustee:

UMB Bank, National Association
Corporate Trust Services
120 South Sixth Street, Suite 1400
Minneapolis, MN 55402
Attention: Gavin Wilkinson
Email: Gavin.Wilkinson@umb.com

(b) The Company, any Applicable Guarantor or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

(c) Any notice or communication mailed or otherwise sent to a Securityholder shall be sent to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

(d) Failure to mail or otherwise send a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed or sent in the manner provided above, it is duly given, whether or not the addressee receives it.

Section 11.03 Communication by Holders with Other Holders. Securityholders may communicate pursuant to Trust Indenture Act §312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, any Subsidiary Guarantor, the Trustee, the Registrar and anyone else shall have the protection of Trust Indenture Act §312(c)

Section 11.04 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 11.05 Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that the individual making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

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(3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

Section 11.06 When Securities Disregarded. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which the Trustee knows are so owned shall be so disregarded. Also, subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

Section 11.07 Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar and the Paying Agent may make reasonable rules for their functions.

Section 11.08 Legal Holidays. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

Section 11.09 Governing Law. This Indenture and the Securities shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 11.10 No Recourse Against Others. A director, officer, employee, incorporator or stockholder, as such, of the Company or any Applicable Guarantor (other than a stockholder that is the Company or another Applicable Guarantor) shall not have any liability for any obligations of the Company or any Applicable Guarantor under the Securities, any Applicable Guarantee or this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issuance of the Securities.

Section 11.11 Successors. All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 11.12 Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

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Section 11.13 Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 11.14 Force Majeur. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, epidemics, pandemics, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

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IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

GULFPORT ENERGY CORPORATION,

By _____

Name:

Title:

JAGUAR RESOURCES LLC,

By _____

Name: Michael Moore

Title: Chief Executive Officer

PUMA RESOURCES, INC.,

By _____

Name: Michael Moore

Title: Chief Executive Officer

GATOR MARINE, INC.,

By _____
Name: Michael Moore
Title: Chief Executive Officer

GATOR MARINE IVANHOE, INC.,

By _____
Name: Michael Moore
Title: Chief Executive Officer

[Signature page to 2021 Indenture]

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WESTHAWK MINERALS LLC,

By _____
Name: Michael Moore
Title: Chief Executive Officer

GULFPORT APPALACHIA, LLC,

By _____
Name: Michael Moore
Title: Chief Executive Officer

GULFPORT MIDSTREAM HOLDINGS, LLC,

By _____
Name: Michael Moore
Title: Chief Executive Officer

GULFPORT MIDCON, LLC,

By _____
Name: Michael Moore
Title: Chief Executive Officer

UMB Bank, National Association,

By _____
Name:
Title:

[Signature page to 2021 Indenture]

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1145 APPENDIX

PROVISIONS RELATING TO THE SECURITIES

1. Definitions

For the purposes of this Appendix the following terms shall have the meanings indicated below:

“Applicable Procedures” means, with respect to any transfer or transaction involving a Temporary Regulation S Global Security or beneficial interest therein, the rules and procedures of the Depository for such a Temporary Regulation S Global Security, to the extent applicable to such transaction and as in effect from time to time.

“Definitive Security” means a certificated Security bearing, if required, the appropriate restricted securities legend set forth in Section 2.3(e).

“Depository” means The Depository Trust Company, its nominees and their respective successors.

“Securities Act” means the Securities Act of 1933.

“Securities Custodian” means the custodian with respect to a Global Security (as appointed by the Depository), or any successor Person thereto and shall initially be the Trustee.

2. The Securities.

2.1 (a) Form and Dating. The Securities will be issued initially pursuant to Section 1145 of the Bankruptcy Code of 1986, as amended, without interest coupons and with the global securities legend and the applicable restricted securities legend set forth in Exhibit 1 hereto, which shall be deposited on behalf of the purchasers of the

Securities represented thereby with the Securities Custodian and registered in the name of the Depository or a nominee of the Depository, duly executed by the Company and authenticated by the Trustee as provided in this Indenture (the “Global Securities”).

The aggregate principal amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee as hereinafter provided.

(b) Book-Entry Provisions. This Section 2.1(b) shall apply only to a Global Security deposited with or on behalf of the Depository.

The Company shall execute and the Trustee shall, in accordance with this Section 2.1(b), authenticate and deliver initially one or more Global Securities that (i) shall be registered in the name of the Depository for such Global Security or Global Securities or the nominee of such Depository and (ii) shall be delivered by the Trustee to the Depository or pursuant to the Depository’s instructions or held by the Trustee as custodian for the Depository.

Members of, or participants in, the Depository (“Agent Members”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository or by the Trustee as the custodian of the Depository or under such Global Security, and the Company, the Trustee and any agent of the Company or the Trustee shall be entitled to treat the Depository as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices of such Depository governing the exercise of the rights of a holder of a beneficial interest in any Global Security.

(c) Definitive Securities. Except as provided in this Section 2.1 or Section 2.3 or 2.4, owners of beneficial interests in Global Securities shall not be entitled to receive physical delivery of Definitive Securities.

2.2 Authentication. The Trustee shall authenticate and deliver: (1) on the Issue Date, an aggregate principal amount of \$[] million 8.0% Senior 1145 Notes due 2026 and (2) any Additional Securities for an original issue in an aggregate principal amount specified in the written order of the Company pursuant to Section 2.02 of this Indenture, in each case upon a written order of the Company signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company. Such order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated and, in the case of any issuance of Additional Securities pursuant to Section 2.13 of this Indenture, shall certify that such issuance is in compliance with Section 4.02 of this Indenture.

2.3 Transfer and Exchange.

(a) Transfer and Exchange of Definitive Securities. When Definitive Securities are presented to the Registrar with a request:

- (x) to register the transfer of such Definitive Securities; or
- (y) to exchange such Definitive Securities for an equal principal amount of Definitive Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Definitive Securities surrendered for transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or its attorney duly authorized in writing.

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(b) Restrictions on Transfer of a Definitive Security for a Beneficial Interest in a Global Security A Definitive Security may not be exchanged for a beneficial interest in a Global Security except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a Definitive Security, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with written instructions directing the Trustee to make, or to direct the Securities Custodian to make, an adjustment on its books and records with respect to such Global Security to reflect an increase in the aggregate principal amount of the Securities represented by the Global Security, such instructions to contain information regarding the Depository account to be credited with such increase, then the Trustee shall cancel such Definitive Security and cause, or direct the Securities Custodian to cause, in accordance with the standing instructions and procedures existing between the Depository and the Securities Custodian, the aggregate principal amount of Securities represented by the Global Security to be increased by the aggregate principal amount of the Definitive Security to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Security equal to the principal amount of the Definitive Security so canceled. If no Global Securities are then outstanding, the Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of an Officer’s Certificate of the Company, a new Global Security in the appropriate principal amount.

(c) Transfer and Exchange of Global Securities

(i) The transfer and exchange of Global Securities or beneficial interests therein shall be effected through the Depository, in accordance with this Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depository therefor. A transferor of a beneficial interest in a Global Security shall deliver to the Registrar a written order given in accordance with the Depository’s procedures containing information regarding the participant account of the Depository to be credited with a beneficial interest in the Global Security. The Registrar shall, in accordance with such instructions, instruct the Depository to credit to the account of the Person specified in such instructions a beneficial interest in the Global Security and to debit the account of the Person making the transfer the beneficial interest in the Global Security being transferred.

(ii) If the proposed transfer is a transfer of a beneficial interest in one Global Security to a beneficial interest in another Global Security, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Security to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the Global Security from which such interest is being transferred.

(iii) Notwithstanding any other provisions of this Appendix (other than the provisions set forth in Section 2.4), a Global Security may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

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(iv) In the event that a Global Security is exchanged for Definitive Securities pursuant to Section 2.4 of this Appendix, prior to the consummation of a Registered Exchange Offer or the effectiveness of a Shelf Registration Statement with respect to such Securities, such Securities may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this Section 2.3 and such other procedures as may from time to time be adopted by the Company.

(d) [Reserved].

(e) Legend.

Each Definitive Security shall bear the following additional legend:

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

(f) Cancellation or Adjustment of Global Security. At such time as all beneficial interests in a Global Security have either been exchanged for Definitive Securities, redeemed, purchased or canceled, such Global Security shall be returned to the Depository for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for certificated Securities, redeemed, purchased or canceled, the principal amount of Securities represented by such Global Security shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Securities Custodian for such Global Security) with respect to such Global Security, by the Trustee or the Securities Custodian, to reflect such reduction.

(g) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depository or other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

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(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

2.4 Definitive Securities.

(a) A Global Security deposited with the Depository or with the Trustee as Securities Custodian for the Depository pursuant to Section 2.1 shall be transferred to the beneficial owners thereof in the form of Definitive Securities in an aggregate principal amount equal to the principal amount of such Global Security, in exchange for such Global Security, only if such transfer complies with Section 2.3 hereof and (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for such Global Security and the Depository fails to appoint a successor depository or if at any time such Depository ceases to be a "clearing agency" registered under the Exchange Act, in either case, and a successor depository is not appointed by the Company within 90 days of such notice (ii) an Event of Default has occurred and is continuing or (iii) the Company, in its sole discretion, notifies the Trustee in writing that it elects to cause the issuance of Definitive Securities under this Indenture.

(b) Any Global Security that is transferable to the beneficial owners thereof pursuant to this Section 2.4 shall be surrendered by the Depository to the Trustee located at its principal corporate trust office in the Borough of Manhattan, The City of New York, to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations. Any portion of a Global Security transferred pursuant to this Section 2.4 shall be executed, authenticated and delivered only in minimum denominations of \$2,000 principal amount and any greater integral multiple of \$1,000 thereof and registered in such names as the Depository shall direct. Any Definitive Security delivered in exchange for an interest in a Transfer Restricted Security shall, except as otherwise provided by Section 2.3(e) hereof, bear the applicable restricted securities legend and definitive securities legend set forth in Exhibit 1 hereto.

(c) Subject to the provisions of Section 2.1(b) hereof, the registered Holder of a Global Security shall be entitled to grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(d) In the event of the occurrence of one of the events specified in Section 2.4(a) hereof, the Company shall promptly make available to the Trustee a reasonable supply of Definitive Securities in definitive, fully registered form without interest coupons. In the event that such Definitive Securities are not issued, the Company expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 6.06 of this Indenture, the right of any beneficial owner of Securities to pursue such remedy with respect to the portion of the Global Security that represents such beneficial owner's Securities as if such Definitive Securities had been issued.

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UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

[Definitive Securities Legend]

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

[FORM OF INITIAL NOTE]

No. __

\$_____ [or such greater or lesser amount as may be indicated on the Schedule of Increases or Decreases in Global Security attached hereto]^{1 3}

8.0% Senior 1145 Notes due 2026

Gulfport Energy Corporation, a Delaware corporation, promises to pay to _____, or registered assigns, the principal sum of _____ dollars [(or such greater or lesser amount as may be indicated on the Schedule of Increases or Decreases in Global Security attached hereto)]¹ on [15], 2026.

Interest Payment Dates: [15] and [15].

Record Dates: [1] and [1].

Additional provisions of this Security are set forth on the other side of this Security.

Dated:

GULFPORT ENERGY CORPORATION

By: _____
Name:
Title:

UMB BANK, NATIONAL ASSOCIATION

as Trustee, certifies that this is one of the Securities referred to in the Indenture

By: _____
Authorized Signatory

³ Add if Global Security

[FORM OF REVERSE SIDE OF SECURITY]

8.0% Senior 1145 Notes due 2026

1. Interest

Gulfport Energy Corporation, a Delaware corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "Company"), promises to pay interest on the principal amount of this Security at the rate per annum shown above. The Company will pay interest semiannually on [15] and [15] of each year, commencing [15], 2021. Interest on the Securities will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from [Issue Date]. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company will pay interest on overdue principal at the rate borne by this Security plus 1.0% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

2. Method of Payment

The Company will pay interest on the Securities (except defaulted interest) to the Persons who are registered holders of Securities at the close of business on the [1]

or [1] next preceding the interest payment date even if Securities are canceled after the record date and on or before the interest payment date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of the Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Company will make all payments in respect of a certificated Security (including principal, premium and interest) by mailing a check to the registered address of each Holder thereof; provided, however, that payments on a certificated Security will be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

3. Paying Agent and Registrar

Initially, UMB Bank, National Association (the “Trustee”), will act as Paying Agent and Registrar. The Company may appoint and change any Paying Agent, Registrar or co-registrar without notice. The Company or any of its domestically incorporated Wholly Owned Subsidiaries may act as Paying Agent, Registrar or co-registrar.

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4. Indenture

The Company issued the Securities under an Indenture dated as of [●], 2021, as such may be amended or supplemented from time to time (the “Indenture”), among the Company, the Subsidiary Guarantors and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§77aaa-77bbb) as in effect on the date of the Indenture (the “Act”). Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms.

The Securities are general unsecured obligations of the Company. The Company shall be entitled, subject to its compliance with Section 4.02 of the Indenture, to issue Additional Securities pursuant to Section 2.13 of the Indenture. The Securities issued on the Issue Date and any Additional Securities will be treated as a single class for all purposes under the Indenture. The Indenture contains covenants that limit the ability of the Company and its subsidiaries to incur additional indebtedness; pay dividends or distributions on, or redeem or repurchase capital stock; make investments; engage in transactions with affiliates; create liens on assets; transfer or sell assets; guarantee indebtedness; restrict dividends or other payments of subsidiaries; and consolidate, merge or transfer all or substantially all of its assets and the assets of its subsidiaries. These covenants are subject to important exceptions and qualifications and are subject to termination upon the occurrence of certain events.

5. Optional Redemption

Except as set forth below and in Section 4.04(h) of the Indenture, the Company shall not be entitled to redeem the Securities at its option.

(a) On and after [15], 2024, the Company shall be entitled, at its option, to redeem all or a portion of the Securities, at the redemption prices (expressed in percentages of principal amount on the redemption date), plus accrued interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on [15] of the years set forth below:

<u>Period</u>	<u>Redemption Price</u>
2024	104.00%
2025 and thereafter	100.00%

(b) In addition, any time prior to [15], 2024, the Company shall be entitled, at its option on one or more occasions, to redeem Securities (which includes Additional Securities, if any) in an aggregate principal amount not to exceed 40% of the aggregate principal amount of the Securities (which includes Additional Securities, if any) issued prior to such date at a redemption price (expressed as a percentage of principal amount) of 108.00%, plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), with an amount equal to the Net Cash Proceeds from one or more Qualifying Equity Offerings; provided, however, that (1) at least 60% of such aggregate principal amount of Securities (which includes Additional Securities, if any) remains outstanding immediately after the occurrence of each such redemption (with Securities held, directly or indirectly, by the Company or its Affiliates being deemed to be not outstanding for purposes of such calculation); and (2) each such redemption occurs within 90 days after the date of the related Qualifying Equity Offering.

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(c) Prior to [15], 2024, the Company shall be entitled, at its option, to redeem all or a portion of the Securities at a redemption price equal to 100% of the principal amount of the Securities plus the Applicable Premium as of, and accrued and unpaid interest to, the redemption date (subject to the right of Holders on the relevant record date to receive interest due on the relevant interest payment date).

6. Notice of Redemption

Notice of redemption shall be sent at least 15 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at its registered address, except that redemption notices may be sent more than 60 days prior to the redemption date if the notice is issued in connection with a defeasance of the Securities or a satisfaction and discharge of the Indenture. Any inadvertent defect in the notice of redemption, including an inadvertent failure to give notice, to any Holder selected for redemption shall not impair or affect the validity of the redemption of any other Security redeemed in accordance with the provisions of the Indenture. Securities in denominations larger than \$2,000 principal amount may be redeemed in part but only in whole multiples of \$1,000. If money sufficient to pay the redemption price of and accrued interest on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date interest ceases to accrue on such Securities (or such portions thereof) called for redemption.

Notice of any redemption in connection with any Qualifying Equity Offering or other securities offering or any other financing, or in connection with a transaction (or a series of related transactions) that constitute a Change of Control, may, at the Company’s discretion, be given prior to the completion thereof and be subject to one or more conditions precedent, including completion of the related Qualifying Equity Offering, securities offering, financing or Change of Control. If a redemption is subject to satisfaction of one or more conditions precedent, the redemption date may be delayed up to 30 Business Days upon notice thereof given to Holders; provided that if such conditions precedent are not satisfied within 30 Business Days of the proposed redemption date, such redemption shall not occur and the notice thereof shall be rescinded, with notice thereof given to Holders.

7. Put Provisions

Upon a Change of Control, each Holder shall have the right to require the Company to repurchase such Holder's Securities at a purchase price equal to 101% of the principal amount of the Securities to be repurchased plus accrued interest, if any, to the date of repurchase (subject to the right of holders of record on the relevant record date to receive interest due on the related interest payment date) as provided in, and subject to the terms of, the Indenture.

The Indenture provides that, under certain circumstances, the Company shall be required to use the Net Available Cash from an Asset Disposition to make an offer to Holders to purchase Securities at a purchase price of 100% of their principal amount plus accrued but unpaid interest, subject to the rights of Holders of record on the relevant record date to receive interest due on the relevant interest payment date.

8. Guarantee

The payment by the Company of the principal of, and premium and interest on, the Securities is fully and unconditionally guaranteed on a joint and several senior basis by each of the Subsidiary Guarantors to the extent set forth in the Indenture.

9. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of \$2,000 principal amount and whole multiples of \$1,000 in excess of \$2,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities for a period of 15 days before a selection of Securities to be redeemed or 15 days before an interest payment date.

10. Persons Deemed Owners

The registered Holder of this Security may be treated as the owner of it for all purposes.

11. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee for payment.

12. Discharge and Defeasance

Subject to certain conditions, the Company at any time shall be entitled to terminate some or all of its obligations under the Securities and the Indenture if the Company deposits with the Trustee (x) cash in United States dollars or (y) cash in United States dollars, U.S. Government Obligations, or a combination thereof, in such amounts as, in the aggregate, will be sufficient (in the case of clause (y), (A) in the opinion of a nationally recognized firm of independent public accountants or a nationally recognized investment banking firm, or (B) if no such opinion in the immediately preceding clause (A) can be reasonably obtained, in the opinion of the chief financial officer of the Company) for the payment of principal of and interest on the Securities to redemption or maturity, as the case may be.

13. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (a) the Indenture and the Securities may be amended with the written consent of the Holders of at least a majority in principal amount outstanding of the Securities and (b) any default or noncompliance with any provision may be waived with the written consent of the Holders of a majority in principal amount outstanding of the Securities. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company, the Subsidiary Guarantors and the Trustee shall be entitled to amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, to comply with Article 5 of the Indenture, to provide for uncertificated Securities in addition to or in place of certificated Securities, to add guarantees with respect to the Securities, including Subsidiary Guarantees, to secure the Securities, to add additional covenants or surrender rights and powers conferred on the Company or the Subsidiary Guarantors, to comply with any requirement of the SEC in connection with qualifying the Indenture under the Act, to make any change that does not adversely affect the rights of any Securityholder in any material respect, to make amendments to provisions of the Indenture relating to the transfer and legending of the Securities, to conform the text of the Securities to any provision of the "Description of the Notes" section of the Offering Memorandum to the extent that such provision in the "Description of the Notes" was intended to be a verbatim recitation of a provision of the Indenture, the Securities or the Subsidiary Guarantees, or to reflect the issuance of Additional Securities.

14. Defaults and Remedies

Under the Indenture, Events of Default include (a) default for 30 days in payment of interest on the Securities; (b) default in payment of principal on the Securities at maturity, upon optional redemption, upon declaration of acceleration or otherwise, or failure by the Company to redeem or purchase Securities when required; (c) failure by the Company to comply with other agreements in the Indenture or the Securities, including certain provisions of the Private Placement Securities Indenture or the Private Placement Securities, in certain cases subject to notice and lapse of time; (d) certain accelerations (including failure to pay within any grace period after final maturity) of other Indebtedness of the Company if the amount accelerated (or so unpaid) exceeds \$100.0 million; (e) certain events of bankruptcy or insolvency with respect to the Company and the Significant Subsidiaries; (f) certain judgments or decrees for the payment of money in excess of \$100.0 million; and (g) certain defaults with respect to Subsidiary Guarantees. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 30% in principal amount of the Securities may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency with respect to the Company are Events of Default that will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of principal or interest) if it determines that withholding notice is in the interest of the Holders.

15. Trustee Dealings with the Company

Subject to certain limitations imposed by the Act, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

16. No Recourse Against Others

A director, officer, employee, incorporator or stockholder, as such, of the Company or any Subsidiary Guarantor shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Securities.

17. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Security.

18. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

19. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

20. Reserved.

21. Governing Law.

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture which has in it the text of this Security in larger type. Requests may be made to:

Gulfport Energy Corporation
3001 Quail Springs Pkwy.
Oklahoma City, OK 73134
Attention: Chief Financial Officer
Facsimile: (405) 252-4901

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____ Your Signature: _____

Sign exactly as your name appears on the other side of this Security.

Signature

Signature Guarantee:

Signature must be guaranteed

Signature

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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[TO BE ATTACHED TO GLOBAL SECURITIES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

The following increases or decreases in this Global Security have been made:

Date of Exchange	Amount of decrease in Principal amount of this Global Security	Amount of increase in Principal amount of this Global Security	Principal amount of this Global Security following such decrease or increase)	Signature of authorized officer of Trustee or Securities Custodian
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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Company pursuant to Section 4.03 or 4.04 of the Indenture, check the box:

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 4.03 or 4.04 of the Indenture, state the amount in principal amount: \$

Dated: _____ Your Signature: _____
(Sign exactly as your name appears on the other side of this Security.)

Signature Guarantee: _____
(Signature must be guaranteed)

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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EXHIBIT B

[FORM OF GUARANTY AGREEMENT]

[] SUPPLEMENTAL INDENTURE

[] SUPPLEMENTAL INDENTURE (this “*Supplemental Indenture*”), dated as of [], 20[] among Gulfport Energy Corporation, a Delaware corporation (the “*Company*”), the New Subsidiary Guarantors (as defined below), and [], as trustee under the Indenture referred to below (the “*Trustee*”).

WITNESSETH:

WHEREAS, the Company and the Subsidiary Guarantors have heretofore executed and delivered to the Trustee an indenture, dated as of [], 2026 ([as supplemented by [] the “*Indenture*”), providing for the issuance of 8.0% Senior Notes due 2026 (the “*Securities*”);

WHEREAS, on [], 2026, the Company issued \$[] in principal amount of Securities;

WHEREAS, pursuant to Section [4.02(a)][5.01(b)] of the Indenture, the Company is required to cause each of the subsidiaries of the Company listed on Annex A (the “*New Subsidiary Guarantors*”) to execute and deliver to the Trustee this Supplemental Indenture;

WHEREAS, pursuant to Section 9.01[2][4], the Company wishes to amend, without the consent of any Securityholder, the Indenture to [add Subsidiary Guarantors] [provide for the assumption by a successor corporation of the obligations of any Subsidiary Guarantor]; and WHEREAS, pursuant to Section [4.02(a)][5.01(b)] of the Indenture, the Trustee, the Company and each of the New Subsidiary Guarantors are authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company, each of the New Subsidiary Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the holders of the Securities as follows:

1. Definitions: Construction.

(a) Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(b) For all purposes of this Supplemental Indenture, except as otherwise herein expressly provided or unless the context otherwise requires: (i) the terms and expressions used herein shall have the same meanings as corresponding terms and expressions used in the Indenture; and (ii) the words "herein," "hereof" and "hereby" and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular section hereof.

2. The New Subsidiary Guarantors.

(a) In accordance with Sections [4.02(a)][5.01(b)] and 9.01[(2)][(4)] of the Indenture, each New Subsidiary Guarantor by its signature below hereby becomes a party to the Indenture as a Subsidiary Guarantor and unconditionally and irrevocably guarantees, jointly and severally, to each Holder and to the Trustee and its successors and assigns (i) the full and punctual payment of principal of and interest on the Securities when due, whether at maturity, by acceleration, by redemption or otherwise, and all other monetary obligations of the Company under the Indenture and the Securities and (ii) the full and punctual performance within applicable grace periods of all other Guaranteed Obligations, in each case on the same terms and conditions as applicable to the other Subsidiary Guarantors set forth in the Indenture, including those terms and conditions set forth in Article 10 of the Indenture, with the same force and effect as if originally named therein as a Subsidiary Guarantor.

(b) Each New Subsidiary Guarantor hereby agrees to all of the terms and conditions of the Indenture applicable to it as a Subsidiary Guarantor thereunder. Each reference to a "Subsidiary Guarantor" in the Indenture shall be deemed to include each New Subsidiary Guarantor.

3. Governing Law. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

4. Trustee Makes No Representation. The recitals herein contained are made by the Company and the New Subsidiary Guarantors and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

5. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Supplemental Indenture. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

6. Effect of Headings. The Section headings herein are for convenience only and shall not effect the construction thereof.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have caused this [] Supplemental Indenture to be duly executed as of the date first written above.

GULFPORT ENERGY CORPORATION

By: _____
Name:
Title:

[NEW SUBSIDIARY GUARANTOR[S]]

By: _____
Name:
Title:

[TRUSTEE]

By: _____
Name:
Title:

[Signature Page to Guaranty Agreement]

Annex A

New Subsidiary Guarantor

THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	
)	Chapter 11
GULFPORT ENERGY CORPORATION, <i>et al.</i> , ¹)	Case No. 20-35562 (DRJ)
Debtors.)	(Jointly Administered)
)	
)	

DISCLOSURE STATEMENT RELATING TO
THE JOINT CHAPTER 11 PLAN OF REORGANIZATION
OF GULFPORT ENERGY CORPORATION AND ITS DEBTOR SUBSIDIARIES

JACKSON WALKER L.L.P.

Matthew D. Cavanaugh (TX Bar No. 24062656)
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steven.serajeddini@kirkland.com

-and-

*Co-Counsel for the Debtors and
Debtors in Possession*

Christopher S. Koenig (admitted *pro hac vice*)
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: chris.koenig@kirkland.com

Dated: February 23, 2021

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gulfport Energy Corporation (1290); Gator Marine, Inc. (1710); Gator Marine Ivanhoe, Inc. (4897); Grizzly Holdings, Inc. (9108); Gulfport Appalachia, LLC (N/A); Gulfport MidCon, LLC (N/A); Gulfport Midstream Holdings, LLC (N/A); Jaguar Resources LLC (N/A); Mule Sky LLC (6808); Puma Resources, Inc. (6507); and Westhawk Minerals LLC (N/A). The location of the Debtors' service address is: 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134.

IMPORTANT INFORMATION ABOUT THIS DISCLOSURE STATEMENT²

THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT TO HOLDERS OF CLAIMS ENTITLED TO VOTE FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PLAN. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY OTHER PURPOSE. BEFORE DECIDING WHETHER TO VOTE FOR OR AGAINST THE PLAN, EACH HOLDER ENTITLED TO VOTE SHOULD CAREFULLY CONSIDER ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN ARTICLE IX HEREIN.

THE PLAN IS SUPPORTED BY THE DEBTORS AND HOLDERS OF APPROXIMATELY 95% OF THE RBL LENDERS AND APPROXIMATELY 70% OF THE UNSECURED NOTES. THE DEBTORS URGE HOLDERS OF CLAIMS AND INTERESTS WHOSE VOTES ARE BEING SOLICITED TO VOTE TO ACCEPT THE PLAN. THE COMMITTEE, AS A FIDUCIARY FOR UNSECURED CREDITORS, IS IN THE MIDST OF AN INVESTIGATION INTO NUMEROUS PREPETITION TRANSACTIONS AND THE TREATMENT OF CLAIMS UNDER THE PLAN. BASED ON THE PRELIMINARY INDICATIONS OF ITS INVESTIGATION, THE COMMITTEE DOES NOT SUPPORT THE PLAN'S PROPOSED ALLOCATION OF DISTRIBUTABLE VALUE FOR UNSECURED CREDITORS, AND THEREFORE DOES NOT SUPPORT THE PLAN. THIS DISCLOSURE STATEMENT INCLUDES CERTAIN VIEWS AND POSITIONS OF THE COMMITTEE REGARDING THE DEBTORS' PLAN. THESE VIEWS AND POSITIONS MAY NOT REFLECT THE VIEWS OF EACH OF THE INDIVIDUAL MEMBERS OF THE COMMITTEE, EACH OF WHICH RESERVES ALL RIGHTS.

THE DEBTORS URGE EACH HOLDER OF A CLAIM ENTITLED TO VOTE TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND THE TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, AND CERTAIN EVENTS AND ANTICIPATED EVENTS IN THE CHAPTER 11 CASES. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE

PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. A COPY OF THE PLAN TO WHICH THIS DISCLOSURE STATEMENT RELATES IS ATTACHED HERETO AS EXHIBIT A. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

IN PREPARING THIS DISCLOSURE STATEMENT, THE DEBTORS RELIED ON FINANCIAL DATA DERIVED FROM THE DEBTORS' BOOKS AND RECORDS AND ON VARIOUS ASSUMPTIONS REGARDING THE DEBTORS' BUSINESSES. WHILE THE DEBTORS BELIEVE THAT SUCH FINANCIAL INFORMATION FAIRLY REFLECTS THE FINANCIAL CONDITION OF THE DEBTORS AS OF THE DATE HEREOF AND THAT THE ASSUMPTIONS REGARDING FUTURE EVENTS REFLECT REASONABLE BUSINESS JUDGMENTS, NO REPRESENTATIONS OR WARRANTIES ARE MADE AS TO THE ACCURACY OF THE FINANCIAL INFORMATION CONTAINED HEREIN OR ASSUMPTIONS REGARDING THE DEBTORS' BUSINESSES AND THEIR FUTURE RESULTS AND OPERATIONS. THE DEBTORS EXPRESSLY CAUTION READERS NOT TO PLACE UNDUE RELIANCE ON ANY FORWARD-LOOKING STATEMENTS CONTAINED HEREIN.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER. THE DEBTORS OR ANY OTHER AUTHORIZED PARTY MAY SEEK TO INVESTIGATE, FILE, AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THIS DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS.

² Capitalized terms used but not otherwise defined in this Disclosure Statement shall have the meaning ascribed to such terms in the *Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and Its Debtor Affiliates*, a copy of which is attached hereto as Exhibit A. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between this Disclosure Statement and the Plan, the Plan will govern.

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THE DEBTORS ARE MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE DUTY TO DO SO, AND EXPRESSLY DISCLAIM ANY DUTY TO PUBLICLY UPDATE ANY FORWARD-LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THIS DISCLOSURE STATEMENT WAS FILED. INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION, MODIFICATION, OR AMENDMENT. THE DEBTORS RESERVE THE RIGHT TO FILE AN AMENDED OR MODIFIED PLAN AND RELATED DISCLOSURE STATEMENT FROM TIME TO TIME, SUBJECT TO THE TERMS OF THE PLAN AND THE RESTRUCTURING SUPPORT AGREEMENT.

THE DEBTORS HAVE NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS HAVE NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS (INCLUDING THOSE HOLDERS OF CLAIMS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN, WHO VOTE TO REJECT THE PLAN, OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE RESTRUCTURING TRANSACTION CONTEMPLATED THEREBY.

THE CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO CERTAIN MATERIAL CONDITIONS PRECEDENT DESCRIBED HEREIN AND SET FORTH IN ARTICLE IX OF THE PLAN. THERE IS NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED, OR IF CONFIRMED, THAT THE CONDITIONS REQUIRED TO BE SATISFIED FOR THE PLAN TO GO EFFECTIVE WILL BE SATISFIED (OR WAIVED).

YOU ARE ENCOURAGED TO READ THE PLAN AND THIS DISCLOSURE STATEMENT IN THEIR ENTIRETY, INCLUDING ARTICLE IX, ENTITLED "RISK FACTORS," WHICH BEGINS ON PAGE 63 BEFORE SUBMITTING YOUR BALLOT TO VOTE ON THE PLAN.

THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A GUARANTEE BY THE BANKRUPTCY COURT OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE MERITS OF THE PLAN.

SUMMARIES OF THE PLAN AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN. THE SUMMARIES OF THE FINANCIAL INFORMATION AND THE DOCUMENTS ANNEXED TO THIS DISCLOSURE STATEMENT OR OTHERWISE INCORPORATED HEREIN BY REFERENCE ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THOSE DOCUMENTS. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE OF THIS DISCLOSURE STATEMENT, AND THERE IS NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER SUCH DATE. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN ACCORDANCE WITH APPLICABLE LAW, THE DEBTORS ARE UNDER NO DUTY TO UPDATE OR SUPPLEMENT THIS DISCLOSURE STATEMENT.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(B) AND IS NOT NECESSARILY PREPARED IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SEC OR ANY SIMILAR FEDERAL, STATE, LOCAL, OR FOREIGN REGULATORY AGENCY, NOR HAS THE SEC OR ANY OTHER AGENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE DEBTORS HAVE SOUGHT TO ENSURE THE ACCURACY OF THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT; HOWEVER, THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT OR INCORPORATED HEREIN BY REFERENCE HAS NOT BEEN, AND WILL NOT BE, AUDITED OR REVIEWED BY THE DEBTORS' INDEPENDENT AUDITORS UNLESS EXPLICITLY PROVIDED OTHERWISE.

UPON CONFIRMATION OF THE PLAN, CERTAIN (BUT NOT ALL) OF THE SECURITIES DESCRIBED IN THIS DISCLOSURE STATEMENT WILL BE ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OR SIMILAR FEDERAL, STATE, LOCAL, OR FOREIGN LAWS, IN RELIANCE ON THE EXEMPTION SET FORTH IN SECTION 1145 OF THE BANKRUPTCY CODE. OTHER SECURITIES MAY BE ISSUED PURSUANT TO OTHER APPLICABLE EXEMPTIONS UNDER THE FEDERAL SECURITIES LAWS. TO THE EXTENT THE EXEMPTION FROM REGISTRATION UNDER SECTION 1145 OF THE BANKRUPTCY CODE DOES NOT APPLY, THE SECURITIES MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO A VALID EXEMPTION OR UPON REGISTRATION UNDER THE SECURITIES ACT.

THE DEBTORS MAKE STATEMENTS IN THIS DISCLOSURE STATEMENT THAT ARE CONSIDERED FORWARD-LOOKING STATEMENTS UNDER FEDERAL SECURITIES LAWS. THE DEBTORS CONSIDER ALL STATEMENTS REGARDING ANTICIPATED OR FUTURE MATTERS TO BE FORWARD-LOOKING STATEMENTS. FORWARD-LOOKING STATEMENTS MAY INCLUDE STATEMENTS ABOUT:

- THE DEBTORS' PLANS, OBJECTIVES, AND EXPECTATIONS;
- THE DEBTORS' BUSINESS STRATEGY;
- THE DEBTORS' FINANCIAL STRATEGY, BUDGET, PROJECTIONS, AND OPERATING RESULTS;
- THE DEBTORS' FINANCIAL CONDITION, REVENUES, CASH FLOWS, AND EXPENSES;
- THE SUCCESS OF THE DEBTORS' OPERATIONS;
- THE COSTS OF CONDUCTING THE DEBTORS' OPERATIONS;
- THE DEBTORS' LEVELS OF INDEBTEDNESS, LIQUIDITY, AND COMPLIANCE WITH DEBT COVENANTS;
- THE LEVEL OF UNCERTAINTY REGARDING THE DEBTORS' FUTURE OPERATING RESULTS;
- THE AMOUNT, NATURE, AND TIMING OF THE DEBTORS' CAPITAL EXPENDITURES;
- THE TERMS OF CAPITAL AVAILABLE TO THE DEBTORS;
- THE DEBTORS' ABILITY TO SATISFY FUTURE CASH OBLIGATIONS;
- THE RISKS ASSOCIATED WITH CERTAIN OF THE DEBTORS' ACQUISITIONS;
- THE EFFECTIVENESS OF THE DEBTORS' RISK MANAGEMENT ACTIVITIES;
- THE DEBTORS' ENVIRONMENTAL LIABILITIES;
- THE DEBTORS' COUNTERPARTY CREDIT RISK;
- THE OUTCOME OF PENDING AND FUTURE LITIGATION CLAIMS;
- GENERAL ECONOMIC AND BUSINESS CONDITIONS;
- OIL, NATURAL GAS, AND NATURAL GAS LIQUID PRICES AND THE OVERALL HEALTH OF THE EXPLORATION AND PRODUCTION INDUSTRY;
- DEVELOPMENTS IN OIL-PRODUCING AND NATURAL GAS-PRODUCING COUNTRIES;
- GOVERNMENTAL REGULATIONS AND TAXATION OF THE OIL AND NATURAL GAS INDUSTRY; AND
- THE POTENTIAL ADOPTION OF NEW GOVERNMENTAL REGULATIONS.

STATEMENTS CONCERNING THESE AND OTHER MATTERS ARE NOT GUARANTEES OF THE REORGANIZED DEBTORS' FUTURE PERFORMANCE. THERE ARE RISKS, UNCERTAINTIES, AND OTHER IMPORTANT FACTORS THAT COULD CAUSE THE REORGANIZED DEBTORS' ACTUAL PERFORMANCE OR ACHIEVEMENTS TO BE DIFFERENT FROM THOSE THEY MAY PROJECT, AND THE DEBTORS UNDERTAKE NO OBLIGATION TO UPDATE THE PROJECTIONS MADE HEREIN. THESE RISKS, UNCERTAINTIES, AND FACTORS MAY INCLUDE THE FOLLOWING: THE DEBTORS' ABILITY TO CONFIRM AND CONSUMMATE THE PLAN; THE POTENTIAL THAT THE DEBTORS MAY NEED TO PURSUE AN ALTERNATIVE TRANSACTION IF THE PLAN IS NOT CONFIRMED; THE DEBTORS' ABILITY TO REDUCE THEIR OVERALL FINANCIAL LEVERAGE; THE POTENTIAL ADVERSE IMPACT OF THE CHAPTER 11 CASES ON THE DEBTORS' OPERATIONS, MANAGEMENT, AND EMPLOYEES; THE RISKS ASSOCIATED WITH OPERATING THE DEBTORS' BUSINESSES DURING THE CHAPTER 11 CASES; CUSTOMER RESPONSES TO THE CHAPTER 11 CASES; THE DEBTORS' INABILITY TO DISCHARGE OR SETTLE CLAIMS DURING THE CHAPTER 11 CASES; GENERAL ECONOMIC, BUSINESS, AND MARKET CONDITIONS; CURRENCY FLUCTUATIONS; INTEREST RATE FLUCTUATIONS; PRICE INCREASES; EXPOSURE TO LITIGATION; A DECLINE IN THE DEBTORS' MARKET SHARE DUE TO COMPETITION OR PRICE PRESSURE BY CUSTOMERS; THE DEBTORS' ABILITY TO IMPLEMENT COST REDUCTION INITIATIVES IN A TIMELY MANNER; THE DEBTORS' ABILITY TO DIVEST EXISTING BUSINESSES; FINANCIAL CONDITIONS OF THE DEBTORS' CUSTOMERS; ADVERSE TAX CHANGES; LIMITED ACCESS TO CAPITAL RESOURCES; CHANGES IN DOMESTIC AND FOREIGN LAWS AND REGULATIONS; TRADE BALANCE; NATURAL DISASTERS; GEOPOLITICAL INSTABILITY; AND THE EFFECTS OF GOVERNMENTAL REGULATION ON THE DEBTORS' BUSINESSES.

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EXHIBITS³

EXHIBIT A Plan of Reorganization

EXHIBIT B Restructuring Support Agreement

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EXHIBIT D Valuation Analysis

EXHIBIT E Liquidation Analysis

³ Each Exhibit is incorporated herein by reference.

I. INTRODUCTION

Gulfport Energy Corporation (“Gulfport Parent”), Gator Marine, Inc., Gator Marine Ivanhoe, Inc., Grizzly Holdings, Inc., Gulfport Appalachia, LLC, Gulfport MidCon, LLC, Gulfport Midstream Holdings, LLC, Jaguar Resources LLC, Mule Sky LLC (“Mule Sky”), Puma Resources, Inc., and Westhawk Minerals LLC (each a “Debtor” and, collectively, the “Debtors”) submit this disclosure statement (this “Disclosure Statement”), pursuant to section 1125 of the Bankruptcy Code, to Holders of Claims against and Interests in the Debtors in connection with the solicitation of votes for acceptance of the *Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and Its Debtor Subsidiaries* (as amended, supplemented, or otherwise modified from time to time, the “Plan”), dated February 23, 2021.⁴ A copy of the Plan is attached hereto as Exhibit A and incorporated herein by reference. The Plan constitutes a separate chapter 11 plan for each of the Debtors.

THE DEBTORS AND CERTAIN CONSENTING STAKEHOLDERS THAT HAVE EXECUTED THE RESTRUCTURING SUPPORT AGREEMENT, INCLUDING HOLDERS OF 95% OF RBL CLAIMS AND 70% OF NOTES CLAIMS, SUPPORT CONFIRMATION OF THE PLAN AND THE DEBTORS BELIEVE THAT THE COMPROMISES CONTEMPLATED UNDER THE PLAN ARE FAIR AND EQUITABLE, MAXIMIZE THE VALUE OF THE DEBTORS’ ESTATES, AND PROVIDE THE BEST RECOVERY TO STAKEHOLDERS. AT THIS TIME, THE DEBTORS BELIEVE THE PLAN REPRESENTS THE BEST AVAILABLE OPTION FOR COMPLETING THE CHAPTER 11 CASES. THE DEBTORS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN. THE COMMITTEE, AS A FIDUCIARY FOR UNSECURED CREDITORS, IS IN THE MIDST OF AN INVESTIGATION INTO NUMEROUS PREPETITION TRANSACTIONS AND THE TREATMENT OF CLAIMS UNDER THE PLAN. BASED ON THE PRELIMINARY INDICATIONS OF ITS INVESTIGATION, THE COMMITTEE DOES NOT SUPPORT THE PLAN’S PROPOSED ALLOCATION OF DISTRIBUTABLE VALUE FOR UNSECURED CREDITORS, AND THEREFORE DOES NOT SUPPORT THE PLAN. THIS DISCLOSURE STATEMENT INCLUDES CERTAIN VIEWS AND POSITIONS OF THE COMMITTEE REGARDING THE DEBTORS’ PLAN. THESE VIEWS AND POSITIONS MAY NOT REFLECT THE VIEWS OF EACH OF THE INDIVIDUAL MEMBERS OF THE COMMITTEE, EACH OF WHICH RESERVES ALL RIGHTS.

II. PRELIMINARY STATEMENT

The Debtors are an independent returns-oriented, gas-weighted, exploration and development company and one of the largest producers of natural gas in the contiguous United States. The Debtors hold significant acreage positions in the Utica Shale of Eastern Ohio and the SCOOP Woodford and SCOOP Springer plays in Oklahoma. Headquartered in Oklahoma City, Oklahoma, the Debtors have approximately 259 employees. The Debtors’ operating revenue for the twelve-month period that ended September 30, 2020 was approximately \$1.35 billion.

⁴ Capitalized terms used but not otherwise defined in this Disclosure Statement shall have the meaning ascribed to such terms in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between this Disclosure Statement and the Plan, the Plan will govern.

As of the Petition Date, the Debtors had approximately \$2.41 billion in total funded debt obligations, consisting of:

- a senior secured revolving credit facility (the “RBL Facility”) with a borrowing base of \$580 million, an elected commitment amount of \$580 million, \$355.5 million in borrowings outstanding, and \$243.7 million in outstanding letters of credit, as of November 13, 2020 (the “Petition Date”);
- a Headquarters Mortgage with approximately \$22 million outstanding;
- the 6.625% senior notes due 2023 (the “2023 Notes”) in an approximate aggregate principal amount of \$350 million;
- the 6.000% senior notes due 2024 (the “2024 Notes”) in an approximate aggregate principal amount of \$650 million;
- the 6.375% senior notes due 2025 (the “2025 Notes”) in an approximate aggregate principal amount of \$600 million; and
- the 6.375% senior notes due 2026 (the “2026 Notes”) and together with the 2023 Notes, the 2024 Notes, and the 2025 Notes, the “Unsecured Notes”) in an approximate aggregate principal amount of \$450 million.⁵

On December 18, 2020, the Bankruptcy Court authorized, on a final basis, the Debtors’ entry into a superpriority revolving credit facility (the “DIP Facility”) in an aggregate principal amount of \$262.5 million, of which \$157.8 million is currently drawn.

Prior to the Petition Date, Gulfport Parent’s common stock traded on the NASDAQ Global Market under the ticker symbol “GPOR.” As of the Petition Date, there were approximately 160,759,942 shares of \$0.01 par value common stock outstanding.

Gulfport Parent was founded in July 1997, in Oklahoma City, Oklahoma, as an independent exploration and production company. During the past five years, the company has focused on the exploration, development, acquisition, and production of natural gas, crude oil and natural gas liquids (“NGL”), primarily in the Appalachia and Mid-Continent basins in the United States. The Debtors’ management team was appointed relatively recently, with the hiring of David M. Wood as chief executive officer in December 2018, Patrick Craine as executive vice president and general counsel in May 2019, and Quentin Hicks as executive vice president and chief financial officer in August 2019. The new management team transitioned the Debtors’ business from growth-oriented to a returns-based business, focused on generating cash flow and operating as cost-effectively as possible.

The Debtors are a leading producer in the southern portion of the Utica Shale and the SCOOP, with approximately 280,000 net reservoir acres as of the Petition Date. As of September 30, 2020, the Debtors had 4.5 trillion cubic feet of natural gas equivalent of proved reserves.

The Debtors, like many of their industry peers, experienced significant challenges over the past several years due to sustained downturns and volatility in commodities markets. Such challenges have been exacerbated throughout 2020 by the unprecedented volatility in global energy prices and market uncertainty due to the effects of the COVID-19 pandemic.

⁵ Gulfport Parent is the borrower under the RBL Facility. The RBL Facility is secured by substantially all of the Debtors' assets and obligations and is guaranteed by each of Gulfport Parent's wholly-owned subsidiaries, excluding Mule Sky. Gulfport Parent is the issuer of each series of Unsecured Notes.

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In 2020 alone, oil and natural gas prices have become extremely depressed, exacerbated by macroeconomic factors and geopolitical conditions. Beginning in the second half of 2019, New York Mercantile Exchange ("NYMEX") natural gas prices began to decline primarily due to very high supply relative to demand and prices continued to decline through the early part of 2020 as a result of an abnormally warm winter. Additionally, in March 2020, the initial spread of COVID-19 caused significant declines in oil and gas demand, resulting in additional declines in energy prices. In mid-April 2020, WTI crude oil for May 2020 delivery dropped roughly 300% in a single day and settled well below \$0 for the first time in history as a result of the uncertainty about the agreement reached between OPEC, Russia, and other world producers to reduce output and the uncertainty caused by the start of the COVID-19 pandemic. The below graphic of WTI crude oil closing prices from January 1, 2018 through August 31, 2020 illustrates the challenging market environment that the Debtors have faced.

WTI Crude Oil Closing Prices



The Debtors' management team has worked proactively to address these market challenges. As a result of lower natural gas prices in recent years, the Debtors significantly reduced their level of capital spending in 2020 and focused their drilling activities on projects they determined would provide the highest rate of return. Additionally, the Debtors have not made any significant acquisitions since the year ended December 31, 2016. Throughout 2019, the Debtors focused on developing their core assets and repaying debt with cash flows generated from operations and divestitures of various noncore assets. The Debtors continually evaluate their property portfolio and sell properties when the Debtors believe that the sales price realized will provide an above-average rate of return for the property or when the property no longer matches the Debtors' strategic focus.

Historically, the Debtors entered into commodity hedging transactions with certain lenders (or affiliates thereof) under the RBL Facility (the "Prepetition Lender Swap Contracts") and any such party to a Prepetition Lender Swap Contract, a "Lender Swap Counterparty"). The Debtors' hedging transactions to date primarily consisted of financially-settled natural gas and crude oil options contracts—consisting of costless collars, swaps, and sold calls—placed with major financial institutions that are also lenders to the Debtors under the RBL Facility. Prepetition, the Debtors hedged a portion of their production—and currently have approximately 26% of their forecasted production hedged in 2021. As of November 11, 2020, the Debtors were party to Prepetition Lender Swap Contracts on approximately 132,000 barrels of oil, 411 Bcf of gas, and 91,500 barrels of natural gas liquids. As of the Petition Date, the Debtors do not have any existing Prepetition Lender Swap Contracts related to interest rates.

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In early September 2020, an ad hoc group of holders of Unsecured Notes (the "Ad Hoc Noteholder Group") entered into nondisclosure agreements and became restricted to negotiate a potential restructuring transaction. The Debtors also began discussing the terms of debtor-in-possession financing and exit financing options with the existing RBL Lenders, the Ad Hoc Noteholder Group, and certain potential third-party capital providers. As discussed above, following productive, arm's-length negotiations, on November 13, 2020, the Debtors, the RBL Lenders, and the Ad Hoc Noteholder Group entered into the Restructuring Support Agreement. The restructuring transactions agreed upon in the Restructuring Support Agreement will be implemented through the Plan, which benefits from overwhelming support from the Debtors' funded debt holders and will result in a material deleveraging and a new money equity rights offering backstopped by the Ad Hoc Noteholder Group. Ultimately, as a result of these negotiations, the Debtors believe they received the best terms available on the DIP Facility and the Exit Facility, and they established support for a value-maximizing Plan that will pave the way for an expeditious exit from chapter 11.

Under the terms of the Restructuring Support Agreement, which are embodied in the Plan, the RBL Lenders and the Ad Hoc Noteholder Group have agreed to facilitate a balance sheet restructuring that will reduce debt by approximately \$1.25 billion, reduce the Debtors' high fixed operational costs, and provide the Debtors with \$580 million in exit financing.

More specifically, the Restructuring Support Agreement and Plan contemplate the following:

DIP and Exit Financing The RBL Lenders, with the Bank of Nova Scotia as administrative agent (the "DIP Agent"), will provide the \$262.5 million DIP Facility, that will "roll up" a portion of the existing RBL Facility and provide sufficient liquidity for the Debtors to operate while in chapter 11. The RBL Lenders have agreed that the RBL Facility and DIP Facility will convert into an exit financing facility (the "Exit Facility") upon the effective date of the Plan (the "Effective Date") subject to the terms and conditions set forth in the Exit Facility Term Sheet.

· **New Money Equity Rights Offering.** The Ad Hoc Noteholder Group has agreed to backstop a new money rights offering of at least \$50 million (the “Rights Offering”), in exchange for New Preferred Stock.

· **Treatment of Unsecured Claims.** The holders of unsecured claims against the Debtors (including bondholder claims, rejection damages claims and litigation claims) will receive in the aggregate 100% of the equity of the Reorganized Debtors (prior to the Rights Offering and subject to dilution by the Management Incentive Plan) and \$550 million of New Unsecured Notes, depending on whether the Holder’s claim is against Gulfport Parent or one of its subsidiaries as described further below.

· Holders of Notes Claims and General Unsecured Claims against Gulfport Subsidiaries will share in an equity pool consisting of 94% of the equity of the Reorganized Debtors (prior to the Rights Offering and subject to dilution by the Management Incentive Plan) and will receive Rights Offering Subscription Rights and New Unsecured Notes.

· Holders of Notes Claims and General Unsecured Claims against Gulfport Parent will share in an equity pool consisting of 6% of the equity of the Reorganized Debtors (prior to the Rights Offering and subject to dilution by the Management Incentive Plan). Holders of Notes Claims will waive recoveries from Gulfport Parent to the extent such Holders have, in the aggregate, received 94% of the equity of the Reorganized Debtors (prior to and not including any dilution by the Management Incentive Plan or any conversion of New Preferred Stock into New Common Stock) until Holders of General Unsecured Claims receive New Common Stock with a value sufficient to satisfy their General Unsecured Claims against Gulfport Parent in full (based on Plan Value).

· **Treatment of Intercompany Claims.** The Plan and the distributions contemplated thereby constitute a global settlement of any and all Intercompany Claims and causes of action by and between any of the Debtors that may exist as of the Effective Date, and any and all Intercompany Claims will be cancelled on the Effective Date in exchange for the distributions contemplated by the Plan to Holders of Claims against and Interests in the respective Debtor entities. The Plan shall be considered a settlement of the Intercompany Claims pursuant to Bankruptcy Rule 9019

· **Treatment of Intercompany Interests.** Holders of Intercompany Interests shall receive no recovery or distribution and shall be Reinstated solely to the extent necessary to maintain the Debtors’ prepetition corporate structure for the ultimate benefit of the Holders of New Common Stock and New Preferred Stock.

· **Treatment of Existing Equity Interests.** The existing equity interests in Gulfport Parent will be canceled without any distribution.

To ensure that the Chapter 11 Cases are completed on an expedited timeline, the Restructuring Support Agreement contains certain milestones, including securing an order confirming the Plan no later than one hundred sixty-five days after the Petition Date and the occurrence of the Effective Date no later than one hundred eighty days after the Petition Date. The Debtors believe they can confirm a plan of reorganization and emerge from chapter 11 within these time periods without prejudicing the ability of any parties to assert their rights in these Chapter 11 Cases.

The Restructuring Support Agreement also requires that the Debtors reduce firm transportation costs and volumes. To this end, the Restructuring Support Agreement contains a milestone to secure, no later than one hundred and eighty days after the Petition Date, one or more final orders permanently reducing the future demand reservation fees owed by the Debtors over the life of all firm transportation agreements of the Debtors, taken as a whole, by at least 50% of the amount of all such fees owed on October 31, 2020, as calculated on a PV-10 basis, and reducing the future firm transportation average daily demand reservation volumes over the life of all of the firm transportation agreements of the Debtors as of October 31, 2020, taken as a whole, by at least 35%.

The Debtors believe the restructuring transactions embodied by the Plan and Restructuring Support Agreement are a significant achievement in the wake of a historically challenging operating environment. Each of the Debtors strongly believes that the Plan is in the best interests of the Debtors’ estates and represents the best available alternative at this time. Given the strength of the Debtors’ asset base and future potential and the committed support of the RBL Lenders and the Ad Hoc Noteholder Group, the Debtors are confident that they can implement the restructuring transactions contemplated by the Plan and Restructuring Support Agreement to ensure the Debtors’ long-term viability. For these reasons, the Debtors strongly recommend that Holders of Claims entitled to vote to accept or reject the Plan vote to accept the Plan. Based on its ongoing investigation, however, the Committee does not support the allocation of value among unsecured creditors of Gulfport Parent and the Gulfport Subsidiaries, and does not support the Plan.

III. QUESTIONS AND ANSWERS REGARDING THIS DISCLOSURE STATEMENT AND PLAN

A. What is chapter 11?

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. In addition to permitting debtor rehabilitation, chapter 11 promotes equality of treatment for creditors and similarly situated equity interest holders, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the date the chapter 11 case is commenced. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a “debtor in possession.”

Consummating a chapter 11 plan is the principal objective of a chapter 11 case. A bankruptcy court’s confirmation of a plan binds the debtor, any person acquiring property under the plan, any creditor or equity interest holder of the debtor (whether or not such creditor or equity interest holder voted to accept the plan), and any other entity as may be ordered by the bankruptcy court. Subject to certain limited exceptions, the order issued by a bankruptcy court confirming a plan provides for the treatment of the debtor’s liabilities in accordance with the terms of the confirmed plan.

B. Why are the Debtors sending me this Disclosure Statement?

The Debtors are seeking to obtain Bankruptcy Court approval of the Plan. Before soliciting acceptances of the Plan, section 1125 of the Bankruptcy Code requires the Debtors to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of the Plan and to share such disclosure statement with all Holders of Claims whose votes on the Plan are being solicited. This Disclosure Statement is being submitted in accordance with these requirements.

C. What is the effect of the Plan on the Debtors’ ongoing business?

The Debtors are reorganizing under chapter 11 of the Bankruptcy Code. As a result, the occurrence of the Effective Date means that the Debtors will continue to operate their business as a going concern. Following Confirmation, the Plan will be consummated on the Effective Date, which is the date on which (1) all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied in accordance with Article IX.B of the Plan and (2) the Plan is declared effective

by the Debtors. On or after the Effective Date, and unless otherwise provided in the Plan, the Reorganized Debtors may operate their business and use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. Additionally, upon the Effective Date, all actions contemplated by the Plan will be deemed authorized and approved.

D. Am I entitled to vote on the Plan?

Your ability to vote on, and your distribution under, the Plan, if any, depends on what type of Claim or Interest you hold. Each category of Holders of Claims or Interests, as set forth in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code, is referred to as a “Class.” Each Class’s respective voting status is set forth below:

Class	Claims and Interests	Status	Voting Rights
Class 1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 3	RBL Claims	Impaired	Entitled to Vote
Class 4A	General Unsecured Claims against Gulfport Parent	Impaired	Entitled to Vote
Class 4B	General Unsecured Claims against Gulfport Subsidiaries	Impaired	Entitled to Vote
Class 5A	Notes Claims against Gulfport Parent	Impaired	Entitled to Vote
Class 5B	Notes Claims against Gulfport Subsidiaries	Impaired	Entitled to Vote
Class 6	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)
Class 7	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)
Class 8	Existing Interests in Gulfport Parent	Impaired	Not Entitled to Vote (Deemed to Reject)
Class 9	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)

E. What will I receive from the Debtors if the Plan is consummated?

The following chart provides a summary of the anticipated recovery to Holders of Allowed Claims or Allowed Interests under the Plan. Any estimates of Claims or Interests in this Disclosure Statement may vary from the final amounts Allowed by the Bankruptcy Court. Your ability to receive distributions under the Plan depends upon the ability of the Debtors to obtain Confirmation and meet the conditions necessary to consummate the Plan.

THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND THEREFORE ARE SUBJECT TO CHANGE. FOR A COMPLETE DESCRIPTION OF THE DEBTORS’ CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS, REFERENCE SHOULD BE MADE TO THE ENTIRE PLAN.⁶

⁶ The recoveries set forth below are based on the same assumptions that underlie the Financial Projections [Docket No. 627, Ex. C], including assumptions regarding the rejection of FT Agreements, and may change based upon changes in the amount of Claims that are Allowed, as well as other factors related to the Debtors’ business operations and general economic conditions.

Except to the extent that the Debtors and a Holder of an Allowed Claim or Interest, as applicable, agrees to a less favorable treatment, such Holder shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for such Holder’s Allowed Claim or Interest. Unless otherwise indicated, each Holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date (or, if payment is not then due, in accordance with its terms in the ordinary course) or as soon as reasonably practicable thereafter.

SUMMARY OF EXPECTED RECOVERIES				
Class	Claim/Interest	Treatment of Claim/ Interest	Projected Total Amount of Claims in Class	Estimated % Recovery Under Plan ⁷
1	Other Secured Claims	Each Holder of an Allowed Other Secured Claim shall receive, at the option of the applicable Debtor, with the consent of the Required Consenting Stakeholders (such consent not to be unreasonably withheld): (i) payment in full in Cash of its Allowed Other Secured Claim; (ii) the collateral securing its Allowed Other Secured Claim; (iii) Reinstatement of its Allowed Other Secured Claim; or (iv) such other treatment that renders its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code. ⁸	\$22 million ⁹	100%
2	Other Priority Claims	Each Holder of an Allowed Other Priority Claim shall receive treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.	\$1 million	100%

⁷ For purposes of illustration, the recoveries presented herein treat the New Preferred Stock on an as-converted basis, and assume dilution of the New Common Stock by the 50% of the Management Incentive Plan Pool contemplated to be allocated within 60 days of the Effective Date.

⁸ Unless otherwise agreed in writing between the Debtors and InterBank, the mortgage lender for the Debtors’ headquarters located at 3001 Quail Springs Parkway, Oklahoma City, OK 73134 (a Class 1 creditor holding an Other Secured Claim), the Debtors will elect treatment option (ii) with respect to InterBank’s Allowed Other Secured Claim. The Debtors and InterBank reserve all rights with respect to the implementation of such treatment.

SUMMARY OF EXPECTED RECOVERIES				
Class	Claim/Interest	Treatment of Claim/ Interest	Projected Total Amount of Claims in Class	Estimated % Recovery Under Plan ⁷
3	RBL Claims	Each Holder of an Allowed RBL Claim shall receive, at the option of each such Holder, either: (i) if such Holder elects to participate in the Exit RBL/Term Loan A Facility, its Pro Rata share of the Exit RBL/Term Loan A; or (ii) if such Holder does not elect to participate in the Exit RBL/Term Loan A Facility (including by not making any election with respect to the Exit Facility on the ballot), its Pro Rata share of the Exit Term Loan B Facility.	\$442 million ¹⁰	100%
4A	General Unsecured Claims against Gulfport Parent	Each Holder of an Allowed General Unsecured Claim against Gulfport Parent shall receive, in full and final satisfaction of such Claim, its Pro Rata ¹¹ share of the Gulfport Parent Equity Pool; <i>provided, however</i> , that once the Holders of Notes Claims receive distributions of 94% of the New Common Stock (prior to and not including any dilution by the Management Incentive Plan or any conversion of New Preferred Stock into New Common Stock) in the aggregate on account of their Notes Claims against all Debtors, the Holders of Notes Claims shall waive any excess recovery on account of their Pro Rata share of the Gulfport Parent Equity Pool until Holders of Allowed General Unsecured Claims against Gulfport Parent have received New Common Stock with a value sufficient to satisfy their Allowed General Unsecured Claims against Gulfport Parent in full (based on Plan Value).	\$218–400 million	3.6–19.8% ¹²

¹⁰ Reflects the aggregate principal amount outstanding as of the Petition Date, after accounting for the Roll-Up DIP Claims, plus estimated accrued, unpaid pre- and postpetition interest on such principal amount at the applicable contractual interest rate and unpaid fees and expenses payable in accordance with the RBL Credit Agreement.

¹¹ In this instance, Pro Rata amounts shall be calculated as the Pro Rata share of all General Unsecured Claims against Gulfport Parent and Notes Claims against Gulfport Parent.

¹² The low end of the recovery estimate assumes the high end of the estimated range of Class 4A Claims and the low end of range of estimated Enterprise Value. The high end of the recovery estimate assumes the low end of the estimated range of Class 4A Claims and the high end of the range of estimated Enterprise Value.

SUMMARY OF EXPECTED RECOVERIES				
Class	Claim/Interest	Treatment of Claim/ Interest	Projected Total Amount of Claims in Class	Estimated % Recovery Under Plan ⁷
4B	General Unsecured Claims against Gulfport Subsidiaries	Each Holder of an Allowed General Unsecured Claim against Gulfport Subsidiaries shall receive, in full and final satisfaction of such Claim, its Pro Rata ¹³ share of the: (i) Gulfport Subsidiaries Equity Pool, (ii) Rights Offering Subscription Rights, and (iii) New Unsecured Notes.	\$1 million ¹⁴	42.8–71.3% ¹⁵

¹³ In this instance, Pro Rata amounts shall be calculated as the Pro Rata share of all General Unsecured Claims against Gulfport Subsidiaries and Notes Claims against Gulfport Subsidiaries.

¹⁴ Certain of the Debtors' surety providers have filed claims against the Gulfport Subsidiaries totaling approximately \$1.11 billion. After eliminating duplicate claims filed against each Debtor, the remaining alleged surety bond claims against the Gulfport Subsidiaries total approximately \$111.6 million. The Debtors believe the surety bond claims should be in Class 4A rather than Class 4B because Gulfport Parent is the issuing Debtor on substantially all of the surety bonds.

¹⁵ Recoveries shown include value in respect of rights to participate in the Rights Offering. The low end of the recovery estimate assumes the low end of the range of estimated Enterprise Value. The high end of the recovery estimate assumes the high end of the range of estimated Enterprise Value.

SUMMARY OF EXPECTED RECOVERIES				
Class	Claim/Interest	Treatment of Claim/ Interest	Projected Total Amount of Claims in Class	Estimated % Recovery Under Plan ⁷

5A	Notes Claims against Gulfport Parent	Each Holder of an Allowed Notes Claim against Gulfport Parent shall receive, in full and final satisfaction of such Claim, its Pro Rata ¹⁶ share of the Gulfport Parent Equity Pool; <i>provided, however</i> , that once the Holders of Notes Claims receive distributions of 94% of the New Common Stock (prior to and not including any dilution by the Management Incentive Plan or any conversion of New Preferred Stock into New Common Stock) in the aggregate on account of their Notes Claims against all Debtors, the Holders of Notes Claims shall waive any excess recovery on account of their Pro Rata share of the Gulfport Parent Equity Pool until Holders of Allowed General Unsecured Claims against Gulfport Parent have received New Common Stock with a value sufficient to satisfy their Allowed General Unsecured Claims against Gulfport Parent in full (based on Plan Value); <i>provided further, however</i> , distributions to any Holder of a Notes Claim against Gulfport Parent shall be subject to the rights and terms of the Notes Indentures and the rights of the Notes Trustee to assert the Notes Trustee Charging Lien.	\$1,823 million	42.9–71.4% ¹⁷ (including Claims on account of Notes Claims against Gulfport Subsidiaries)
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¹⁶ In this instance, the Pro Rata amounts shall be calculated as the Pro Rata share of all General Unsecured Claims against Gulfport Parent and Notes Claims against Gulfport Parent.

¹⁷ Recoveries shown include value in respect of rights to participate in the Rights Offering. The low end of the recovery estimate assumes the low end of the range of estimated Enterprise Value. The high end of the recovery estimate assumes the high end of the range of estimated Enterprise Value.

SUMMARY OF EXPECTED RECOVERIES				
Class	Claim/Interest	Treatment of Claim/ Interest	Projected Total Amount of Claims in Class	Estimated % Recovery Under Plan ⁷
5B	Notes Claims against Gulfport Subsidiaries	Each Holder of an Allowed Notes Claim against Gulfport Subsidiaries shall receive, in full and final satisfaction of such Claim, its Pro Rata ¹⁸ share of the: (i) Gulfport Subsidiaries Equity Pool, (ii) Rights Offering Subscription Rights, and (iii) New Unsecured Notes; <i>provided, however</i> , distributions to any Holder of a Notes Claim against Gulfport Subsidiaries shall be subject to the rights and terms of the Notes Indentures and the rights of the Notes Trustee to assert the Notes Trustee Charging Lien.	\$1,823 million	42.9–71.4% ¹⁹ (including Claims on account of Notes Claims against Gulfport Parent)
6	Intercompany Claims	The Plan and the distributions contemplated thereby constitute a global settlement of any and all Intercompany Claims and causes of action by and between any of the Debtors that may exist as of the Effective Date, and any and all Intercompany Claims will be canceled on the Effective Date in exchange for the distributions contemplated by the Plan to Holders of Claims against and Interests in the respective Debtor entities. The Plan shall be considered a settlement of the Intercompany Claims pursuant to Bankruptcy Rule 9019.	\$388 million	N/A
7	Intercompany Interests	Holdings of Intercompany Interests shall receive no recovery or distribution and shall be Reinstated solely to the extent necessary to maintain the Debtors' prepetition corporate structure for the ultimate benefit of the Holders of New Common Stock and New Preferred Stock.	N/A	N/A

¹⁸ In this instance, the Pro Rata amounts shall be calculated as the Pro Rata share of all General Unsecured Claims against Gulfport Subsidiaries and Notes Claims against Gulfport Subsidiaries.

¹⁹ Recoveries shown include value in respect of rights to participate in the Rights Offering. The low end of the recovery estimate assumes the low end of the range of estimated Enterprise Value. The high end of the recovery estimate assumes the high end of the range of estimated Enterprise Value.

SUMMARY OF EXPECTED RECOVERIES				
Class	Claim/Interest	Treatment of Claim/ Interest	Projected Total Amount of Claims in Class	Estimated % Recovery Under Plan ⁷
8	Existing Interests in Gulfport Parent	On the Effective Date, all Existing Interests in Gulfport Parent shall be canceled, released, and extinguished, and will be of no further force or effect.	N/A	0%
9	Section 510(b) Claims	On the Effective Date, all Allowed Section 510(b) Claims, if any, shall be canceled, released, and extinguished, and will be of no further force or effect.	\$0	0%

F. What will I receive from the Debtors if I hold an Administrative Claim or Priority Tax Claim?

Administrative Claims, DIP Claims, Professional Fee Claims, Priority Tax Claims, Statutory Fees, and Transaction Expenses have not been placed in a Class in the Plan, consistent with section 1123(a)(1) of the Bankruptcy Code. Article II.A of the Plan sets forth the treatment for Administrative Claims (except for Professional Fee Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of the Judicial Code) and provides in part that such each Claim will be satisfied in full in an amount of Cash equal to the amount of such Allowed Administrative Claim. Article II.D of the Plan sets forth the treatment for Priority Tax Claims, which states that an Allowed Priority

Tax Claim will be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

G. Are any regulatory approvals required to consummate the Plan?

There are no known U.S. regulatory approvals that are required to consummate the Plan. However, to the extent any such regulatory approvals or other authorizations, consents, rulings, or documents are necessary to implement and effectuate the Plan, it is a condition precedent to the Effective Date that they be obtained.

H. What happens to my recovery if the Plan is not confirmed or does not go effective?

In the event that the Plan is not confirmed or does not go effective, there is no assurance that the Debtors will be able to reorganize their businesses. It is possible that any alternative may provide Holders of Claims and Interests with less than they would have received pursuant to the Plan. For a more detailed description of the consequences of extended chapter 11 cases, or of a liquidation scenario, see Article X.H of this Disclosure Statement, entitled “Best Interests of Creditors/Liquidation Analysis.” The Liquidation Analysis is attached to this Disclosure Statement as Exhibit E.

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I. If the Plan provides that I get a distribution, do I get it upon Confirmation or when the Plan goes effective, and what is meant by “Confirmation,” “Effective Date,” and “Consummation?”

“Confirmation” of the Plan refers to approval of the Plan by the Bankruptcy Court. Confirmation of the Plan does not guarantee that you will receive the distribution indicated under the Plan. After Confirmation of the Plan by the Bankruptcy Court, there are conditions that need to be satisfied or waived so that the Plan can become effective. Initial distributions to Holders of Allowed Claims and Interests will only be made on the Effective Date or as soon as reasonably practicable thereafter, as specified in the Plan. See Article X of this Disclosure Statement, entitled “Confirmation of the Plan,” for a discussion of the conditions precedent to Consummation of the Plan.

J. Is there potential litigation related to the Plan?

Parties in interest have objected to the approval of this Disclosure Statement and may object to Confirmation of the Plan as well, which objections potentially could give rise to litigation. See Article IX.C.9 of this Disclosure Statement, entitled “The Reorganized Debtors May Be Adversely Affected by Potential Litigation, Including Litigation Arising Out of the Chapter 11 Cases.”

In the event that it becomes necessary to confirm the Plan over the rejection of certain Classes, the Debtors may seek Confirmation of the Plan notwithstanding the dissent of such rejecting Classes. The Bankruptcy Court may confirm the Plan pursuant to the “cramdown” provisions of the Bankruptcy Code, which allow the Bankruptcy Court to confirm a plan that has been rejected by an impaired class if it determines that the Plan satisfies section 1129(b) of the Bankruptcy Code. See Article IX.A.8 of this Disclosure Statement, entitled “The Debtors May Not Be Able to Secure Confirmation of the Plan.”

K. Are there risks to owning the New Common Stock and New Preferred Stock upon emergence from Chapter 11?

Yes. See Article IX of this Disclosure Statement, entitled “Risk Factors.” Among other things, the ownership percentage represented by the New Common Stock and the New Preferred Stock distributed on the Effective Date under the Plan will be subject to dilution from the Management Incentive Plan or other securities that may be issued post-emergence.

L. What is the Rights Offering?

On the Effective Date, the Debtors will consummate a rights offering of at least \$50 million in net proceeds for New Preferred Stock at a per share price of \$1,000, pursuant to the Backstop Commitment Agreement, the Plan, and the Rights Offering Procedures.

More specifically, the Debtors or Reorganized Debtors, as applicable, will allocate the Rights Offering Subscription Rights to Holders of Allowed General Unsecured Claims against Gulfport Subsidiaries and Allowed Notes Claims against Gulfport Subsidiaries as set forth in the Plan and the Rights Offering Procedures. Upon exercise of the Rights Offering Subscription Rights pursuant to the terms of the Rights Offering Procedures, the Backstop Commitment Agreement, and the Plan, the Reorganized Debtors shall be authorized to issue New Preferred Stock in accordance with the Rights Offering Procedures, the Backstop Commitment Agreement, and the Plan.

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The Rights Offering will be conducted on a Pro Rata basis in reliance upon one or more exemptions from registration under the Securities Act, which will include the exemption provided in section 1145 of the Bankruptcy Code to the fullest extent available and, to the extent such exemption is not available (and with respect to the New Preferred Stock, only in the proportion required to preserve the availability of such exemption under section 1145 of the Bankruptcy Code), the exemption from registration set forth in section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder or another available exemption from registration under the Securities Act, as described below under Article XI of this Disclosure Statement, “Certain Securities Law Matters.”

Pursuant to the Backstop Commitment Agreement, the Backstop Commitment Parties shall purchase any New Preferred Stock not subscribed to in the Rights Offering, as set forth in the Backstop Commitment Agreement. In addition, on the Distribution Date, New Preferred Stock in an amount equal to the Backstop Commitment Premium shall be distributed to the Backstop Commitment Parties under and as set forth in the Backstop Commitment Agreement. Any shares of New Preferred Stock issued to the Backstop Commitment Parties pursuant to the Backstop Commitment Agreement (including the Backstop Commitment Premium) will be issued in reliance on section 4(a)(2) of the Securities Act (and/or Regulation D promulgated thereunder). On the Effective Date, the rights and obligations of the Debtors under the Backstop Commitment Agreement will vest in the Reorganized Debtors.

M. Will there be releases, injunction, and exculpation granted to parties in interest as part of the Plan?

Yes, the Plan proposes to release the Released Parties and to exculpate the Exculpated Parties. The Debtors’ releases, third-party releases, exculpation, and injunction provisions included in the Plan are an integral part of the Debtors’ overall restructuring efforts and were an essential element of the negotiations among the Debtors and the other parties to the Restructuring Support Agreement in obtaining their support for the Plan pursuant to the terms of the Restructuring Support Agreement.

To effectuate the settlement embodied in the Plan, the Plan includes certain Debtor and third-party releases, an exculpation provision, and an injunction provision. These provisions are the product of extensive good faith, arm’s-length negotiations, were material inducements for the Consenting Stakeholders to enter into the Restructuring Support Agreement and the comprehensive settlement embodied in the Plan, and are supported by the Debtors and the Consenting Stakeholders. Moreover, the Released Parties and the Exculpated Parties have made substantial and valuable contributions to the Debtors’ restructuring through efforts to negotiate and implement the Plan, which will maximize and preserve the going-concern value of the Debtors for the benefit of all parties in interest. Accordingly, each of the Released Parties and the Exculpated Parties

warrants the benefit of the release and exculpation provisions.

IMPORTANTLY, ALL HOLDERS OF CLAIMS OR INTERESTS THAT DO NOT VALIDLY OPT OUT OF THE RELEASES WILL BE DEEMED TO HAVE EXPRESSLY, UNCONDITIONALLY, GENERALLY, INDIVIDUALLY, AND COLLECTIVELY CONSENTED TO THE RELEASE AND DISCHARGE OF ALL CLAIMS AND CAUSES OF ACTION AGAINST THE DEBTORS AND THE RELEASED PARTIES. THE RELEASES ARE AN INTEGRAL ELEMENT OF THE PLAN.

Based on the foregoing, the Debtors believe that the release, exculpation, and injunction provisions in the Plan are necessary and appropriate and meet the requisite legal standard promulgated by the United States Court of Appeals for the Fifth Circuit. More specifically, while their review is ongoing, the Debtors are not aware of any potentially colorable Claims or Causes of Action held by the Debtors or their Estates against the Released Parties that would provide a material benefit to creditor recoveries. In particular, the Debtors are not aware of any colorable Claims or Causes of Action against current or former directors or officers that would provide a material benefit to creditor recoveries. Accordingly, as of this time, the Debtors do not believe that they have material Causes of Action against any of the Released Parties, let alone Causes of Action that would justify the risk, expense, and delay attendant to their pursuit and therefore, if the Plan is consummated, all claims and Causes of Action against the Released Parties will be released pursuant to the Plan.²⁰

²⁰ For the avoidance of doubt, Causes of Action of Debtors against other Debtors are discussed separately in Section VIII. As discussed further in Section VIII.K, the Debtors believe that the settlement of such intercompany Causes of Action pursuant to the Plan is fair and reasonable and that any material intercompany Causes of Action being resolved for material consideration. The Committee's position regarding such Causes of Action is described in Section VIII.I and VIII.J.

Moreover, the Debtors will present evidence at the Confirmation Hearing to demonstrate the basis for and propriety of the release and exculpation provisions. The release, exculpation, and injunction provisions that are contained in the Plan are copied in pertinent part below.

1. Releases by the Debtors.

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released and discharged by the Debtors, the Reorganized Debtors, and their Estates from any and all claims and Causes of Action, whether known or unknown, including any derivative claims, asserted by or on behalf of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates (as applicable) would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against or Interest in a Debtor or other Entity, or that any Holder of any Claim against or Interest in a Debtor or other Entity could have asserted on behalf of the Debtors, based on or relating to or in any manner arising from in whole or in part, the Debtors (including the management, ownership, or operation thereof), any Securities issued by the Debtors and the ownership thereof, the Debtors' in or out of court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), the RBL Facility, any intercompany transactions, the Chapter 11 Cases and any related adversary proceedings, the formulation, preparation, dissemination, solicitation, negotiation, entry into, or filing of the Restructuring Support Agreement, the Disclosure Statement, the DIP Facility, the Plan, the Plan Supplement, the Exit Facility, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the DIP Facility, the Exit Facility, the Rights Offering, the Backstop Commitment Agreement, the Plan, or the Plan Supplement, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release: (i) any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any Restructuring Transaction, any Definitive Document, or any other document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or the Restructuring Transactions; or (ii) the rights of any Holder of Allowed Claims to receive distributions under the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the claims or Causes of Action released by the Debtor release; (c) in the best interests of the Debtors, the Estates, and all Holders of Claims and Interests; (d) fair, equitable and reasonable; (e) given and made after reasonable investigation by the Debtors and after notice and opportunity for hearing; and (f) a bar to any of the Debtors, the Reorganized Debtors, or the Estates asserting any claim or Cause of Action released by the Debtor release against any of the Released Parties.

2. Releases by the Releasing Parties.

Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, each Releasing Party is deemed to have released and discharged each Debtor, Reorganized Debtor, and Released Party from any and all claims and Causes of Action, whether known or unknown, including any derivative claims, asserted on behalf of the Debtors, the Reorganized Debtors, or their Estates (as applicable) that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), any Securities issued by the Debtors and the ownership thereof, the Debtors' in or out of court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), the RBL Facility, any intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, solicitation, negotiation, entry into, or filing of the Restructuring Support Agreement, the Disclosure Statement, the DIP Facility, the Plan, the Plan Supplement, the Exit Facility, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the DIP Facility, the Exit Facility, the Rights Offering, the Backstop Commitment Agreement, the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release: (i) any post-Effective Date obligations of any party or

Entity under the Plan, the Confirmation Order, any Restructuring Transaction, any Definitive Document, or any other document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or the Restructuring Transactions, including the Exit RBL/Term Loan A Facility Documentation and the Exit Term Loan B Facility Documentation; (ii) the rights of any Holder of Allowed Claims to receive distributions under the Plan. For the avoidance of doubt, nothing in this Plan shall be deemed to be, or construed as, a release, waiver, discharge, or other limitation or modification of any of the RBL/DIP Preserved Rights.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the third-party release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that the third-party release is: (a) consensual; (b) essential to the Confirmation; (c) given in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the restructuring and implementing the Plan; (d) a good faith settlement and compromise of the claims or Causes of Action released by the third-party release; (e) in the best interests of the Debtors and their Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice and opportunity for hearing; and (h) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to the third-party release.

3. Exculpation.

Except as otherwise specifically provided in the Plan or the Confirmation Order, no Exculpated Party shall have or incur liability for, and each Exculpated Party shall be released and exculpated from any claims and Cause of Action for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or termination of the Restructuring Support Agreement and related prepetition transactions (including the RBL Credit Agreement, the Notes Indentures or the Notes), the Disclosure Statement, the Plan, the DIP Facility, the Exit Facility Documentation, the Plan Supplement, or any Restructuring Transaction, contract, instrument, release or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement, the Restructuring Support Agreement, the DIP Facility, the Exit Facility, the Rights Offering, the Backstop Commitment Agreement, the Plan, or the Plan Supplement, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

4. Injunction.

Except as otherwise expressly provided in the Plan or the Confirmation Order or for obligations or distributions issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold the Released Claims are permanently enjoined from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action, suit, or other proceeding of any kind on account of or in connection with or with respect to any Released Claims; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any Released Claims; (3) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the Estates of such Entities on account of or in connection with or with respect to any Released Claims; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or the Estates of such Entities on account of or in connection with or with respect to any Released Claims unless such Entity has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable Law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any Released Claims released or settled pursuant to the Plan.

Upon entry of the Confirmation Order, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, managers, principals, and direct and indirect Affiliates, in their capacities as such, shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Each Holder of an Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in Article VIII.F of the Plan.

5. Release of Liens.

Except as otherwise provided in the Exit Facility Documentation, the Plan, the Confirmation Order, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors or Reorganized Debtors, or any other Holder of a Secured Claim. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed, at the sole cost and expense of the Reorganized Debtors, to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of such Liens and/or security interests, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency, records office, or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such mortgages, deeds of trust, Liens, pledges, and other security interests.

To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such Holder, has filed or

recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors, the Reorganized Debtors, or the Exit Facility Agents that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such Holder's behalf.

N. How will the preservation of the Causes of Action impact my recovery under the Plan?

The Plan provides for the preservation of certain Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, each Reorganized Debtor, as applicable, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, whether arising before or after the Petition Date, that are specifically enumerated in the Schedule of Retained Causes of Action, and the Reorganized Debtors' rights to commence, prosecute, or settle such retained Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date or any other provision of the Plan to the contrary.

The Reorganized Debtors may pursue such retained Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Reorganized Debtors, as applicable, will not pursue any and all available retained Causes of Action of the Debtors against it. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all retained Causes of Action against any Entity. Unless otherwise agreed upon in writing by the parties to the applicable Cause of Action, all objections to the Schedule of Retained Causes of Action must be Filed with the Bankruptcy Court on or before thirty days after the Effective Date. Any such objection that is not timely Filed will be disallowed and forever barred, estopped, and enjoined from assertion against any Reorganized Debtor, without the need for any objection or responsive pleading by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court.

The Reorganized Debtors may settle any such objection without any further notice to or action, order, or approval of the Bankruptcy Court. If there is any dispute regarding the inclusion of any Cause of Action on the Schedule of Retained Causes of Action that remains unresolved by the Debtors or Reorganized Debtors, as applicable, and the objection party for thirty days, such objection shall be resolved by the Bankruptcy Court. Unless any Causes of Action of the Debtors against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order (and for the avoidance of doubt, any Causes of Action on the Schedule of Retained Causes of Action shall not be expressly relinquished, exculpated, released, compromised, or settled in the Plan), the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Debtors reserve and retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any retained Causes of Action that a Debtor may hold against any Entity will vest in the Reorganized Debtors. The applicable Reorganized Debtors, through their authorized agents or representatives, will retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors will have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

O. How will undeliverable distributions and unclaimed property be treated under the Plan?

If any distribution to a Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable, no distribution will be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then-current address or other necessary information for delivery, at which time all currently due missed distributions shall be made to such Holder on the next Distribution Date without interest. Undeliverable distributions will remain in the possession of the Reorganized Debtors until such time as a distribution becomes deliverable, or such distribution reverts to the Reorganized Debtors or is canceled pursuant to the Plan and shall not be supplemented with any interest, dividends, or other accruals of any kind.

Any distribution under the Plan that is an Unclaimed Distribution or remains undeliverable for a period of six months after distribution will be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution or undeliverable distribution will vest in the applicable Reorganized Debtor automatically (and without need for a further order by the Bankruptcy Court, notwithstanding any applicable federal, provincial, or estate escheat, abandoned, or unclaimed property laws to the contrary) and, to the extent such Unclaimed Distribution is comprised of New Common Stock or New Preferred Stock, such New Common Stock or New Preferred Stock will be canceled. Upon such vesting, the Claim of the Holder or its successors with respect to such property will be canceled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the distribution that is an Unclaimed Distribution, to the contrary. The Disbursing Agent will adjust the number of shares of New Common Stock outstanding as of the date of such cancellation to ensure that the distributions of New Common Stock contemplated under the Plan, including in respect of the Gulfport Parent Equity Pool and Gulfport Subsidiaries Equity Pool, are given full force and effect.

P. Are there minimum distribution restrictions?

No Cash payment of less than \$250 shall be made to a Holder of an Allowed Claim on account of such Allowed Claim. When any distribution pursuant to the Plan on account of an Allowed Claim or Allowed Interest (as applicable) would otherwise result in the issuance of a number of shares of New Common Stock or New Preferred Stock that is not a whole number, the actual distribution of shares of New Common Stock or New Preferred Stock will be rounded as follows: (a) fractions of one-half or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half will be rounded to the next lower whole number with no further payment therefor. No fractional shares of New Common Stock or New Preferred Stock will be distributed, and no Cash will be distributed in lieu of such fractional amounts.

Q. What steps did the Debtors take to evaluate alternatives to a chapter 11 filing?

As described in the *Declaration of Quentin R. Hicks, Executive Vice President and Chief Financial Officer of Gulfport, In Support of Chapter 11 Petitions and First Day Motions* [Docket No. 40] (the "First Day Declaration"), prior to the Petition Date, the Debtors evaluated numerous potential alternatives to address their funded indebtedness. As described in the First Day Declaration, following these considerations and in light of all of the circumstances, including depressed commodities prices and high fixed costs related to the Debtors' midstream contracts, the Board of Directors of Gulfport Parent determined in its business judgment to pursue a holistic restructuring through a chapter 11 filing.

R. Who is committed by the Restructuring Support Agreement to support the Plan?

The Plan is supported by parties, including, but not limited to, the Debtors, holders of over 95% of the RBL Claims, and holders of over 70% of the Notes Claims.

S. Are the Debtors seeking to pay professional fees of the Consenting Stakeholders pursuant to the Plan?

The Restructuring Support Agreement is the cornerstone of the Debtors' restructuring, and the Consenting Stakeholders and their professionals have been, and continue to be, integral to facilitating the restructuring transactions contemplated by the Restructuring Support Agreement and the Plan. The Restructuring Support Agreement provides that the Consenting Stakeholders shall support the Plan on the terms set forth therein. Part of the consideration for this support is that the Debtors are obligated to pay the reasonable fees and expenses of certain professionals to the Consenting Stakeholders, Agents, and Notes Trustee.

T. What is the deadline to vote on the Plan?

The Voting Deadline is March 29, 2021, at 11:59 p.m., prevailing Central Time.

U. How do I vote for or against the Plan?

Detailed instructions regarding how to vote on the Plan are contained on the Ballots distributed to holders of Claims that are entitled to vote on the Plan. For your vote to be counted, your ballot must be properly completed, executed, and delivered as directed, so that your ballot or a master ballot including your vote is **actually received** by the Debtors' solicitation agent, Epiq Corporate Restructuring (the "Solicitation Agent") **on or before the Voting Deadline, i.e. March 29, 2021, at 11:59 p.m., prevailing Central Time**. See Article X of this Disclosure Statement, entitled "Confirmation of the Plan," for more information.

V. Why is the Bankruptcy Court holding a Confirmation Hearing?

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court to hold a hearing on Confirmation of the Plan and recognizes that any party in interest may object to Confirmation of the Plan.

W. When is the Confirmation Hearing set to occur?

The Bankruptcy Court has scheduled the Confirmation Hearing for April 7, 2021, at 1:00 p.m., prevailing Central Time. The Confirmation Hearing may be adjourned from time to time without further notice.

Objections to Confirmation must be Filed and served on the Debtors, and certain other parties, by no later than March 29, 2021, at 4:00 p.m., prevailing Central Time, in accordance with the notice of the Confirmation Hearing that accompanies this Disclosure Statement and the Disclosure Statement Order.

X. What is the purpose of the Confirmation Hearing?

The confirmation of a plan of reorganization by a bankruptcy court binds the debtor, any issuer of securities under a plan of reorganization, any person acquiring property under a plan of reorganization, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the bankruptcy court confirming a plan of reorganization discharges a debtor from any debt that arose before the confirmation of such plan of reorganization and provides for the treatment of such debt in accordance with the terms of the confirmed plan of reorganization.

Y. Who do I contact if I have additional questions with respect to this Disclosure Statement or the Plan?

If you have any questions regarding this Disclosure Statement or the Plan, please contact the Solicitation Agent via one of the following methods:

By regular mail, hand delivery, or overnight mail at:

Gulfport Energy LLC
c/o Epiq Corporate Restructuring, LLC
10300 SW Allen Boulevard
Beaverton, OR 97005

By electronic mail at:
gulfportinfo@epiqglobal.com

By telephone at:
(888) 905-0409 (toll free) or
+1 503 597-7687 (for parties outside the U.S.)

Copies of the Plan, this Disclosure Statement, and any other publicly filed documents in the Chapter 11 Cases are available upon written request to the Solicitation Agent at the address above or by downloading the exhibits and documents from the website of the Solicitation Agent at <https://dm.epiq11.com/case/gulfport/info> (free of charge) or the Bankruptcy Court's website at <http://www.tx.uscourts.gov/bankruptcy> (for a fee).

Z. Do the Debtors recommend voting in favor of the Plan?

Yes. The Debtors believe that the Plan provides for a larger distribution to all Holders of Claims than would otherwise result from any other available alternative. The Debtors believe that the Plan, which contemplates a significant deleveraging of the Debtors' balance sheet and projects them emerging from chapter 11 in less than a year, is in the best interest of all Holders of Claims or Interests, and that any other alternatives (to the extent they exist) fail to realize or recognize the value inherent under the Plan.

IV. THE DEBTORS' RESTRUCTURING SUPPORT AGREEMENT, DIP FACILITY, AND PLAN**A. Restructuring Support Agreement.**

On November 13, 2020, the Debtors and the Consenting Stakeholders, including Holders of approximately 95% of the RBL Claims and over 70% of the Notes Claims,

entered into the Restructuring Support Agreement to implement the restructuring transactions contemplated thereby. The Plan, the Backstop Commitment Agreement, and the Exit Facility Term Sheet are attached as **Exhibit A**, **Exhibit F**, and **Exhibit G**. The restructuring transactions contemplated by the Plan will significantly reduce the Debtors' funded debt obligations and annual interest payments, result in a stronger balance sheet for the Debtors, and also reduce high operational costs through rejection of the Debtors' firm transportation agreements.

The Plan represents a significant step in the Debtors' months-long restructuring process. The Restructuring Support Agreement will allow the Debtors to proceed expeditiously through chapter 11 to a successful emergence. The Plan will significantly deleverage the Debtors' balance sheet, reduce go-forward fixed costs, and provide the capital injection needed for the Debtors to conduct competitive operations going forward.

B. The DIP Facility.

To fund the administration of the Chapter 11 Cases, Bank of Nova Scotia, as agent under the RBL Facility, and certain of the lenders thereunder, agreed to provide a \$262.5 million DIP Facility, subject to the terms and conditions specified in the DIP Loan Documents.

More specifically, the DIP Facility provides the Debtors with \$105 million in revolving new money financing under which borrowings will bear interest, at the Debtors' election, at the Base Rate, or LIBOR, as applicable, plus the Applicable Rate (subject to a LIBOR floor of 1.00 percent), \$90 million of which became immediately available upon entry of, and subject to the terms of, the Interim DIP Order. The remaining \$15 million of new money financing became available upon entry of the final order approving entry into the DIP Facility. Further, upon entry of the final order approving entry into the DIP Facility, \$157.5 million of the DIP Facility rolled up the ratable share of the outstanding principal amount of the RBL Facility of each lender under the DIP Facility.

C. The Plan.

The Plan contemplates the following key terms, among others described herein and therein:

1. Issuance of New Common Stock and New Preferred Stock.

Pursuant to the Plan and as set forth in the Restructuring Steps Memorandum, the Debtors presently intend to implement a flip merger at least one day prior to or on the Effective Date (the "Flip Merger"). However, it is possible that the parties will decide to undertake one of two alternative structures described below in lieu of undertaking the Flip Merger, in which case, the New Common Stock, Rights Offering Subscription Rights, and New Preferred Stock will instead represent interests in Reorganized Gulfport Parent. The parties' decision with respect to this implementation will be set forth in the Restructuring Steps Memorandum.

Assuming the Flip Merger occurs, all Interests in Reorganized Gulfport Holdco held by Holders of Existing Interests as a result of the Flip Merger will be canceled as of the Effective Date and on the Effective Date or as soon as reasonably practicable thereafter, (a) Reorganized Gulfport Holdco will issue the New Common Stock and Rights Offering Subscription Rights to Reorganized Gulfport Parent, which shall distribute such New Common Stock and Rights Offering Subscription Rights, as applicable, to each Holder of a Claim that is entitled to receive New Common Stock or Rights Offering Subscription Rights in exchange for such Claim pursuant to the Plan and (b) Reorganized Gulfport Holdco will issue New Preferred Stock to each Holder of a Claim that is entitled to receive New Preferred Stock pursuant to the Rights Offering or the Backstop Commitment Agreement (including the Backstop Commitment Premium). However, it is possible that the parties will agree to utilize an alternative structure. In the first alternative structure ("Alternative Structure 1"), (x) all Existing Interests will be cancelled, (y) Reorganized Gulfport Parent will issue and distribute New Common Stock and Rights Offering Subscription Rights directly to each Holder of a Claim that is entitled to receive New Common Stock or Rights Offering Subscription Rights in exchange for such Claim pursuant to the Plan, and (z) Reorganized Gulfport Parent will issue New Preferred Stock to each Holder of a Claim that is entitled to receive New Preferred Stock pursuant to the Rights Offering or the Backstop Commitment Agreement (including the Backstop Commitment Premium). In the second alternative structure ("Alternative Structure 2"), (i) all Existing Interests will be cancelled, (ii) Reorganized Gulfport Parent will issue New Common Stock and Rights Offering Subscription Rights to Reorganized Gulfport Holdco, a newly formed direct subsidiary of Reorganized Gulfport Parent, which shall distribute such New Common Stock and Rights Offering Subscription Rights, as applicable, to each Holder of a Class 4B or Class 5B Claim that is entitled to receive New Common Stock or Rights Offering Subscription Rights in exchange for such Claim pursuant to the Plan, (iii) Reorganized Gulfport Parent will issue and distribute New Common Stock directly to each Holder of a Class 4A or Class 5A Claim that is entitled to receive New Common Stock in exchange for such Claim pursuant to the Plan and (iv) Reorganized Gulfport Parent will issue New Preferred Stock to each Holder of a Claim that is entitled to receive New Preferred Stock pursuant to the Rights Offering or the Backstop Commitment Agreement (including the Backstop Commitment Premium). Under each such structure, the issuance of New Common Stock and New Preferred Stock will be authorized without the need for any further corporate action and without any further action by the Debtors or the Reorganized Debtors, as applicable. The Reorganized Debtors will be authorized to issue a certain number of shares of New Common Stock and New Preferred Stock required to be issued under the Plan and pursuant to their New Organizational Documents. On the Effective Date, the Debtors or Reorganized Debtors, as applicable, will issue all Securities, notes, instruments, certificates, and other documents required to be issued pursuant to the Plan.

All of the New Common Stock and New Preferred Stock issued or authorized to be issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance referred to in Article VI of the Plan will be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions will bind each Entity receiving such distribution or issuance.

2. Entry into the Exit Facility.

On the Effective Date, the Reorganized Debtors will enter into the Exit Facility, the terms of which will be set forth in the Exit Facility Documentation and consistent with the Restructuring Support Agreement; *provided* that the Debtors or the Reorganized Debtors, as applicable, determine that entry into the Exit Facility is in the best interests of the Reorganized Debtors and such determination is acceptable to the Required Consenting Stakeholders.

To the extent applicable, Confirmation of the Plan will be deemed (a) approval of the Exit Facility (including the transactions and related agreements contemplated thereby and all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors or the Reorganized Debtors, as applicable, in connection therewith), to the extent not approved by the Bankruptcy Court previously and (b) authorization for the Debtors or the Reorganized Debtors, as applicable, to, without further notice to or order of the Bankruptcy Court, (i) execute and deliver those documents and agreements necessary or appropriate to pursue or obtain the Exit Facility, including the Exit Facility Documentation, and incur and pay any fees and expenses in connection therewith, and (ii) act or take action under applicable Law, regulation, order, or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors or the Reorganized Debtors, as applicable, may deem to be necessary to consummate the Exit Facility; *provided* that such modifications are acceptable to the Required Consenting Stakeholders.

As of the Effective Date, upon the granting or continuation of Liens in accordance with the Exit Facility Documentation, all of the Liens and security interests to be granted in accordance with the Exit Facility Documentation (a) will be deemed to be granted, (b) will be legal, binding, automatically perfected, non-avoidable, and enforceable Liens on, and security interests in, the applicable collateral in accordance with the respective terms of the Exit Facility Documentation, (c) will be deemed perfected on or prior to the Effective Date, subject only to such Liens and security interests as may be permitted under the respective Exit Facility Documentation, and (d) will not be subject to avoidance, recharacterization, or equitable subordination for any purposes whatsoever and will not constitute preferential transfers, fraudulent transfers, or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law, and the Exit Facility Collateral Agent for the benefit of the Exit Facility Secured Parties will have a valid, binding, perfected, non-avoidable, and enforceable first-priority lien on and security interest in the Exit Facility Collateral, subject only to such Liens and security interests as permitted under the Exit Facility Documentation, and valid, binding, non-avoidable, and enforceable guarantee and collateral documentation. To the extent provided in the Exit Facility Documentation, the Exit Facility Agents or holder(s) of Liens under the Exit Facility Documentation are authorized to file with the appropriate authorities mortgages, financing statements and other documents, and to take any other action in order to evidence, validate, and perfect such Liens or security interests. The guarantees, mortgages, pledges, Liens, and other security interests granted to secure the obligations arising under the Exit Facility Documentation have been granted in good faith, for legitimate business purposes, and for reasonably equivalent value as an inducement to the lenders thereunder to extent credit thereunder will be deemed not to constitute a fraudulent conveyance or fraudulent transfer and will not otherwise be subject to avoidance, recharacterization, or subordination for any purposes whatsoever and will not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable nonbankruptcy law, and the priorities of such Liens and security interests will be as set forth in the Exit Facility Documentation. The Reorganized Debtors and the persons and entities granted such Liens and security interests will be authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection will occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents will not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

3. Issuance of the New Unsecured Notes.

On the Effective Date, the Debtors, as applicable, will execute the New Unsecured Notes Documents, pursuant to which Reorganized Gulfport Parent (or, in the case of the Alternative Structure 2, Reorganized Gulfport Holdco) will issue the New Unsecured Notes to applicable Holders of Claims in partial exchange for such Holders' respective Claims as set forth in Article III.B of the Plan.

To the extent applicable, Confirmation of the Plan shall be deemed (a) approval of the New Unsecured Notes Documents (including the transactions and related agreements contemplated thereby and actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors or the Reorganized Debtors, as applicable, in connection therewith), to the extent not approved by the Bankruptcy Court previously, and (b) authorization for the Debtors or the Reorganized Debtors, as applicable, to, without further notice to or order of the Bankruptcy Court, (i) execute and deliver those documents and agreements necessary or appropriate to issue the New Unsecured Notes, including the New Unsecured Notes Documents, and incur and pay any fees and expenses in connection therewith, and (ii) act or take action under applicable Law, regulation, order, or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors or the Reorganized Debtors, as applicable, may deem to be necessary to consummate the issuance of the New Unsecured Notes; *provided* that such modifications are acceptable to the Required Consenting Stakeholders.

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4. Rights Offering.

As described more fully in Article III.L, entitled "What is the Rights Offering?," on the Effective Date, the Debtors will consummate the Rights Offering.

5. Employee Compensation and Benefits.

It is the Debtors' intent that these Chapter 11 Cases will have a minimal impact on employees.

a. Compensation and Benefits Programs.

Subject to the provisions of the Plan, all Compensation and Benefits Programs will be treated as Executory Contracts under the Plan and deemed assumed on the Effective Date pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code, except for:

- (a) all employee equity or equity-based incentive plans, and any provisions set forth in the Compensation and Benefits Programs that provide for rights to acquire existing Interests in any of the Debtors;
- (b) Compensation and Benefits Programs that have been rejected pursuant to an order of a Bankruptcy Court; and
- (c) any Compensation and Benefits Programs that, as of the entry of the Confirmation Order, have been specifically waived by the beneficiaries of any Compensation and Benefits Program.

Any assumption of Compensation and Benefits Programs pursuant to the Plan shall be deemed not to trigger (i) any applicable change of control, immediate vesting, termination (similar provisions therein) and (ii) an event of "Good Reason" (or a term of like import), in each case as a result of the consummation of the Restructuring Transactions. No counterparty shall have rights under a Compensation and Benefits Program assumed pursuant to the Plan other than those applicable immediately prior to such assumption.

b. Workers' Compensation Programs.

As of the Effective Date, except as set forth in the Plan Supplement, the Debtors and the Reorganized Debtors will continue to honor their obligations under: (a) all applicable workers' compensation laws in states in which the Reorganized Debtors operate; and (b) the Debtors' written contracts, agreements, agreements of indemnity, self-insured workers' compensation bonds, policies, programs, and plans for workers' compensation and workers' compensation insurance. All Proofs of Claims on account of workers' compensation will be deemed withdrawn automatically and without any further notice to or action, order, or approval of the Bankruptcy Court. Nothing in the Plan will limit, diminish, or otherwise alter the Debtors' or Reorganized Debtors' defenses, Causes of Action, or other rights under applicable non-bankruptcy Law with respect to any such contracts, agreements, policies, programs, and plans. Nothing herein or in the Plan shall be deemed to impose any obligations on the Debtors in addition to what is provided for under applicable state law.

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c. Management Incentive Plan.

Effective on the Effective Date, the Reorganized Debtors may implement the Management Incentive Plan as provided herein. If determined by the New Board, the Management Incentive Plan will provide for 50% of the Management Incentive Plan Pool (the “Initial Pool”) to be allocated within sixty (60) days following the Effective Date to the Management Incentive Plan Participants in the form of restricted stock units (or their economic equivalents) subject to terms (including performance metrics and vesting criteria) to be agreed between the Management Incentive Plan Participants and the New Board; provided that such period shall be extended automatically by an additional thirty (30) days if good faith discussions between the Management Incentive Plan Participants and the New Board regarding the terms of the Management Incentive Plan remain ongoing at the conclusion of the initial sixty (60) day period. If either (a) the New Board does not institute the Management Incentive Plan with respect to the Initial Pool in accordance with the terms of Article IV.P of the Plan (including the time periods set forth therein) or (b) the terms of the Initial Pool with respect to any Management Incentive Plan Participant are not satisfactory to such participant in such participant’s sole discretion prior to the expiration of the time periods set forth herein, in either case, such event shall constitute “good reason” under the applicable MIP Employment Agreement; provided that the allocation of the Initial Pool of any Management Incentive Plan Participant (but not any other terms and conditions of the Initial Pool) shall be deemed satisfactory as to such participant if such participant receives at least the applicable percentage of the Initial Pool set forth in the Initial MIP Allocation.

6. Employee and Retiree Benefits.

All Compensation and Benefits Programs shall be assumed by the Reorganized Debtors and shall remain in place as of the Effective Date, and the Reorganized Debtors will continue to honor such agreements, arrangements, programs, and plans. For the avoidance of doubt, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, will continue to be paid in accordance with applicable law. On the Effective Date, the Debtors will assume all employment agreements, indemnification agreements, or other agreements entered into with current and former employees, directors, managers, members, or officers, including the MIP Employment Agreements. For the avoidance of doubt, the only employment agreements with severance obligations that will be assumed are the MIP Employment Agreements.

7. Royalties and Working Interests.

Notwithstanding anything in the Plan to the contrary, all of the Royalty and Working Interests and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. On the Effective Date, pursuant to section 365(a) of the Bankruptcy Code, the Debtors shall be deemed to have assumed all agreements, documents, and instruments related thereto, and all Royalty and Working Interests and obligations thereunder shall remain in full force and effect in accordance with the terms of the granting instruments or other governing documents applicable to such Royalty and Working Interests. Entry of the Confirmation Order will constitute the Bankruptcy Court’s approval of the Reorganized Debtors’ assumption of all such Royalty and Working Interests and related agreements, documents, and instruments. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any obligations assumed by the foregoing assumption of the Royalty and Working Interest obligations, and each such obligation will be deemed and treated as an Executory Contract that has been assumed by the Reorganized Debtors under the Plan as to which no Proof of Claim or Cure Claim need be Filed, and to the extent there are cure amounts owed either prepetition and/or post-petition such amounts shall survive and will not be discharged on the Effective Date. For the avoidance of doubt, the provisions of Article VIII.A–E of the Plan shall not discharge, modify, affect, or impair any Royalty and Working Interests assumed pursuant to this Article IV.C.7.

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8. Managers and Officers of the Reorganized Debtors.

As of the Effective Date, the term of the current members of the board of directors of Gulfport Parent shall expire. The New Board will consist of the Reorganized Debtors’ Chief Executive Officer and other directors, all of whom will be selected and appointed in a manner determined by the Required Consenting Noteholders. The identities of directors on the New Board will be set forth in the Plan Supplement to the extent known at the time of filing.

V. SOLICITATION AND VOTING PROCEDURES

This Disclosure Statement is being distributed, along with the applicable Ballot to be used for voting on the Plan, to the Holders of Claims in those Classes that are entitled to vote to accept or reject the Plan. The procedures and instructions for voting and related deadlines are set forth in the exhibits annexed to the Disclosure Statement Order, incorporated herein by reference.

The Disclosure Statement Order is incorporated herein by reference and should be read in conjunction with this Disclosure Statement in formulating a decision to vote to accept or reject the Plan.

THE DISCUSSION OF THE SOLICITATION AND VOTING PROCESS SET FORTH IN THIS DISCLOSURE STATEMENT IS ONLY A SUMMARY

PLEASE REFER TO THE DISCLOSURE STATEMENT ORDER FOR A MORE COMPREHENSIVE DESCRIPTION OF THE SOLICITATION AND VOTING PROCESS.

A. Holders of Claims Entitled to Vote on the Plan

Under the provisions of the Bankruptcy Code, not all holders of claims against or interests in a debtor are entitled to vote on a chapter 11 plan. The table in Article III.D of this Disclosure Statement, entitled “Am I entitled to vote on the Plan?” which begins on page 6, provides a summary of the status and voting rights of each Class (and, therefore, of each Holder within such Class absent an objection to the Holder’s Claim) under the Plan.

As shown in the table, the Debtors are soliciting votes to accept or reject the Plan only from Holders of Claims in Classes 3, 4A, 4B, 5A, and 5B (collectively, the “Voting Classes”). The Holders of Claims in the Voting Classes are Impaired under the Plan and may, in certain circumstances, receive a distribution under the Plan. Accordingly, Holders of Claims in the Voting Classes have the right to vote to accept or reject the Plan.

The Debtors are *not* soliciting votes from Holders of Claims or Interests in Classes 1, 2, 6, 7, 8 and 9.

B. Solicitation Agent

The Debtors have retained the Claims and Noticing Agent, Epiq, to act as, among other things, the Solicitation Agent in connection with the solicitation of votes to accept or reject the Plan.

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C. Solicitation Package.

Contemporaneously herewith, the Debtors Filed the proposed Disclosure Statement Order. For purposes of this Article V, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Disclosure Statement Order. Pursuant to the Disclosure Statement Order, Holders of Claims in the Voting Classes will receive appropriate solicitation materials (in paper or electronic form) including (the following materials, collectively, the “Solicitation Package”):

- the Disclosure Statement (including schedules);
- the Disclosure Statement Order (without exhibits);
- the Solicitation Procedures;
- the Cover Letter;
- the Committee Letter;
- the Confirmation Hearing Notice;
- the applicable Ballot for the relevant Class of Claims;
- a pre-addressed, postage pre-paid reply envelope; and
- any supplemental documents the Debtors may File with the Bankruptcy Court or that the Bankruptcy Court orders to be made available.

The Solicitation Package shall provide the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits) in electronic format (flash drive or CD-ROM, or, in the case of Holders of Notes Claims, by electronic service in accordance with the customary procedures of the bank or brokerage firm holding the securities, or that firm’s agent), and all other contents of the Solicitation Package, including Ballots and the Solicitation Procedures, shall be provided in paper format.

D. Voting Record Date.

The Voting Record Date is February 22, 2021. The Voting Record Date is the date on which it will be determined which Holders of Claims in the Voting Classes are entitled to vote to accept or reject the Plan and whether Claims have been properly assigned or transferred under Bankruptcy Rule 3001(e) such that an assignee or transferee, as applicable, can vote to accept or reject the Plan as the Holder of a Claim.

E. Voting on the Plan.

The Voting Deadline is March 29, 2021 at 11:59 p.m., prevailing Central Time. In order to be counted as votes to accept or reject the Plan, all Ballots must be: (a) electronically submitted utilizing the online balloting portal maintained by the Solicitation Agent on or before the Voting Deadline; or (b) properly executed, completed, and delivered (either by using the envelope provided, by first class mail, overnight courier, or personal delivery) so that the Ballots are **actually received** by the Solicitation Agent on or before the Voting Deadline at the following address:

DELIVERY OF BALLOTS
FOR CLASSES 3, 4A, 4B, 5A, and 5B

If by First Class mail:

Gulfport Energy Corporation
Ballot Processing
c/o Epiq Corporate Restructuring, LLC
P.O. Box 4422
Beaverton, OR 97076-4422

If by overnight courier or hand delivery:

Gulfport Energy Corporation
Ballot Processing
c/o Epiq Corporate Restructuring, LLC
10300 SW Allen Boulevard
Beaverton, OR 97005

OR

ONLINE PORTAL AT <https://dm.epiq11.com/gulfport>

FOR CLASS 5A AND 5B ONLY (PREFERRED METHOD)

MASTER AND PRE-VALIDATED BENEFICIAL BALLOTS

Via E-mail: Tabulation@epiqglobal.com

(Please reference “Gulfport Master Ballot” or “Gulfport” in the subject line, as applicable)

If you received an envelope addressed to your nominee, please return your ballot to your nominee, allowing enough time for your nominee to cast your vote on a master ballot before the Voting Deadline.

PLEASE SELECT JUST ONE OPTION TO SUBMIT YOUR VOTE:

FOR CLASSES 3, 4A, AND 4B

EITHER RETURN A PROPERLY EXECUTED PAPER BALLOT WITH YOUR VOTE

OR

VOTE ELECTRONICALLY THROUGH THE CUSTOMIZED,
ONLINE BALLOTING PORTAL ON THE DEBTORS' CASE WEBSITE
MAINTAINED BY EPIQ ("E-BALLOT")

OR, FOR CLASS 5A AND 5B

RETURN A PROPERLY EXECUTED MASTER OR PRE-VALIDATED BALLOT WITH YOUR VOTE VIA E-MAIL AT TABULATION@EPIQGLOBAL.COM AND REFERENCING "GULFPORT MASTER BALLOT" OR "GULFPORT" IN THE SUBJECT LINE, AS APPLICABLE.

Holders of Claims who cast a Ballot via E-Ballot should NOT also submit a paper ballot.

E-BALLOT SHALL BE THE EXCLUSIVE MEANS OF VOTING ELECTRONICALLY. EPIQ SHALL NOT ACCEPT VOTES SUBMITTED VIA E-MAIL, FACSIMILE, OR ANY ELECTRONIC METHODS OTHER THAN E-BALLOT; PROVIDED THAT EPIQ SHALL ACCEPT MASTER BALLOTS FROM NOMINEES SUBMITTED VIA E-MAIL TO EPIQ.

IF YOU HAVE ANY QUESTIONS ABOUT THE SOLICITATION OR VOTING PROCESS, PLEASE CONTACT THE SOLICITATION AGENT TOLL FREE AT 888-905-0409. ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE OR OTHERWISE NOT IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER WILL NOT BE COUNTED EXCEPT AS OTHERWISE PROVIDED FOR IN THE SOLICITATION PROCEDURES OR IN THE SOLE AND ABSOLUTE DISCRETION OF THE DEBTORS.

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F. Ballots Not Counted.

No Ballot will be counted toward Confirmation if, among other things: (1) it is illegible or contains insufficient information to permit the identification of the Holder of the Claim; (2) it was transmitted by means other than as specifically set forth in the Ballots; (3) it was cast by an Entity that is not entitled to vote on the Plan; (4) it was cast for a Claim listed in the Debtors' schedules as contingent, unliquidated, or disputed for which the applicable Bar Date has passed and no Proof of Claim was timely Filed; (5) it was cast for a Claim that is subject to an objection pending as of the Voting Record Date (unless temporarily allowed in accordance with the Disclosure Statement Order); (6) it was sent to the Debtors, the Debtors' agents/representatives (other than the Solicitation Agent), the administrative agents under the Debtors' credit facilities, or the Debtors' financial or legal advisors instead of the Solicitation Agent; (7) it lacks an original signature, with the understanding that the voting party's electronic signature through E-Ballot will be deemed an original signature; or (8) it is not clearly marked to either accept or reject the Plan or it is marked both to accept and reject the Plan. **Please refer to the Disclosure Statement Order for additional requirements with respect to voting to accept or reject the Plan.**

G. Rights Offering Procedures.

The Rights Offering Procedures are attached as Exhibit H.

H. Dates and Deadlines.

The following table sets forth important dates and deadlines relating to voting and confirmation of the Plan:²¹

EVENT	DATE
Voting Record Date	February 22, 2021
Solicitation Mailing Date	March 1, 2021 (or as soon as reasonably practicable thereafter)
Publication Deadline	Five Business Days following the entry of the Disclosure Statement Order (or as soon as reasonably practicable thereafter)
Plan Supplement Filing Deadline	March 22, 2021
Confirmation Objection Deadline	March 29, 2021, at 4:00 p.m. (prevailing Central Time)
Voting Deadline	March 29, 2021, at 11:59 p.m. (prevailing Central Time)
Deadline to File Voting Report	April 5, 2021, at 12:00 p.m. (prevailing Central Time)
Confirmation Brief	April 5, 2021, at 12:00 p.m. (prevailing Central Time)
Confirmation Hearing Date	April 7, 2021, at 1:00 p.m. (prevailing Central Time)

²¹ These dates and deadlines are subject to the Bankruptcy Court's entry of the Debtors' proposed Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation Procedures with Respect to Confirmation of the Debtors' Proposed Chapter 11 Plan, (III) Approving the Forms of Ballots and Notices in Connection therewith, (IV) Approving the Rights Offering Procedures and Related Materials, (V) Scheduling Certain Dates with Respect thereto, and (VI) Granting Related Relief (the "Disclosure Statement Order").

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VI. THE DEBTORS' CORPORATE HISTORY, STRUCTURE, AND BUSINESS OVERVIEW

A. Gulfport's Corporate History and Operations.

Gulfport was founded in July 1997, in Oklahoma City, Oklahoma, as an independent exploration and production company. During the past five years, the company has focused on the exploration, development, acquisition, and production of natural gas, crude oil, and NGL, primarily in the Appalachia and Mid-Continent basins in the United States. The Debtors' management team was appointed relatively recently, with the hiring of David M. Wood as chief executive officer in December 2018, Patrick Craine as executive vice president and general counsel in May 2019, and Quentin Hicks as executive vice president and chief financial officer in August 2019. The new management team transitioned the Debtors' business from growth-oriented to a returns-based business, focused on generating cash flow and operating as cost-effectively as possible.

The Debtors are one of the largest producers of natural gas in the contiguous United States, targeting development in the Utica and the SCOOP. The Debtors currently have approximately 259 employees. The Debtors' operating revenue for the twelve-month period that ended September 30, 2020 was approximately \$1.35 billion, and, as of the Petition Date, the Debtors have approximately \$2.41 billion in total funded debt obligations.

1. Gulfport's Business Strategy.

Since their inception, the Debtors have built a strong asset base through a combination of property acquisitions and development of proved reserves. The Debtors' current operations and capital programs focus on organic drilling opportunities and the development of previously acquired properties. Through efficient development of their existing inventory of drilling locations over the past several years, the Debtors were able to refocus from a growth-oriented company to a company that is focused on lower growth and on cash flow generation through efficient development of its existing inventory of drilling locations. The Debtors' substantial inventory of hydrocarbon resources provides a strong foundation to create future value. Further, concentrated blocks of undeveloped acreage give the Debtors the opportunity to apply best-in-class well spacing analysis, completion techniques, and lateral lengths to maximize capital efficiency. The Debtors have worked diligently to improve their cost structure over the past year through various initiatives, such as voluntary and involuntary reductions in staffing and a continuing focus on reducing operating and capital expenses.

In addition, the Debtors have non-core positions in the Alberta oil sands in Canada through their interest in Grizzly Oil Sands ULC and an approximate 21.8% equity interest in Mammoth Energy Services, Inc., an energy services company listed on the NASDAQ under the symbol TUSK.

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2. Gulfport's Geography.

The Debtors are a leading producer in the southern portion of the Utica Shale and the SCOOP, with approximately 280,000 net reservoir acres as of the Petition Date. As of September 30, 2020, the Debtors had 4.5 trillion cubic feet of natural gas equivalent of proved reserves.



Oklahoma. The SCOOP is a loosely defined area that encompasses many of the top hydrocarbon producing counties in Oklahoma within the Anadarko basin. The SCOOP play mainly targets the Devonian to Mississippian aged Woodford, Sycamore, and Springer formations. The Debtors have approximately 76,000 net reservoir acres (comprised of approximately 41,500 in the Woodford formation and approximately 34,500 in the Springer formation) located primarily in Garvin, Grady, and Stephens Counties. The Woodford Shale across the Debtors' position ranges in thickness from 200 to over 400 feet and directly overlies the Hunton Limestone and underlies the Sycamore formation, both of which are also locally productive reservoirs. The Sycamore formation consists of hydrocarbon-bearing interbedded shales and siliceous limestones ranging in thickness from 150 to over 450 feet and is overlain by the Caney Shale. The Springer formation across the Debtors' position is comprised of a series of lenticular sand and shale units. The primary targets are a series of porous, low clay and organic-rich packages within the Goddard Shale member ranging in thickness from 50 to over 250 feet. During the third quarter of 2020, the Debtors produced approximately 201 MMcfe per day net to their interests in this area.

Ohio. The Utica Shale is a hydrocarbon-bearing rock formation located in the Appalachian basin of the United States and Canada. The Debtors hold approximately 205,000 net reservoir acres located primarily in Belmont, Harrison, Jefferson, and Monroe Counties in Eastern Ohio where the Utica Shale ranges in thickness from 600 to over 750 feet. During the third quarter of 2020, the Debtors produced approximately 790 MMcfe per day net to their interests in the area. The Debtors' Utica Shale operations are responsible for approximately 89% of the Debtors' current net production.

3. Acquisitions and Divestitures.

As a result of lower natural gas prices in recent years, the Debtors significantly reduced their level of capital spending in 2020 and focused their drilling activities on projects they determined would provide the highest rate of return. Additionally, the Debtors have not made any significant acquisitions since the year ended December 31, 2016. Throughout 2019, the Debtors focused on developing their core assets and repaying debt with cash flows generated from operations and divestitures of various non-core assets. The Debtors continually evaluate their property portfolio and sell properties when the Debtors believe that the sales price realized will provide an above-average rate of return for the property or when the property no longer matches the Debtors' strategic focus. The Debtors' recent divestitures are described below:

Sale of Southern Louisiana Assets. In December 2018, the Debtors entered into an agreement to sell their non-core assets located in the West Cote Blanche Bay and Hackberry fields of Louisiana to a third party for a purchase price of approximately \$19.7 million. The Debtors received approximately \$9.1 million in cash and retained contingent overriding royalty interests in the assets. Additionally, the Debtors could also receive contingent payments based on commodity prices exceeding specified thresholds over the two years following the closing date of July 3, 2019.

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Sale of Non-Operated Utica Interests. On December 30, 2019, the Debtors closed on a sale of certain non-operated interests in the Utica Shale for approximately \$29 million in cash, subject to customary closing terms and adjustments.

Sale of Bakken Overriding Royalty Interests. During 2019, the Debtors sold certain overriding royalty interests associated with the Debtors' assets in the fields of the Bakken formation in North Dakota and Montana. This sale closed December 11, 2019, and the Debtors received approximately \$7 million of total proceeds, net of purchase price adjustments.

Sale of Non-Core Water Assets. In December 2019, the Debtors entered into an agreement to divest their non-core water infrastructure assets across their SCOOP position to Bison Oilfield Services LLC, a third-party water service provider. Upon the closing of the sale on January 2, 2020, the Debtors received \$50 million in cash and have an opportunity to earn potential additional incentive payments in excess of \$50 million over the subsequent fifteen years.

4. Gulfport's Operations.

The Debtors focus on the upstream sector of the oil and gas industry, and specifically on locating and extracting raw natural gas, crude oil, and other hydrocarbons from under the ground and assets that include acreage with mineral rights, wells, and simple well pad equipment. The Debtors' production in the second quarter of 2020 was comprised of 91% natural gas, 6% natural gas liquids, and 3% oil.

The Debtors provide natural gas, oil, and NGL services, including securing and negotiating of commodity transactions, gathering, hauling, processing, and transportation services, contract administration and nomination services for their interests and other interest owners in the Debtor-operated wells. The Debtors are also party to a variety of oil, natural gas, and NGL purchase and sale contracts with third parties for purposes of risk mitigation and satisfaction of pipeline delivery commitments. Typically, the Debtors sell their produced natural gas and oil to end users, marketers, and other purchasers that have access to various transport pipelines. In areas where there is no practical access to oil gathering pipelines, oil is trucked and transported to terminals, market hubs, refineries, or storage facilities. The Debtors transport their gas in-basin through pipeline gathering systems that then tie into various long-haul pipelines that transport gas to various end markets throughout the United States and Canada.

The Debtors maintain production sales agreements under both spot and term transactions. Natural gas production is sold under both spot and term transactions with the majority being shorter term in nature, typically one year or less. The Debtors also maintain long-term gathering, processing, and transportation contracts with various parties that require delivery of fixed, determinable quantities of production over specified periods of time. Many of the Debtors' FT Agreements contain reservation charges that require significant monthly payments for capacity reservations on each pipeline, whether or not the Debtors actually ship or receive a benefit for that capacity of hydrocarbons. Given current market conditions, and the Debtors' business plan for the next several years, which prioritizes cash flow over growth, the Debtors' forecasted production is far less than the current capacity reservations held by the Debtors under their various FT Agreements, which leads to a high fixed cost burden on the business for which the Debtors are not receiving any benefit. The Debtors also have various firm sales contracts to deliver and sell a specified volume of natural gas to the relevant counterparties. The Debtors expect to fulfill these delivery commitments primarily with production from proved developed reserves.

5. Hedge Portfolio.²²

Historically, the Debtors entered into Prepetition Lender Swap Contracts to reduce their exposure to market fluctuations in the prices of natural gas and oil. The Debtors' hedging transactions to date primarily consisted of financially-settled natural gas and crude oil options contracts—consisting of costless collars, swaps, and sold calls—placed with major financial institutions that are also lenders to the Debtors under the RBL Facility. Prepetition, the Debtors hedged a portion of their production—and currently have approximately 26% of their forecasted production hedged in 2021. As of November 11, 2020, the Debtors were party to Prepetition Lender Swap Contracts on approximately 132,000 barrels of oil, 411 Bcf of gas, and 91,500 barrels of natural gas liquids. As of the Petition Date, the Debtors do not have any existing Prepetition Lender Swap Contracts related to interest rates.

The treatment of the Debtors' hedges is a critical component of the global resolution set forth in the Restructuring Support Agreement and the Plan. As discussed in the Hedging Motion, the Debtors' filing of their bankruptcy petitions is an event of default under the Debtors' Prepetition Lender Swap Contracts, which permits the Prepetition Lender Swap Counterparties to terminate the trades, which are substantially out of the money on an aggregate basis. More specifically, as of October 22, 2020, the estimated mark-to-market liability of the Debtors' Prepetition Lender Swap Contracts was approximately \$183 million owed from the Debtors to the Prepetition Lender Swap Counterparties. If these hedges were to be terminated upon the filing of chapter 11 petitions—which would have been the counterparties' right under the "safe harbors" provided by the Bankruptcy Code—those terminations would have created \$183 million in secured debt that is *pari passu* with the RBL Facility. This massive increase in secured debt would have made the Debtors' restructuring materially more challenging.

The treatment of the Debtors' significant hedging obligations in the Restructuring Support Agreement was heavily negotiated among the parties. The parties agreed that approximately \$60.3 million of these hedging obligations (75% of the Cal22 sold calls) would be consensually terminated prepetition, while the hedge banks agreed that all of the remaining hedges would remain in place under the DIP Facility as part of the global resolution contemplated by the Restructuring Support Agreement and the DIP Facility, and upon emergence as part of the Exit Facility. The agreements with the hedge banks embodied in the Restructuring Support Agreement and DIP Facility also require the Debtors to enter into new hedges, which will protect the Debtors from volatility in the oil and gas markets postpetition. The restructuring transactions contemplated by the Restructuring Support Agreement would not be possible if the hedging counterparties did not agree to maintain certain prepetition hedges as part of the DIP Facility and Exit Facility and to permit postpetition hedging—the \$183 million of additional secured debt that would have been triggered by the termination of the prepetition hedges and the lack of access to postpetition hedging would have required a new equity investment multiple times higher than the \$50 million Rights Offering in the Plan, and would have made the Debtors' restructuring materially more challenging.

6. Postpetition Hedging.

As required by the Restructuring Support Agreement, following the Petition Date, the Debtors entered into swap contracts representing not less than 80% of projected production from proved developed producing reserves for calendar year 2021. As of January 11, 2021, the Debtors have entered into swap contracts for 22% of projected production from proved developed producing reserves for calendar year 2022. The Debtors expect to reach a percentage not less than 60% of projected production from proved developed producing reserves prior to the Effective Date.

²² Capitalized terms used in this section but not otherwise defined herein shall have the meaning given to them in the *Order (I) Authorizing the Debtors to (A) Perform Under and Amend Prepetition Lender Swap Contracts, (B) Enter into and Perform Under Postpetition Lender Swap Contracts, (C) Grant Liens and Superpriority Administrative Claims, and (D) Modify the Automatic Stay and (II) Granting Related Relief* [Docket No. 113].

B. The Debtors' Prepetition Capital Structure

As of the Petition Date, the Debtors had approximately \$2.41 billion in total funded debt obligations. The relative priorities of each debt obligation are as follows:

Debt	Approx. Principal Amount Outstanding
RBL Facility (including outstanding letters of credit)	\$599.2 million
Headquarters Mortgage	\$22 million
6.625% Senior Notes due 2023	\$325 million
6.000% Senior Notes due 2024	\$580 million

6.375% Senior Notes due 2025	\$508 million
6.375% Senior Notes due 2026	\$375 million
Total Unsecured Notes	\$1.79 billion
Total Funded Debt Obligations	\$2.41 billion

1. The RBL Facility.

The Debtors maintain a senior secured revolving credit facility, the RBL Facility, under that certain Amended and Restated Credit Agreement, dated as of December 27, 2013 (as amended, restated or otherwise modified from time to time, the “RBL Credit Agreement”), by and among Gulfport Parent, as borrower, the Bank of Nova Scotia, as administrative agent (the “RBL Agent”) and issuing bank, the joint lead arrangers and joint bookrunners, co-syndication agents, co-documentation agents, and each of the lenders party thereto. The RBL Facility is secured by substantially all of the Debtors’ assets and obligations, and is guaranteed by each of Gulfport Parent’s wholly-owned subsidiaries, excluding Mule Sky LLC.

The RBL Facility provides for a maximum facility amount of \$1.5 billion and matures on December 13, 2021. The borrowing base under the RBL Facility is subject to redeterminations from time to time. As of the Petition Date, the RBL Facility had a borrowing base of \$580 million, with an elected commitment amount of \$580 million, and \$355.5 million in borrowings outstanding. As of the Petition Date, the Debtors had no availability under the RBL Facility, after giving effect to an aggregate of \$243.7 million of letters of credit.

Advances under the RBL Facility may be in the form of either base rate loans or Eurodollar loans. The interest rate for base rate loans is equal to the applicable rate, which ranges from 1% to 2%, plus the highest of: (a) the federal funds rate plus 0.50%; (b) the rate of interest in effect for such day as publicly announced from time to time by the RBL Agent as its “prime rate”; and (c) the Eurodollar rate for an interest period of one month plus 1%. The interest rate for Eurodollar loans is equal to the applicable rate, which ranges from 2% to 3%, plus the London Interbank Offered Rate (“LIBOR”). As of September 30, 2020, amounts borrowed under the Debtors’ revolving credit facility bore interest at the weighted average rate of 3.30%.

The RBL Facility contains customary negative covenants, including restrictions on the Debtors’ ability to: (a) incur indebtedness; (b) grant liens; (c) pay dividends and make other restricted payments; (d) agree to payment restrictions affecting the restricted Debtors; (e) make investments; (f) undertake fundamental changes, including selling all or substantially all of the Debtors’ assets; (g) change the nature of their business; (h) enter into transactions with their affiliates; and (i) engage in certain transactions with restricted subsidiaries. The RBL Facility was also amended to include a typical “anti-cash hoarding” covenant as part of the April redetermination process, which was further amended in October 2020 pursuant to the forbearance agreement with the RBL Lenders. The RBL Facility also includes certain affirmative financial covenants. As of the Petition Date, the Debtors are in compliance with the financial covenants of the RBL Facility.

2. Unsecured Notes.

Since 2015, Gulfport Parent has issued four different series of Unsecured Notes: the 2023 Notes, 2024 Notes, 2025 Notes, and 2026 Notes. All of Gulfport Parent’s existing and future restricted subsidiaries that guarantee the RBL Facility, or certain other debt, guarantee the Unsecured Notes, provided, however, that the Unsecured Notes are not guaranteed by Mule Sky LLC, and will not be guaranteed by any of Gulfport Parent’s future unrestricted subsidiaries.

During the year ended December 31, 2019, the Debtors used borrowings under the RBL Facility to repurchase in arm’s-length, open-market transactions approximately \$190.1 million aggregate principal amount of outstanding Unsecured Notes for \$138.8 million (the “2019 Open Market Repurchase”). The 2019 Open Market Repurchase included approximately: (a) \$20.5 million principal amount of the 2023 Notes; (b) \$46.6 million principal amount of the 2024 Notes; (c) \$70.5 million principal amount of the 2025 Notes; and (d) \$52.5 million principal amount of the 2026 Notes (collectively, the “Repurchased Debt”). The Debtors recognized a \$48.6 million gain on debt extinguishment, which included retirement of unamortized issuance costs and fees associated with the Repurchased Debt. The 2019 Open Market Repurchase was disclosed via SEC filing.²³

From January 1, 2020 to May 1, 2020, the Debtors had repurchased \$73.3 million in aggregate principal amount of Unsecured Notes in arm’s-length, open market transactions for \$22.8 million in cash. These additional debt repurchases were also disclosed via SEC filing.²⁴

The 2019 Open Market Repurchase and 2020 Open Market Repurchase were entered into to take advantage of the favorable bond prices on Unsecured Notes and were performed by third party trading desks at the Debtors’ banks. The Debtors provided price targets to the third party trading desks, who then worked within those targets. No transactions were directly negotiated with the Debtors.

a. 2023 Notes.

In connection with entry into that certain indenture, dated as of April 21, 2015, by and among Gulfport Parent, Wells Fargo Bank, N.A., as trustee, and the subsidiary guarantors party thereto, as may be amended, restated, or otherwise supplemented from time to time (the “2023 Notes Indenture”), Gulfport Parent issued a series of 6.625% senior notes due 2023 in an aggregate principal amount of \$350 million. The 2023 Notes bear interest at a rate of 6.625% per annum, with interest payable semi-annually on May 1 and November 1 of each year. The 2023 Notes will mature on May 1, 2023. As of the Petition Date, \$325 million principal remains outstanding under the 2023 Notes, after giving effect to the 2019 Open Market Repurchases.

²³ See Gulfport 10-K (Feb. 27, 2020).

²⁴ See Gulfport 10-Q (Nov. 9, 2020).

b. 2024 Notes.

In connection with entry into that certain indenture, dated as of October 14, 2016, by and among Gulfport Parent, Wells Fargo Bank, N.A., as trustee, and the subsidiary guarantors party thereto, as may be amended, restated, or otherwise supplemented from time to time (the “2024 Notes Indenture”), Gulfport Parent issued a series of 6.000% senior notes due 2024 in an aggregate principal amount of \$650 million. The 2024 Notes bear interest at a rate of 6.000% per annum, with interest payable semi-

annually on April 15 and October 15 of each year. The 2024 Notes will mature on October 15, 2024. As of the Petition Date, \$580 million principal amount remains outstanding under the 2024 Notes, after giving effect to the 2019 Open Market Repurchases.

c. 2025 Notes.

In connection with entry into that certain indenture, dated as of December 21, 2016, by and among Gulfport Parent, Wells Fargo Bank, N.A., as trustee, and the subsidiary guarantors party thereto, as may be amended, restated, or otherwise supplemented from time to time (the “2025 Notes Indenture”), Gulfport Parent issued a series of 6.375% senior notes due 2025 in an aggregate principal amount of \$600 million. The 2025 Notes bear interest at a rate of 6.375% per annum, with interest payable semi-annually on May 15 and November 15 of each year. The 2025 Notes will mature on May 15, 2025. As of the Petition Date, \$508 million principal amount remains outstanding under the 2025 Notes, after giving effect to the 2019 and 2020 Open Market Repurchases.

d. 2026 Notes.

In connection with entry into that certain indenture, dated as of October 11, 2017, by and among Gulfport Parent, Wells Fargo Bank, N.A., as trustee, and the subsidiary guarantors party thereto, as may be amended, restated, or otherwise supplemented from time to time (the “2026 Notes Indenture”), Gulfport Parent issued a series of 6.375% senior notes due 2026 in an aggregate principal amount of \$450 million. The 2026 Notes bear interest at a rate of 6.375% per annum, with interest payable semi-annually on January 15 and July 15 of each year. The 2026 Notes will mature on January 15, 2026. As of the Petition Date, approximately \$375 million principal amount remains outstanding under the 2026 Notes, after giving effect to the 2019 and 2020 Open Market Repurchases.

3. Equity.

Since an initial public offering in February 2006, Gulfport Parent’s common stock has traded on the NASDAQ Global Market under the ticker symbol “GPOR.” As of the Petition Date, there are approximately 160,759,942 shares of \$0.01 par value common stock outstanding, which, as of October 23, 2020, traded at \$0.27 per share, implying a market capitalization of approximately \$43 million. The Gulfport Parent Board is authorized to issue up to 200,000,000 shares of the Debtors’ common stock. The Debtors have never paid any cash dividends on their common stock and are currently prohibited from doing so under the RBL Facility.

In January 2018, the Gulfport Parent Board approved a stock repurchase program to acquire up to \$100 million of Gulfport Parent’s outstanding stock during the year. In May 2018, the Gulfport Parent Board expanded the repurchased program authorizing Gulfport Parent to acquire up to an additional \$100 million of its outstanding common stock during 2018 for a total of up to \$200 million. This repurchase program ran through December 31, 2018 and Gulfport Parent repurchased 20.7 million shares of common stock in 2018 for \$200 million in aggregate consideration. This repurchase program was disclosed via SEC filings in connection with its authorization.²⁵

In January 2019, the Gulfport Parent Board approved a new stock repurchase program to acquire a portion of the company’s outstanding common stock within a 24-month period. The program was later suspended in the fourth quarter of 2019. For the year ended December 31, 2019, the Debtors repurchased 3.8 million shares for a cost of approximately \$30 million under this repurchase program. All repurchased shares have been canceled and returned to the status of authorized but unissued shares. As of November 9, 2020, there were 311 holders of record of Gulfport Parent common stock. Since May 2014, the trading price of Gulfport Parent common stock has faced downward pressures proportionate with downturns in commodity markets as depicted below.

C. Prepetition Management Retention Program

As disclosed in Gulfport Parent’s Form 8-K dated March 17, 2020, on March 16, 2020, the board of directors of Gulfport Parent (the “Board”) authorized incentive compensation opportunities, which are tied to the achievement of one or more performance goals and service-based compensation opportunities to select Gulfport employees (the “2020 Incentive Plan”). The 2020 Incentive Plan focused on (i) continued employment or performance of services for Gulfport until relevant vesting, forfeiture or clawback dates, as applicable and (ii) achievement of objectives and goals relating to certain financial and operational metrics over a period of time.

As disclosed in Gulfport’s Form 10-Q dated August 6 and November 9, 2020, prior to the Petition Date, on August 4, 2020, Gulfport’s compensation committee (the “Compensation Committee”) of the Board authorized a redesign of the incentive compensation program for the Debtors’ workforce, including for its named executive officers. In connection with a comprehensive review of the Debtors’ compensation programs and in consultation with its independent compensation consultant, Pearl Meyer & Partners, LLC, (“Pearl Meyer”) and legal advisors, the Board determined that significant changes were appropriate to retain and motivate Gulfport’s employees as a result of the ongoing uncertainty and unprecedented disruption in the oil and gas industry. Accordingly, Gulfport implemented a revised compensation structure for Gulfport’s senior executives and employees and the non-employee directors.

Under the revised program, all unpaid amounts previously awarded pursuant to the 2020 Incentive Plan and all restricted stock units granted in 2020 issued to Gulfport named executive officers were cancelled and replaced with cash retention incentives. Those named executive officers each agreed to the reductions in their salaries implemented on June 2, 2020, which was effective until December 31, 2020. The modified structure provided that Gulfport’s executive officers would have the opportunity to earn an aggregate amount of up to approximately \$14.2 million under the revised 2020 executive compensation program, which was paid after the Compensation Committee approved quarterly performance metrics) as follows: (i) 50% was prepaid with an obligation to refund up to 100% of the compensation (on an after-tax basis) if certain specified quarterly incentive metrics are not achieved from August 1, 2020 to July 31, 2021; and (ii) 50% was prepaid with an obligation to refund the compensation (on an after-tax basis) if the employee does not remain employed for a period of up to 12 months (or earlier change in control or completion of a comprehensive restructuring), unless they are terminated without cause or resign for good reason. In respect of the 2020 annual bonuses under the Debtors’ 2014 executive annual incentive compensation plan, the Debtors paid a pro rata portion of each executive officer’s bonus based on the determination of Gulfport’s achievement of the previously established 2020 performance metrics through July 31, 2020.

²⁵ See Gulfport 8-K (Nov. 1, 2018).

The Board also revised the Debtors’ non-employee director compensation program. Under the revised program, the component of non-employee director compensation paid as a regular cash retainer was reduced by approximately 10% effective June 2, 2020, and effective August 3, 2020, all non-employee director compensation was set to be paid in cash on a quarterly basis. All compensation, including cash retainers for Board and committee services as well as equity retainer value, was converted into lump sum cash retainers on a dollar-for-dollar basis. The Board also forfeited the equity retainers granted in July 2020 in connection with the transition to the all-cash program. Specifically, for the 2020 calendar year, each non-employee director (i) in lieu of any annual equity award, received a cash payment with an aggregate value of \$175,000, paid quarterly in advance, (ii) received, at the levels previously in effect, the regular board retainer, committee chair retainers, and lead director retainers quarterly in advance, and (iii) if applicable, continued to receive the previously approved Restructuring Committee compensation on a monthly basis. In addition, the restricted stock awards granted to

the Non-Employee Directors on July 16, 2020 in respect of the annual Non-Employee Director equity award were cancelled. Pearl Meyer determined that these compensation levels were in close alignment to the market percentile.

VII. EVENTS LEADING TO THE CHAPTER 11 FILINGS

A. Market and Industry-Specific Challenges.

Beginning in the second half of 2019, NYMEX natural gas prices began to decline primarily due to very high supply relative to demand and prices continued to decline through the early part of 2020 as a result of an abnormally warm winter. Making matters worse, as 2020 progressed, it proved to be a year of unique and unprecedented challenges for energy companies, and the Debtors were no exception. The global COVID-19 health crisis and associated public health and safety measures have dramatically decreased energy demand. The lower demand for energy and market volatility have forced over two dozen major exploration and production (“E&P”) companies and related service providers to file for chapter 11 protection this year. These trends were devastating for the Debtors as well: Gulfport Parent’s common stock price dropped by 90.1% from mid-March to October 7, 2020.

B. Liquidity Challenges and Responses.

At the beginning of 2020, Gulfport Parent’s liquidity was constrained by lower revenue, high fixed costs, including interest on the Unsecured Notes, high fixed-capacity reservation payments on FT Agreements, and FT rates that sometimes resulted in reduced margin versus selling natural gas in-basin. The Debtors forecasted that liquidity would decrease while leverage would increase over the course of the year. The Debtors quickly took action to address the numerous challenges ahead. In late February, the Debtors hired Kirkland & Ellis LLP (“Kirkland”) as legal counsel and Perella Weinberg Partners (“PWP”) and Tudor, Pickering, Holt & Co. (“TPH”) as financial advisors to explore liability management alternatives. As described further herein, the Debtors and their advisors immediately began evaluating a variety of potential alternatives, including M&A transactions, potential financing solutions (including amendments to the RBL Facility or a refinancing thereof), covenant relief from the RBL Lenders, and various potential transactions with holders of their Unsecured Notes, equity holders, or other third parties. Ultimately, given the increasing strain on the Debtors’ liquidity position, the redetermination of the borrowing base by the RBL Lenders, the need to address the Debtors’ high fixed costs, and the potential for significant additional claims to be asserted against the Debtors if they were to default under their Prepetition Lender Swap Contracts, it became clear that the optimal alternative was an in-court transaction supported by holders of the Unsecured Notes and the RBL Lenders.

In light of these mounting challenges, the Debtors and their advisors took action to improve their leverage profile and reduce fixed cost burdens and capital spending. The Debtors were able to improve operational and drilling efficiencies and optimize their 2020 and 2021 gas hedge portfolio. Additionally, through discounted bond repurchases, the Debtors were able to reduce their total long-term debt by approximately \$98.5 million since mid-2019.

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Throughout the late spring and early summer, the Debtors explored various liability management alternatives to ensure that the Debtors had sufficient liquidity during this tumultuous period. The Debtors discussed potential deleveraging M&A transactions with various counterparties, and even exchanged term sheets for one potential merger. Due in part to the Debtors’ level of existing funded indebtedness, these M&A negotiations stalled, and no actionable merger proposals were received. The Debtors explored a potential “uptiering” exchange with their unsecured bondholders that would have reduced the Debtors’ leverage and potentially facilitated an extension of the RBL Facility. In July 2020, the Debtors entered into an amendment of their RBL Facility that would have allowed for the issuance of new second lien notes to facilitate such a transaction. The Debtors explored this transaction with their bondholders but were ultimately unable to reach terms to make such a transaction actionable.

The Debtors also explored alternative financing from third parties—the Debtors’ advisors contacted over a dozen potential lenders and entered into nondisclosure agreements with eight such parties. The Debtors and their advisors extensively engaged with these parties regarding potential financing alternatives, including a new term loan that would have refinanced the RBL Facility as well as structures that would have involved sales of overriding royalty interests in certain of the Debtors’ operating assets. Unfortunately, the cost of capital for these structures was very high and did not provide enough deleveraging or liquidity enhancement to justify the costs or burdens that would be placed on the Debtors’ drilling inventory economics. Additionally, many of the proposed structures contained covenants and conditions precedent that would have either been very difficult for the Debtors to meet or that would have had a material impact on the Debtors’ ability to operate their business. Ultimately, despite extensive and good faith negotiations with a variety of potential capital providers, no alternative financing option emerged that would have materially improved the Debtors’ liquidity and leverage position.

C. The Midstream Contracts.

Concurrently with the negotiations with the Ad Hoc Noteholder Group and the RBL Lenders, the Debtors also began exploring options to reduce their high FT costs and other midstream obligations. In anticipation of a potential chapter 11 filing, the Debtors commenced negotiations with contract counterparties regarding consensual amendments to the contracts that would reduce capacity reservation payments and the Debtors’ credit assurance requests. The Debtors entered into nondisclosure agreements with several FT counterparties and held discussions in September and October of 2020.

On September 14, 2020, following entry into an NDA, the Debtors and their advisors held a discussion with Rockies Express Pipeline LLC (“REX”). On that call, the Debtors explained their view that the existing FT Agreement with REX (the “REX Agreement”) was not a sustainable agreement on a go-forward basis, and made a proposal to REX regarding an amendment to the REX Agreement. The Debtors disclosed to REX information relating to the Debtors’ financial condition and the potential that if the Debtors were unable to reach terms with REX and other counterparties on market terms for amended agreements, then a chapter 11 filing may be required. The next day—September 15, 2020—REX filed a petition with FERC requesting that FERC (a) issue an order that FERC has exclusive jurisdiction over modifications to the REX Agreement prior to a petition for bankruptcy and concurrent jurisdiction with the bankruptcy court postpetition and (b) open a proceeding examining whether modification or abrogation of the REX Agreement would be in the public interest. The only evidence cited by REX in its petition was the inclusion of “going-concern” language in the Debtors’ Form 10-Q, which was filed nearly 40 days prior to REX’s petition. Over the following weeks, other FT counterparties, including Midship Pipeline Company, LLC (“Midship”), Rover Pipeline LLC (“Rover”), and certain subsidiaries of TC Energy Corporation (“TC Energy”) filed similar petitions with FERC.

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The Debtors objected to the propriety of FERC opening proceedings, particularly when no modification or abrogation of the relevant FT Agreements had been proposed. FERC overruled the Debtors’ objections, and quickly initiated “paper hearings” over the Debtors’ procedural and substantive objections, and set a “rocket docket” briefing schedule.²⁶ FERC’s decision to resolve these complex issues in a paper hearing instead of a full evidentiary hearing before an administrative law judge, with a total briefing period of only *three weeks*, showcases FERC’s intent to issue an opinion as quickly as possible to fruitlessly preempt any potential chapter 11 filing by the Debtors. In fact, FERC explicitly admitted its desire to issue a ruling before the imposition of the automatic stay in its order instituting the paper hearing with REX.

On October 28, 2020, FERC issued an order concluding that the record in the paper hearing did not support a finding that the public interest presently requires abrogation or modification of the filed rates contained in certain firm transportation agreements between Gulfport Parent and its subsidiaries and REX.²⁷ On November 6, 2020, FERC issued an order with similar findings, concluding that the record in the paper hearing did not support a finding that the public interest presently requires abrogation or

modification of the filed rates contained in certain firm transportation agreements between Gulfport Parent and Midship.²⁸ On November 9, 2020, FERC issued its third and fourth rulings, finding that no party in the TC Energy or Rover proceedings provided evidence proving that the public interest requires a change in the filed rates.²⁹

FERC's rulings contend—contrary to significant case law—that rejection of a FERC-jurisdictional contract abrogates or modifies the rates of the contract, which FERC must approve. FERC thus purports to be the final arbiter of rejection. *See, e.g., Midship Pipeline LLC*, Order on Petition for Declaratory Order, 173 FERC ¶ 61,011 (2020), at 15 ¶ 30 (holding “any bankruptcy reorganization plan or other action in a bankruptcy proceeding that purports to authorize the modification *or rejection* of the Agreement cannot be confirmed unless and until the Commission agrees, or the plan or other such action is made contingent on Commission approval, as reflected in a Commission order”) (emphasis added). Given that FERC has already taken steps that threaten to usurp this Court's jurisdiction and interfere with the Debtors' right to reject certain executory contracts under the Bankruptcy Code, the Debtors have filed an adversary proceeding and sought a temporary restraining order to enjoin FERC from issuing or enforcing any order that (a) might interfere with the Bankruptcy Court's exclusive jurisdiction to decide any motion to reject that the Debtors may bring, (b) may hinder the Bankruptcy Court's ability to administer the reorganization of the Debtors' estates, or (c) purports to enforce obligations of the Debtors under any contract for which rejection is approved.

The Debtors' liquidity position was also worsened by the actions of Midship. On July 13, 2020, after robust negotiations, the Debtors entered into a fourth amendment under the Precedent Agreement with Midship under which Gulfport Parent agreed to pay Midship \$32.9 million as a prepayment for reservation charges and, thereafter, Gulfport Parent could provide Midship a \$34 million surety bond and lower the existing \$75.6 million letter of credit already in place in favor of Midship to \$12.2 million—thus resulting in \$79.1 million in credit assurance to Midship. On September 28, 2020, Gulfport Parent paid Midship the \$32.9 million prepayment in Cash. On October 2, 2020, while Gulfport Parent and Midship were in discussions as to timing for the exchange of the surety bond to lower the letter of credit, Midship, despite already holding significantly more credit support than required under the amendment, drew down the full \$75.6 million letter of credit that was still in place, which, in addition to the \$32.9 million prepayment made on September 28, resulted in Midship receiving \$108.5 million in Cash from the Debtors. These actions severely affected the Debtors' liquidity, as Midship was only entitled to \$79.1 million in credit assurance under the fourth amendment.

²⁶ *See e.g., Rockies Express Pipeline LLC*, Order on Petition for Declaratory Order, 172 FERC ¶ 61,279 at P 29 (2020).

²⁷ *Rockies Express Pipeline LLC*, Order on Paper Hearing, 173 FERC ¶ 61,099 (2020).

²⁸ *Midship Pipeline Company, LLC*, Order on Paper Hearing, 173 FERC ¶ 61,130 (2020).

²⁹ *ANR Pipeline Co., Columbia Gas Transmission, LLC, Columbia Gulf Transmission, LLC*, Order on Paper Hearing, 173 FERC ¶ 61,131 (2020); *Rover Pipeline LLC*, Order on Paper Hearing, 173 FERC ¶ 61,133 (2020).

On November 16, 2020, the Debtors commenced an adversary proceeding against Midship with respect to this matter, as discussed more fully in the adversary complaint, and the Debtors filed an emergency scheduling motion to set a briefing schedule with respect to the adversary proceeding. The Debtors settled with Midship, and on December 15, 2020, the Debtors and Midship Filed the Midship Settlement Agreement (as defined herein). The Midship Settlement Agreement includes a revised midstream service agreement with Midship (the “New Gulfport TSA”) and fully resolves the Midship AP. On January 8, 2021, the Bankruptcy Court entered an order approving the Midship Settlement Agreement [Docket No. 589].

D. The Restructuring Negotiations.

In early September 2020, the Ad Hoc Noteholder Group entered into nondisclosure agreements and became restricted to negotiate a potential restructuring transaction. The Debtors also began discussing the terms of debtor-in-possession financing and exit financing options with the existing RBL Lenders, the Ad Hoc Noteholder Group, and certain potential third-party capital providers. As discussed above, following productive, arm's-length negotiations, on November 13, 2020, the Debtors, the RBL Lenders, and the Ad Hoc Noteholder Group entered into the Restructuring Support Agreement. The restructuring transactions agreed upon in the Restructuring Support Agreement will be implemented through the Debtors' prearranged Plan, which benefits from overwhelming support from the Debtors' funded debt holders and will result in a material deleveraging and a new money equity rights offering backstopped by the Ad Hoc Noteholder Group. Ultimately, as a result of these negotiations, the Debtors believe they received the best terms available on the DIP Facility and the Exit Facility, and they established support for a value-maximizing Plan that will pave the way for an expeditious exit from chapter 11.

VIII. MATERIAL DEVELOPMENTS AND EVENTS IN THE CHAPTER 11 CASES

A. Corporate Structure Upon Emergence

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, each Debtor shall continue to exist after the Effective Date as a separate corporation, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other analogous governing documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other analogous governing documents) are amended under the Plan or otherwise, in each case, consistent with the Plan and the Restructuring Support Agreement, and to the extent such documents are amended in accordance therewith, such documents are deemed to be amended pursuant to the Plan and require no further action or approval.

B. Expected Timetable of the Chapter 11 Cases

The Restructuring Support Agreement contains certain milestones in relation to the Chapter 11 Cases that apply unless extended or waived in writing. The Debtors have already satisfied the below milestones:

- no later than 11:59 p.m. (prevailing central time) on November 13, 2020, the Debtors shall have commenced the Chapter 11 Cases in the Bankruptcy Court;
- no later than three Business Days after the Petition Date, the Bankruptcy Court shall have entered the DIP Order on an interim basis;
- no later than thirty days after the Petition Date, the Debtors shall have Filed with the Bankruptcy Court the Plan and the Disclosure Statement;

- on the date that the Debtors File the Plan and the Disclosure Statement with the Bankruptcy Court, the Debtors shall have Filed with the Bankruptcy Court the Backstop Approval Motion; and
- no later than thirty-five days after the Petition Date, the Bankruptcy Court shall have entered the DIP Order on a final basis.

The Debtors intend to move as quickly as practicable during the Chapter 11 Cases to comply with remaining milestones, including:

- no later than one hundred days after the Petition Date, the Bankruptcy Court shall have entered the Disclosure Statement Order;
- no later than one hundred and forty days after the Petition Date, the Debtors shall have Filed with the Bankruptcy Court the Plan Supplement;
- no later than one hundred and sixty-five days after the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order;
- no later than one hundred and eighty days after the Petition Date, the Plan Effective Date shall have occurred; and
- no later than one hundred and eighty days after the Petition Date, the Bankruptcy Court shall have entered one or more final orders permanently reducing the future demand reservation fees owed by the Debtors over the life of all firm transportation agreements of the Debtors, taken as a whole, by at least 50% of the amount of all such fees owed on October 31, 2020, as calculated on a PV-10 basis and reducing the future firm transportation average daily demand reservation volumes over the life of all of the firm transportation agreements of the Debtors as of October 31, 2020, taken as a whole, by at least 35%.

Should the Debtors' projected timelines prove accurate, the Debtors could emerge from chapter 11 within 180 days of the Petition Date (which is May 12, 2021). **No assurances can be made, however, that the Bankruptcy Court will enter various orders on the timetable anticipated by the Debtors or that certain conditions precedent to the Effective Date will have occurred by the outside date under the Restructuring Support Agreement.**

C. First Day Relief.

The Debtors Filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Petitions") on the Petition Date. Shortly thereafter, the Debtors Filed several motions (the "First Day Motions") designed to facilitate the administration of the Chapter 11 Cases and minimize disruption to the Debtors' operations by, among other things, easing the strain on the Debtors' relationships with employees, vendors, and service providers, and other third parties following the commencement of the Chapter 11 Cases. On November 16, 2020, the Bankruptcy Court entered orders approving the First Day Motions on either an interim or final basis.

The First Day Motions, and all orders for relief granted in the Chapter 11 Cases, can be viewed free of charge at <https://dm.epiq11.com/case/gulfport>. A brief description of each of the First Day Motions and the evidence in support thereof is also set forth in the First Day Declaration.

1. DIP Motion.

On November 15, 2020, the Debtors Filed the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition First Lien Secured Parties Pursuant to Sections 361, 362, 363, and 364 of the Bankruptcy Code, (IV) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing* [Docket No. 29] (the "DIP Motion"), requesting that the Bankruptcy Court approve the DIP Facility provided by the DIP Lenders. On November 16, 2020, the Bankruptcy Court entered an order approving the DIP Motion on interim basis [Docket No. 114] (the "Interim DIP Order"). On December 18, 2020, the Bankruptcy Court entered an order approving the DIP Motion on a final basis [Docket No. 468] (the "Final DIP Order").

2. Operational Motions.

The Debtors also Filed several other motions seeking relief to facilitate their operation in the ordinary course, including:

- Wages Motion: The *Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief* [Docket No. 20] (the "Wages Motion"), seeking authorization to pay prepetition wages, salaries, other compensation, and reimbursable expenses, and to continue employee benefits programs. On November 16, 2020, the Bankruptcy Court entered an order approving the Wages Motion on a final basis [Docket No. 119].
- Cash Management Motion: The *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Maintain Existing Business Forms and Books and Records, and (C) Continue to Perform Intercompany Transactions and (II) Granting Related Relief* [Docket No. 28] (the "Cash Management Motion"), seeking authorization to continue using their existing cash management system, maintain existing business forms and books and records, and continue to perform intercompany transactions. On November 16, 2020, the Bankruptcy Court entered an order approving the Cash Management Motion on an interim basis [Docket No. 115]. On January 27, 2021, the Bankruptcy Court entered an order approving the Cash Management Motion on a final basis [Docket No. 694].

- Hedging Motion: The *Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Perform Under and Amend Prepetition Lender Swap Contracts, (B) Enter Into and Perform Under Postpetition Lender Swap Contracts, (C) Grant Liens and Superpriority Administrative Claims, and (D) Modify the Automatic Stay and (II) Granting Related Relief* [Docket No. 27] (the "Hedging Motion"), seeking authorization to perform under and amend Prepetition Lender Swap Contracts, to enter into and perform under Postpetition Lender Swap Contracts, and to grant liens and superpriority administrative expense claims on account of those Lender Swap Contracts, and modifying the automatic stay. On November 16, 2020, the Bankruptcy Court entered an order approving the Hedging Motion on a final basis [Docket No. 113].
- Taxes Motion: The *Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief* [Docket No. 18] (the "Taxes Motion"), seeking authorization to pay certain prepetition taxes and fees. On November 16, 2020, the Bankruptcy Court entered an order approving the Taxes Motion on a final basis [Docket No. 122].

Insurance Motion: The Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto and (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies and (II) Granting Related Relief [Docket No. 16] (the "Insurance Motion"), seeking authorization to pay their obligations under insurance policies entered into prepetition and renew, amend, supplement, extend or purchase insurance coverage in the ordinary course of business. On November 16, 2020, the Bankruptcy Court entered an order approving the Insurance Motion on a final basis [Docket No. 124].

Utilities Motion: The Debtors' Emergency Motion for Entry of an Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief [Docket No. 13] (the "Utilities Motion"), seeking approval of the procedures for, among other things, determining adequate assurance for utility providers, prohibiting utility providers from altering, refusing, or discontinuing services, and determining that the Debtors are not required to provide additional adequate assurance to such providers. On November 16, 2020, the Bankruptcy Court entered an order approving the Utilities Motion on a final basis [Docket No. 116].

Surety Bond Motion: The Debtors' Emergency Motion for Entry of an Order (I) Approving Continuation of the Surety Bond Program and (II) Granting Related Relief [Docket No. 15] (the "Surety Bond Motion"), seeking authorization to continue the Debtors' surety bond program. On November 16, 2020, the Bankruptcy Court entered an order approving the motion on a final basis [Docket No. 121].

Royalty Payments Motion: The Debtors' Emergency Motion for Entry of an Order (I) Authorizing Payment of Mineral Obligations and (II) Granting Related Relief [Docket No. 14] (the "Royalty Payments Motion"), seeking authorization to pay the Debtors' various obligations under their oil and gas leases and certain other mineral obligation agreements. On November 16, 2020, the Bankruptcy Court entered an order approving the Royalty Payments Motion on a final basis [Docket No. 117].

Lienholder Motion: The Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of (A) Operating Expenses, (B) Marketing Expenses, (C) Shipping and Warehousing Claims, (D) 503(b)(9) Claims, and (E) Outstanding Orders and (II) Granting Related Relief [Docket No. 19] (the "Lienholder Motion"), seeking authorization to pay in the ordinary course of business all undisputed, liquidated, prepetition amounts owing on account of various operating expenses, marketing expenses, shipping and warehousing claims, section 503(b)(9) claims, and outstanding orders for goods not yet delivered by the Petition Date. On November 16, 2020, the Bankruptcy Court entered an order approving the Lienholder Motion on an interim basis [Docket No. 118]. On December 11, 2020, the Bankruptcy Court entered an order approving the Lienholder Motion on a final basis [Docket No. 386].

3. Administrative Motions.

The Debtors also Filed several other motions seeking relief to facilitate their operation in the ordinary course, including:

Joint Administration Motion: The Debtors' Emergency Motion for Entry of an Order (I) Directing Joint Administration of the Chapter 11 Cases and (II) Granting Related Relief [Docket No. 2] (the "Joint Administration Motion"), seeking joint administration of the Chapter 11 Cases. On November 14, 2020, the Bankruptcy Court entered an order approving the Joint Administration Motion on a final basis [Docket No. 4].

Creditor Matrix Motion: The Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to File A Consolidated List of Creditors and A Consolidated List of the 30 Largest Unsecured Creditors, (II) Waiving the Requirement to File A List of Equity Security Holders, (III) Authorizing the Debtors to Redact Certain Personal Identification Information, and (IV) Granting Related Relief [Docket No. 12] (the "Creditor Matrix Motion"), seeking authorization to File a consolidated list of their 30 largest unsecured creditors, waiving the requirement to File a list of equity security holders, and authorizing the Debtors to redact certain personal identification information from documents Filed with the Bankruptcy Court. On November 16, 2020, the Bankruptcy Court entered an order approving the Creditor Matrix Motion on a final basis [Docket No. 65].

NOL Motion: The Debtors' Emergency Motion for Entry of an Order (I) Approving Notification and Hearing Procedures for Certain Transfers of Common Stock and (II) Granting Related Relief [Docket No. 22] (the "NOL Motion"), seeking approval of the notification and hearing procedures for certain transfers of common stock in order to preserve the Debtors' valuable tax attributes. On November 16, 2020, the Bankruptcy Court entered an order approving the NOL Motion on a final basis [Docket No. 123].

SOFA Motion: The Debtors' Emergency Motion for Entry of an Order Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs [Docket No. 11] (the "SOFA Motion"), seeking extension of the time within which the Debtors must File their schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules") until January 11, 2021. On November 16, 2020, the Bankruptcy Court entered an order approving the SOFA Motion on a final basis [Docket No. 120]. On December 14, 2020, the Debtors Filed their Schedules [Docket Nos. 409-430].

Claims and Noticing Agent Retention Motion: The Debtors' Emergency Motion for Entry of an Order Appointing Epiq Corporate Restructuring, LLC as Claims, Noticing, Solicitation, and Administrative Agent [Docket No. 17] (the "Claims and Noticing Agent Retention Motion"), seeking authorization to retain Epiq,³⁰ as claims, noticing, and solicitation agent. On November 16, 2020, the Bankruptcy Court entered an order approving the Claims and Noticing Agent Retention Motion [Docket No. 66].

³⁰ "Epiq" is the trade name of Epiq Corporate Restructuring, LLC.

D. Other Procedural and Administrative Motions

On December 11, 2020, the Debtors held their second day hearing before the Bankruptcy Court. The Debtors Filed certain motions to be heard at the second day hearing, which will further facilitate the smooth and efficient administration of the Chapter 11 Cases and reduce the administrative burdens associated therewith, including:

Ordinary Course Professionals Motion: On November 20, 2020, the Debtors Filed the Debtors' Motion for Entry of an Order Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business [Docket No. 207] (the "OCP Motion"). The OCP Motion sought to establish procedures for the retention and compensation of certain professionals utilized by the Debtors in the ordinary course operation of their businesses. On December 11, 2020, the Bankruptcy Court entered an order granting the OCP Motion [Docket No. 389].

Interim Compensation Motion: On November 20, 2020, the Debtors Filed the *Debtors' Motion for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 208] (the "**Interim Compensation Motion**"). The Interim Compensation Motion sought to establish procedures for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals whose retentions are approved by the Bankruptcy Court pursuant to sections 327 or 1103 of the Bankruptcy Code and who will be required to File applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code. On December 11, 2020, the Bankruptcy Court entered an order granting the Interim Compensation Motion [Docket No. 387].

De Minimis Asset Transactions Motion: On November 15, 2020, the Debtors Filed the *Debtors' Motion for Entry of an Order Approving Procedures for De Minimis Asset Transactions* [Docket No. 30] (the "**De Minimis Asset Transactions Motion**"). The De Minimis Asset Transactions Motion sought to establish procedures for the use, sale, or transfer of assets with an aggregate sale price equal to or less than \$5,000,000 without the need for further Bankruptcy Court approval. On December 11, 2020, the Bankruptcy Court entered an order granting the De Minimis Asset Transactions Motion [Docket No. 391].

E. Shareholder Motion to Dismiss

On November 24, 2020, Ralph J. Zimbouski (the "**Moving Shareholder**") Filed the *Motion for Gulfport Energy Bankruptcy Dismissal* and attached letters [Docket No. 231] (collectively, the "**Shareholder Motion**"). The Moving Shareholder made a number of claims regarding the Debtors' prepetition actions and requested the Bankruptcy Court dismiss the Debtors' Chapter 11 Cases. On December 15, 2020, the Debtors Filed the *Debtors' Objection to Shareholder's Motion to Dismiss the Chapter 11 Cases* [Docket No. 437]. The Moving Shareholder subsequently Filed other letters with the Court [Docket Nos. 317, 320, 447, 522, 528, 695, 751]. The Debtors oppose the relief requested in the Moving Shareholder's other letters.

F. Retention of the Debtors' Professionals

To assist the Debtors in carrying out their duties as debtors in possession and to otherwise represent the Debtors' interests in the Chapter 11 Cases, the Debtors Filed applications requesting that the Court authorize the Debtors to retain and employ the following advisors pursuant to sections 327 and 328 of the Bankruptcy Code: (a) Kirkland as counsel to the Debtors; (b) Jackson Walker LLP as co-counsel to the Debtors; (c) PWP as financial advisor and investment banker to the Debtors; (d) PricewaterhouseCoopers LLP ("**PwC**") as tax services provider to the Debtors; (e) Alvarez & Marsal North America, LLC, as restructuring advisor to the Debtors; (f) Wachtell, Lipton, Rosen & Katz, as counsel to the Special Committee of the Board of Directors of Gulfport Energy Corporation (the "**Parent Special Committee**"); (g) Chilmark Partners, LLC, as financial advisor and investment banker to the Topco Special Committee; (h) Katten Muchin Rosenman LLP as counsel to the Disinterested Directors of certain wholly-owned subsidiaries of Gulfport Energy Corporation (collectively, the "**Subsidiary Special Committee**"); (i) M3 Advisory Partners, LP, as financial advisor and investment banker to the Subsidiary Special Committee; and (j) Grant Thornton, LLP as tax advisor to the Debtors. Concurrently with the application requesting authorization to retain Alvarez & Marsal North America, LLC, the Debtors sought an order designating Mark Rajcevich, Managing Director at Alvarez & Marsal North America, LLC, as the Debtors' Chief Restructuring Officer. The Court entered orders approving the retention of Kirkland [Docket No. 607], Jackson Walker LLP [Docket No. 732], Alvarez & Marsal North America, LLC [Docket No. 631], M3 Advisory Partners, LP [Docket No. 698], Katten Muchin Rosenman LLP [Docket No. 629], PwC [Docket No. 699], Chilmark Partners, LLC [Docket No. 697], Wachtell, Lipton, Rosen & Katz [Docket No. 696], and Grant Thornton LLP [Docket No. 736].

G. Schedules of Assets and Liabilities and Statements of Financial Affairs.

On November 15, 2020, the Debtors Filed the SOFA Motion [Docket No. 11] seeking an extension of the time within which the Debtors must File their schedules of assets and liabilities and statements of financial affairs (collectively, the "**Schedules**") until January 11, 2021 for a total of 59 days from the Petition Date. The Bankruptcy Court granted this motion on November 16, 2020 [Docket No. 120]. The Debtors Filed their Schedules on December 14, 2020 [Docket Nos. 409-430].

H. Establishment of a Claims Bar Date.

On November 20, 2020, the Debtors Filed the *Debtors' Motion for Entry of an Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, and (IV) Granting Related Relief* [Docket No. 209] (the "**Bar Date Motion**"), proposing the Claims Bar Date by which the entities holding Claims against the Debtors that arose (or that are deemed to have arisen) prior to the Petition Date (including, without limitation, Class 4A, General Unsecured Claims Against Gulfport Parent, and Class 4B, General Unsecured Claims Against Gulfport Subsidiaries) must File Proofs of Claim. On December 11, 2020, the Bankruptcy Court approved the Bar Date Motion and entered an order establishing January 26, 2021 as the general claims bar date and May 12, 2021 as the governmental claims bar date [Docket No. 388] (the "**Bar Date Order**"). Pursuant to the Bar Date Order, any party required to File a Proof of Claim under the Bar Date Order that fails to do so before the applicable bar date will be forever barred, estopped, and enjoined from asserting such claim against the Debtors and the Debtors will be forever discharged from any indebtedness or liability relating to such claim. Such party will not be permitted to vote to accept or reject the Plan or receive any recovery under the Plan.

THE FOLLOWING SECTIONS VII-J REFLECT THE VIEWS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE "COMMITTEE**") WITH RESPECT TO CERTAIN MATTERS RELATING TO THE DEBTORS, THE PLAN, AND THE DISCLOSURE STATEMENT. THESE VIEWS AND POSITIONS MAY NOT REFLECT THE VIEWS OF EACH OF THE INDIVIDUAL MEMBERS OF THE COMMITTEE, EACH OF WHICH RESERVES ALL RIGHTS. THE DEBTORS AND THE OTHER PARTIES TO THE RESTRUCTURING SUPPORT AGREEMENT DISAGREE WITH THE COMMITTEE'S CHARACTERIZATIONS BELOW AND RESERVE ALL RIGHTS WITH RESPECT TO THE MATTERS RAISED BY THE COMMITTEE.**

I. The Committee's Investigation into the Debtors' Prepetition Transactions

The Committee was appointed on November 27, 2020 to represent the interests of all unsecured creditors in these Chapter 11 Cases.³¹ The Committee selected Kramer Levin Naftalis & Frankel LLP to serve as its legal counsel, Conway MacKenzie to serve as financial advisor, and Jefferies to serve as investment banker. The Committee currently consists of seven members: UMB Bank, N.A., Rockies Express Pipeline LLC, MPLX LP, Bryon LeFort, Pioneer Drilling Services Ltd., Stallion Oilfield Construction Corp., and REME LLC d/b/a Leam Drilling Services.

Once appointed, the Committee began investigating the Debtors' prepetition transactions, including the prepetition transfer of oil and gas assets worth in excess of a billion dollars from Gulfport Parent to the Gulfport Subsidiaries, and the multi-million dollar prepetition bonuses paid to the Debtors' management. The Committee served a comprehensive document request on the Debtors on December 11, 2020,³² and then in connection with a resolution of issues associated with the debtor-in-possession financing, the Committee and the Debtors agreed to a case timeline that included certain discovery deadlines, hearing dates, and a briefing schedule associated with the Disclosure Statement and Plan confirmation.³³ That agreed schedule called for the Debtors to produce the requested documents and communications to the Committee by

January 18, 2021, so that the Committee would have enough time to complete its investigation before its deadline to object to approval of the Disclosure Statement.

After a series of discovery disputes related to the Debtors' document production, the Committee's deadline to object to the Disclosure Statement was extended to February 16. The Committee's investigation remains ongoing, and certain discovery disputes remain open. In addition to reviewing future document productions, the Committee intends to depose numerous Debtor witnesses concerning the prepetition transactions and related matters. The outcome of the Committee's investigation could materially impact the projected recoveries to unsecured creditors under a chapter 11 plan.

Preliminary indications of the Committee's investigation have led the Committee to believe that the allocation of value in the Debtors' proposed Plan among creditors of Gulfport Parent and Gulfport Subsidiaries is inappropriate and does not adequately compensate for the settlement and release of estate and third party claims and causes of action. **Therefore, the Committee does not support the Plan's proposed allocation of distributable value among unsecured creditors of Gulfport Parent and the Gulfport Subsidiaries, and does not support the Plan as proposed.**

J. The Committee Believes Significant Prepetition Transactions May Give Rise to Claims and Causes of Actions.

The Committee's investigation is focused on analyzing potential claims and causes of action that could materially increase unsecured creditor recoveries. While the Committee's investigation remains ongoing, it appears that certain prepetition transactions could well give rise to significant claims for, among other things, constructive and/or intentional fraudulent transfers, preferential transfers, breaches of fiduciary duty, and substantive consolidation. The Debtors' Plan proposes to release any and all such claims, for minimal (if any) consideration. Yet the Committee believes that the claims, if not settled in the Plan and instead prosecuted for the benefit of creditors, could dramatically improve unsecured creditor recoveries. The primary transactions that are the subject of the Committee's investigation are briefly set forth below. Also included below are certain Committee assessments, based on the Committee's investigation to date, that unsecured creditors should consider when determining whether to vote in favor or against the Plan. Creditors should also review the letter from the Committee accompanying the solicitation materials for specific information regarding the Committee's position and recommendations with respect to the Plan.

³¹ See Notice of Appointment of Committee of Unsecured Creditors [Docket No. 248].

³² See The Official Committee of Unsecured Creditors' Notice of Rule 2004 Request for Production of Documents from Debtors [Docket No. 382].

³³ See Agreed Scheduling Order With Respect to Confirmation and Related Matters [Docket No. 495].

i. 2019 Drop Down of the Utica Assets

In June 2019, Gulfport Parent transferred significant oil and gas assets with a book value in excess of a billion dollars (the "Utica Assets") to its subsidiary, Gulfport Appalachia, LLC, in a transaction or transactions that the Committee believes may not have been properly disclosed in Gulfport Parent's filings with the SEC. As a result of this transaction, referred to herein as the "2019 Drop Down," general unsecured creditors of Gulfport Parent were effectively subordinated to noteholders that held claims at both the subsidiary and parent level. The imbalance in currently proposed recoveries between these two general unsecured creditor constituencies is due, in large part, to the 2019 Drop Down, which naturally has been a focus of the Committee's investigation.

a. Factual Background

Discussions about restructuring the Debtors' Oklahoma and Ohio oil and gas assets began in early 2017. By the end of March 2017, the company's management had decided to utilize the company subsidiaries to (allegedly) limit liability by reorganizing and consolidating operations in both Utica and SCOOP. Ultimately, the reorganization was delayed by, among other things, the company's implementation of a new management/accounting system.

In June 2019, the transfer of the valuable Utica Assets with a book value in excess of a billion dollars was completed, and included the transfer of all legal and operational aspects of Ohio wells from Gulfport Parent to Gulfport Appalachia, LLC, and all Bakken and Niobrara wells from Gulfport Parent to Puma Resources, Inc. The company appears to have informed contract counterparties of the transaction, but the Committee, notwithstanding its repeated requests, has received only limited communications related to the transaction.

Despite the significance of these transactions, the Debtors' public filings scarcely described the transaction at all, disclosing only that "[e]ffective June 1, 2019, the [Gulfport] Parent contributed interests in certain oil and gas assets and related liabilities to certain of the [g]uarantors." Gulfport Energy Corp., Quarterly Report (Form 10-Q) (Aug. 2, 2019). The absence of disclosure obscures the materiality of the transaction. Notably, while the public filings do not forthrightly disclose the extent of these transfers, the consolidated financial statements filed by the company reflected the movement of over a billion dollars of such assets to the subsidiary Gulfport Appalachia, LLC.

Because of the significance of these transactions, the Committee has sought numerous categories of documents relating to the 2019 Drop Down, and the Debtors' production of documents remains ongoing. The Committee has also asked to depose witnesses knowledgeable about it, and the Debtors produced the first such witness on February 12, 2021.

b. Relevant Legal Standards

The Committee is investigating whether the 2019 Drop Down was a fraudulent conveyance. Fraudulent conveyance claims take two forms: intentional fraud and constructive fraud. Often an estate representative will assert both categories of claim arising out of the same facts.

An intentional fraudulent conveyance is a conveyance made with the intent of placing one's assets beyond the reach of creditors, whether with an intent to "defraud" or with an intent simply to "hinder" or "delay" creditors. Because fraud is often difficult to prove directly, it can be established by aggregating various so-called "badges of fraud," which include, e.g., (i) lack or inadequacy of consideration; (ii) a close relationship between the parties; (iii) the retention of possession, benefit, or use of the property in question; (iv) the financial condition of the transferor both before and after the transaction; (v) the existence of a pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threats of suits by creditors; (vi) the general chronology of events; (vii) a transfer not in the usual course of business; and (viii) the secrecy or haste of the transaction.

A constructive fraudulent conveyance, on the other hand, is a transfer for less than “reasonably equivalent value” when (i) the transferor is insolvent or is thereby rendered insolvent, (ii) the transferor is engaged in or about to engage in a transaction for which its remaining property constitutes unreasonably small capital, or (iii) the transferor believes that it will incur debt beyond its ability to pay.³⁴ In light of this legal standard, issues concerning valuation and insolvency are hotly disputed in constructive fraudulent transfer litigation, and often require extensive factual and expert evidence.

It is important to note that both transfers and incurrences of obligations can be fraudulent for purposes of the relevant Bankruptcy Code and state-law statutes.

c. Committee Assessment and Commentary

Given the magnitude of the 2019 Drop Down and its proximity to the Debtors’ bankruptcy filing, the Committee is acutely focused on whether this transaction was carried out in a fair and equitable manner.

The Committee professionals are conducting a detailed valuation analysis to determine whether the parties to the 2019 Drop Down were solvent at the time of the transfer. Based on the Committee’s investigation conducted to date, the Committee believes that the company may well have been insolvent at the time of the 2019 Drop Down, though the Committee professionals are still reviewing the solvency of the Debtors at the time of the 2019 Drop Down and have not yet formed a final opinion. The Committee professionals have scheduled depositions with relevant company personnel in connection with its analysis of both the 2019 Drop Down and other potential claims and causes of action, which will bear on both the question of solvency, as well as other important factual elements of these claims.

As noted above, if successfully prosecuted, a constructive fraudulent conveyance claim could materially impact the propriety of the recoveries contemplated under the Plan. In particular, in the event the 2019 Drop Down is found to be a fraudulent transfer, the Committee believes that the transaction would likely be deemed void and the Utica Assets, potentially worth in excess of a billion dollars, would be effectively returned to Gulfport Parent. This, in turn, would upend the assumptions upon which Plan recoveries are premised, substantially increasing recoveries for General Unsecured Creditors of Gulfport Parent and rendering the Debtors’ proposed distributions to unsecured creditors wholly inappropriate.

ii. Prepetition Payments to Insider Executives

The Committee is also investigating whether certain prepetition bonuses paid to company executives may be clawed back as preferential transfers and/or fraudulent conveyances. During the eight months leading up to the Debtors’ bankruptcy filing, the Debtors’ executive officers, and senior management team (the “Insider Executives”) and certain other senior employees (together with the Insider Executives, the “Executives”) received over \$19.6 million in bonus payments.

³⁴ A constructive fraudulent conveyance may also exist where there was a transfer of less than “reasonably equivalent value” and such transfer was made for the benefit of an insider under an employment contract and not in the ordinary course of business.

a. Factual Background

In March 2020, the Debtors’ compensation committee (the “Compensation Committee”) approved the Debtors’ 2020 Incentive Plan (the “Original Incentive Plan”). The plan set forth terms of retention and incentive awards for 2020 for Executives. The Original Incentive Plan provided for (i) retention payments that were payable in advance but subject to clawback if an Executive was no longer with the Debtor at the end of the retention period; and (ii) short- and long-term incentive payments, payable in cash and stock-based compensation after assessment of a one-year performance period.

In April 2020, the Company paid the following Executives an aggregate total of \$3,698,750 in retention payments for fiscal year 2020 pursuant to the 2020 Incentive Plan: David Wood received \$834,000; Donnie Moore received \$505,000; Patrick Craine received \$435,000; Quentin Hicks received \$425,000; Michael Sluiter received \$360,000; Lester Zitkus received \$351,900; RJ Moses received \$350,000; Stephanie Timmermeyer received \$123,450; Rebecca Addison received \$45,300; and Ty Peck received \$269,100 (each an “April Payment” and collectively the “April Payments”). Shortly thereafter, in August 2020, the board revised the 2020 incentive plan. Under this revised plan, (the “Modified Incentive Plan”), in September 2020, the company paid the Executives, except for Peck: (i) \$1.8 million in prorated incentive payments for performance through July and (ii) \$14.2 million split 50/50 between pre-paid retention and pre-paid incentive bonuses (the “September Payments”).

All of the April Payments and the September Payments enabled the Executives to receive more than they would have if the Debtors’ bankruptcy cases were cases under chapter 7 of the Bankruptcy Code, as unsecured creditors stand to receive less than 100% recovery in the Debtors’ bankruptcy cases.

b. Relevant Legal Standards

The Bankruptcy Code generally allows for the recapture of certain payments made by a debtor in satisfaction of antecedent debt within the 90 days prior to a bankruptcy filing when those payments were made for the benefit of a creditor while the debtor was insolvent. (As to insiders, the look-back period extends to a full year.) Referred to as preferential transfers, these transfers may be voidable under the Bankruptcy Code, with the overall goal of fostering equal treatment among similarly situated creditors. Affirmative defenses to preferential transfer claims include that the transfers were made in the ordinary course of business, or that the transferee subsequently provided new value to the debtor (for example, in the form of goods, services, or new credit).

The legal standards regarding fraudulent transfers, discussed in Section VI.J.i.b., are also relevant to the analysis of the validity of the April Payments and September Payments. In addition, as noted above, a transfer for less than reasonably equivalent value may be avoided as a fraudulent conveyance even if the debtor was solvent at the time of the transfer where the transfer was made to an insider under an employment contract and not in the ordinary course of business.

c. Committee Commentary

The Committee is investigating whether the prepetition payments to Executives can be avoided as fraudulent conveyances and/or preferential transfers. If avoided, these payments could inure to the benefit of unsecured creditors.

The Committee believes that the September Payments constitute transfers on account of antecedent debt—namely, the Debtors’ existing obligations under written agreements entered into with each of the Executives in August 2020. The payments were made on September 3, 2020, which is less than 90 days before the Petition Date and thus the Debtors are presumed to have been insolvent at the time of the transfers. The April Payments to the Insider Executives were also made on account of the Debtors’

existing obligations under written agreements entered into with the Insider Executives in March 2020. The payments were made on April 3, 2020—less than one year before the Petition Date—at a time when the Debtors were insolvent and were made to insiders including the Debtors’ officers and senior management team. The Committee believes that both the September Payments and April Payments therefore may well be ultimately deemed to be preferential transfers, and avoided.

Additionally, though further fact discovery is required, the Committee believes that these transfers may also be voided as fraudulent transfers. It is unclear whether the Debtors received reasonably equivalent value in exchange for these payments. Given that these transfers inured to the benefit of insiders under employment contracts and potentially were made outside of the ordinary course of business, a fraudulent transfer claim may be pursued even if the Debtors were solvent at the time of such transfers. The transfers took place, however, at a time when the Debtors were in all likelihood insolvent. Further, the Committee continues to analyze whether these payments give rise to claims against the Debtors’ current and former officers and directors for breaches of fiduciary duty that might generate recoveries under the Debtors’ associated insurance policies.

iii. Stock Repurchases/Debt Buybacks

In addition, the Committee is investigating certain share repurchases and debt buybacks (the “Share Repurchases and Debt Buybacks”) that the Debtors conducted before filing for bankruptcy. Beginning in 2018 and continuing through 2019, the Debtors executed \$230 million in buybacks of their common stock and approximately \$150 million of their bond debt. *See generally supra* Art. VI.B.2–3.

The Committee is investigating whether these transactions give rise to claims for fraudulent conveyance or voidable preferences. The Committee also continues to analyze whether, even putting aside traditional avoidance actions, these transactions give rise to claims against the Debtors’ current and former officers and directors for breaches of the duty care that might generate recoveries under the Debtors’ associated insurance policies. The Committee’s investigation has included reviewing documents produced in response to the Committee’s Rule 2004 request to determine (1) how the stock or debt was acquired, how the acquisitions were funded and on what terms, (2) whether the Debtors were solvent at the time of such transactions, (3) whether the sales were for reasonable value, and (4) whether these transactions were conducted at arm’s-length.

iv. Significant Prepetition Divestitures

In 2019, the Debtors sold off certain non-core assets in a series of transactions (the “Prepetition Divestitures”). According to the Debtors, the Prepetition Divestitures were a part of the Debtors’ efforts to develop their core assets and repay cash flows. *See supra* Art. VI.A.3.

These transactions could be the subject of fraudulent transfer claims, and/or breach of fiduciary duty and related claims. The Committee is investigating the facts and circumstances surrounding these transactions, including by taking depositions of relevant persons involved in transactions. If, for example, such transactions were effectuated at a time when the Debtors were insolvent, and the Debtors did not receive reasonably equivalent value in return of these transfers, such transfers could be deemed constructive fraudulent transfers and therefore void. The Committee is likewise investigating (1) the validity of the reasons for entering into the above transactions, (2) the process for choosing to sell the above assets, (3) the process for selecting the successful purchasers, and (4) the adequacy of the sale prices, in an effort to ensure the transactions were legitimate and obtained at a fair price.

v. Substantive Consolidation and Alter Ego

Bankruptcy courts have the power to provide an array of equitable relief in certain circumstances. The equitable doctrine of substantive consolidation, for example, may allow bankruptcy courts to disregard the corporate separateness of subsidiaries and parent entities that effectively function as a single economic entity. Similar claims may arise under which a court may “pierce the corporate veil” and establish alter ego liability if a plaintiff can demonstrate that a parent and subsidiary operated as a single economic unit. The Committee is closely investigating whether there could be a legitimate basis to substantively consolidate the Debtors, which would render the disparate creditor treatment under the Plan wholly improper.

Certain aspects of the Debtors’ operations are relevant to a substantive consolidation and/or alter ego analysis. For example, the company acted in a variety of ways that might lead a court to find that Gulfport Parent and Gulfport Subsidiaries were acting as a single economic entity. The manner in which the company interacted with its midstream and other contract counterparties suggests a consolidated method of operation: midstream contracts were held at Gulfport Parent, and the company’s assets were purportedly held at the subsidiaries, but many counterparties that the company dealt with did not understand whether they were interacting with Gulfport Parent or Gulfport Subsidiaries.

The Committee’s investigation to date suggests that certain creditors were at best confused by which entity they were facing. While certain trade creditors’ claims have been scheduled by the Debtors at the subsidiary Debtor entities, many of such creditors’ corresponding proofs of claim have been filed against Gulfport Parent. This is not surprising because there was a common prepetition practice whereby such creditors would invoice the Parent and be paid by subsidiaries (via the Gulfport Parent), with the associated privity disconnect an apparent byproduct of the 2019 Drop Down.

A finding that the Debtors’ estates should be substantively consolidated would dramatically alter the landscape upon which creditor recoveries are premised. The analysis is highly fact-based, and the Committee’s investigation will continue to assess whether substantive consolidation poses a meaningful risk to confirmation of this Plan.

vi. Other Investigation Claims

The Committee is continuing to investigate various other prepetition transactions of the Debtors to determine whether colorable claims exist and should be pursued to the benefit of the Debtors’ estates, and is investigating the proposed treatment of claims under the Plan and settlements set forth therein, including (i) the basis and process for arriving at the equity splits between the Gulfport Parent and Gulfport Subsidiaries to 94/6 in RSA negotiations on the eve of filing and (ii) the proposed settlement relating to intercompany claim/cash management issues (including resolving issues preserved under the final cash management order relating to expenses typically netted from proceeds that were never accounted for in the intercompany ledgers). While the Committee’s investigation of these items remains ongoing, the Committee currently believes it has identified numerous issues with the proposed Plan that, if not appropriately addressed, may present significant challenges to confirmation.

THE FOLLOWING SECTION VIII.K REFLECTS THE VIEWS OF THE SPECIAL COMMITTEES, AND DOES NOT REFLECT THE VIEWS OF THE COMMITTEE WITH RESPECT TO THE SPECIAL COMMITTEE INVESTIGATIONS. THE COMMITTEE RESERVES ALL RIGHTS WITH RESPECT TO THESE MATTERS

1. Appointment of the Special Committees.

Prior to the Petition Date, in connection with their restructuring efforts, the Debtors appointed disinterested directors to form the Parent Special Committee and the Subsidiary Special Committee (together, the “Special Committees”) to conduct investigations regarding potential intercompany claims based on, among other things, the 2019 contribution of assets from Gulfport Parent to Gulfport Appalachia (the “2019 Asset Contribution”).

To assist in the execution of their duties, the Parent Special Committee and the Subsidiary Special Committee each retained advisors; the Parent Special Committee retained Wachtell Lipton, Rosen & Katz (“Wachtell Lipton”), as counsel, and Chilmark Partners, LLC (“Chilmark”), as financial advisors, and the Subsidiary Special Committee retained Katten Muchin Rosenman LLP (“Katten”), as counsel, and M3 Advisory Partners, LP (“M3”), as financial advisors.

In addition to their regular roles as members of the boards of their respective entities, the members of the Special Committees conducted independent investigations into certain potential intercompany claims and causes of action. An overview of the status and progress of the Special Committees’ work as of the date hereof is below.

2. Summary of Parent Special Committee Investigation.

The Parent Special Committee was formed on September 10, 2020 via a resolution of the Board of Directors of Gulfport Parent and was delegated broad authority to act for Gulfport Parent with respect to certain conflicts that may exist between Gulfport Parent and Gulfport Subsidiaries, including authority to investigate claims between the entities and to act on behalf of Gulfport Parent with respect to such matters (the “Parent Independent Investigation”).

The Parent Special Committee consists of Alvin Bledsoe and John W. Somerhalder II. Mr. Bledsoe is the Chairman of Gulfport Parent’s Board of Directors, which he joined in January 2020. Mr. Somerhalder joined Gulfport Parent’s Board in July 2020. After being appointed to the Parent Special Committee, Mr. Bledsoe and Mr. Somerhalder retained Wachtell Lipton as legal advisor and Chilmark as financial advisor.

One of the matters encompassed by the Parent Independent Investigation is the 2019 Asset Contribution, which was completed on or around June 1, 2019, in which Gulfport Parent contributed substantially all of its leasehold and ownership interests in the Utica Shale region to Gulfport Appalachia. As a result of the 2019 Asset Contribution, while Gulfport Parent continued to be party to contracts with midstream providers, the Debtors’ oil-and-gas exploration assets were held directly by the Subsidiaries.

The Parent Special Committee, with the assistance of its advisors at Wachtell Lipton and Chilmark, reviewed and analyzed the 2019 Asset Contribution and potential causes of action relating to that transaction. The Parent Special Committee and its advisors also reviewed and analyzed the intercompany payables and receivables in the Debtors’ books and records, as well as the likely quantum of rejection damages claims against Gulfport Parent. In connection with this diligence process, Wachtell Lipton and Chilmark (at the direction of the Parent Special Committee) interviewed knowledgeable individuals with respect to 2019 Asset Contribution and related matters, requested various categories of documents from the Debtors and the Debtors’ advisors, and reviewed thousands of documents produced in response to the requests. In addition to gathering facts relating to the transaction, the Parent Special Committee (with the assistance of and through its advisors) also evaluated market evidence and other facts relating to Gulfport Parent’s and Gulfport Subsidiaries’ financial condition at the time of the 2019 Asset Contribution, and evaluated potential causes of action to avoid the transfer of the relevant assets or recover from the Subsidiaries.

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As it conducted its review and drew preliminary conclusions, the Parent Special Committee provided input to the Debtors’ management and advisors regarding the ongoing negotiation with the Ad Hoc Group of Bondholders and other creditors, and ultimately agreed to approve the Restructuring Support Agreement, which includes a material recovery to Gulfport Parent-only creditors on account of intercompany claims and potential causes of action.

The Parent Special Committee’s agreement to support the RSA Plan was (and remains) subject to a fiduciary out, in the event that continuing to support the transactions contemplated by the Plan fails to accord with the Parent Special Committee’s fiduciary duties. The Parent Special Committee, with the assistance of its advisors, is continuing to evaluate facts and arguments (including evidence and arguments developed by the Official Committee of Unsecured Creditors) relating to the 2019 Asset Contribution, other issues including arguments for substantive consolidation, and the ultimate implications of the Plan for Gulfport Parent’s creditors.

3. Summary of Subsidiary Special Committee Investigation.

The Subsidiary Special Committee was formed on September 15, 2020, when the governing body for each of the Gulfport Subsidiaries appointed Stefan M. Selig and Andrew C. Kidd, as disinterested directors. The Subsidiary Special Committee was delegated broad authority to, among other things: (i) commence an independent investigation (the “Subsidiary Independent Investigation”) into whether any potential claims or causes of action exist between Gulfport Parent and Gulfport Subsidiaries; (ii) determine whether any matter arising in the Debtors’ chapter 11 cases presents a potential conflict of interest between Gulfport Subsidiaries and Gulfport Parent or its directors and officers; and (iii) take any and all actions necessary with respect to such matters as deemed appropriate by the Subsidiary Special Committee. Shortly thereafter, the Subsidiary Special Committee engaged Katten and M3 to assist with the Subsidiary Independent Investigation.

In the course of conducting the Subsidiary Independent Investigation, and at the direction of the Subsidiary Special Committee, Katten and M3 submitted three sets of targeted but broad diligence requests to the Debtors seeking documents and information relevant to the Subsidiary Independent Investigation, including, among other requests, copies of board materials and minutes, corporate governance documents, intercompany agreements, accounting information, and internal company communications. To date Katten and M3 have received and reviewed more than 7,000 documents produced in response to the Subsidiary Special Committee’s requests and document requests from the Committee. Katten and M3 conducted interviews with seven members of the Debtors’ current and former management team and, to minimize cost and avoid duplication of effort, attended, and will attend, additional depositions conducted by the Committee, some of which include persons already interviewed by Katten and M3.

Pursuant to the Subsidiary Independent Investigation, Katten and M3 are continuing to analyze potential claims and causes of action held by the Debtors’ Estates relating to, among other things, the acquisition of certain assets of Vitruvian II Woodford, LLC through Gulfport MidCon, LLC (formerly known as Scoop Acquisition Company, LLC), on February 17, 2017 (the “2017 Acquisition”); the 2019 Asset Contribution; intercompany dealings, practices, and observance of corporate formalities, as they pertain to single entity theories of liability or substantive consolidation; and intercompany payables and receivables owing between Gulfport Parent, on the one hand, and certain of Gulfport Subsidiaries, on the other. The potential claims and causes of action include: (a) actual and constructive fraudulent transfers; (b) substantive consolidation; (c) debt recharacterization; (d) breach of fiduciary duty; and (e) unjust enrichment.

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Based on the documents and information received and reviewed through the date hereof in connection with conducting the Subsidiary Independent Investigation, the Subsidiary Special Committee’s preliminary determination is that it continues to support the compromise reflected in the RSA and Plan. However, the support and preliminary determinations reached by the Subsidiary Special Committee remain subject to the fiduciary out set forth in the RSA, the completion of the Subsidiary Independent

Investigation, and the Subsidiary Special Committee reserves all rights in respect of the foregoing.

L. Litigation Matters.

In the ordinary course of business, the Debtors are parties to certain lawsuits, legal proceedings, collection proceedings, and claims arising out of their business operations. The Debtors cannot predict with certainty the outcome of these lawsuits, legal proceedings, and claims.

With certain exceptions, the filing of the Chapter 11 Cases operates as a stay with respect to commencement or continuation of litigation against the Debtors that was or could have been commenced before the commencement of the Chapter 11 Cases. In addition, the Debtors' liability with respect to litigation stayed by the commencement of the Chapter 11 Cases generally is subject to discharge, settlement, and release upon confirmation of a plan under chapter 11, with certain exceptions. Therefore, certain litigation Claims against the Debtors may be subject to discharge in connection with the Chapter 11 Cases.

Prior to the Petition Date, approximately 152 separate individuals and entities in Ohio (the "Ohio Litigation Claimants") brought lawsuits or are putative class members in lawsuits against the Debtors and other defendants (the "Ohio Litigation"). The majority of the Ohio Litigation Claimants allege that certain of the Debtors committed—and are continuing to commit—unlawful trespass, conversion, and unjust enrichment relating to the oil and gas operations on the claimants' Ohio properties. These Ohio Litigation Claimants allege that Gulfport and other defendants drilled below the leased formation (the Marcellus Shale and the Utica Shale) and wrongly extracted minerals from a deeper, unleased formation (the "Point Pleasant Formation"), which the Ohio Litigation Claimants allege is expressly reserved to each respective Ohio Litigation Claimant under the terms of the specific lease. Prior to the Petition Date, a state court in Ohio granted summary judgment for one of the Ohio Litigation Claimants, TERA, LLC ("TERA"), finding that TERA's lease did not give the Debtors and other defendants drilling rights to the Point Pleasant Formation and that defendants intentionally trespassed and are liable for conversion and willful trespass damages under Ohio law, *TERA, LLC v. Rice Drilling D, LLC, et al.*, Case No. 17-CV-344 (Court of Common Pleas, Belmont County, Ohio) (the "TERA Case"). In addition to the Point Pleasant Formation drilling dispute, the remaining lawsuits relate to various royalty and drilling issues. A trial on damages in the TERA case was scheduled for December 15, 2020, which was stayed as a result of the bankruptcy and adjourned until May 11, 2021.

The Ohio Litigation Claimants each filed a proof of claim asserting combined damages of approximately \$477 million. In addition, a proof of claim has been filed asserting damages of at least \$1.75 billion on behalf of an uncertified, putative class in *J&R Passmore, LLC, et al., v. Rice Drilling D LLC, et al.*, Case No. 2:18-cv-1587 (S.D. Ohio, Eastern Division) ("Passmore Litigation"). On February 10, 2021, the Debtors filed a motion with the Bankruptcy Court to strike the class proof of claim [Docket No. 761]. The Ohio Litigation Claimants filed an objection to the Debtors' motion to strike on February 18, 2021 [Docket No. 787]. On February 12, 2021, the Ohio Litigation Claimants filed their *Motion for Certification of Class Proofs of Claim* [Docket No. 766].

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The Ohio Litigation Claimants allege that the drilling by Gulfport and other defendants into the Point Pleasant Formation is illegal and has continued following the filing of these chapter 11 cases. The Ohio Litigation Claimants have asserted that they will take all actions to which they are legally entitled to stop these actions, which, if successful may have a negative effect on the Debtors' post-bankruptcy operations and cash flow. The Ohio Litigation Claimants have also asserted that they intend to file administrative expense claims for alleged post-petition harms of no less than approximately \$14.4 million (as of January 26, 2021).

The Debtors and other named defendants dispute the allegations in the Ohio Litigation. Further, the Debtors believe that the Ohio Litigation is unlikely to succeed on the merits and that the proffered damages are grossly exaggerated. The Debtors believe the partial summary judgment secured in favor of the plaintiffs in the TERA Case was wrongly decided and intend to appeal.

Even assuming liability and assuming a putative class is certified, the Debtors estimate that the damages, if any, in respect of the claims asserted by the Ohio Litigation Claimants would be immaterial under any outcome in the underlying litigation. The Debtors expressly reserve their rights to object to any purported "class" claim and the individual proofs of claim filed by putative class members on any grounds and reserve all rights regarding all matters described in the foregoing disclosure.

M. The Midship Adversary Proceeding and Settlement

Prior to the Petition Date, Gulfport Parent and Midship entered into an agreement for the transportation of natural gas. In June, 2020, Gulfport Parent and Midship amended this agreement to restructure volume requirements and credit assurance terms.

Under the June, 2020, amendment, Gulfport Parent agreed to provide Midship with \$32.9 million as a prepayment for reservation charges under the agreement. Thereafter, Gulfport Parent was to provide Midship a \$34 million surety bond in exchange for Gulfport Parent being able to reduce the amount of the posted Letter of Credit already in place as credit assurance under the agreement from \$75.6 million to \$12.2 million.

In accordance with this amendment to the agreement, Gulfport Parent paid Midship the \$32.9 million prepayment on September 28, 2020. Notwithstanding this prepayment, while the parties discussed the specifics for effectuating the exchange of the new \$34 million surety bond and the corresponding reduction to the Letter of Credit, Midship suddenly instead drew on the full \$75.6 million Letter of Credit, in violation of the agreement. Midship claims that it drew down the \$75.6 million because Gulfport Parent did not provide a \$34 million surety bond by October 1, 2020. The Debtors dispute this claim.

Accordingly, on November 15, 2020, the Debtors commenced an adversary proceeding against Midship (Adv. Proc. No. 20-03465) (the "Midship AP") by filing a complaint with the Bankruptcy Court (the "Midship Complaint") [Midship AP Docket No. 1]. The Midship Complaint sought to recover actual damages in the amount of \$75.6 million, less any amounts equal to any and all money, obligations, and/or liabilities incurred by Gulfport Parent and owed to Midship, as well as punitive and exemplary damages, on the basis of Midship's breach of contract, conversion, fraud, negligent misrepresentation, and violation of the automatic stay under section 362 of the Bankruptcy Code, and on the basis of section 542 of the Bankruptcy Code, requiring turnover of the property of the estate.

On November 18, 2020, the Debtors moved for a preliminary injunction in the adversary proceeding [Docket No. 6]. After the filing of the Midship Complaint, the Debtors and Midship engaged in negotiations to resolve the Midship AP. The parties adjourned the hearing on the request for the preliminary injunction and continued negotiations to resolve the Midship AP and reach a new long-term arrangement.

On December 15, 2020, the Debtors and Midship Filed the *Joint Motion of Debtors and Midship Pipeline Company, LLC for Entry of an Order (I) Authorizing and Approving Settlement Agreement and (II) Granting Related Relief* [Docket No. 442] (the "Midship Settlement Agreement"). The Midship Settlement Agreement includes a revised midstream service agreement with Midship (the "New Gulfport TSA") and fully resolves the Midship AP. On January 8, 2021, the Bankruptcy Court entered an order approving the Midship Settlement Agreement [Docket No. 589].

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N. The FERC Adversary Proceeding

In the course of the Chapter 11 Cases, the Debtors are seeking to reject, pursuant to section 365 of the Bankruptcy Code and applicable binding Fifth Circuit Court of Appeals precedent, certain negotiated rate firm transportation natural gas transportation service agreements. Rates under these contracts are regulated by the Federal Energy Regulatory Commission (“FERC”).

FERC has maintained that rejection of a FERC-jurisdictional executory contract in bankruptcy abrogates or modifies the rates of that contract and that FERC has ultimate authority to pass judgment on the modification or abrogation of the rates in a FERC-jurisdictional contract through rejection in bankruptcy. The Debtors dispute this view.

Accordingly, on November 15, 2020, the Debtors commenced an adversary proceeding against FERC (Adv. Pro. 20-03464) (the “FERC AP”) by filing a complaint with the Bankruptcy Court (the “FERC Complaint”) [FERC AP Docket No. 1]. The FERC Complaint seeks a declaratory judgment from the Bankruptcy Court that: (i) the Bankruptcy Court has exclusive jurisdiction—which FERC cannot preempt or negate—over the Debtors’ right to reject the firm transportation agreements under section 365 of the Bankruptcy Code; (ii) the Debtors do not need FERC’s approval or any authorization under the Natural Gas Act to reject the firm transportation agreements under the Bankruptcy Code; and (iii) FERC cannot act under the Natural Gas Act to enforce the Debtors’ obligations or compel the Debtors’ continued performance of any firm transportation agreement for which rejection is approved. In addition, the FERC Complaint seeks preliminary and permanent injunctions enjoining FERC from interfering with the Debtors’ rights to reject the firm transportation agreements pursuant to section 365 of the Bankruptcy Code.

The FERC Complaint also sought entry of a related temporary restraining order against FERC. On November 16, 2020, the Bankruptcy Court denied the Debtors’ request for a temporary restraining order.

O. The FT Agreement Rejection Motions.

In the period leading up to the Petition Date, the Debtors analyzed their executory contracts and unexpired leases, including negotiated rate, firm natural gas transportation service agreements (the “FT Agreements”), in light of the Debtors’ go-forward business plan. The FT Agreements require the Debtors to pay fixed capacity reservation charges whether or not the Debtors actually ship or receive any benefit from that capacity. In addition, the pricing environment for gas production and the Debtors’ financial condition when the FT Agreements were executed were materially different than they have been recently. Based on recent pricing for natural gas, it is no longer economical for the Debtors to maintain certain of the FT Agreements. As a result of their analysis, the Debtors determined that, in their business judgment, certain of the FT Agreements are unnecessary and burdensome to the Debtors’ estates, and it is in the best interests of their estates to reject those FT Agreements and related contracts effective as of the Petition Date.

On November 15, 2020, the Debtors Filed the *Motion of Gulfport Energy Corporation for Entry of an Order (I) Authorizing Rejection of the Negotiated Rate Firm Transportation Agreements with Rockies Express Pipeline LLC and Rover Pipeline, LLC and Related Contracts Effective as of the Petition Date and (II) Granting Related Relief* [Docket No. 59] and the *Motion of Gulfport Energy Corporation for Entry of an Order (I) Authorizing Rejection of Certain Negotiated Rate Firm Transportation Agreements and Related Contracts Effective as of the Petition Date and (II) Granting Related Relief* [Docket No. 58] (collectively, the “FERC Contracts Rejection Motions”). On December 31, 2020, the Debtors Filed the *Motion of Gulfport Energy Corporation for Entry of an Order (I) Authorizing Rejection of the Negotiated Rate Firm Transportation Agreement with Enable Gas Transmission Effective as of December 31, 2020 and (II) Granting Related Relief* [Docket No. 517] (the “Enable Rejection Motion”).

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On December 4, 2020, FERC Filed a limited objection [Docket No. 290] to the FERC Contracts Rejection Motions. On December 7, 2020, a number of objections were Filed by other FT Agreement contract counterparties: (i) Everest Reinsurance Company and Everest National Insurance Company Filed an objection to the FERC Contracts Rejection Motions [Docket No. 299]; (ii) Rover Filed an objection [Docket No. 302]; and (iii) QBE Insurance Corporation Filed a joinder to Rover’s objection [Docket No. 304].

In conjunction with these objections, on December 2, 2020, REX Filed the *Motion to Withdraw Reference of the Motion of Gulfport Energy Corporation for Entry of an Order (I) Authorizing Rejection of the Negotiated Rate Firm Transportation Agreements with Rockies Express Pipeline LLC and Rover Pipeline, LLC and Related Contracts Effective as of the Petition Date and (II) Granting Related Relief* [Docket No. 274] (the “REX Motion to Withdraw the Reference”). After REX, TC Energy [Docket No. 296] and Rover [Docket No. 301] Filed similar motions to withdraw the reference (together with the REX Motion to Withdraw the Reference, collectively the “Motions to Withdraw Reference”). In response, the Debtors Filed the *Debtors’ Objection to Rockies Express Pipeline LLC’s Motion to Withdraw Reference of the Motion of Gulfport Energy Corporation for Entry of an Order (I) Authorizing Rejection of the Negotiated Rate Firm Transportation Agreements with Rockies Express Pipeline LLC and Rover Pipeline, LLC and Related Contracts Effective as of the Petition Date and (II) Granting Related Relief* [Docket No. 323] and the *Debtors’ Combined Objection to TC Energy’s and Rover Pipeline LLC’s Motions to Withdraw Reference of the Debtors’ Motions for Entry of an Order (I) Authorizing Rejection of Certain Negotiated Rate Firm Transportation Agreement and Related Contracts Effective as of the Petition Date and (II) Granting Related Relief* [Docket No. 335]. A hearing on the Motions to Withdraw Reference was held on December 11, 2020. On January 21, 2021, the Bankruptcy Court issued a report and recommendation regarding the Motions to Withdraw Reference and recommended that the District Court (as defined herein) deny the motions in their entirety [Docket No. 661]. On January 21, 2021, the Motions to Withdraw Reference were assigned to United States District Judge Lynn N. Hughes of the United States District Court for the Southern District of Texas (the “District Court”), civil case number 4:21-cv-00232 and remain pending before the District Court as of the date of this Disclosure Statement.

On January 27, 2021, the Debtors and REX Filed the *Joint Motion of the Debtors and Rockies Express Pipeline LLC for Entry of an Order (I) Authorizing And Approving Settlement Agreement and (II) Granting Related Relief* [Docket No. 701]. On January 28, 2021, the Debtors and REX Filed the *Joint Stipulation and Agreed Order By and Among the Debtors and Rockies Express Pipeline LLC Granting Relief From the Automatic Stay* [Docket No. 709].

On December 31, 2020, the Debtors Filed the Enable Rejection Motion. The Enable Rejection Motion rejects certain negotiated rate firm natural gas transportation service agreements, the rates, terms, and conditions of which are subject to the FERC Gas Tariff. A hearing is scheduled for the Enable Rejection Motion on March 3, 2021 at 9:30 a.m., prevailing Central Time.

P. G&P Contract Rejection Motion.

On November 24, 2020, the Debtors Filed the *Debtors’ Motion for Entry of an Order (I) Authorizing Rejection of Certain Executory Contracts Effective as of November 23, 2020 and (II) Granting Related Relief* [Docket No. 230] (the “G&P Rejection Motion”). These contracts relate to either the gathering for or purchase of gas from the Debtors.

On December 15, 2020, DCP NGL Services, LLC (“DCP”) Filed a limited objection [Docket No. 439], arguing that the G&P Rejection Motion should not be granted on a retroactive basis with respect to Gulfport’s contract with DCP because the Debtors have continued to receive the benefit of this contract subsequent to the Petition Date and the proposed effective date of the G&P Rejection Motion. On January 20, 2021, the Debtors Filed a joint stipulation and agreed order with DCP [Docket No. 646].

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IX. RISK FACTORS

Holders of Claims should read and consider carefully the risk factors set forth below before voting to accept or reject the Plan. Although there are many risk factors discussed below, these factors should not be regarded as constituting the only risks present in connection with the Debtors' business or the Plan and its implementation. For additional risk factors that may affect the Debtors' restructuring, please refer to the Debtors' publicly available filings with the SEC, including but not limited to the Debtors' most recent annual form 10-K filed on February 27, 2020 and quarterly form 10-Q filed on November 9, 2020.

THE DEBTORS HAVE PROVIDED THE FOLLOWING RISK FACTOR DESCRIPTIONS TO SATISFY THE DISCLOSURE REQUIREMENTS OF SECTION 1125 OF THE BANKRUPTCY CODE. DISCLOSURE AND DISCUSSION OF ADDITIONAL RISK FACTORS RELATED TO THE DEBTORS' BUSINESS MAY BE FOUND IN PUBLICLY AVAILABLE SECURITIES FILINGS.

A. Bankruptcy Law Considerations.

The occurrence or non-occurrence of any or all of the following contingencies, and any others, could affect distributions available to Holders of Allowed Claims and Allowed Interests under the Plan but will not necessarily affect the validity of the vote of the Impaired Classes to accept or reject the Plan or require a re-solicitation of the votes of Holders of Claims in such Impaired Classes.

1. There Is a Risk of Termination of the Restructuring Support Agreement.

The Restructuring Support Agreement contains provisions that give the Consenting Stakeholders the ability to terminate the Restructuring Support Agreement upon the occurrence of certain events or if certain conditions are not satisfied, including the failure to achieve certain milestones. To the extent that events giving rise to termination of the Restructuring Support Agreement occur, the Restructuring Support Agreement may terminate prior to the Confirmation or Consummation of the Plan, which could result in the loss of support for the Plan by important creditor constituencies. Any such loss of support could adversely affect the Debtors' ability to confirm and consummate the Plan.

2. Parties in Interest May Object to the Plan's Classification of Claims and Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtors believe that the classification of the Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Interests each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims or Interests, as applicable, in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

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3. The Conditions Precedent to the Effective Date of the Plan May Not Occur.

As more fully set forth in Article IX of the Plan, the Effective Date of the Plan is subject to a number of conditions precedent. If such conditions precedent are not waived or not met, the Effective Date will not take place.

4. The Conditions Precedent to Consummation of the Exit Facility May Not Occur.

As more fully set forth in the Exit Facility Documentation, the Exit Facility is subject to a number of conditions precedent. These conditions precedent include, among other things, requirements for leverage and liquidity of the Reorganized Debtors. If these conditions precedent are not satisfied or waived, the Exit Facility may not be consummated, and because consummation of the Exit Facility is itself a condition precedent to the Effective Date, the Effective Date may not take place.

5. The Bankruptcy Court May Not Grant the Midstream Contract Rejection Motions.

The Bankruptcy Court could deny the Debtors' motions to reject certain FT Agreements, and because one of the conditions precedent to consummation of the Exit Facility is to permanently reduce their contractual future demand reservation fees by at least 50% of the present value of all such fees owed on October 31, 2020, and reduce the future firm transportation average daily demand reservation volumes by at least 35% of the amount as of October 31, 2020, the Exit Facility may not be consummated. Because consummation of the Exit Facility is itself a condition precedent to the Effective Date, the Effective Date may not take place as a result.

6. The District Court May Grant the Motions to Withdraw Reference.

The Bankruptcy Court issued a report and recommendation on the Motions to Withdraw Reference. The Bankruptcy Court recommends that the Motions to Withdraw Reference be denied, but the District Court could nonetheless grant the Motions to Withdraw Reference and withdraw the reference with respect to the FERC Contracts Rejection Motions. In the event the District Court withdrew the reference with respect to the FERC Contracts Rejection Motions, the District Court would be the court responsible for hearing the FERC Contracts Rejection Motions. There is no certainty around the timing of the District Court's ruling on the Motions to Withdraw Reference or the timing of a ruling on the FERC Contracts Rejection Motions in the Bankruptcy Court or the District Court.

7. The Debtors May Fail to Satisfy Vote Requirements.

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may need to seek to confirm an alternative chapter 11 plan or transaction, subject to the terms of the Restructuring Support Agreement. There can be no assurance that the terms of any such alternative chapter 11 plan or other transaction would be similar or as favorable to the Holders of Interests and Claims as those proposed in the Plan, and the Debtors do not believe that any such transaction exists or is likely to exist that would be more beneficial to the Estates or Holders of Claims and Interests than the Plan.

8. The Debtors May Not Be Able to Secure Confirmation of the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the Bankruptcy Court that: (a) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to non-accepting holders of claims or equity interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code.

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There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim or Allowed Interest might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement, the balloting procedures, and voting results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation are not met. If a chapter 11 plan of reorganization is not confirmed by the Bankruptcy Court, it is unclear whether the Debtors will be able to reorganize their business and what, if anything, Holders of Allowed Interests and Allowed Claims would ultimately receive.

The Debtors, subject to the terms and conditions of the Plan and the Restructuring Support Agreement, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could result in less favorable treatment of any non-accepting Class of Allowed Claims or Allowed Interests, as well as any class junior to such non-accepting class, than the treatment currently provided in the Plan. Such a less favorable treatment could include a distribution of property with a lesser value than currently provided in the Plan or no distribution whatsoever under the Plan.

9. Nonconsensual Confirmation.

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm a plan at the proponents' request if at least one impaired class (as defined under section 1124 of the Bankruptcy Code) has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired class(es). The Debtors believe that the Plan satisfies these requirements, and the Debtors may request such nonconsensual Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion. In addition, the pursuit of nonconsensual Confirmation or Consummation of the Plan may result in, among other things, increased expenses relating to professional compensation.

10. Continued Risk upon Confirmation.

Even if the Plan is consummated, the Debtors will continue to face a number of risks, including certain risks that are beyond their control, such as further deterioration or other changes in economic conditions, changes in the industry, potential revaluing of their assets due to chapter 11 proceedings, changes in demand for oil and natural gas, and increasing expenses. See Article IX.C of this Disclosure Statement, entitled "Risks Related to the Debtors' and the Reorganized Debtors' Businesses." Some of these concerns and effects typically become more acute when a case under the Bankruptcy Code continues for a protracted period without indication of how or when the case may be completed. As a result of these risks and others, there is no guarantee that a chapter 11 plan of reorganization reflecting the Plan will achieve the Debtors' stated goals.

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In addition, at the outset of the Chapter 11 Cases, the Bankruptcy Code provides the Debtors with the exclusive right to propose the Plan and prohibits creditors and others from proposing a plan. The Debtors will have retained the exclusive right to propose the Plan upon filing their Petitions. If the Bankruptcy Court terminates that right, however, or the exclusivity period expires, there could be a material adverse effect on the Debtors' ability to achieve confirmation of the Plan in order to achieve the Debtors' stated goals.

Further, even if the Debtors' debts are reduced and/or discharged through the Plan, the Debtors may need to raise additional funds through public or private debt or equity financing or other various means to fund the Debtors' businesses after the completion of the proceedings related to the Chapter 11 Cases. Adequate funds may not be available when needed or may not be available on favorable terms.

11. The Chapter 11 Cases May Be Converted to Cases under Chapter 7 of the Bankruptcy Code

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in a chapter 11 plan because of (a) the likelihood that the assets would have to be sold or otherwise disposed of in a disorderly fashion over a short period of time, rather than reorganizing or selling the business as a going concern at a later time in a controlled manner, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and Claims, some of which would be entitled to priority, would be generated during the liquidation, including Claims resulting from the rejection of Unexpired Leases and other Executory Contracts in connection with cessation of operations.

12. The Debtors May Object to the Amount or Classification of a Claim.

Except as otherwise provided in the Plan or the Restructuring Support Agreement, the Debtors reserve the right to object to the amount or classification of any Claim under the Plan, subject to the terms of the Restructuring Support Agreement. The estimates set forth in this Disclosure Statement cannot be relied upon by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

13. Risk of Non-Occurrence of the Effective Date.

Although the Debtors believe that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur.

14. Contingencies Could Affect Votes of Impaired Classes to Accept or Reject the Plan

The distributions available to Holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Allowed Claims to be subordinated to other Allowed Claims.

The estimated Claims and creditor recoveries set forth in this Disclosure Statement are based on various assumptions, and the actual Allowed amounts of Claims may significantly differ from the estimates. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims may vary from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtors cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Allowed Claims under the Plan.

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15. Releases, Injunctions, and Exculpations Provisions May Not Be Approved.

Article VIII of the Plan provides for certain releases, injunctions, and exculpations, including a release of liens and third-party releases that may otherwise be asserted against the Debtors, Reorganized Debtors, or Released Parties, as applicable. The releases, injunctions, and exculpations provided in the Plan are subject to objection by parties in interest and may not be approved. If the releases are not approved, certain Released Parties may withdraw their support for the Plan.

The releases provided to the Released Parties and the exculpation provided to the Exculpated Parties are necessary to the success of the Debtors' reorganization because the Released Parties and Exculpated Parties have made significant contributions to the Debtors' reorganization efforts and have agreed to make further contributions, but only if they receive the full benefit of the Plan's release and exculpation provisions. The Plan's release and exculpation provisions are an inextricable component of the Plan and the significant deleveraging and financial benefits that they embody.

B. Risks Related to Recoveries Under the Plan

1. The Reorganized Debtors May Not Be Able to Achieve Their Projected Financial Results

The Reorganized Debtors may not be able to achieve their projected financial results. The Financial Projections set forth in this Disclosure Statement represent the Debtors' management team's best estimate of the Debtors' future financial performance, which is necessarily based on certain assumptions regarding the anticipated future performance of the Reorganized Debtors' operations, as well as the United States and world economies in general, and the industry segments in which the Debtors operate in particular. While the Debtors believe that the Financial Projections contained in this Disclosure Statement are reasonable, there can be no assurance that they will be realized. If the Debtors do not achieve their projected financial results, the value of the New Common Stock and New Preferred Stock may be negatively affected and the Debtors may lack sufficient liquidity to continue operating as planned after the Effective Date. Moreover, the financial condition and results of operations of the Reorganized Debtors from and after the Effective Date may not be comparable to the financial condition or results of operations reflected in the Debtors' historical financial statements.

2. The New Common Stock and New Preferred Stock is Subject to Dilution.

The ownership percentage represented by the New Common Stock and New Preferred Stock distributed on the Effective Date under the Plan will be subject to dilution from the Management Incentive Plan or other securities that may be issued post-emergence.

3. Certain Tax Implications of the Plan.

Holders of Allowed Claims should carefully review Article XII of this Disclosure Statement, entitled "Certain United States Federal Income Tax Consequences of the Plan," to determine how the tax implications of the Plan and the Chapter 11 Cases may adversely affect the Reorganized Debtors and Holders of certain Claims.

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4. The Debtors May Not Be Able to Accurately Report Their Financial Results.

The Debtors have established internal controls over financial reporting. However, internal controls over financial reporting may not prevent or detect misstatements or omissions in the Debtors' financial statements because of their inherent limitations, including the possibility of human error, and the circumvention or overriding of controls or fraud. Therefore, even effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. If the Debtors fail to maintain the adequacy of their internal controls, the Debtors may be unable to provide financial information in a timely and reliable manner within the time periods required for the Debtors' financial reporting under SEC rules and regulations and the terms of the agreements governing the Debtors' indebtedness. Any such difficulties or failure could materially adversely affect the Debtors' business, results of operations, and financial condition. Further, the Debtors may discover other internal control deficiencies in the future and/or fail to adequately correct previously identified control deficiencies, which could materially adversely affect the Debtors' business, results of operations, and financial condition.

5. A Liquid Trading Market for the Shares of New Common Stock May Not Develop.

Although the Debtors and the Reorganized Debtors may apply to relist the New Common Stock on a national securities exchange (subject to the terms of the Restructuring Support Agreement), the Debtors make no assurance that they will be able to obtain this listing or, even if the Debtors do, that liquid trading markets for shares of New Common Stock will develop. The liquidity of any market for shares of New Common Stock will depend upon, among other things, the number of holders of shares of New Common Stock, the Reorganized Debtors' financial performance, and the market for similar securities, none of which can be determined or predicted. Accordingly, there can be no assurance that an active trading market for the New Common Stock will develop, nor can any assurance be given as to the liquidity or prices at which such securities might be traded. In the event an active trading market does not develop, the ability to transfer or sell New Common Stock may be substantially limited.

6. The Trading Price for the Shares of New Common Stock May Be Depressed Following the Effective Date

Assuming that the Effective Date occurs, shares of New Common Stock and New Preferred Stock will be issued to Holders of certain Classes of Claims. Following the Effective Date of the Plan, shares of New Common Stock and New Preferred Stock may be sold to satisfy withholding tax requirements, to the extent necessary to fund such requirements. In addition, Holders of Claims and Interests that receive shares of New Common Stock or New Preferred Stock may seek to sell such securities in an effort to obtain liquidity. These sales and the volume of New Common Stock and New Preferred Stock available for trading could cause the trading price for the shares of New Common Stock or New Preferred Stock to be depressed, particularly in the absence of an established trading market for the New Common Stock and New Preferred Stock.

7. Certain Holders of New Common Stock May be Restricted in their Ability to Transfer or Sell their Securities.

The recipients of shares of New Common Stock to holders who are deemed "underwriters" as defined in section 1145(b) of the Bankruptcy Code (which includes affiliates of the Reorganized Debtors) will be restricted in their ability to transfer or sell their securities. In addition, securities issued under the Plan not under section 1145 of the Bankruptcy Code but pursuant to exemptions from registration under the Securities Act will also be subject to restrictions on resale. Holders of shares of New Common Stock subject to restrictions on resale will be permitted to transfer or sell such securities only pursuant to the provisions of Rule 144 under the Securities Act, if available, or another available exemption from the registration requirements of the Securities Act, or registration under the Securities Act of such shares of New Common Stock. These restrictions may adversely impact the value of the New Common Stock and make it more difficult for such persons to dispose of their securities, or to realize value on such securities, at a time when they wish to do so. See Article XI to this Disclosure Statement, entitled "Certain Securities Law Matters."

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C. Risks Related to the Debtors' and the Reorganized Debtors' Businesses

1. The Reorganized Debtors May Not Be Able to Generate Sufficient Cash to Service All of Their Indebtedness

The Reorganized Debtors' ability to make scheduled payments on, or refinance their debt obligations, depends on the Reorganized Debtors' financial condition and operating performance, which are subject to prevailing economic, industry, and competitive conditions and to certain financial, business, legislative, regulatory, and other factors beyond the Reorganized Debtors' control. The Reorganized Debtors may be unable to maintain a level of cash flow from operating activities sufficient to permit the Reorganized Debtors to pay the principal, premium, if any, and interest on their indebtedness, including, without limitation, potential borrowings under the Exit Facility upon emergence.

2. The Debtors Will Be Subject to the Risks and Uncertainties Associated with the Chapter 11 Cases

For the duration of the Chapter 11 Cases, the Debtors' ability to operate, develop, and execute a business plan, and continue as a going concern, will be subject to the risks and uncertainties associated with bankruptcy. These risks include the following: the (a) ability to develop, confirm, and consummate the Restructuring Transactions specified in the Plan; (b) ability to obtain Bankruptcy Court approval with respect to motions Filed in the Chapter 11 Cases from time to time; (c) ability to maintain relationships with suppliers, vendors, service providers, customers, employees, and other third parties; (d) ability to maintain contracts that are critical to the Debtors' operations; (e) ability of third parties to seek and obtain Bankruptcy Court approval to terminate contracts and other agreements with the Debtors; (f) ability of third parties to seek and obtain Bankruptcy Court approval to terminate or shorten the exclusivity period for the Debtors to propose and confirm a chapter 11 plan, to appoint a chapter 11 trustee, or to convert the Chapter 11 Cases to chapter 7 proceedings; and (g) actions and decisions of the Debtors' creditors and other third parties who have interests in the Chapter 11 Cases that may be inconsistent with the Debtors' plans.

These risks and uncertainties could affect the Debtors' businesses and operations in various ways. For example, negative events associated with the Chapter 11 Cases could adversely affect the Debtors' relationships with suppliers, service providers, customers, employees, and other third parties, which in turn could adversely affect the Debtors' operations and financial condition. Also, the Debtors will need the prior approval of the Bankruptcy Court for transactions outside the ordinary course of business, which may limit the Debtors' ability to respond timely to certain events or take advantage of certain opportunities. Because of the risks and uncertainties associated with the Chapter 11 Cases, the Debtors cannot accurately predict or quantify the ultimate impact of events that occur during the Chapter 11 Cases that may be inconsistent with the Debtors' plans.

3. Operating in Bankruptcy for a Long Period of Time May Harm the Debtors' Businesses

The Debtors' future results will be dependent upon the successful confirmation and implementation of a plan of reorganization. A long period of operations under Bankruptcy Court protection could have a material adverse effect on the Debtors' businesses, financial condition, results of operations, and liquidity. So long as the proceedings related to the Chapter 11 Cases continue, senior management will be required to spend a significant amount of time and effort dealing with the reorganization instead of focusing exclusively on business operations. A prolonged period of operating under Bankruptcy Court protection also may make it more difficult to retain management and other key personnel necessary to the success and growth of the Debtors' businesses. In addition, the longer the proceedings related to the Chapter 11 Cases continue, the more likely it is that customers and suppliers will lose confidence in the Debtors' ability to reorganize their businesses successfully and will seek to establish alternative commercial relationships.

So long as the proceedings related to the Chapter 11 Cases continue, the Debtors will be required to incur substantial costs for professional fees and other expenses associated with the administration of the Chapter 11 Cases.

Further, the Debtors cannot predict the ultimate amount of all settlement terms for the liabilities that will be subject to a plan of reorganization. Even after a plan of reorganization is approved and implemented, the Reorganized Debtors' operating results may be adversely affected by the possible reluctance of prospective lenders and other counterparties to do business with a company that recently emerged from bankruptcy protection.

4. Financial Results May Be Volatile and May Not Reflect Historical Trends.

The Financial Projections attached hereto as Exhibit C are based on assumptions that are an integral part of the projections, including Confirmation and Consummation of the Plan in accordance with its terms, the anticipated future performance of the Debtors, industry performance, general business and economic conditions, and other matters, many of which are beyond the control of the Debtors and some or all of which may not materialize.

In addition, unanticipated events and circumstances occurring after the date hereof may affect the actual financial results of the Debtors' operations. These variations may be material and may adversely affect the value of the New Common Stock, the New Preferred Stock, and the ability of the Debtors to make payments with respect to their indebtedness. Because the actual results achieved may vary from projected results, perhaps significantly, the Financial Projections should not be relied upon as a guarantee or other assurance of the actual results that will occur.

Further, during the Chapter 11 Cases, the Debtors expect that their financial results will continue to be volatile as restructuring activities and expenses, contract terminations and rejections, and claims assessments significantly impact the Debtors' consolidated financial statements. As a result, the Debtors' historical financial performance likely will not be indicative of their financial performance after the Petition Date. In addition, if the Debtors emerge from the Chapter 11 Cases, the amounts reported in subsequent consolidated financial statements may materially change relative to historical consolidated financial statements, including as a result of revisions to the Debtors' operating plans pursuant to a plan of reorganization. The Debtors also may be required to adopt fresh start accounting, in which case their assets and liabilities will be recorded at fair value as of the fresh start reporting date, which may differ materially from the recorded values of assets and liabilities on the Debtors' consolidated balance sheets. The Debtors' financial results after the application of fresh start accounting also may be different from historical trends.

Lastly, the business plan was developed by the Debtors with the assistance of their advisors. There can be no assurances that the Debtors' business plan will not change, perhaps materially, as a result of decisions that the board of directors may make after fully evaluating the strategic direction of the Debtors and their business plan. Any deviations from the Debtors' existing business plan would necessarily cause a deviation.

5. The Debtors' Substantial Liquidity Needs May Impact Revenue.

The Debtors operate in a capital-intensive industry. If the Debtors' cash flow from operations remains depressed or decreases as a result of low commodity prices, decreased E&P sector capital expenditures, or otherwise, the Debtors may not have the ability to expend the capital necessary to improve or maintain their current operations, resulting in decreased revenues over time.

The Debtors face uncertainty regarding the adequacy of their liquidity and capital resources. In addition to the cash necessary to fund ongoing operations, the Debtors have incurred significant professional fees and other costs in connection with preparing for the Chapter 11 Cases and expect to continue to incur significant professional fees and

costs throughout the Chapter 11 Cases. The Debtors cannot guarantee that cash on hand and cash flow from operations will be sufficient to continue to fund their operations and allow the Debtors to satisfy obligations related to the Chapter 11 Cases until the Debtors are able to emerge from bankruptcy protection.

The Debtors' liquidity, including the ability to meet ongoing operational obligations, will be dependent upon, among other things: (a) their ability to comply with the terms and condition of the DIP Orders; (b) their ability to maintain adequate cash on hand; (c) their ability to develop, confirm, and consummate a chapter 11 plan or other alternative restructuring transaction; and (d) the cost, duration, and outcome of the Chapter 11 Cases. In the event that cash on hand, cash flow from operations, and cash provided through access to cash collateral are not sufficient to meet the Debtors' liquidity needs, the Debtors may be required to seek additional financing. The Debtors can provide no assurance that additional financing would be available or, if available, offered to the Debtors on acceptable terms. The Debtors' access to additional financing is, and for the foreseeable future likely will continue to be, extremely limited if it is available at all. In addition, the Debtors' ability to consummate the Plan is dependent on, among other things, their ability to satisfy the conditions precedent to the Exit Facility. The Debtors can provide no assurance that such conditions will be satisfied. The Debtors' long-term liquidity requirements and the adequacy of their capital resources are difficult to predict at this time.

6. Oil and Natural Gas Prices Are Volatile, and Continued Low Oil or Natural Gas Prices Could Materially Adversely Affect the Debtors' Businesses, Results of Operations, and Financial Condition.

The Debtors' revenues and profitability and the value of the Debtors' properties substantially depend on prevailing oil and natural gas prices. In short, the Debtors face a high level of exposure to oil and natural gas price swings. Oil and natural gas are commodities, and therefore, their prices are subject to wide fluctuations in response to changes in supply and demand and are subject to both short- and long-term cyclical trends. Oil and natural gas prices historically have been volatile and are likely to continue to be volatile in the future, especially given current economic and geopolitical conditions. The prices for oil and natural gas are subject to a variety of factors beyond the Debtors' control, such as:

- the current uncertainty in the global economy;
- changes in global supply and demand for oil and natural gas;
- the condition of the United States and global economies;
- the actions of certain foreign countries;
- the price and quantity of imports of foreign oil and natural gas;

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- political conditions, including embargoes, war or civil unrest in or affecting other oil producing activities of certain countries;
- the level of global oil and natural gas exploration and production activity;
- the level of global oil and natural gas inventories;
- production or pricing decisions made by OPEC;
- weather conditions;
- technological advances affecting energy consumption; and
- the price and availability of alternative fuels.

As set forth in Article II of this Disclosure Statement, in early 2020, the continued spread of COVID-19 caused oil and gas prices to suffer. Subsequently, in March 2020, a breakdown in dialogue between OPEC and Russia over proposed oil production cuts in the midst of the COVID-19 pandemic caused oil and gas prices to fall to their lowest levels in nearly twenty years. It is impossible to tell with certainty whether a deal will be reached regarding production levels and whether such a deal would ultimately correct commodity prices. Further, it is impossible to tell with certainty how, or to what degree, the COVID-19 pandemic will affect the macro-economy and commodity prices in the long term.

Continued volatility or weakness in oil and natural gas prices (or the perception that oil and natural gas prices will remain depressed) generally leads to decreased upstream spending, which in turn negatively affects demand for the Debtors' services. A sustained decline in oil or natural gas prices may materially and adversely affect the Debtors' future business, financial condition, results of operations, liquidity or ability to finance planned capital expenditures. As a result, if there is a further decline or sustained depression in commodity prices, the Debtors may, among other things, be unable to maintain or increase their borrowing capacity, meet their debt obligations or other financial commitments, or obtain additional capital, all of which could materially adversely affect the Debtors' businesses, results of operations, and financial condition.

7. The Debtors' Operations May Be Impacted by the Continuing COVID-19 Pandemic.

The continued spread of COVID-19 could have a significant impact on the Debtors' business, both in the context of consumer demand and production capacity. On a macro level, this pandemic could dampen global growth and ultimately lead to a greater economic recession than already exists. If this occurs, demand for oil and natural gas would likely decline, as would commodity prices generally. Such a scenario would negatively impact the Debtors' financial performance. In addition, government lockdowns and employee infections could both inhibit the Debtors' ability to extract and transport their hydrocarbon production. This diminished production capacity would negatively affect the Debtors' financial performance.

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8. The Debtors' Business is Subject to Complex Laws and Regulations That Can Adversely Affect the Cost, Manner, or Feasibility of Doing Business.

The Debtors' operations are subject to extensive federal, state, and local laws and regulations, including complex environmental laws and occupational health and safety laws. The Debtors may be required to make large expenditures to comply with such regulations. Failure to comply with these laws and regulations may result in the suspension or termination of operations and subject the Debtors to administrative, civil and criminal penalties. Additionally, in recent years, the practice of hydraulic fracturing has come under increased scrutiny by the environmental community. The Debtors' operations create the risk of environmental liabilities to the government or third parties for any unlawful discharge of oil, gas, or other pollutants into the air, soil, or water. In the event of environmental violations, the Reorganized Debtors may be charged with

remedial costs and land owners may file claims for alternative water supplies, property damage, or bodily injury. Laws and regulations protecting the environment have become more stringent in recent years, and may, in some circumstances, result in liability for environmental damage regardless of negligence or fault. In addition, pollution and similar environmental risks generally are not fully insurable. These liabilities and costs could have a material adverse effect on the business, financial condition, results of operations, and cash flows of the Reorganized Debtors.

9. The Reorganized Debtors May Be Adversely Affected by Potential Litigation, Including Litigation Arising Out of the Chapter 11 Cases

In the future, the Reorganized Debtors may become parties to litigation. In general, litigation can be expensive and time consuming to bring or defend against. Such litigation could result in settlements or damages that could significantly affect the Reorganized Debtors' financial results. It is also possible that certain parties will commence litigation with respect to the treatment of their Claims or Interests under the Plan. It is not possible to predict the potential litigation that the Reorganized Debtors may become party to, nor the final resolution of such litigation. The impact of any such litigation on the Reorganized Debtors' businesses and financial stability, however, could be material.

10. The Loss of Key Personnel Could Adversely Affect the Debtors' Operations.

The Debtors' operations are dependent on a relatively small group of key management personnel and a highly-skilled employee base. The Debtors' recent liquidity issues and the Chapter 11 Cases have created distractions and uncertainty for key management personnel and employees. As a result, the Debtors have experienced, and may continue to experience, increased levels of employee attrition. Because competition for experienced personnel can be significant, the Debtors may be unable to find acceptable replacements with comparable skills and experience and the loss of such key management personnel could adversely affect the Debtors' ability to operate their businesses. In addition, a loss of key personnel or material erosion of employee morale could have a material adverse effect on the Debtors' ability to meet expectations, thereby adversely affecting the Debtors' businesses and the results of operations.

X. CONFIRMATION OF THE PLAN

A. The Confirmation Hearing.

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court to hold a hearing on confirmation of the Plan and recognizes that any party in interest may object to confirmation of the Plan. The Confirmation Hearing is currently scheduled for April 7, 2021, at 1:00 p.m., prevailing Central Time. The Confirmation Hearing may, however, be continued or adjourned from time to time without further notice to parties in interest other than an adjournment announced in open court or a notice of adjournment Filed with the Bankruptcy Court and served in accordance with the Bankruptcy Rules. Subject to section 1127 of the Bankruptcy Code and the Restructuring Support Agreement, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

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Additionally, section 1128(b) of the Bankruptcy Code provides that a party in interest may object to confirmation. The deadline to object to confirmation is currently March 29, 2021 at 4:00 p.m. (prevailing Central Time). An objection to confirmation of the Plan must be Filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the Bankruptcy Court's order so that the objection is actually received on or before the deadline to File such objections as set forth therein.

B. Purpose of the Confirmation Hearing

The confirmation of a plan of reorganization by a bankruptcy court binds the debtor, any issuer of securities under a plan of reorganization, any person acquiring property under a plan of reorganization, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the bankruptcy court confirming a plan of reorganization discharges a debtor from any debt that arose before the confirmation of such plan of reorganization and provides for the treatment of such debt in accordance with the terms of the confirmed plan of reorganization.

C. Confirmation Requirements.

Among the requirements for confirmation of a plan pursuant to section 1129 of the Bankruptcy Code are: (1) the plan is accepted by all impaired classes of claims or interests,³⁵ or if rejected by an impaired class, the plan "does not discriminate unfairly" and is "fair and equitable" as to the rejecting impaired class; (2) the plan is feasible; and (3) the plan is in the "best interests" of holders of claims or interests.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies all of the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that: (1) the Plan satisfies, or will satisfy, all of the necessary statutory requirements of chapter 11 for plan confirmation; (2) the Debtors have complied, or will have complied, with all of the necessary requirements of chapter 11 for plan confirmation; and (3) the Plan has been proposed in good faith.

D. Feasibility.

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan of reorganization is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor, or any successor to the debtor (unless such liquidation or reorganization is proposed in such plan of reorganization).

To determine whether the Plan meets this feasibility requirement, the Debtors, with the assistance of their advisors, have analyzed their ability to meet their respective obligations under the Plan. As part of this analysis, the Debtors have prepared their projected consolidated balance sheet, income statement, and statement of cash flows (the "Financial Projections"). Creditors and other interested parties should review Article IX of this Disclosure Statement, entitled "Risk Factors," for a discussion of certain factors that may affect the future financial performance of the Reorganized Debtors.

³⁵ A class of claims is "impaired" within the meaning of section 1124 of the Bankruptcy Code unless the plan (a) leaves unaltered the legal, equitable and contractual rights to which the claim or equity interest entitles the holder of such claim or equity interest or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable, or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

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The Financial Projections are attached hereto as **Exhibit C** and incorporated herein by reference. Based upon the Financial Projections, the Debtors believe that they will be a viable operation following the Chapter 11 Cases and that the Plan will meet the feasibility requirements of the Bankruptcy Code.

E. Acceptance by Impaired Classes.

The Bankruptcy Code requires, as a condition to confirmation, except as described in the following section, that each Impaired Class of Claims or Interests accept the plan. A class that is not “impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such a class is not required.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in a number of allowed claims in that class, counting only those claims that have *actually* voted to accept or to reject the plan. Thus, a class of Claims will have voted to accept the Plan only if two-thirds in amount and a majority in number of the Allowed Claims in such class that actually vote on the Plan cast their ballots in favor of acceptance.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two-thirds in amount of allowed interests in that class, counting only those interests that have *actually* voted to accept or to reject the plan. Thus, a Class of Interests will have voted to accept the Plan only if two-thirds in amount of the Allowed Interests in such class that actually vote on the Plan cast their ballots in favor of acceptance.

Pursuant to Section III E of the Plan, if a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Holders of such Claims or Interests in such Class shall be deemed to have accepted the Plan.

F. Confirmation Without Acceptance by All Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if all impaired classes have not accepted it, provided that the plan has been accepted by at least one impaired class of claims. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class’s rejection or deemed rejection of the plan, the plan will be confirmed, at the plan proponent’s request, in a procedure commonly known as a “cramdown” so long as the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan.

If any Impaired Class rejects the Plan, the Debtors reserve the right to seek to confirm the Plan utilizing the “cramdown” provision of section 1129(b) of the Bankruptcy Code. To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtors may request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan or any Plan Supplement document, including the right to amend or modify the Plan or any Plan Supplement document to satisfy the requirements of section 1129(b) of the Bankruptcy Code.

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1. No Unfair Discrimination.

The “unfair discrimination” test applies to classes of claims or interests that are of equal priority and are receiving different treatment under a plan. The test does not require that the treatment be the same or equivalent, but that treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims or interests of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly. A plan could treat two classes of similarly situated creditors differently without unfairly discriminating against either class.

2. Fair and Equitable Test.

The “fair and equitable” test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receives more than 100 percent of the amount of the allowed claims in the class. As to the dissenting class, the test sets different standards depending upon the type of claims or equity interests in the class.

The Debtors submit that if the Debtors “cramdown” the Plan pursuant to section 1129(b) of the Bankruptcy Code, the Plan is structured so that it does not “discriminate unfairly” and satisfies the “fair and equitable” requirement. With respect to the unfair discrimination requirement, all Classes under the Plan are provided treatment that is substantially equivalent to the treatment that is provided to other Classes that have equal rank. With respect to the fair and equitable requirement, no Class under the Plan will receive more than 100 percent of the amount of Allowed Claims or Interests in that Class. The Debtors believe that the Plan and the treatment of all Classes of Claims or Interests under the Plan satisfy the foregoing requirements for nonconsensual Confirmation of the Plan.

G. Valuation Analysis.

The Plan provides for Holders of Claims in Classes 4A, 4B, 5A, and 5B to receive shares of New Common Stock in the Reorganized Debtors, upon Consummation of the Plan. Accordingly, PWP performed an analysis of the estimated implied value of the Debtors on a going-concern basis as of December 28, 2020 (the “Valuation Analysis”) at the Debtors’ request. Based on the Valuation Analysis which is attached hereto as Exhibit D, the Reorganized Debtors will have an implied equity value at emergence of approximately \$600 million at the midpoint.

The Valuation Analysis, including the procedures followed, assumptions made, qualifications, and limitations on review undertaken, should be read in conjunction with Article IX of this Disclosure Statement entitled “Risk Factors.” The Valuation Analysis performed by PWP is based on data and information as of December 28, 2020. PWP makes no representations as to changes to such data and information that may have occurred since the date of the Valuation Analysis.

THE VALUATION ANALYSIS REPRESENTS A HYPOTHETICAL VALUATION OF THE REORGANIZED DEBTORS AND THEIR ASSETS AND BUSINESSES, WHICH ASSUMES THAT THE REORGANIZED DEBTORS CONTINUE AS AN OPERATING BUSINESS IN SUBSTANTIALLY THE SAME CORPORATE STRUCTURE. THE ESTIMATED VALUE SET FORTH IN THE VALUATION ANALYSIS DOES NOT PURPORT TO CONSTITUTE AN APPRAISAL OR NECESSARILY REFLECT THE ACTUAL MARKET VALUE THAT MIGHT BE REALIZED THROUGH A SALE OR LIQUIDATION OF THE REORGANIZED DEBTORS, THEIR SECURITIES OR THEIR ASSETS, WHICH MAY BE MATERIALLY DIFFERENT THAN THE ESTIMATES SET FORTH IN THE VALUATION ANALYSIS. ACCORDINGLY, SUCH ESTIMATED VALUE IS NOT NECESSARILY INDICATIVE OF THE PRICES AT WHICH ANY SECURITIES OF THE REORGANIZED DEBTORS MAY TRADE AFTER GIVING EFFECT TO THE RESTRUCTURING TRANSACTIONS SET FORTH IN THE PLAN. ANY SUCH PRICES MAY BE MATERIALLY DIFFERENT THAN INDICATED BY THE VALUATION ANALYSIS.

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H. Best Interests of Creditors/Liquidation Analysis.

The Debtors believe that the Plan provides Holders of Allowed Claims and Interests the same or greater recovery as would be achieved if the Debtors were to liquidate

under chapter 7 of the Bankruptcy Code. This belief is based on a number of considerations, including: (a) that the Debtors' primary assets likely would have to be sold on a piecemeal basis in a chapter 7 liquidation; (b) the additional Administrative Claims that would be incurred if the cases were converted to a chapter 7 along with the other costs associated therewith; and (c) that there would not be a robust market to liquidate the Debtors' assets and services.

The Debtors, with the assistance of their restructuring advisor, Alvarez & Marsal North America, LLC, have prepared an unaudited liquidation analysis, which is attached hereto as **Exhibit E** (the "Liquidation Analysis"), to assist Holders of Claims and Interests in evaluating the Plan. The Liquidation Analysis compares the projected recoveries that would result from the liquidation of the Debtors in a hypothetical case under chapter 7 of the Bankruptcy Code with the estimated distributions to Holders of Allowed Claims and Interests under the Plan. The Liquidation Analysis is based on the value of the Debtors' assets and liabilities as of a certain date and incorporates various estimates and assumptions, including a hypothetical conversion to a chapter 7 liquidation as of a certain date. Further, the Liquidation Analysis is subject to potentially material changes, including with respect to economic and business conditions as well as legal rulings. Therefore, the actual liquidation value of the Debtors could vary materially from the estimate provided in the Liquidation Analysis.

I. Financial Information and Projections.

In connection with planning and developing the Plan, the Debtors, with the assistance of their advisors, prepared the Financial Projections for fiscal years 2021 through 2025, which are attached hereto as **Exhibit C**, including management's assumptions related thereto. For purposes of the Financial Projections, the Debtors have assumed an illustrative emergence date of April 30, 2021. The Financial Projections assume that the Plan will be implemented in accordance with its stated terms. The Debtors are unaware of any circumstances as of the date of this Disclosure Statement that would require the re-forecasting of the Financial Projections due to a material change in the Debtors' prospects.

The Financial Projections are based on forecasts of key economic variables and may be significantly impacted by, among other factors, changes in the competitive environment, regulatory changes, and/or a variety of other factors, including the factors listed in this Disclosure Statement. Accordingly, the estimates and assumptions underlying the Financial Projections are inherently uncertain and are subject to significant business, economic, and competitive uncertainties. Therefore, such projections, estimates, and assumptions are not necessarily indicative of current values or future performance, which may be significantly less or more favorable than set forth herein. The Financial Projections should be read in conjunction with the assumptions, qualifications, and explanations set forth in this Disclosure Statement.

J. Additional Information Regarding this Disclosure Statement and Plan

If you have any questions regarding this Disclosure Statement or the Plan, please contact the Debtors' Claims and Noticing Agent, Epiq, by emailing gulfportinfo@epiqglobal.com, or by calling (888) 905-0409 (toll free) or +1 503) 597-7687 (international).

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Copies of the Plan and the Disclosure Statement: (a) are available on the Debtors' restructuring website, free of charge, at <https://dm.epiq11.com/case/gulfport/>; (b) may be obtained upon request of the Debtors' proposed counsel at the address specified above; (c) are on file with the Clerk of the Bankruptcy Court, 4th Floor, 515 Rusk Street, Houston, Texas 77002, where they are available for review between the hours of 8:30 a.m. to 5:00 p.m., prevailing Central Time; and (d) are available for inspection for a fee on PACER at <https://ecf.txsb.uscourts.gov>.

XI. CERTAIN SECURITIES LAW MATTERS

The Debtors believe that the New Unsecured Notes, New Common Stock, the New Preferred Stock, and the options or other equity awards (and any New Common Stock underlying such awards) to be issued pursuant to the Management Incentive Plan will be "securities," as defined in section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, and any applicable state securities law (a "Blue Sky Law"). The Debtors further believe that the offer, sale, issuance, and initial distribution of the New Unsecured Notes, the New Common Stock, and the New Preferred Stock (other than any New Preferred Stock issued pursuant to the Backstop Commitment Agreement) by the Reorganized Debtors pursuant to the Plan (collectively, the "1145 Securities") are exempt from federal and state securities registration requirements under various provisions of the Securities Act, the Bankruptcy Code, and any applicable state Blue Sky Law as described in more detail below. The New Common Stock underlying the Management Incentive Plan will be issued pursuant to a registration statement or another available exemption from registration under the Securities Act and other applicable law.

A. Issuance of Securities under the Plan.

All 1145 Securities will be issued in reliance upon section 1145 of the Bankruptcy Code to the extent permitted under applicable law. All 4(a)(2) Securities will be issued in reliance upon section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder, will be considered "restricted securities," and may not be transferred except pursuant to an effective registration statement under the Securities Act or an available exemption therefrom.

Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan of reorganization from registration under section 5 of the Securities Act and state or local securities laws if three principal requirements are satisfied: (i) the securities must be offered and sold under a plan of reorganization and must be securities issued by the debtor, an affiliate participating in a joint plan with the debtor, or a successor to the debtor under the plan; (ii) the recipients of the securities must hold prepetition or administrative expense claims against the debtor or interests in the debtor; and (iii) the securities must be issued entirely in exchange for the recipient's claim against or interest in the debtor or "principally" in exchange for such claim or interest and "partly" for cash or property.

The Debtors' issuance of the New Unsecured Notes, New Common Stock, and New Preferred Stock (other than any New Preferred Stock issued pursuant to the Backstop Commitment Agreement) under the Plan satisfies the requirements of section 1145(a) of the Bankruptcy Code. Accordingly, no registration statement will be filed under the Securities Act or any state securities laws. Recipients of the New Unsecured Notes, New Common Stock, and New Preferred Stock are advised to consult with their own legal advisors as to the availability of any exemption from registration under the Securities Act and any applicable state Blue Sky Law. As discussed below, the exemptions provided for in section 1145(a) do not apply to an entity that is deemed an "underwriter" as such term is defined in section 1145(b) of the Bankruptcy Code.

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B. Subsequent Transfers.

Subject to the limitations in the New Organization Documents, the Section 1145 Securities may be freely transferred by recipients following the initial issuance under the Plan, and all resales and subsequent transfers of the Section 1145 Securities are exempt from registration under the Securities Act and state securities laws, unless the holder is an "underwriter" with respect to such securities. Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions" of an entity that is not an "issuer:" (a) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; (b) offers to sell securities offered or sold under a plan for the holders of such securities; (c) offers to buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (i) with a view to distribution of such securities, and (ii) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (d)

is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In addition, a person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

You should confer with your own legal advisors to determine whether or not you are an "underwriter."

The definition of an "issuer" for purposes of whether a person is an underwriter under section 1145(b)(1)(D) of the Bankruptcy Code, by reference to section 2(a)(11) of the Securities Act, includes as "statutory underwriters" all "affiliates," which are all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. The reference to "issuer," as used in the definition of "underwriter" contained in section 2(a)(11) of the Securities Act, is intended to cover "Controlling Persons" of the issuer of the securities. "Control," as defined in Rule 405 of the Securities Act, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Accordingly, an officer or director of a reorganized debtor or its successor under a plan of reorganization may be deemed to be a "Controlling Person" of the debtor or successor, particularly if the management position or directorship is coupled with ownership of a significant percentage of the reorganized debtor's or its successor's voting securities. In addition, the legislative history of section 1145 of the Bankruptcy Code suggests that a creditor who owns 10% or more of a class of securities of a reorganized debtor may be presumed to be a "Controlling Person" and, therefore, an underwriter.

Resales of the New Unsecured Notes, New Common Stock, or New Preferred Stock constituting 1145 Securities by entities deemed to be "underwriters" (which definition includes "Controlling Persons") are not exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Under certain circumstances, holders of New Unsecured Notes, New Common Stock, or New Preferred Stock who are deemed to be "underwriters" may be entitled to resell their New Unsecured Notes, New Common Stock, or New Preferred Stock pursuant to the limited safe harbor resale provisions of Rule 144 of the Securities Act. Generally, Rule 144 of the Securities Act would permit the public sale of securities received by such Person if the required holding period has been met and, under certain circumstances, current information regarding the issuer is publicly available and volume limitations, manner of sale requirements and certain other conditions are met. Whether any particular Person would be deemed to be an "underwriter" (including whether the Person is a "Controlling Person") with respect to the New Unsecured Notes, New Common Stock, or New Preferred Stock would depend upon various facts and circumstances applicable to that Person. Accordingly, the Debtors express no view as to whether any Person would be deemed an "underwriter" with respect to such New Unsecured Notes, New Common Stock, or New Preferred Stock and, in turn, whether any Person may freely trade such New Unsecured Notes, New Common Stock, or New Preferred Stock.

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Unlike the securities that will be issued pursuant to section 1145(a)(1) of the Bankruptcy Code, the shares of New Preferred Stock issued pursuant to the Backstop Commitment Agreement (which will be issued in reliance on upon section 4(a)(2) of the Securities Act (and/or Regulation D promulgated thereunder)) and any shares of New Common Stock issued in reliance upon section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder (collectively, "4(a)(2) Securities") will be deemed "restricted securities" that may not be offered, sold, exchanged, assigned or otherwise transferred unless they are registered under the Securities Act or an exemption from registration under the Securities Act is available, including under Rule 144 or Rule 144A promulgated under the Securities Act.

Rule 144 provides a limited safe harbor for the resale of restricted securities if certain conditions are met. These conditions vary depending on whether the issuer is a reporting issuer and whether the holder of the restricted securities is an "affiliate" of the issuer. Rule 144 defines an affiliate as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer."

A non-affiliate of an issuer who has not been an affiliate of the issuer during the preceding three months may resell restricted securities after a six-month holding period if at the time of the sale there is available certain current public information regarding the issuer, and may sell the securities after a one-year holding period whether or not there is current public information regarding the issuer. Adequate current public information is available for a reporting issuer if the issuer has filed all periodic reports required under Section 13 or 15(d) of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") during the twelve months preceding the sale of the restricted securities. If the issuer is a non-reporting issuer, adequate current public information is available if certain information about the issuer is made publicly available. The Debtors currently expect that the Reorganized Debtors will continue to be a reporting issuer and file all such required periodic reports and that current public information will be available to allow resales by non-affiliates when the six-month holding period expires (approximately six months after the emergence date).

An affiliate of an issuer that is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may resell restricted securities after the one-year holding period if at the time of the sale certain current public information regarding the issuer is available. An affiliate must also comply with the volume, manner of sale and notice requirements of Rule 144. First, the rule limits the number of restricted securities (plus any unrestricted securities) sold for the account of an affiliate (and related persons) in any three-month period to the greater of 1% of the outstanding securities of the same class being sold, or, if the class is listed on a stock exchange, the average weekly reported volume of trading in such securities during the four weeks preceding the filing of a notice of proposed sale on Form 144, or if no notice is required, the date of receipt of the order to execute the transaction by the broker or the date of execution of the transaction directly with a market maker. Second, the manner of sale requirement provides that the restricted securities must be sold in a broker's transaction, directly with a market maker or in a riskless principal transaction (as defined in Rule 144). Third, if the amount of securities sold under Rule 144 in any three month period exceeds 5,000 shares or has an aggregate sale price greater than \$50,000, an affiliate must file or cause to be filed with the SEC three copies of a notice of proposed sale on Form 144, and provide a copy to any exchange on which the securities are traded.

The Debtors believe that the Rule 144 exemption will not be available with respect to any 4(a)(2) Securities (whether held by non-affiliates or affiliates) until at least six months after the Effective Date, assuming certain public information regarding the issuer is available. Accordingly, unless transferred pursuant to an effective registration statement or another available exemption from the registration requirements of the Securities Act, Holders of 4(a)(2) Securities will be required to hold their 4(a)(2) Securities for at least six months and, thereafter, to sell them only in accordance with the applicable requirements of Rule 144, pursuant to the an effective registration statement or pursuant to another available exemption from the registration requirements of applicable securities laws.

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Each certificate representing, or issued in exchange for or upon the transfer, sale or assignment of, any 4(a)(2) Security shall, upon issuance, be stamped or otherwise imprinted with a restrictive legend substantially consistent with the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON [ISSUANCE DATE], AND SUCH SECURITIES [AND THE COMMON STOCK, IF ANY, ISSUABLE UPON EXERCISE OF SUCH SECURITIES] HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY OTHER APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN AVAILABLE EXEMPTION FROM REGISTRATION THEREUNDER."

The Reorganized Debtors reserve the right to reasonably require certification, legal opinions or other evidence of compliance with Rule 144 as a condition to the removal of such legend or to any resale of the 4(a)(2) Securities. The Reorganized Debtors also reserve the right to stop the transfer of any 4(a)(2) Securities if such transfer is not in compliance with Rule 144, pursuant to an effective registration statement or pursuant to another available exemption from the registration requirements of applicable securities laws. All persons who receive 4(a)(2) Securities will be required to acknowledge and agree that (a) they will not offer, sell or otherwise transfer any 4(a)(2) Securities

except in accordance with an exemption from registration, including under Rule 144 of the Securities Act, if and when available, or pursuant to an effective registration statement, and (b) the 4(a)(2) Securities will be subject to the other restrictions described above.

Any persons receiving restricted securities under the Plan should consult with their own counsel concerning the availability of an exemption from registration for resale of these securities under the Securities Act and other applicable law.

BECAUSE OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION OF WHETHER A PARTICULAR PERSON MAY BE AN UNDERWRITER OR AN AFFILIATE AND THE HIGHLY FACT-SPECIFIC NATURE OF THE AVAILABILITY OF EXEMPTIONS FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING THE EXEMPTIONS AVAILABLE UNDER SECTION 1145 OF THE BANKRUPTCY CODE, SECTION 4(A)(2) OF THE SECURITIES ACT, AND RULE 144 UNDER THE SECURITIES ACT, NONE OF THE DEBTORS MAKE ANY REPRESENTATION CONCERNING THE ABILITY OF ANY PERSON TO DISPOSE OF THE SECURITIES TO BE ISSUED UNDER OR OTHERWISE ACQUIRED PURSUANT TO THE PLAN. THE DEBTORS RECOMMEND THAT POTENTIAL RECIPIENTS OF THE SECURITIES TO BE ISSUED UNDER OR OTHERWISE ACQUIRED PURSUANT TO THE PLAN CONSULT WITH THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY FREELY TRADE SUCH SECURITIES AND THE CIRCUMSTANCES UNDER WHICH THEY MAY RESELL SUCH SECURITIES.

C. New Common Stock & Management Incentive Plan

The Confirmation Order shall authorize the board of directors of the Reorganized Debtors to adopt the Management Incentive Plan, which shall contain terms and conditions acceptable to the Debtors and the Backstop Commitment Parties and as set forth in the Plan Supplement. Awards issued under the Management Incentive Plan that include New Common Stock will dilute all of the New Common Stock outstanding. The New Common Stock is also subject to dilution in connection with the conversion of any other options, convertible securities or other securities that may be issued post-emergence.

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D. Shares Issuable Pursuant to the Rights Offering

Subscription rights to participate in the Rights Offering shall be distributed to the Backstop Commitment Parties and the holders of Allowed General Unsecured Claims in accordance with the Plan and the issuance of such subscription rights will be exempt from SEC registration under applicable law. The Subscription Rights and any shares of New Preferred Stock issuable upon the exercise thereof (other than the unsubscribed shares of New Preferred Stock issued to the Backstop Commitment Parties pursuant to the Backstop Commitment Agreement) will be issued in reliance upon section 1145 of the Bankruptcy Code to the extent permitted under applicable law. The unsubscribed shares of New Preferred Stock issued to the Backstop Commitment Parties pursuant to the Backstop Commitment Agreement, including the Backstop Commitment Premium, will be issued in reliance upon section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder. All shares of New Preferred Stock issued pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder (and any shares of New Common Stock issuable upon conversion of such New Preferred Stock) will be considered “restricted securities” and may not be transferred except pursuant to an effective registration statement under the Securities Act or an available exemption therefrom.

The Debtors believe that the securities issued in the Rights Offering (other than such securities issued pursuant to the Backstop Commitment Agreement) satisfy all the requirements of section 1145(a)(1) of the Bankruptcy Code and are, therefore, exempt from registration under the Securities Act and state securities laws (except with respect to an underwriter as described above).

On the Effective Date, the Reorganized Debtors will consummate the Rights Offering. Unless otherwise expressly allowed in the Rights Offering or Rights Offering Procedures, the right to participate in the Rights Offering may not be sold, transferred, or assigned.

XII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

A. Introduction.

The following discussion summarizes certain United States (“U.S.”) federal income tax consequences of the implementation of the Plan to the Debtors and certain Holders of Claims entitled to vote on the Plan (*i.e.*, Holders of Allowed Claims in Class 3, Class 4A, Class 4B, Class 5A, and Class 5B). This summary does not address the U.S. federal income tax consequences to Holders of Claims or Interests not entitled to vote on the Plan. This summary is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), the U.S. Treasury Regulations promulgated thereunder (the “Treasury Regulations”), judicial decisions, published administrative rules, and pronouncements of the Internal Revenue Service (the “IRS”), all as in effect on the date hereof (collectively, “Applicable Tax Law”). Changes in Applicable Tax Law or new interpretations thereof may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below. The Debtors have not requested, and do not intend to request, any ruling or determination from the IRS or any other taxing authority with respect to the tax consequences discussed herein, and the discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS or any other taxing authority would not assert, or that a court would not sustain, a different position from any position discussed herein.

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This summary does not address non-U.S., U.S. state or local, or non-income tax consequences of the Plan (including such consequences with respect to the Debtors or Reorganized Debtors), nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to a Holder in light of its individual circumstances, such as the consequences to accrual method U.S. Holders (as defined below) that prepare an “applicable financial statement” (as defined in section 451 of the Tax Code), or to a Holder that may be subject to special tax rules such as persons liable for alternative minimum tax, the so called “Medicare tax” or the base erosion and anti-abuse tax, U.S. Holders whose functional currency is not the U.S. dollar, U.S. expatriates, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax-exempt organizations, controlled foreign corporations, passive foreign investment companies, partnerships (or other entities treated as partnerships or other pass-through entities), beneficial owners of partnerships or other pass-through entities, subchapter S-corporations, persons who hold Claims or who will hold the Exit Facility, New Common Stock, New Preferred Stock or New Unsecured Notes as part of a straddle, hedge, conversion transaction, or other integrated investment, persons using a mark-to-market method of accounting, and Holders of Claims who are themselves in bankruptcy. Further, this summary assumes that a Holder of a Claim (a) only holds Claims in a single Class, except as otherwise noted, and (b) holds its Claims, and will hold any Exit Facility, New Common Stock, New Preferred Stock or New Unsecured Notes, as applicable, received pursuant to the Plan only as a “capital asset” (within the meaning of section 1221 of the Tax Code (generally, property held for investment)). This summary also assumes that the various debt and other arrangements to which any of the Debtors or Reorganized Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form and that the RBL Claims and Notes Claims constitute, and that the Exit Facility and New Unsecured Notes will constitute, interests in the Debtors or Reorganized Debtors, as applicable, “solely as a creditor” for purposes of section 897 of the Tax Code. This summary does not discuss differences in tax consequences to Holders of Claims that act as backstop parties or otherwise act or receive consideration in a capacity different from that of any other Holder of a Claim of the same Class or Classes, and the tax consequences for such Holders may differ materially from those described below. This summary does not address the U.S. federal income tax consequences to Holders (1) whose Claims are Unimpaired or otherwise entitled to payment in full in Cash under the Plan, or (2) that are deemed to reject the Plan.

For purposes of this discussion, a “U.S. Holder” is a Holder of a Claim that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof, or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (a) if a court within the United States is able to exercise primary supervision over the trust’s administration and one or more United States persons (within the meaning of section 7701(a)(30) of the Tax Code) have authority to control all substantial decisions of the trust, or (b) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person. For purposes of this discussion, a “non-U.S. Holder” is any Holder of a Claim that is not a U.S. Holder or a partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes).

If a partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes) is a Holder of a Claim, the tax treatment of a partner (or other beneficial owner) generally will depend upon the status of the partner (or other beneficial owner) and the activities of the partnership and the partner (or other beneficial owner). Partners (or other beneficial owners) of partnerships (or other pass-through entities) that are Holders of Claims are urged to consult their respective tax advisors regarding the U.S. federal income tax consequences of the Plan.

THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE FEDERAL, STATE, LOCAL, AND NON-U.S. INCOME, ESTATE, AND OTHER TAX CONSEQUENCES OF THE PLAN.

B. Certain U.S. Federal Income Tax Consequences to the Debtors and the Reorganized Debtors

1. Effects of the Restructuring Transactions on Tax Attributes of the Debtors

As of December 31, 2019, the Debtors estimate that they had approximately \$1,362,933,077 of federal net operating losses carryforwards (“NOLs”) and \$4,732,477,505 of total asset basis. The Debtors further estimate that they may generate additional tax attributes in the 2020 and 2021 taxable years. The potential impact on these attributes is discussed below.

2. Cancellation of Debt Income and Reduction of Tax Attributes

In general, absent an exception, a taxpayer will realize and recognize cancellation of indebtedness income (“CODI”) for U.S. federal income tax purposes upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of CODI, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of (i) the amount of any cash paid, (ii) the issue price of any new indebtedness issued (e.g. the Exit Facility and New Unsecured Notes), and (iii) the fair market value of any other consideration (e.g., the New Common Stock and Rights Offering Subscription Rights) given in satisfaction of such indebtedness at the time of the exchange.

Under section 108 of the Tax Code, a taxpayer is not required to include CODI in gross income (a) if the taxpayer is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of indebtedness occurs pursuant to that proceeding, or (b) to the extent that the taxpayer is insolvent immediately before the discharge. Instead, as a consequence of such exclusion, a taxpayer must reduce its tax attributes by the amount of CODI that it excluded from gross income. In general, tax attributes will be reduced in the following order: (a) NOLs and NOL carryforwards; (b) general business credit carryovers; (c) minimum tax credit carryovers; (d) capital loss carryovers; (e) tax basis in assets (but not below the amount of liabilities to which the taxpayer remains subject); (f) passive activity loss and credit carryovers; and (g) foreign tax credit carryovers. Alternatively, a taxpayer with CODI may elect to first reduce the basis of its depreciable assets pursuant to section 108(b)(5) of the Tax Code.³⁶ The reduction in tax attributes occurs only after the debtor’s net income or loss for the taxable year of the debt discharge has been determined. To the extent that CODI exceeds the amount of available tax attributes, such excess generally will not be subject to U.S. federal income tax and generally will have no other U.S. federal income tax impact.

The Treasury Regulations address the method and order for applying tax attribute reduction to an affiliated group of corporations filing a consolidated return. Under these Treasury Regulations, the tax attributes of each member of such an affiliated group of corporations that is excluding CODI is first subject to reduction. To the extent the debtor member’s tax basis in the stock of a lower-tier member of the affiliated group is reduced, a “look through rule” requires that a corresponding reduction be made to the tax attributes of the lower-tier member. If a debtor member’s excluded CODI exceeds its tax attributes, the excess CODI is applied to reduce certain remaining consolidated tax attributes of the affiliated group.

³⁶ Whether this election can apply to the Debtors’ assets that are subject to depletion, as opposed to depreciation, is subject to uncertainty.

No determination has yet been made as to whether the Reorganized Debtors would elect to first reduce tax basis in their assets or to first reduce NOLs. The amount of CODI that may result in a reduction of the Debtors’ tax attributes will depend on the fair market value (or issue price as determined for U.S. federal income tax purposes, in the case of new debt) of the consideration received by holders of Claims. The fair market value and issue price, as applicable, of such consideration cannot be known with certainty until after the Effective Date.

3. Limitation on Utilization of NOLs and Other Tax Attributes.

After giving effect to the reduction in tax attributes pursuant to excluded CODI described above, the Reorganized Debtors’ ability to use any remaining tax attributes post-emergence will be subject to certain limitations under sections 382 and 383 of the Tax Code.

Under sections 382 and 383 of the Tax Code, if a corporation undergoes an “ownership change” within the meaning of section 382 or 383 of the Tax Code, the amount of any remaining NOLs, net unrealized built-in losses, tax credit carryforwards, and possibly certain other attributes of the Debtors allocable to periods prior to such ownership change (collectively, “Pre-Change Losses”) that may be utilized to offset future taxable income generally are subject to an annual limitation. For this purpose, if a corporation (or consolidated group) has a “net unrealized built-in loss” at the time of an ownership change (taking into account most assets and items of “built-in” income and deductions), then generally such built-in losses (including amortization, depletion, and depreciation deductions attributable to such built-in losses) recognized during the following five years (up to the amount of the original net unrealized built-in loss) will be treated as Pre-Change Losses and similarly will be subject to the annual limitation. In general, a corporation’s (or consolidated group’s) net unrealized built-in loss will be deemed to be zero unless it is greater than the lesser of (a) \$10,000,000 and (b) 15% of the fair market value of its assets (with certain adjustments) before the ownership change. While the analysis is ongoing, it is expected that Gulfport Parent will have a net unrealized built-in loss at the time of an ownership change.

The rules of sections 382 and 383 of the Tax Code are complicated, but, as a general matter, the Debtors anticipate that the issuance of New Common Stock and New Preferred Stock pursuant to the Plan will result in an “ownership change” of Gulfport Parent and that the Reorganized Debtors’ use of Pre-Change Losses will be subject to significant limitation unless an exception to the general rules of sections 382 and 383 of the Tax Code applies.

a. General Section 382 Annual Limitation.

In general, the amount of the annual limitation to which a corporation that undergoes an “ownership change” would be subject is equal to the product of (a) the fair market value of the stock of the corporation immediately before the ownership change (with certain adjustments) and (b) the “long-term tax-exempt rate” (which is the highest of the adjusted federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the ownership change occurs, currently 1.10% for February 2021). The annual limitation may be increased to the extent that the Reorganized Debtors recognize certain built-in gains in their assets during the five-year period following the ownership change, or are treated as recognizing built-in gains pursuant to the safe harbors provided in IRS Notice 2003-65.³⁷ Section 383 of the Tax Code applies a similar limitation to capital loss carryforwards and tax credits. Any unused limitation may be carried forward, thereby increasing the annual limitation in the subsequent taxable year. As discussed below, however, special rules may apply in the case of a corporation that experiences an ownership change as the result of a bankruptcy proceeding.

³⁷ The IRS issued proposed regulations in September 2019 that would revoke IRS Notice 2003-65 and make substantial changes to the way limitations under section 382 of the Tax Code are calculated. The changes would decrease the limitation set forth in section 382 of the Tax Code in most cases and potentially cause entities that would have had a net unrealized built-in gain under Notice 2003-65 to instead have a net unrealized built-in loss (or cause entities that would have had a net unrealized built-in loss to have a larger net unrealized built-in loss), which would result in additional limitations on the ability to deduct Pre-Change Losses. Additionally, the IRS issued further proposed regulations in January 2020 that would provide certain transition relief for the application of any finalized regulation. Under such transition relief, any finalized regulations would apply only to ownership changes occurring 31 days after the regulations are finalized and certain specified and identifiable transactions would be subject to a “grandfathering” rule that allows for application of the prior IRS Notice 2003-65 rules. Additionally, the “grandfathering” rule would also apply so long as a company files its chapter 11 case within 31 days of the issuance of final regulations, even where the applicable ownership change occurs more than 31 days after the finalization of the regulations. Because the Debtors Filed their chapter 11 cases prior to the finalization of the proposed regulations, the regulations will not be applicable to the Debtors with respect to any ownership change that occurs pursuant to the Plan.

Notwithstanding the rules described above, if post-ownership change, a debtor corporation and its subsidiaries do not continue the debtor corporation’s historic business or use a significant portion of its historic business assets in a new business for two years after an ownership change, the annual limitation resulting from such ownership change is zero.

b. Special Bankruptcy Exceptions.

An exception to the foregoing annual limitation rules generally applies when former equity holders and so-called “qualified creditors” of a debtor corporation in chapter 11 receive, in respect of their equity interests and debt claims, at least 50% of the vote and value of the stock of the debtor corporation (or a controlling corporation if also in chapter 11) as reorganized pursuant to a confirmed chapter 11 plan (the “382(l)(5) Exception”). If the requirements of the 382(l)(5) Exception are satisfied, a debtor’s Pre-Change Losses would not be limited on an annual basis, but, instead, NOL carryforwards would be reduced by the amount of any interest deductions claimed by the debtor during the three taxable years preceding the effective date of the plan of reorganization, and during the part of the taxable year prior to and including the effective date of the plan of reorganization, in respect of all debt converted into stock pursuant to the reorganization. If the 382(l)(5) Exception were to apply to the ownership change resulting from the Plan and the Reorganized Debtors undergo another “ownership change” within two years after the Effective Date, then the Reorganized Debtors’ Pre-Change Losses thereafter would be effectively eliminated in their entirety.

Where the 382(l)(5) Exception is not applicable to a corporation in bankruptcy (either because the debtor corporation does not qualify for it or the debtor corporation otherwise elects not to utilize the 382(l)(5) Exception), another exception will generally apply (the “382(l)(6) Exception”). Under the 382(l)(6) Exception, the annual limitation will be calculated by reference to the lesser of (a) the value of the debtor corporation’s new stock (with certain adjustments) immediately after the ownership change, and (b) the value of such debtor corporation’s assets (determined without regard to liabilities) immediately before the ownership change. This differs from the ordinary rule that requires the fair market value of a debtor corporation that undergoes an “ownership change” to be determined before the events giving rise to the change. The 382(l)(6) Exception also differs from the 382(l)(5) Exception in that a debtor corporation is not required to reduce its NOL carryforwards by the amount of interest deductions claimed within the prior three-year period, and a debtor corporation may undergo another ownership change within two years without automatically triggering the elimination of its Pre-Change Losses. The resulting limitation from any such subsequent ownership change would be determined under the regular rules for ownership changes.

The Restructuring Transactions may qualify for the 382(l)(5) Exception, although analysis is ongoing. Even if the Restructuring Transactions are eligible for the 382(l)(5) Exception, the Debtors have not yet decided whether they would elect out of its application. Regardless of whether the Reorganized Debtors take advantage of the 382(l)(6) Exception or the 382(l)(5) Exception, the Reorganized Debtors’ use of their Pre-Change Losses after the Effective Date may be adversely affected if another ownership change were to occur after the Effective Date.

C. Certain U.S. Federal Income Tax Consequences to Certain U.S. Holders of Claims and Interests

The U.S. federal income tax consequences to a U.S. Holder of a Claim may depend, in part, on whether the obligation underlying the Claim surrendered (or the consideration received therefor) constitutes a “security” of the Debtor or Reorganized Debtor, as applicable, for U.S. federal income tax purposes. Neither the Tax Code nor the Treasury Regulations promulgated thereunder defines the term “security.” Whether a debt instrument constitutes a “security” is determined based on all relevant facts and circumstances, but authorities have held that the length of the term of a debt instrument at initial issuance is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are numerous other factors that could be taken into account in determining whether a debt instrument is a security, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof with respect to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into an equity interest in the obligor, whether payments of interest are fixed, variable, or contingent, and whether such payments are made on a current basis or accrued.

1. Consequences to U.S. Holders of Class 3 Claims (Allowed RBL Claims).

Pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, release, and discharge of the Allowed RBL Claims, each Holder thereof will

receive either (i) the Exit RBL/Term Loan A Facility or (ii) Exit Term Loan B Facility.

The extent to which a U.S. Holder of Allowed RBL Claims will recognize gain or loss pursuant to the Plan will depend upon whether the receipt of the Exit Facility in respect of its Claims qualifies as a recapitalization within the meaning of Section 368(a)(1)(E) of the Tax Code. In general, receipt of the Exit Facility in respect of Allowed RBL Claims will qualify as a recapitalization if (a) either (i) the Flip Merger occurs and the Gulfport Parent issues the Exit Facility or (ii) the Alternative Structure is utilized and (b) the RBL Claims and the applicable Exit Facility are each treated as “securities” for U.S. federal income tax purposes.

Although the matter is not free from doubt, the Debtors believe and intend to take the position that the Allowed RBL Claims should not be treated as “securities” for U.S. federal income tax purposes, and the remainder of this discussion assumes that the Allowed RBL Claims are not treated as “securities” for U.S. federal income tax purposes. Additionally, although the treatment of the Exit Facility cannot be known with certainty at this time, the discussion further assumes that the Exit Facility will not be treated as a “security” for U.S. federal income tax purposes. Therefore, regardless of which structure is utilized and which Reorganized Debtor is the issuer of the Exit Facility, the exchange of Allowed RBL Claims for the Exit Facility is expected to be treated as a taxable exchange under section 1001 of the Tax Code. In that case, a U.S. Holder of an Allowed RBL Claim would generally recognize gain or loss in an amount equal to (a) the issue price of the Exit Facility received for such Allowed RBL Claim (other than any Exit Facility treated as received in satisfaction of accrued but unpaid interest on the Allowed RBL Claim as discussed below under “Accrued Interest”) less (b) such U.S. Holder’s adjusted tax basis in such Allowed RBL Claim. A U.S. Holder’s initial aggregate tax basis in the Exit Facility would generally equal the issue price of the Exit Facility. A U.S. Holder’s holding period for the Exit Facility would begin the day following the exchange. Any gain or loss recognized by a U.S. Holder from the exchange will be capital gain or loss, except to the extent described below under “Market Discount.” Capital gain will generally be taxable at preferential rates to any non-corporate U.S. Holder whose holding period in its Allowed RBL Claim is greater than one year at the time of the exchange. The deductibility of capital losses is subject to limitations.

2. Consequences to U.S. Holders of Class 4A Claims (General Unsecured Claims against Gulfport Parent).

Pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, release, and discharge of Allowed General Unsecured Claims against Gulfport Parent (“Class 4A Claims”), each Holder thereof will receive New Common Stock.

Although not free from doubt, under the Flip Merger structure, Alternative Structure 1, and Alternative Structure 2, the Debtors intend to treat the receipt of New Common Stock in respect of Class 4A Claims as a taxable exchange under section 1001 of the Tax Code. Therefore, a U.S. Holder of any Allowed Class 4A Claim would generally recognize gain or loss in an amount equal to (a) the fair market value of the New Common Stock received in respect of such Class 4A Claim (other than any New Common Stock treated as received in satisfaction of accrued but unpaid interest on such Class 4A Claim as discussed below under “Accrued Interest”) less (b) such U.S. Holder’s adjusted tax basis in such Class 4A Claim. A U.S. Holder’s initial aggregate tax basis in the New Common Stock received would generally equal its fair market value. A U.S. Holder’s holding period for the New Common Stock would begin the day following the exchange. Any gain or loss recognized by a U.S. Holder from the exchange will be capital gain or loss, except to the extent described below under “Market Discount.” Capital gain will generally be taxable at preferential rates to any non-corporate U.S. Holder whose holding period in its Class 4A Claim is greater than one year at the time of the exchange. The deductibility of capital losses is subject to limitations.

3. Consequences to U.S. Holders of Class 4B Claims (General Unsecured Claims against Gulfport Subsidiaries).

Pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, release, and discharge of the Allowed General Unsecured Claims against Gulfport Subsidiaries (“Class 4B Claims”), each Holder thereof will receive New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes.

Although not free from doubt, under the Flip Merger structure, Alternative Structure 1, and Alternative Structure 2, the Debtors intend to treat the receipt of New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes in respect of Class 4B Claims as a taxable exchange under section 1001 of the Tax Code. Therefore, a U.S. Holder of any Allowed Class 4B Claim would generally recognize gain or loss in an amount equal to (a) the fair market value of the New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes received in respect of such Class 4B Claim (other than any New Common Stock, Rights Offering Subscription Rights, or New Unsecured Notes treated as received in satisfaction of accrued but unpaid interest on such Class 4B Claim as discussed below under “Accrued Interest”) less (b) such U.S. Holder’s adjusted tax basis in such Class 4B Claim. A U.S. Holder’s initial aggregate tax basis in the New Common Stock and Rights Offering Subscription Rights should generally equal their respective fair market values and a U.S. Holder’s initial aggregate tax basis in the New Unsecured Notes should generally equal their issue price (as determined below). A U.S. Holder’s holding period for the New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes would begin the day following the exchange. Any gain or loss recognized by a U.S. Holder from the exchange will be capital gain or loss, except to the extent described below under “Market Discount.” Capital gain will generally be taxable at preferential rates to any non-corporate U.S. Holder whose holding period in its Class 4B Claim is greater than one year at the time of the exchange. The deductibility of capital losses is subject to limitations.

4. Consequences to U.S. Holders of Class 5A Claims (Notes Claims against Gulfport Parent).

Pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, release, and discharge of Allowed Notes Claims against Gulfport Parent (“Class 5A Claims”), each Holder thereof will receive New Common Stock.

a. Flip Merger Structure.

Although not free from doubt, assuming the Flip Merger occurs, the Debtors intend to treat the receipt of New Common Stock in respect of Class 5A Claims as a taxable exchange under section 1001 of the Tax Code. Therefore, a U.S. Holder of any Allowed Class 5A Claim would generally recognize gain or loss in an amount equal to (a) the fair market value of the New Common Stock received in respect of such Class 5A Claim (other than any New Common Stock treated as received in satisfaction of accrued but unpaid interest on such Class 5A Claim as discussed below under “Accrued Interest”) less (b) such U.S. Holder’s adjusted tax basis in such Class 5A Claim. A U.S. Holder’s initial aggregate tax basis in the New Common Stock received would generally equal its fair market value. A U.S. Holder’s holding period for the New Common Stock would begin the day following the exchange. Any gain or loss recognized by a U.S. Holder from the exchange will be capital gain or loss, except to the extent described below under “Market Discount.” Capital gain will generally be taxable at preferential rates to any non-corporate U.S. Holder whose holding period in its Class 5A Claim is greater than one year at the time of the exchange. The deductibility of capital losses is subject to limitations.

It is possible that a Holder of Class 5A Claims that also holds Class 5B Claims could be treated as exchanging their Class 5A Claims as part of a tax-free recapitalization (as described in more detail below). If so, such a Holder would recognize a realized gain to the extent of the New Common Stock and Rights Offering Subscription Rights received, but would not recognize a loss. Holders of Class 5A Claims should consult their tax advisor regarding such potential treatment.

b. Alternative Structure 1 or Alternative Structure 2.

If either Alternative Structure 1 or Alternative Structure 2 is utilized, the extent to which a U.S. Holder of Class 5A Claims will recognize gain or loss pursuant to the

Plan will depend upon whether the receipt of New Common Stock in respect of Class 5A Claims qualifies as a recapitalization within the meaning of section 368(a)(1)(E) of the Tax Code. In general, receipt of New Common Stock in respect of Class 5A Claims will qualify as a recapitalization if the obligations underlying the Claims are treated as “securities” of Gulfport Parent for U.S. federal income tax purposes (as discussed above).

Although the matter is not free from doubt, the Debtors believe and intend to take the position that (i) the 2023 Notes, 2024 Notes, 2025 Notes and 2026 Notes should each be treated as securities of Gulfport Parent and (ii) the receipt of New Common Stock by a U.S. Holder in respect of its Class 5A Claims should be treated as a transaction that qualifies as a recapitalization for U.S. federal income tax purposes if Alternative Structure 1 or Alternative Structure 2 is utilized. Assuming the receipt of New Common Stock in respect of Notes Claims is treated as a transaction that qualifies as a recapitalization for U.S. federal income tax purposes, a U.S. Holder will generally not recognize gain or loss on the exchange except to the extent that New Common Stock is treated as received in satisfaction of accrued but unpaid interest on the Notes (see the “Accrued Interest” discussion below). In addition, any market discount on the Notes would carry over to the New Common Stock (see “Market Discount” discussion below). A U.S. Holder’s aggregate tax basis in its New Common Stock (other than New Common Stock received in satisfaction of accrued but unpaid interest on the Notes (see “Accrued Interest” discussion below)) should be equal to the tax basis of the Notes surrendered therefor, and a U.S. Holder’s holding period for its New Common Stock should include the holding period for Notes exchanged therefor.

5. Consequences to U.S. Holders of Class 5B Claims (Notes Claims Against Gulfport Subsidiaries).

Pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, release, and discharge of the Allowed Notes Claims against Gulfport Subsidiaries (“Class 5B Claims”), each Holder thereof will receive New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes.

a. Flip Merger Structure.

Assuming the Flip Merger occurs, the extent to which a U.S. Holder of Class 5B Claims will recognize gain or loss pursuant to the Plan will depend upon whether the receipt of New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes in respect of Class 5B Claims qualifies as a recapitalization within the meaning of section 368(a)(1)(E) of the Tax Code. In general, receipt of New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes in respect of its Claims will qualify as a recapitalization if the obligations underlying the Claims and the New Unsecured Notes received in exchange therefor are each treated as “securities” of Gulfport Parent for U.S. federal income tax purposes (as discussed above). As discussed above, the Debtors believe and intend to take the position that the 2023 Notes, 2024 Notes, 2025 Notes, and 2026 Notes should each be treated as securities of Gulfport Parent. Additionally, the Debtors believe and intend to take the position that the New Unsecured Notes will be treated as securities of Gulfport Parent. Therefore, although not free from doubt, the Debtors intend to treat the receipt of New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes by a U.S. Holder in respect of its Class 5B Claims as a transaction that qualifies as a recapitalization for U.S. federal income tax purposes. In such case, a U.S. Holder of any Allowed Class 5B Claim would generally not recognize loss, but would generally recognize gain in an amount equal to the lesser of (a) the fair market value of the New Common Stock and Rights Offering Subscription Rights received in respect of such Class 5B Claim (other than any New Common Stock or Rights Offering Subscription Rights treated as received in satisfaction of accrued but unpaid interest on such Class 5B Claim as discussed below under “Accrued Interest”) and (b) the amount of gain realized from such exchange.³⁸ A U.S. Holder’s initial aggregate tax basis in the New Common Stock and Rights Offering Subscription Rights should generally equal their respective fair market values and a U.S. Holder’s initial aggregate tax basis in the New Unsecured Notes should generally equal the tax basis of the Class 5B Claims surrendered therefor, decreased by the fair market value of the New Common Stock and Rights Offering Subscription Rights received and increased by the amount of any gain recognized. A U.S. Holder’s holding period for the New Common Stock and Rights Offering Subscription Rights would begin the day following the exchange and a U.S. Holder’s holding period in the New Unsecured Notes should include the holding period for the Class 5B Claims surrendered therefor. Any gain recognized by a U.S. Holder from the exchange will be capital gain, except to the extent described below under “Market Discount.” Capital gain will generally be taxable at preferential rates to any non-corporate U.S. Holder whose holding period in its Class 5B Claim is greater than one year at the time of the exchange.

³⁸ It is possible that a Holder of Class 5B Claims that also holds Class 5A Claims could be treated as exchanging their Class 5B Claims as part of an exchange that includes its Class 5A Claims. If so, such a Holder’s realized gain would include any gain on its Class 5A Claims. Holders of 5B Claims should consult their tax advisor regarding such potential treatment.

b. Alternative Structure 1.

If Alternative Structure 1 is utilized, the extent to which a U.S. Holder of Class 5B Claims will recognize gain or loss pursuant to the Plan will depend upon whether the receipt of New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes in respect of Class 5B Claims qualifies as a recapitalization within the meaning of section 368(a)(1)(E) of the Tax Code. In general, receipt of New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes in respect of its Claims will qualify as a recapitalization if the obligations underlying the Claims are treated as “securities” of Gulfport Parent for U.S. federal income tax purposes (as discussed above). As discussed above, the Debtors believe and intend to take the position that the 2023 Notes, 2024 Notes, 2025 Notes, and 2026 Notes should each be treated as securities of Gulfport Parent. Additionally, assuming the receipt of such consideration does qualify as a recapitalization, the extent to which any gain is recognized as a result of such recapitalization will depend on whether the New Unsecured Notes are treated as “securities” of Gulfport Parent for U.S. federal income tax purposes (as discussed above). Although the matter is not free from doubt, the Debtors believe and intend to take the position that the New Unsecured Notes will be treated as securities of Gulfport Parent. Therefore, the receipt of New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes by a U.S. Holder in respect of its Class 5B Claims should be treated as a transaction that qualifies as a recapitalization for U.S. federal income tax purposes. In such case, a U.S. Holder will generally not recognize gain or loss on the exchange except to the extent that New Common Stock, Rights Offering Subscription Rights and New Unsecured Notes are treated as received in satisfaction of accrued but unpaid interest on the Notes (see the “Accrued Interest” discussion below). In addition, any market discount on the Notes would carry over to the New Common Stock, Rights Offering Subscription Rights and New Unsecured Notes (see “Market Discount” discussion below). A U.S. Holder’s aggregate tax basis in its New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes (other than New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes received in satisfaction of accrued but unpaid interest on the Notes (see “Accrued Interest” discussion below)) should be equal to its aggregate tax basis in the Notes surrendered therefor, and a U.S. Holder’s holding period for its New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes should include the holding period for the Notes exchanged therefor.

c. Alternative Structure 2.

If Alternative Structure 2 is utilized, the tax treatment to a U.S. Holder of Class 5B Claims is not entirely clear. In general, the receipt of New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes by such U.S. Holder in respect of its Claims will qualify as a recapitalization if the obligations underlying the Claims are treated as “securities” of Reorganized Gulfport Holdco for U.S. federal income tax purposes (as discussed above). If the Class 5B Claims are treated as “securities” of Reorganized Gulfport Holdco in Alternative Structure 2, the receipt of New Common Stock, Rights Offering Subscription Rights and New Unsecured Notes by a U.S. Holder in respect of its Class 5B Claims should be treated as a transaction that qualifies as a recapitalization for U.S. federal income tax purposes and the tax consequences to such U.S.

Holder will be as described in Section 5.a above with respect to such U.S. Holders under the Flip Merger structure.

However, if such Notes Claims are not treated as “securities” of Reorganized Gulfport Holdco, the receipt of New Common Stock, Rights Offering Subscription Rights, and New Unsecured Notes by U.S. Holders of Class 5B Claims is expected to be treated as a taxable exchange under section 1001 of the Tax Code and the tax consequences to such U.S. Holder will be as described in Section 3 above with respect with respect to U.S. Holders of Class 4B Claims.

6. Accrued Interest.

A portion of the consideration received by U.S. Holders of Claims may be attributable to accrued but unpaid interest on such Claims. This amount should be taxable to U.S. Holders as ordinary interest income to the extent it has not been previously included in the U.S. Holder’s gross income for U.S. federal income tax purposes. Conversely, a U.S. Holder of a Claim may be able to recognize a deductible loss to the extent that any accrued interest on its Claims was previously recognized by the U.S. Holder but was not paid in full by the Debtors. Such loss may be ordinary, but Applicable Tax Law is unclear on this point. The tax basis of any non-cash consideration treated as received in satisfaction of accrued but unpaid interest should equal the amount of such accrued but unpaid interest. The holding period for such non-cash consideration should begin on the day following the receipt of such consideration.

If the fair market value of the consideration received by a Holder pursuant to the Plan is not sufficient to fully satisfy all principal and interest on an Allowed Claim, the extent to which such consideration will be attributable to accrued but unpaid interest is unclear. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan is binding for U.S. federal income tax purposes, while certain Treasury Regulations treat payments as allocated first to any accrued but unpaid interest. Under the Plan, the aggregate consideration to be distributed to U.S. Holders of Claims in each Class will be allocated first to the principal amount of such Allowed Claims, with any excess allocated to unpaid interest that accrued on these Claims, if any. However, the IRS could take the position that the consideration received by the U.S. Holder should be allocated first to accrued but unpaid interest for U.S. federal income tax purposes.

HOLDERS OF CLAIMS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE PROPER ALLOCATION OF THE CONSIDERATION RECEIVED BY THEM UNDER THE PLAN AND THE U.S. FEDERAL INCOME TAX TREATMENT OF ACCRUED BUT UNPAID INTEREST AND OID.

7. Market Discount.

Under the “market discount” provisions of the Tax Code, some or all of any gain realized by a U.S. Holder of a Claim may be treated as ordinary income (instead of capital gain) to the extent of the amount of “market discount” on the debt instruments constituting the exchanged Claim. In general, a debt instrument is considered to have been acquired with “market discount” if it was acquired other than on original issue and if such U.S. Holder’s initial tax basis in the debt instrument is less than (x) the stated redemption price on the debt instrument at maturity or (y) in the case of a debt instrument issued with original issue discount, its “revised issue price,” in each case by at least a *de minimis* amount (equal to 0.25% of the sum of the stated redemption price at maturity, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a U.S. Holder on the taxable disposition of a Claim (determined as described above) that was acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while the Claim was considered to be held by the U.S. Holder (unless the U.S. Holder elected to include market discount in income as it accrued). In addition, in the event of recapitalization treatment (as described above), the Tax Code indicates that, under Treasury Regulations to be issued, any accrued market discount in respect of the Allowed Notes Claims should not be currently includable in income. However, such accrued market discount should carry over to any non-recognition property received in exchange therefor (*i.e.*, any New Common Stock, Rights Offering Subscription Rights or New Unsecured Notes). Any gain recognized by a U.S. Holder upon a subsequent disposition of such property would be treated as ordinary income to the extent of any accrued market discount carried over not previously included in income. To date, specific Treasury Regulations implementing this rule have not been issued. U.S. Holders are urged to consult their own tax advisors concerning the application of the market discount rules to their Claims.

8. Subscription Rights.

A U.S. Holder that elects to exercise its Rights Offering Subscription Rights should be treated as purchasing, in exchange for its Rights Offering Subscription Rights and the amount of cash paid by the U.S. Holder to exercise such Rights Offering Subscription Rights, New Preferred Stock. Such a purchase should generally be treated as the exercise of an option under general tax principles, and such U.S. Holder should not recognize income, gain, or loss for U.S. federal income tax purposes when it exercises the Rights Offering Subscription Rights. A U.S. Holder’s aggregate tax basis in the New Preferred Stock should equal the sum of (i) the amount of cash paid by the U.S. Holder to exercise the Rights Offering Subscription Rights plus (ii) such U.S. Holder’s tax basis in the Rights Offering Subscription Rights immediately before the Rights Offering Subscription Rights are exercised. A U.S. Holder’s holding period for the New Preferred Stock received pursuant to such exercise should begin on the day following the Effective Date.

A U.S. Holder that elects not to exercise the Rights Offering Subscription Rights may be entitled to claim a loss equal to the amount of tax basis allocated to such Rights Offering Subscription Rights, subject to any limitation on such U.S. Holder’s ability to utilize capital losses. U.S. Holders electing not to exercise their Rights Offering Subscription Rights are urged to consult with their own tax advisors as to the tax consequences of such decision.

9. Consequences of Owning and Disposing of New Common Stock and New Preferred Stock.

a. Distributions with Respect to the New Common Stock and New Preferred Stock

The gross amount of any distribution of cash or property (other than New Preferred Stock paid in-kind with respect to the New Preferred Stock, which will be treated as described in “Potential Constructive Distributions with Respect to the New Preferred Stock” below) made to a U.S. Holder with respect to the New Common Stock or New Preferred Stock generally will be includible in gross income by a U.S. Holder as dividend income to the extent such distribution is paid out of current or accumulated earnings and profits, as determined under U.S. federal income tax principles. To the extent those distributions exceed Reorganized Gulfport Holdco’s (or, in the case of Alternative Structure 1 or Alternative Structure 2, Reorganized Gulfport Parent’s) current and accumulated earnings and profits, the distribution (i) will be treated as a non-taxable return of the U.S. Holder’s adjusted basis in the New Common Stock or New Preferred Stock, as applicable, and (ii) thereafter as capital gain. Dividends received by non-corporate U.S. Holders may qualify for reduced rates of taxation. Subject to applicable limitations, a distribution which is treated as a dividend for U.S. federal income tax purposes may qualify for the dividends-received deduction if such amount is distributed to a corporate U.S. Holder and certain other requirements are satisfied.

b. Potential Constructive Distributions with Respect to the New Preferred Stock

Under section 305 of the Tax Code, holders of New Preferred Stock may be treated as receiving distributions with respect to their New Preferred Stock under section 301 of the Tax Code under a variety of circumstances. However, certain provisions of section 305 of the Tax Code apply only if the New Preferred Stock constitutes “preferred”

stock for purposes of section 305 of the Tax Code (as opposed to “common” stock for purposes of section 305 of the Tax Code). The determination of whether stock constitutes “preferred” or “common” stock for purposes of section 305 of the Tax Code depends in large part upon whether the stock participates significantly in corporate growth (such stock colloquially being referred to as “participating preferred stock”). Participating preferred stock is treated as common stock for purposes of section 305 of the Tax Code and, accordingly, certain of the deemed distribution provisions of section 305 of the Tax Code are generally inapplicable to such stock.

Although the treatment of the New Preferred Stock under section 305 of the Tax Code is subject to uncertainty, the New Preferred Stock will participate with New Common Stock in dividends of Reorganized Gulfport Holdco (or, in the case of Alternative Structure 1 or Alternative Structure 2, Reorganized Gulfport Parent’s) on an as-converted basis, and, as a result of its ability to convert at any time, will receive upon liquidation the greater of (i) the liquidation preference, including any dividends accrued to the holder thereof, and (ii) what the holders of the New Preferred Stock would receive on an as-converted basis. Accordingly, the Debtors currently anticipate that the Reorganized Debtors will take the position that the New Preferred Stock will be treated as “common” stock for purposes of section 305 of the Tax Code. If such treatment under section 305 of the Tax Code is respected, any ordinary payment-in-kind distributions and preferred original issue discount (*i.e.*, the excess of redemption price over issue price) (“Preferred OID”), if any, should not be subject to the deemed distribution provisions of section 305 of the Tax Code. Moreover, although subject to potential uncertainty, the Debtors currently anticipate that the Reorganized Debtors will take the position that any dividends made simultaneously to New Common Stock and New Preferred Stock should not result in a deemed distribution under section 305 of the Tax Code.

If the New Preferred Stock is treated as “preferred” stock under section 305 of the Tax Code, any Preferred OID on the New Preferred Stock will generally be required to be recognized as a dividend over the term of the New Preferred Stock on a constant-yield-to-maturity basis to the extent of the Reorganized Gulfport Holdco’s (or, in the case of Alternative Structure 1 or Alternative Structure 2, Reorganized Gulfport Parent’s) earnings and profits (and thereafter first as a return of capital which reduces basis and then, generally, capital gain, under the same rules applicable to other distributions in respect of the New Common Stock and New Preferred Stock, though any such amounts treated as a dividend will generally be ineligible for the reduced rate applicable to qualified dividend income or the dividends received deduction available to qualified corporations).

Further, if the New Preferred Stock is treated as “preferred” stock under section 305 of the Tax Code, there is a risk that payment-in-kind distributions and the resulting increases in the liquidation preference of the New Preferred Stock will be treated as a deemed dividend to the extent of Reorganized Gulfport Holdco’s (or, in the case of Alternative Structure 1 or Alternative Structure 2, Reorganized Gulfport Parent’s) earnings and profits (as described above).

In addition to the above rules, under certain circumstances, the payment-in-kind distributions with respect to the New Preferred Stock could be subject to treatment as a deemed distribution, even if the New Preferred Stock otherwise constitutes “common stock” for purposes of section 305 of the Tax Code. Such treatment could apply in the event distributions are made with respect to the New Common Stock (and the New Preferred Stock on an as-converted basis), because such distributions on the New Common Stock, in conjunction with the payment-in-kind distributions with respect to the New Preferred Stock, could implicate Treasury Regulation Section 1.305-7 and the disproportionate distribution rule of section 305 of the Tax Code. As described above, however, the Debtors currently anticipate that the Reorganized Debtors will take the position that any cash dividends made simultaneously to New Common Stock and New Preferred Stock should not result in a deemed distribution under section 305 of the Tax Code.

Holders of Claims receiving the New Preferred Stock are urged to consult their own tax advisors regarding the treatment of the New Preferred Stock under section 305 of the Tax Code.

c. Conversion of New Preferred Stock to New Common Stock.

Subject to the discussion immediately below, the conversion of New Preferred Stock to New Common Stock should generally be a tax-free exchange pursuant to a recapitalization, with the result that the basis and holding period of the New Preferred Stock transfers to the New Common Stock in the hands of the converting U.S. Holder.

If, however, there are dividends in arrears on the New Preferred Stock and the fair market value of the New Common Stock received (determined immediately following the recapitalization) exceeds the issue price of the New Preferred Stock surrendered, then the conversion may result in a deemed distribution if (a) the conversion is “pursuant to a plan to periodically increase a shareholder’s proportionate interest in the assets or earnings and profits of the corporation” or (b) the New Preferred Stock does not constitute “common” stock for purposes of section 305 of the Tax Code. There is significant uncertainty with respect to whether clause (a) would apply to a conversion of the New Preferred Stock. In the event clause (b) applied to such conversion, a converting holder would be treated as receiving a deemed distribution in an amount equal to the *lesser of* (x) the amount of the dividends in arrears and (y) the excess of (i) the fair market value of the New Common Stock (determined immediately following the recapitalization) over (ii) the issue price of the New Preferred Stock surrendered, in each case, to the extent of the current or accumulated earnings and profits of Reorganized Gulfport Holdco (or, in the case of Alternative Structure 1 or Alternative Structure 2, Reorganized Gulfport Parent) as determined under U.S. federal income tax principles (and, thereafter, first as a return of capital which reduces basis and then, generally, capital gain, under the same rules applicable to other distributions in respect of the New Common Stock and New Preferred Stock, though any such amounts treated as a dividend will generally be ineligible for the reduced rate applicable to qualified dividend income or the dividends received deduction available to qualified corporations).

Holders of Claims receiving the New Preferred Stock are urged to consult their own tax advisors regarding the tax consequences of converting the New Preferred Stock.

d. Sale, Redemption, Retirement or Other Taxable Disposition of New Common Stock and New Preferred Stock.

Unless a non-recognition provision applies and except as discussed in “Market Discount” above, a U.S. Holder generally will recognize capital gain or loss upon the sale, redemption, retirement, or other taxable disposition of New Common Stock or New Preferred Stock. Such capital gain or loss will be long-term capital gain or loss if at the time of such disposition, the U.S. Holder held the New Common Stock or New Preferred Stock, as applicable, for more than one year. Long-term capital gains of an individual taxpayer generally are taxed at preferential rates. Under the recapture rules of section 108(e)(7) of the Tax Code, a U.S. Holder may be required to treat gain recognized on such a disposition of the New Common Stock or New Preferred Stock as ordinary income if such U.S. Holder took a bad debt deduction with respect to its Claim or recognized an ordinary loss on the exchange of its Claim for New Common Stock or New Preferred Stock.

However, if there are unpaid accrued and declared dividends on the New Preferred Stock at the time of the sale, redemption, retirement or other taxable disposition of the New Preferred Stock, then, generally, the portion of the consideration attributable to those dividends will be treated as a dividend to the extent of the current or accumulated earnings and profits of Reorganized Gulfport Holdco (or, in the case of Alternative Structure 1 or Alternative Structure 2, Reorganized Gulfport Parent) as determined under U.S. federal income tax principles (and, thereafter, first as a return of capital which reduces basis and then, generally capital gain, under the same rules applicable to other distributions in respect of the New Common Stock and New Preferred Stock).

10. Consequences of Owning and Disposing of the Exit Facility and New Unsecured Notes.

a. Issue Price of the Exit Facility and New Unsecured Notes

The determination of “issue price” for purposes of the analysis herein will depend, in part, on (i) whether the RBL Claims or Exit Facility are traded on an “established market” at any time during the 31-day period ending fifteen (15) days after the Effective Date and (ii) whether the Notes or New Unsecured Notes are traded on an “established market” at any time during the 31-day period ending fifteen (15) days after the Effective Date. In general, a debt instrument will be treated as traded on an established market if (a) a “sales price” for an executed purchase of the debt instrument appears on a medium that is made available to issuers of debt instruments, persons that regularly purchase or sell debt instruments, or persons that broker purchases or sales of debt instruments; (b) a “firm” price quote for the debt instrument is available from at least one broker, dealer, or pricing service for property and the quoted price is substantially the same as the price for which the person receiving the quoted price could purchase or sell the property; or (c) there are one or more “indicative” quotes available from at least one broker, dealer, or pricing service for property. The issue price of a debt instrument that is traded on an established market would be the fair market value of such debt instrument on the issue date as determined by such trading. The issue price of a debt instrument that is not traded on an established market but is issued in exchange for property traded on an established market would be the fair market value of such property on the issue date as determined by such trading. If the Exit Facility or New Unsecured Notes, as applicable, are not treated as traded on an established market nor issued for other property so traded, the issue price of the Exit Facility or New Unsecured Notes, as applicable, generally would be its stated principal amount (because the interest rate on the Exit Facility and New Unsecured Notes is expected to exceed the applicable federal rate published by the IRS).

b. Stated Interest on the Exit Facility and New Unsecured Notes

Each payment of stated interest on the Exit Facility and New Unsecured Notes generally will be taxable to a U.S. Holder of the Exit Facility and New Unsecured Notes as ordinary income at the time it is paid or accrued in accordance with the U.S. Holder’s usual method of accounting for tax purposes.

c. Accrual of Original Issue Discount on the Exit Facility or New Unsecured Loans

The Exit Facility or New Unsecured Loans, as applicable, may be treated as issued with original issue discount (“OID”). A debt instrument generally has OID if its “stated redemption price at maturity” exceeds its “issue price” (as described above) by more than a *de minimis* amount. The “stated redemption price at maturity” of the Exit Facility or New Unsecured Loans, as applicable, for this purpose would include all principal and interest payable over the term of such debt instrument, other than “qualified stated interest,” (*i.e.*, stated interest that is unconditionally payable at least annually at a constant rate in cash or property (other than debt of the issuer)). The stated interest payable on the Exit Facility and New Unsecured Loans should be considered qualified stated interest for this purpose.

If the Exit Facility or New Unsecured Loans are issued with OID, a U.S. Holder of such Exit Facility or New Unsecured Loans, as applicable, generally will be required to include OID in gross income as it accrues over the term of the loan in accordance with a constant yield-to-maturity method, regardless of whether the U.S. Holder is a cash or accrual method taxpayer, and regardless of whether and when the U.S. Holder receives cash payments of interest on the obligation. Accordingly, a U.S. Holder could be treated as receiving interest income in advance of a corresponding receipt of cash. Any OID that a U.S. Holder includes in income will increase the holder’s adjusted tax basis in the Exit Facility or New Unsecured Loans, as applicable. A U.S. Holder generally will not be required to include separately in income cash payments (other than in respect of qualified stated interest) received on the Exit Facility or New Unsecured Loans; instead, such payments will reduce the U.S. Holder’s adjusted tax basis in the Exit Facility or New Unsecured Loans by the amount of the payment.

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The amount of OID includible in income for a taxable year by a U.S. Holder generally equals the sum of the daily portions of OID that accrue on the Exit Facility or New Unsecured Loans, as applicable, for each day during the taxable year on which such Holder holds the Exit Facility or New Unsecured Loans, as applicable, whether reporting on the cash or accrual basis of accounting for U.S. federal income tax purposes. The daily portion is determined by allocating to each day of an accrual period (generally, the period between interest payments or compounding dates) a pro rata portion of the OID allocable to such accrual period. The amount of OID that will accrue during an accrual period is the product of the “adjusted issue price” of the Exit Facility or New Unsecured Loans, as applicable, at the beginning of the accrual period multiplied by the yield to maturity of the Exit Facility or New Unsecured Loans, as applicable, less the amount of any qualified stated interest allocable to such accrual period. The “adjusted issue price” of the Exit Facility or New Unsecured Loans, as applicable, at the beginning of an accrual period will equal its issue price, increased by the aggregate amount of OID that has accrued on the Exit Facility or New Unsecured Loans, as applicable, in all prior accrual periods, and decreased by any payments made during all prior accrual periods on the Exit Facility or New Unsecured Loans, as applicable, other than qualified stated interest.

THE RULES REGARDING THE DETERMINATION OF ISSUE PRICE AND OID ARE COMPLEX, AND THE OID RULES DESCRIBED ABOVE MAY NOT APPLY IN ALL CASES. ACCORDINGLY, EACH HOLDER OF THE EXIT FACILITY OR NEW UNSECURED LOANS IS URGED TO CONSULT ITS TAX ADVISOR REGARDING THE POSSIBLE APPLICATION OF THE OID RULES TO THE EXIT FACILITY OR NEW UNSECURED LOANS.

d. Sale, Redemption, or Repurchase of the Exit Facility or New Unsecured Notes

Unless a non-recognition provision applies, a U.S. Holder of the Exit Facility or New Unsecured Notes generally will recognize capital gain or loss upon the sale, redemption, or other disposition of the Exit Facility or New Unsecured Notes. Such capital gain or loss will be long-term capital gain or loss if at the time of the sale, exchange, retirement, or other taxable disposition, the U.S. Holder’s holding period in the Exit Facility or New Unsecured Notes, as applicable, is more than one year. Long-term capital gain of an individual taxpayer generally is taxed at preferential rates. The deductibility of capital losses is subject to certain limitations as discussed in “Limitation on the Use of Capital Losses” below.

11. Limitation on the Use of Capital Losses.

A U.S. Holder of a Claim who recognizes capital losses as a result of the distributions under the Plan or as a result of the disposition of the Exit Facility, New Common Stock, New Preferred Stock or New Unsecured Notes received under the Plan will be subject to limits on the use of such capital losses. For a non-corporate U.S. Holder, capital losses may be used to offset any capital gains (without regard to holding periods), and also ordinary income to the extent of the lesser of (x) \$3,000 (\$1,500 for married individuals filing separate returns) and (y) the excess of the capital losses over the capital gains. A non-corporate U.S. Holder may carry over unused capital losses and apply them against future capital gains and a portion of their ordinary income for an unlimited number of years. For corporate U.S. Holders, capital losses may only be used to offset capital gains. A corporate U.S. Holder that has more capital losses than may be used in a tax year may carry back unused capital losses to the three years preceding the capital loss year or may carry over unused capital losses for the five years following the capital loss year.

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D. Certain U.S. Federal Income Tax Consequences to Certain Non-U.S. Holders of Allowed Claims Entitled To Vote

1. Gain Recognition.

Whether a non-U.S. Holder realizes gain or loss on the sale, exchange or other disposition, and the amount of any such gain or loss, is generally determined in the same manner as set forth above in connection with U.S. Holders.

Any gain realized by a non-U.S. Holder on the sale, exchange or other disposition of its Claim generally will not be subject to U.S. federal income taxation unless (i) the non-U.S. Holder is an individual who was present in the United States for 183 days or more during the taxable year in which the restructuring transactions occur and certain other conditions are met or (ii) such gain is effectively connected with the conduct by such non-U.S. Holder of a trade or business in the United States (and if an income tax treaty applies, such gain is attributable to a permanent establishment maintained by such non-U.S. Holder in the United States).

If the first exception applies, the non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty) on the amount by which such non-U.S. Holder's capital gains allocable to U.S. sources exceed its capital losses allocable to U.S. sources during the taxable year of the sale, exchange or other disposition. If the second exception applies, the non-U.S. Holder generally will be subject to U.S. federal income tax with respect to any gain realized on the sale, exchange or other disposition at regular graduated U.S. federal income tax rates as if it were a "United States person" (as defined in the Tax Code). In addition, if such non-U.S. Holder is a corporation, it may be subject to a branch profits tax equal to 30 percent (or such lower rate provided by an applicable treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments. In order to claim an exemption from withholding tax, such non-U.S. Holder will be required to provide a properly executed IRS Form W-8ECI (or such successor form as the IRS designates).

2. Interest.

Payments made to a non-U.S. Holder pursuant to the Plan that are attributable to accrued but unpaid interest with respect to its Claims and interest payments made (or OID accruals) in respect of the Exit Facility or New Unsecured Notes generally will not be subject to U.S. federal income or withholding tax, provided that (a) such non-U.S. Holder does not actually or constructively own 10 percent or more of the total combined voting power of all classes of the stock of (i) Gulfport Parent (with respect to interest attributable to the Claims) or (ii) Reorganized Gulfport Parent (or, in the case of Alternative Structure 2, Reorganized Gulfport Holdco) (with respect to interest (including OID) attributable to the New Unsecured Notes or Exit Facility), as applicable, (b) such non-U.S. Holder is not a "controlled foreign corporation" that is a "related person" with respect to (i) Gulfport Parent (with respect to interest attributable to the Claims) or (ii) Reorganized Gulfport Parent (or, in the case of Alternative Structure 2, Reorganized Gulfport Holdco) (with respect to interest (including OID) attributable to the New Unsecured Notes or Exit Facility), as applicable (each, within the meaning of the Tax Code), and (c) the withholding agent has received or receives, prior to payment, appropriate documentation (generally, IRS Form W-8BEN or W-8BEN-E) establishing that the non-U.S. Holder is not a U.S. person (the "Portfolio Interest Exception"). However, the Portfolio Interest Exception is not available with respect to interest that is effectively connected with the conduct by the non-U.S. Holder of a trade or business within the United States (in which case, provided the non-U.S. Holder provides a properly executed IRS Form W-8ECI (or successor form) to the withholding agent, the non-U.S. Holder (x) generally will not be subject to withholding tax, but (y) will be subject to U.S. federal income tax in the same manner as a U.S. Holder (unless an applicable income tax treaty provides otherwise), and a non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such non-U.S. Holder's effectively connected earnings and profits that are attributable to the interest at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty)). A non-U.S. Holder that does not qualify for the Portfolio Interest Exception with respect to interest that is not effectively connected income generally will be subject to withholding of U.S. federal income tax at a 30 percent rate (or at a reduced rate or exemption from tax under an applicable income tax treaty) on payments that are attributable to accrued but unpaid interest. For purposes of providing a properly executed IRS Form W-8BEN or W-8BEN-E, special procedures are provided under applicable Treasury Regulations for payments through qualified foreign intermediaries or certain financial institutions that hold customers' securities in the ordinary course of their trade or business.

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3. Consequences of Owning New Common Stock and New Preferred Stock.

a. Distributions on the New Common Stock and New Preferred Stock

The gross amount of any distribution of cash or property made to a non-U.S. Holder with respect to New Common Stock or New Preferred Stock generally will be treated the same as described with respect to U.S. Holders above.

Subject to the withholding requirements under FATCA (as defined below) and with respect to effectively connected dividends, each of which is discussed below, any dividend made to a non-U.S. Holder on the New Common Stock or New Preferred Stock, as applicable, generally will be subject to U.S. withholding tax at a rate of 30% of the gross amount of the dividend unless an applicable income tax treaty provides for a lower rate. To receive the benefit of a reduced income tax treaty rate of withholding, a non-U.S. Holder must provide the applicable withholding agent with an IRS Form W-8BEN or IRS Form W-8BEN-E (or other applicable or successor form) certifying qualification for the reduced rate.

If dividends paid to a non-U.S. Holder are effectively connected with such non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. Holder maintains a permanent establishment in the United States to which such dividends are attributable), such dividends will be exempt from the U.S. federal withholding tax described above. Any such effectively connected dividends will be subject to U.S. federal income tax at regular graduated U.S. federal income tax rates as if it were a "United States person" (as defined in the Tax Code). A non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on its effectively connected earnings and profits (as adjusted for certain items), which will include such effectively connected dividends.

b. Potential Constructive Distributions with Respect to New Preferred Stock

As discussed above, holders of New Preferred Stock may be treated as receiving deemed distributions under a variety of circumstances. To the extent that any such constructive distributions are deemed to occur, they will constitute dividends for U.S. federal income tax purposes to the extent of Reorganized Gulfport Holdco's (or, in the case of Alternative Structure 1 or Alternative Structure 2, Reorganized Gulfport Parent's) current or accumulated earnings and profits as determined under U.S. federal income tax principles (and thereafter first as a return of capital which reduces basis and then, generally, capital gain), and thus subject to the same withholding and information reporting regimes described above with respect to distributions on the New Common Stock and New Preferred Stock.

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Under Treasury Regulations issued pursuant to section 871(m) of the Tax Code, withholding at a rate of 30 percent (subject to certain treaty considerations) would apply to certain "dividend equivalent" payments made or deemed made to Non-U.S. Holders in respect of financial instruments that reference U.S. stocks. The Treasury Regulations promulgated under section 871(m) do not apply to a payment to the extent that the payment is already treated as a deemed dividend under the rules described above, and therefore generally would not apply in respect of adjustments to the conversion rate of the New Preferred Stock. However, because the section 871(m) rules are

complex, it is possible that they will apply in certain circumstances in which the deemed dividend rules described above do not apply, in which case the section 871(m) rules might require withholding at a different time or amount than the deemed dividend. Importantly, in Notice 2020-2, the IRS extended certain transition relief that makes section 871(m) of the Tax Code inapplicable to instruments that are not so-called “delta one” instruments.

c. Conversion of New Preferred Stock to New Common Stock.

The characterization of the conversion of New Preferred Stock to New Common for a non-U.S. Holder will generally be the same as for a U.S. Holder, as described above, and any dividend income that a non-U.S. Holder realizes as a result of the conversion of New Preferred Stock to New Common Stock will be subject to the same withholding and information reporting regimes described above with respect to distributions on the New Common Stock and New Preferred Stock.

4. Sale, Redemption, Retirement or Other Taxable Disposition of New Common Stock, New Preferred Stock the Exit Facility or New Unsecured Notes.

A non-U.S. Holder generally will not be subject to U.S. federal income tax with respect to any gain realized on the sale, redemption, retirement or other taxable disposition (including a cash redemption) of its New Common Stock, New Preferred Stock, the Exit Facility or New Unsecured Notes unless:

- such non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition and certain other requirements are met;
- such gain is effectively connected with such non-U.S. Holder’s conduct of a U.S. trade or business (and if an income tax treaty applies, such gain is attributable to a permanent establishment maintained by such non-U.S. Holder in the United States); or
- with respect to the New Common Stock or New Preferred Stock, Reorganized Gulfport Holdco (or, in the case of Alternative Structure 1 or Alternative Structure 2, Reorganized Gulfport Parent) is or has been during a specified testing period a “U.S. real property holding corporation” (a “USRPHC”) for U.S. federal income tax purposes.

If the first exception applies, the non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty) on the amount by which such non-U.S. Holder’s capital gains allocable to U.S. sources exceed its capital losses allocable to U.S. sources during the taxable year of disposition. If the second exception applies, the non-U.S. Holder generally will be subject to U.S. federal income tax with respect to such gain at regular graduated U.S. federal income tax rates as if it were a “United States person” (as defined in the Tax Code), and a non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to earnings and profits effectively connected with a U.S. trade or business that are attributable to such gains at a rate of 30% (or at a reduced rate or exemption from tax under an applicable income tax treaty). To claim such exemption from withholding tax, a non-U.S. Holder must provide a properly executed IRS Form W-8ECI (or successor form).

If the third exception applies in the case of a sale, redemption, retirement or other taxable disposition of New Common Stock or New Preferred Stock, the non-U.S. Holder generally will be subject to U.S. federal income tax on any gain recognized on the disposition of all or a portion of its New Common Stock or New Preferred Stock and will be required to file U.S. federal income tax returns. Taxable gain from the disposition of an interest in a USRPHC (generally equal to the difference between the amount realized and such non-U.S. Holder’s adjusted tax basis in such interest) will constitute effectively connected income. Further, the buyer of the New Common Stock or New Preferred Stock will be required to withhold an amount equal to 15% of the amount realized on the disposition. The amount of any such withholding would be allowed as a credit against the non-U.S. Holder’s U.S. federal income tax liability and may entitle the non-U.S. Holder to a refund, provided that the non-U.S. Holder properly and timely files a tax return with the IRS.

In general, a corporation is a USRPHC with respect to a non-U.S. Holder if the fair market value of the corporation’s U.S. real property interests (as defined in the Tax Code and applicable Treasury Regulations) equals or exceeds 50% of the aggregate fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business (applying certain look-through rules to evaluate the assets of subsidiaries) at any time within the shorter of (a) the five-year period ending on the date of the applicable disposition or (b) the non-U.S. Holder’s holding period for its interests in the corporation. The Debtors expect that Reorganized Gulfport Holdco (or, in the case of Alternative Structure 1 or Alternative Structure 2, Reorganized Gulfport Parent) will be a USRPHC as of the Effective Date, and thus expect that the New Common Stock and New Preferred Stock will constitute a United States real property interest under the Tax Code. However, in general, the provisions described above will not apply (a) upon a disposition of New Common Stock if at all times during the shorter of the five-year period preceding the disposition date or the non-U.S. Holder’s holding period in the New Common Stock, (i) the non-U.S. Holder did not directly or indirectly own more than 5% of the value of the New Common Stock during a specified testing period and (ii) the New Common Stock is regularly traded on an established securities market or (b) upon a disposition of New Preferred Stock if either (i) (1) the New Common Stock is regularly traded on an established securities market, (2) the New Preferred Stock is not regularly traded, and (3) the fair market value of the New Preferred Stock owned, actually or constructively, by the non-U.S. Holder on the date the New Preferred Stock was acquired is equal to or less than the fair market value of 5% of the value of New Common Stock or (ii) (1) the New Preferred Stock is regularly traded, and (2) the non-U.S. Holder owns, actually or constructively, 5% or less of the outstanding New Preferred Stock. It is expected at this time that the New Common Stock will be treated as regularly traded, but no assurance can be given.

5. FATCA.

Under sections 1471 through 1474 of the Tax Code (“FATCA”), foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. accountholders and investors or be subject to withholding on the receipt of “withholdable payments.” For this purpose, “withholdable payments” are generally U.S. source payments of fixed or determinable, annual, or periodical income (including dividends, if any, on New Common Stock or New Preferred Stock and interest with respect to the Exit Facility or New Unsecured Notes), and, subject to the proposed Treasury Regulations described below, also include gross proceeds from the sale of any property of a type which can produce U.S. source interest or dividends. FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding tax.

Previously, withholding with respect to gross proceeds from the disposition of certain property like the RBL Claims, Notes Claims, Exit Facility, New Common Stock, New Preferred Stock, and New Unsecured Notes was scheduled to begin on January 1, 2019; however, such withholding has been eliminated under proposed Treasury Regulations, which can be relied on until final regulations become effective. Each non-U.S. Holder is urged to consult its own tax advisor regarding the possible impact of these rules on such non-U.S. Holder.

E. Information Reporting and Backup Withholding.

The Debtors, the Reorganized Debtors, and any other applicable withholding agent will withhold all amounts required by law to be withheld from payments of interest, dividends and other amounts payable under the Plan or in connection with payments made on account of consideration received pursuant to the Plan. The Debtors will comply with all applicable reporting requirements of the Tax Code. In general, information reporting requirements may apply to distributions or payments made to a Holder of a Claim

under the Plan, as well as future payments made with respect to the consideration received under the Plan. In addition, backup withholding of taxes will generally apply to payments in respect of a Claim under the Plan, as well as future payments made with respect to the consideration received under the Plan, unless, in the case of a U.S. Holder, such U.S. Holder provides a properly executed IRS Form W-9 or, in the case of a non-U.S. Holder, such non-U.S. Holder provides a properly executed applicable IRS Form W-8 (or, in each case, such Holder otherwise establishes eligibility for an exemption).

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Holder's U.S. federal income tax liability, and the Holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS (generally, a federal income tax return).

In addition, the Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Holders' tax returns.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY U.S. STATE OR LOCAL, OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

XIII. RESTRUCTURING TRANSACTIONS

The Plan contemplates a number of restructuring transactions that will be effectuated prior to or on the Effective Date in connection with the Plan: (i) the DIP Facility and Exit Facility provided by the RBL Lenders, (ii) the cancellation of General Unsecured Claims and Notes Claims in exchange for 100% of the New Common Stock, subject to dilution on account of the Rights Offering, and New Unsecured Notes, and (iii) the Rights Offering.

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More specifically, pursuant to the Plan and as set forth in the Restructuring Steps Memorandum, the Debtors intend to implement a flip merger at least one day prior to or on the Effective Date. At least one day prior to the Effective Date of the Plan, Gulfport Parent will form a new corporate subsidiary, Reorganized Gulfport Holdco, which in turn will form a new corporate subsidiary (the "Merger Subsidiary"). Immediately following the formation of these subsidiaries, the Merger Subsidiary will merge with and into Gulfport Parent, with Gulfport Parent surviving as a wholly-owned subsidiary of Reorganized Gulfport Holdco. Pursuant to the Flip Merger, (a) Holders of Existing Common Stock will exchange their Existing Common Stock for New Common Stock, (b) the nominal interests of Reorganized Gulfport Holdco held by Gulfport Parent will be canceled, and (c) Reorganized Gulfport Holdco will become the new publicly traded parent corporation. On the Effective Date or as soon as reasonably practicable thereafter, Reorganized Gulfport Holdco will contribute New Common Stock and Rights Offering Subscription Rights to Gulfport Parent. Immediately following such contribution, (i) Class 4A and Class 5A Creditors will exchange their Allowed General Unsecured Claims against Gulfport Parent and Allowed Notes Claims against Gulfport Parent with Gulfport Parent for New Common Stock and (ii) Class 4B and Class 5B Creditors will exchange their Allowed General Unsecured Claims against Gulfport Subsidiaries and Allowed Notes Claims against Gulfport Subsidiaries with Reorganized Gulfport Parent for New Unsecured Notes, New Common Stock, and Rights Offering Subscription Rights. All Interests in Reorganized Gulfport Holdco held by Holders of Existing Interests as a result of the Flip Merger will be canceled.

However, it is possible that the parties will instead utilize Alternative Structure 1 or Alternative Structure 2, in which case, the New Common Stock, Rights Offering Subscription Rights, and New Preferred Stock will instead represent interests in Gulfport Parent and the Restructuring Transactions will be effected as set forth in the Restructuring Steps Memorandum.

XIV. RECOMMENDATION

In the opinion of the Debtors, the Plan is preferable to all other available alternatives and provides for a larger distribution to the Debtors' creditors than would otherwise result in any other scenario. Accordingly, the Debtors recommend that Holders of Claims entitled to vote on the Plan vote to accept the Plan and support Confirmation of the Plan.

Dated: February 23, 2021

Gulfport Energy Corporation

/s/ Mark Rajcevich

Mark Rajcevich

Chief Restructuring Officer

GULFPORT ENERGY CORPORATION

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EXHIBIT A

Plan of Reorganization

EXHIBIT B

Restructuring Support Agreement

Filed at Docket No. 40, Ex. A

EXHIBIT C

Financial Projections

EXHIBIT D

Valuation Analysis

D-1

EXHIBIT E

Liquidation Analysis

E-1

EXHIBIT F

Backstop Commitment Agreement

F-1

EXHIBIT G
Exit Facility Term Sheet

G-1

EXHIBIT H
Rights Offering Procedures

H-1

securities and exchange commission
Washington, D.C. 20549

FORM T-1

**STATEMENT OF ELIGIBILITY UNDER
THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE**

Check if an Application to Determine Eligibility of
a Trustee Pursuant to Section 305(b)(2)

UMB BANK, NATIONAL ASSOCIATION
(Exact name of Trustee as specified in its charter)

44-0194180
I.R.S. Employer Identification No.

1010 Grand Blvd.
Kansas City, Missouri
(Address of principal executive offices)

64106
(Zip Code)

UMB BANK, NATIONAL ASSOCIATION
JACOB H. SMITH IV
120 S. 6th Street, Suite 1400 | Minneapolis, MN 55402
Tel: 612-337-7014
(Name, address and telephone number of agent for service)

GULFPORT ENERGY CORPORATION
(Issuer with respect to the Securities)

Delaware
(State or other jurisdiction
of incorporation or organization)

73-1521290
(I.R.S. Employer
Identification No.)

3001 Quail Springs Parkway
Oklahoma City, Oklahoma
(Address of Principal Executive Offices)

73134
(Zip Code)

8.0% Senior Notes due 2026
(Title of the Indenture Securities)

FORM T-1

Item 1. GENERAL INFORMATION. Furnish the following information as to the Trustee.

a) *Name and address of each examining or supervising authority to which it is subject.*

The Comptroller of the Currency
Mid-Western District
2345 Grand Avenue, Suite 700
Kansas City, Missouri 64108

Federal Reserve Bank of Kansas City
Federal Reserve P.O. Station
Kansas City, Missouri 64198

Supervising Examiner
Federal Deposit Insurance Corporation
720 Olive Street, Suite 2909
St. Louis, Missouri 63101

b) *Whether it is authorized to exercise corporate trust powers.*
Yes

Item 2. AFFILIATIONS WITH OBLIGOR. *If the obligor is an affiliate of the Trustee, describe each such affiliation.*
None

Items 3-15 *Items 3-15 are not applicable because, to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

Item 16. LIST OF EXHIBITS: *List below all exhibits filed as a part of this statement of eligibility and qualification.*

1. A copy of the Articles of Association of the Trustee (Exhibit 1 to Form T-1 filed with Registration Statement No. 333-74008).
 2. Certificate of Authority from the Comptroller of the Currency evidencing a change of the corporate title of the Association (Exhibit 2 to Form T-1 filed with Registration Statement No. 333-74008).
 3. Certificate from the Comptroller of the Currency evidencing authority to exercise corporate trust powers and a letter evidencing a change of the corporate title of the Association (Exhibit 3 to Form T-1 filed with Registration Statement No. 333-74008).
 4. Bylaws, as amended of the Trustee (Exhibit 4 to Form T-1 filed with Registration Statement No. 333-74008).
 5. A copy of each Indenture referred to in Item 4. Not applicable.
 6. The consent of the Trustee required by Section 321(b) of the Act (Exhibit 6 to Registration Statement No. 333-74008).
 7. Report of Condition of the Trustee as of December 31, 2020 published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 7.
-

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, UMB BANK, NATIONAL ASSOCIATION a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the city of Baltimore, State of Maryland on the 7th day of MAY, 2021.

By: /s/ Jacob H. Smith IV
JACOB H. SMITH IV
Vice President

Exhibit 7

(See Attached)

Consolidated Report of Condition for Insured Banks and Savings Associations for December 31, 2020

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding as of the last business day of the quarter.

Schedule RC—Balance Sheet

		Dollar Amounts in Thousands		RC/N	Amount	
Assets						
1. Cash and balances due from depository institutions (from Schedule RC-A):						
a.	Noninterest-bearing balances and currency and coin (1).....	0081	430,026			1.a.
b.	Interest-bearing balances (2).....	0071	3,187,434			1.b.
2. Securities:						
a.	Held-to-maturity securities (from Schedule RC-B, column A) (3).....	JJ34	1,012,004			2.a.
b.	Available-for-sale debt securities (from Schedule RC-B, column D).....	1773	9,299,623			2.b.
c.	Equity securities with readily determinable fair values not held for trading (4).....	IA22	107,081			2.c.
3. Federal funds sold and securities purchased under agreements to resell:						
a.	Federal funds sold.....	B987	0			3.a.
b.	Securities purchased under agreements to resell (5,6).....	B989	1,650,335			3.b.
4. Loans and lease financing receivables (from Schedule RC-C):						
a.	Loans and leases held for sale.....		5369		6,708	4.a.
b.	Loans and leases held for investment.....	B528	16,101,864			4.b.
c.	LESS: Allowance for loan and lease losses (7).....	3123	215,973			4.c.
d.	Loans and leases held for investment, net of allowance (item 4.b minus 4.c).....	B529	15,885,891			4.d.
5. Trading assets (from Schedule RC-D).....						
6. Premises and fixed assets (including capitalized leases).....						
7. Other real estate owned (from Schedule RC-M).....						
8. Investments in unconsolidated subsidiaries and associated companies.....						
9. Direct and indirect investments in real estate ventures.....						
10. Intangible assets (from Schedule RC-M).....						
11. Other assets (from Schedule RC-F) (6).....						
12. Total assets (sum of items 1 through 11).....						
Liabilities						
13. Deposits:						
a.	In domestic offices (sum of totals of columns A and C from Schedule RC-E).....	2200	27,232,240			13.a.
(1)	Noninterest-bearing (8).....	6631	10,061,012			13.a.1.
(2)	Interest-bearing.....	6636	17,171,228			13.a.2.
b.	Not applicable					
14. Federal funds purchased and securities sold under agreements to repurchase:						
a.	Federal funds purchased (9).....	B993	65,636			14.a.
b.	Securities sold under agreements to repurchase (10).....	B995	2,249,861			14.b.
15. Trading liabilities (from Schedule RC-D).....						
16. Other borrowed money (includes mortgage indebtedness) (from Schedule RC-M).....						
17. and 18. Not applicable						
19. Subordinated notes and debentures (11).....						

1 Includes cash items in process of collection and unposted debits.
 2 Includes time certificates of deposit not held for trading.
 3 Institutions that have adopted ASU 2016-13 should report in item 2.a amounts net of any applicable allowance for credit losses, and item 2.a should equal Schedule RC-B, item 8, column A, less Schedule RI-B, Part II, item 7, column B.
 4 Item 2.c is to be completed by all institutions. See the instructions for this item and the Glossary entry for "Securities Activities" for further detail on accounting for investments in equity securities.
 5 Includes all securities resale agreements, regardless of maturity.
 6 Institutions that have adopted ASU 2016-13 should report in items 3.b and 11 amounts net of any applicable allowance for credit losses.
 7 Institutions that have adopted ASU 2016-13 should report in item 4.c the allowance for credit losses on loans and leases.
 8 Includes noninterest-bearing, demand, time, and savings deposits.
 9 Report overnight Federal Home Loan Bank advances in Schedule RC, item 16, "Other borrowed money."
 10 Includes all securities repurchase agreements, regardless of maturity.
 11 Includes limited-life preferred stock and related surplus.

Schedule RC—Continued

Dollar Amounts in Thousands		RCON	Amount
Liabilities—continued			
20. Other liabilities (from Schedule RC-G).....		2930	525,686
21. Total liabilities (sum of items 13 through 20).....		2948	30,073,423
22. Not applicable			
Equity Capital			
Bank Equity Capital			
23. Perpetual preferred stock and related surplus.....		3838	0
24. Common stock.....		3230	21,250
25. Surplus (excludes all surplus related to preferred stock).....		3839	849,822
26. a. Retained earnings.....		3632	1,704,062
b. Accumulated other comprehensive income (1).....		8530	327,425
c. Other equity capital components (2).....		A130	0
27. a. Total bank equity capital (sum of items 23 through 26.c).....		3210	2,902,559
b. Noncontrolling (minority) interests in consolidated subsidiaries.....		3000	0
28. Total equity capital (sum of items 27.a and 27.b).....		G105	2,902,559
29. Total liabilities and equity capital (sum of items 21 and 28).....		3300	32,975,982

Memoranda

To be reported with the March Report of Condition.

1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 2019.....
- | RCON | Number |
|------|--------|
| 6724 | NR |
- M.1.
- 1a = An integrated audit of the reporting institution's financial statements and its internal control over financial reporting conducted in accordance with the standards of the American Institute of Certified Public Accountants (AICPA) or the Public Company Accounting Oversight Board (PCAOB) by an independent public accountant that submits a report on the institution
 - 1b = An audit of the reporting institution's financial statements only conducted in accordance with the auditing standards of the AICPA or the PCAOB by an independent public accountant that submits a report on the institution
 - 2a = An integrated audit of the reporting institution's parent holding company's consolidated financial statements and its internal control over financial reporting conducted in accordance with the standards of the AICPA or the PCAOB by an independent public accountant that submits a report on the consolidated holding company (but not on the institution separately)
 - 2b = An audit of the reporting institution's parent holding company's consolidated financial statements only conducted in accordance with the auditing standards of the AICPA or the PCAOB by an independent public accountant that submits a report on the consolidated holding company (but not on the institution separately)
 - 3 = This number is not to be used
 - 4 = Directors' examination of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm (may be required by state-chartering authority)
 - 5 = Directors' examination of the bank performed by other external auditors (may be required by state-chartering authority)
 - 6 = Review of the bank's financial statements by external auditors
 - 7 = Compilation of the bank's financial statements by external auditors
 - 8 = Other audit procedures (excluding tax preparation work)
 - 9 = No external audit work

To be reported with the March Report of Condition.

2. Bank's fiscal year-end date (report the date in MMDD format).....
- | RCON | Date |
|------|------|
| 8678 | NR |
- M.2.

1 Includes, but is not limited to, net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, and accumulated defined benefit pension and other postretirement plan adjustments.
2 Includes treasury stock and unearned Employee Stock Ownership Plan shares.