

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

FORM 8-K

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

Date of Report (Date of earliest event reported): May 17, 2021

Gulfport Energy Corporation
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-19514
(Commission
File Number)

86-3684669
(I.R.S. Employer
Identification No.)

**3001 Quail Springs Parkway
Oklahoma City, Oklahoma 73134**
(Address of Principal Executive Offices and Zip Code)

Registrant's telephone number, including area code: (405) 252-4600

NOT APPLICABLE
(Former name or former address, if changed since last report)

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

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	GPOR	The New York Stock Exchange

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

Emerging growth company

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

Explanatory Note:

As previously reported, on November 13, 2020, Gulfport Energy Operating Corporation (f/k/a Gulfport Energy Corporation, or the "Predecessor") and its wholly owned subsidiaries (together with the Predecessor, the "Debtors") filed petitions for voluntary relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court for the Southern District of Texas, Houston Division (the "Bankruptcy Court"). The Debtors' chapter 11 cases are jointly administered under the caption *In re Gulfport Energy Corporation, et al.*, Case No. 20-35562 (DRJ) (the "Chapter 11 Cases").

On April 28, 2021, the Bankruptcy Court entered an order (the "Confirmation Order") approving and confirming the *Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and Its Debtor Subsidiaries* (as amended, modified or supplemented from time to time, the "Plan"). The Confirmation Order and the Plan were filed as Exhibits 2.1 and 2.2, respectively to the Predecessor's Current Report on Form 8-K filed with the Securities and Exchange Commission (the "Commission") on April 28, 2021 and are hereby incorporated by reference as Exhibits 2.1 and 2.2, respectively, to this Current Report on Form 8-K.

Pursuant to the Plan and as part of the Debtors' emergence from bankruptcy, Gulfport Energy Corporation ("Gulfport") was incorporated under the laws of Delaware on April 30, 2021, as evidenced by the Certificate of Incorporation (the "Certificate of Incorporation"). On May 14, 2021, pursuant to the Plan, the Predecessor effectuated certain restructuring transactions, including entering into a Plan of Merger with Gulfport Merger Sub, Inc., a newly formed, wholly owned subsidiary of Gulfport ("Merger Sub"), pursuant to which Merger Sub was merged with and into Predecessor, resulting in the Predecessor became a wholly owned subsidiary of Gulfport. On May 17, 2021 (the "Effective Date") Gulfport filed an Amended and Restated Certificate of Incorporation (the "A&R Certificate of Incorporation") with the State of Delaware authorizing new shares of common stock, par value \$0.0001, per share (the "Common Stock") and Preferred Stock (as defined below).

On the Effective Date, the Plan became effective in accordance with its terms and the Debtors emerged from the Chapter 11 Cases. As a result, effective as of the Effective Date for the purposes of Rule 15d-5 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Gulfport is the successor registrant to the Predecessor. Gulfport is thereby deemed subject to the periodic reporting requirements of the Exchange Act, and the rules and regulations promulgated thereunder, and, in accordance therewith, will file

reports and other information with the Commission.

This Current Report is being filed by Gulfport as its initial report to the Commission and as notice that Gulfport is deemed the successor issuer to the Predecessor under the Exchange Act and, in accordance with the rules and regulations promulgated thereunder, intends to file reports and other information with the Commission. The first periodic report to be filed by Gulfport with the Commission will be its Quarterly Report on Form 10-Q for the quarter ending on June 30, 2021.

Item 1.01- Entry into a Material Definitive Agreement

Exit Credit Facility

Capitalized terms used, but not defined, in this section have the meanings ascribed to them in the Plan. On May 17, 2021, the Debtors entered into a Second Amended and Restated Credit Agreement (as amended, supplemented or modified from time to time, together with all Exhibits and schedules thereto, the “Exit Credit Agreement”) with The Bank of Nova Scotia as administrative agent (in such capacity, the “Administrative Agent”), various lender parties (collectively, the “Lenders”) and acknowledged and agreed to by certain of Gulfport’s subsidiaries, as guarantors (the “Guarantors”), providing for (i) a new money senior secured reserve-based revolving credit facility in an aggregate maximum principal amount of up to \$1.50 billion (the “Exit Facility”); (ii) a senior secured term loan in an aggregate maximum principal amount of up to \$180.0 million (the “First-Out Term Loan Facility,” and together with the Exit Facility, the “Exit Credit Facility”), collectively with an initial borrowing base and elected commitments amount of up to \$580.0 million (less the amount of any term loan deemed funded by any RBL Lender that is not a Consenting RBL Lender).

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The borrowing base will be redetermined semiannually on or around May 1 and November 1 of each year, with one interim “wildcard” redetermination available to each of Gulfport and the Administrative Agent between scheduled redeterminations during each calendar year. The next scheduled redetermination will be on or around November 1, 2021.

Loans drawn under the Exit Facility will not be subject to amortization, while loans drawn under the First-Out Term Loan Facility will amortize with quarterly installments in an amount equal to \$15.0 million, commencing on the closing date and occurring every three months after the closing date.

The Exit Facility provides for a \$150.0 million sublimit of the aggregate commitments that is available for the issuance of letters of credit. The Exit Facility bears interest at a rate equal to, at Gulfport’s election, either (a) LIBOR plus an applicable margin that varies from 3.00% to 4.00% per annum or (b) a base rate plus an applicable margin that varies from 2.00% to 3.00% per annum. The First-Out Term Loan Facility bears interest at a rate equal to, at Gulfport’s election, either (a) LIBOR (subject to a 1.00% floor) plus 4.50% or (b) a base rate (subject to a 2.00% floor) plus 3.50%. The Exit Facility and First-Out Term Loan Facility will mature on May 17, 2024.

The Exit Credit Agreement requires Gulfport to maintain (i) a net funded leverage ratio of less than or equal to 3.00 to 1.00, (ii) a net senior secured leverage ratio of less than or equal to 2.00 to 1.00, and (iii) a current ratio of greater than or equal to 1.00 to 1.00.

Gulfport is required to pay a commitment fee of 0.50% per annum on the average daily unused portion of the current aggregate commitments under the Exit Facility. Gulfport is also required to pay customary letter of credit and fronting fees.

The Exit Credit Agreement also contains customary affirmative and negative covenants, including, among other things, as to compliance with laws (including environmental laws and anti-corruption laws), delivery of quarterly and annual financial statements and borrowing base certificates, conduct of business, maintenance of property, maintenance of insurance, restrictions on the incurrence of liens, indebtedness, asset dispositions, restricted payments, and other customary covenants.

Additionally, the Exit Credit Agreement contains customary events of default and remedies for credit facilities of this nature. If Gulfport does not comply with the financial and other covenants in the Exit Credit Agreement, the Lenders may, subject to customary cure rights, require immediate payment of all amounts outstanding under the Exit Credit Agreement and any outstanding unfunded commitments may be terminated.

This summary of the Exit Credit Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Exit Credit Agreement, which is filed as Exhibit 10.1 to this Current Report and incorporated herein by reference.

Guarantee and Security of the Exit Credit Facility

The obligations under the Exit Credit Facility are guaranteed by Gulfport and the Guarantors (collectively, the “Loan Parties”) and secured by substantially all of the Loan Parties’ assets (subject to customary exceptions), including mortgages on at least 85% of the PV-10 of the borrowing base properties as set forth on the reserve report. On the Effective Date, the Guarantors entered into a guarantee and collateral agreement in favor of the Administrative Agent, for the benefit of the secured parties thereunder, pursuant to which the Guarantors guaranteed the payment and performance of all indebtedness and liabilities arising pursuant to, or in connection with, the Exit Credit Agreement.

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Senior Unsecured Notes Indentures

On the Effective Date, Gulfport Energy Operating Corporation, a Delaware corporation and a subsidiary of Gulfport (the “Issuer”), entered into an indenture to issue up to \$550 million aggregate principal amount of its 8.000% senior notes due 2026, dated as of May 17, 2021, by and among the Issuer, UMB Bank, National Association, as trustee, and the guarantors party thereto (such indenture, the “1145 Indenture,” and such senior notes issued thereunder, the “1145 Notes”), under section 1145 of the Bankruptcy Code (“Section 1145”). Certain eligible holders have made an election (the “4(a)(2) Election”) entitling such holders to receive senior notes issued pursuant to an indenture, dated as of May 17, 2021, by and among the Issuer, UMB Bank, National Association, as trustee, and the guarantors party thereto (such indenture, the “4(a)(2) Indenture,” and such senior notes issued thereunder, the “4(a)(2) Notes”), under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”) as opposed to its share of the up to \$550 million aggregate principal amount of 1145 Notes. The 4(a)(2) Indenture’s terms are substantially similar to the terms of the 1145 Indenture. The primary differences between the terms of the 4(a)(2) Indenture and the terms of the 1145 Indenture are that (i) affiliates of the Issuer holding 4(a)(2) Notes are permitted to vote in determining whether the holders of the required principal amount of indenture securities have concurred in any direction or consent under the 4(a)(2) Indenture, while affiliates of the Issuer holding 1145 Notes will not be permitted to vote on such matters under the 1145 Indenture, (ii) the covenants of the 1145 Indenture (other than the payment covenant) require that the Issuer comply with the covenants of the 4(a)(2) Indenture, as amended, and (iii) the 1145 Indenture requires that the 1145 Securities be redeemed pro rata with the 4(a)(2) Securities and that the 1145 Indenture be satisfied and discharged if the 4(a)(2) Indenture is satisfied and discharged.

The offering of the 1145 Notes and the 4(a)(2)Notes (together, the “Notes”) is part of a series of exit financing transactions being undertaken in connection with the Debtors’ Chapter 11 Cases and pursuant to the terms of the Plan as approved by the Bankruptcy Court on April 28, 2021. The following is a brief description of the material provisions of the 1145 Indenture, the 4(a)(2) Indenture and the Notes. The 1145 Indenture and the 4(a)(2) Indentures are referred to together as the “Indentures.”

Ranking

The Notes are the Issuer's senior unsecured obligations. Accordingly, they rank (i) equal in right of payment to all existing and future senior indebtedness, including borrowings under the Exit Credit Facility, (ii) effectively subordinate in right of payment to all of existing and future secured indebtedness, including indebtedness under the Exit Credit Facility, to the extent of the value of the collateral securing such indebtedness, (iii) structurally subordinate in right of payment to all existing and future indebtedness and other liabilities of any future subsidiaries that do not guarantee the Notes and any entity that is not a subsidiary that does not guarantee the Notes and (iv) senior in right of payment to all future subordinated indebtedness. Each guarantee of the Notes by a guarantor is a general, unsecured, senior obligation of such guarantor. Accordingly, the guarantees (i) rank equally in right of payment with all existing and future senior indebtedness of such guarantor (including such guarantor's guarantee of indebtedness under the Exit Credit Facility), (ii) are effectively subordinated to all existing and future secured indebtedness of such guarantor, including such guarantor's guarantee of indebtedness under the Exit Credit Facility, to the extent of the value of the collateral of such guarantor securing such secured indebtedness, (iii) are structurally subordinated to all indebtedness and other liabilities of any future subsidiaries of such guarantor that do not guarantee the Notes and (iv) rank senior in right of payment to all future subordinated indebtedness of such guarantor.

Guarantees

The Notes are guaranteed on a senior unsecured basis by each of the Issuer's subsidiaries that guarantee the Exit Facility.

Maturity and Interest

The Notes will mature on May 17, 2026.

Interest on the Notes will be payable semi-annually, on June 1 and December 1 of each year, commencing on December 1, 2021, to holders of record on the immediately preceding May 15 or November 15, as the case may be. Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from May 17, 2021. Interest will be computed on the basis of a 360-day year of twelve 30-day months. Gulfport will pay interest on overdue principal at 8.0% plus 1.0% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

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Covenants

Each of the Indentures contain covenants limiting the Issuer's and its restricted subsidiaries' ability to (i) incur additional debt, (ii) pay dividends or distributions in respect of certain equity interests or redeem, repurchase or retire certain equity interests or subordinated indebtedness, (iii) make certain investments, (iv) create restrictions on distributions from restricted subsidiaries, (v) engage in specified sales of assets, (vi) enter into certain transactions among affiliates, (vii) engage in certain lines of business, (viii) engage in consolidations, mergers and acquisitions, (ix) create unrestricted subsidiaries and (x) incur or create liens. These covenants contain important exceptions, limitations and qualifications. At any time that the Notes are rated investment grade, certain covenants will be terminated and cease to apply.

Optional Redemption

On and after May 17, 2024, the Issuer has the right, at its option, to redeem all or a portion of the Notes, at the redemption prices, plus accrued interest to the redemption date, if redeemed during the 12-month period commencing on May 17 of the years set forth below:

Period	Redemption Price
2024	104.00%
2025 and thereafter	100.00%

At any time prior to May 17, 2024, the Issuer has the right, at its option on one or more occasions, to redeem Notes in an aggregate principal amount not to exceed 40% of the aggregate principal amount of the Notes issued prior to such date at a redemption price of 108.00%, plus accrued and unpaid interest to the redemption date, using net cash proceeds from one or more equity offerings, subject to certain use of proceeds and timing requirements.

Prior to May 17, 2024, the Issuer also has the right, at its option, to redeem all or a portion of the Notes at a redemption price equal to 100% of the principal amount of the Notes plus the Applicable Premium (as defined in the Indentures) as of, and accrued and unpaid interest to, the redemption date.

Change of Control

Upon the occurrence of a change of control, each holder of Notes shall have the right to require the Issuer to repurchase such holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of such Notes, plus accrued and unpaid interest, if any, up to the date of purchase.

Events of Default

Each of the Indenture also provides for customary events of default which, if certain of them occur: (i) would make all outstanding Notes due and payable immediately; or (ii) would allow the trustee or the holders of at least 30% in aggregate principal amount of the then outstanding Notes to declare the principal of and accrued and unpaid interest, if any, on all the Notes to be due and payable by notice to the Issuer and, upon such declaration, such principal and accrued and unpaid interest, if any, will be due and payable immediately.

The foregoing descriptions of each of the 1145 Indenture and the 4(a)(2) Indenture are qualified in their entirety by the full text of each of the 1145 Indenture and the 4(a)(2) Indenture, including the applicable form of Note contained therein, which are attached as Exhibit 4.1 and Exhibit 4.2 to this Current Report, respectively, and incorporated herein by reference.

Registration Rights Agreement

Pursuant to the Plan, on the Effective Date, Gulfport entered into a Registration Rights Agreement (the "Registration Rights Agreement") with certain stockholders (the "Holders"). The Registration Rights Agreement provides resale registration rights for the Holders' Registrable Securities (as defined in the Registration Rights Agreement).

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Pursuant to the Registration Rights Agreement, upon a request of any Holder holding at least 10% of the Common Stock of Gulfport, Gulfport is required to use commercially

reasonable efforts to effect the registration of such Holder's Registrable Securities and to keep such Registration Statement (the "Registration Statement") effective for a period of not less than 180 days (or, if sooner, until all Registrable Securities have been sold under such Registration Statement).

In the event that Gulfport becomes eligible ("S-3 Shelf Eligible") to use a registration statement on Form S-3 in connection with a secondary public offering of equity securities on a delayed or continuous basis pursuant to Rule 415 under the Securities Act (a "Shelf Registration Statement") and a Shelf Registration Statement is not then effective, upon a written request from any Holder, Gulfport must use its commercially reasonable efforts to register on a Shelf Registration Statement the offer and sale of all or a portion of the Registrable Securities owned by such Holder. With respect to each Shelf Registration Statement, Gulfport shall as promptly as practicable after the written request of the requesting Holder, file a Shelf Registration Statement and use its commercially reasonable efforts to cause such Shelf Registration Statement to be declared effective as promptly as practicable, and remain effective until the earlier of the date (x) on which all of the securities covered by such Shelf Registration Statement are no longer Registrable Securities and (y) on which Gulfport cannot extend the effectiveness of such Shelf Registration Statement because it is no longer S-3 Shelf Eligible.

Additionally, the Holders have customary underwritten offering and piggyback registration rights, subject to the limitations set forth in the Registration Rights Agreement.

These registration rights are subject to certain conditions and limitations, including the right of underwriters to limit the number of shares to be included in a registration statement and Gulfport's right to delay or withdraw a registration statement under certain circumstances. Gulfport will generally pay all registration expenses in connection with its obligations under the Registration Rights Agreement, regardless of whether a registration statement is filed or becomes effective. The registration rights granted in the Registration Rights Agreement are subject to customary indemnification and contribution provisions, as well as customary restrictions such as blackout periods and, if an underwritten offering is contemplated, limitations on the number of shares to be included in the underwritten offering that may be imposed by the underwriters.

The obligations to register shares under the Registration Rights Agreement will terminate with respect to each Holder when such Holder no longer owns any Registrable Securities.

The description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Registration Rights Agreement, which is filed as Exhibit 10.2 to this Current Report and incorporated herein by reference.

Side Letter with Silver Point

On the Effective Date, Gulfport entered into a cooperation agreement (the "Side Letter") with Silver Point Capital, L.P., a Delaware limited partnership ("Silver Point"). Pursuant to the Side Letter, from the Effective Date until the date which Silver Point ceases to hold 20% or more of the voting power of the Common Stock, the Preferred Stock, and any other securities of Gulfport entitled to vote in the election of directors, or securities convertible into, or exercisable or exchangeable for, such shares or other securities, whether or not subject to the passage of time or other contingencies (the "Expiration Date"), Gulfport agreed to (i) use all reasonable efforts to cause the election of a director designated by Silver Point (the "Silver Point Designee") at each annual or special meeting of the stockholders of Gulfport at which directors are to be elected, (ii) take such action as is necessary such that the Silver Point Designee is, subject to Gulfport policies, New York Stock Exchange listing standards and applicable law, appointed to the Compensation Committee of the Board and to any executive committee of the Board exercising substantially all the typical authority or role of the Board that is formed on or after the Effective Date and (iii) invite one representative of Silver Point, who will be designated by Silver Point, to attend all meetings of the Board (and any committee thereof) in a nonvoting observer capacity and, in this respect, shall, subject to customary restrictions, give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors.

The description of the Side Letter does not purport to be complete and is qualified in its entirety by reference to the full text of the Side Letter, which is filed as Exhibit 10.3 to this Current Report and incorporated herein by reference.

Item 1.02 - Termination of a Material Definitive Agreement

Equity Interests

In accordance with the Plan, all agreements, instruments and other documents evidencing, relating to or otherwise connected with any of the Predecessor's equity interests outstanding prior to the Effective Date (the "Existing Equity Interests") were cancelled, released and extinguished without any distribution.

Debt Securities

In accordance with the Plan, on the Effective Date, all outstanding obligations under the following notes (the "Unsecured Notes") were cancelled and the indentures governing such obligations were cancelled, except to the limited extent expressly set forth in the Plan:

- the 6.625% Unsecured Notes due 2023, issued pursuant to that certain Indenture dated as of April 21, 2015 by and among the Predecessor, as issuer, UMB Bank, N.A. as successor trustee, and the subsidiary guarantors party thereto;
- the 6.000% Unsecured Notes due 2024, issued pursuant to that certain Indenture, dated as of October 14, 2016, by and among the Predecessor, as issuer, UMB Bank, N.A. as successor trustee, and the subsidiary guarantors party thereto;
- the 6.375% Unsecured Notes due 2025, issued pursuant to that certain Indenture, dated as of December 21, 2016, by and among the Predecessor, as issuer, UMB Bank, N.A. as successor trustee, and the subsidiary guarantors party thereto; and
- the 6.375% Unsecured Notes due 2026, issued pursuant to that certain Indenture, dated as of October 11, 2017, by and among the Predecessor, as issuer, UMB Bank, N.A. as successor trustee, and the subsidiary guarantors party thereto.

Other Claims

In accordance with the Plan, holders of claims against and interests in the Debtors received the following treatment (capitalized terms used, but not defined, in this section have the meanings ascribed to them in the Plan):

- each holder of allowed claims arising under the senior secured credit facility provided for under that certain Amended and Restated Credit Agreement, dated as of December 27, 2013, by and among the Predecessor, as the borrower and the other parties thereto (Class 3) received at its option: (a) its Pro Rata share of the Exit RBL/Term Loan A or (b) its Pro Rata share of the Exit Term Loan B Facility;
- each holder of an Allowed General Unsecured Claim against the Predecessor (Class 4A) greater than the Convenience Claim Threshold received its Pro Rata share of (i) the Gulfport Parent Equity Pool, (ii) the Gulfport Parent Cash Pool and (iii) the Mammoth Shares; *provided* that holders of Allowed General Unsecured Claims against the Predecessor that were greater than the Convenience Claim Threshold could irrevocably opt into Convenience Claim treatment by completing a Convenience Claim Opt-In Form;

- each holder of an Allowed General Unsecured Claim against the subsidiaries of the Predecessor (Class 4B) greater than the Convenience Claim Threshold received its Pro Rata share of (i) the Gulfport Subsidiaries Equity Pool, (ii) the Rights Offering Subscription Rights and (iii) the New Unsecured Notes; *provided* that holders of Allowed General Unsecured Claims against the subsidiaries of the Predecessor that were greater than the Convenience Claim Threshold could irrevocably opt into Convenience Claim treatment by completing a Convenience Claim Opt-In Form;

- each holder of an Allowed Convenience Claim (Class 4C) received its Pro Rata share of the Convenience Claims Distribution Pool but not in excess of 100% of each such holder's claim;
- each holder of an Allowed Notes Claim against the Predecessor (each a "Parent Notes Claim") (Class 5A) received its Pro Rata share of the Gulfport Parent Equity Pool, subject to the rights and terms of the Indentures and the rights of the Notes Trustee to assert the Notes Trustee Charging Lien; *provided* that such holders waived certain recovery rights as further described in the Plan;
- each holder of an Allowed Notes Claim against the subsidiaries of the Predecessor (each a "Subsidiary Notes Claim") (Class 5B) received its Pro Rata share of the (i) Gulfport Subsidiaries Equity Pool, (ii) Rights Offering Subscription Rights and (iii) New Unsecured Notes, subject to the rights and terms of the Indentures and the rights of the Notes Trustee to assert the Notes Trustee Charging Lien;
- all Intercompany Claims (Class 6) were cancelled on the Effective Date in exchange for the distributions contemplated by the Plan to holders of claims and such claims were considered settled pursuant to Bankruptcy Rule 9019;
- holders of Intercompany Interests (Class 7) received no recovery or distribution but were Reinstated only to the extent necessary to maintain Gulfport's prepetition corporate structure for the ultimate benefit of the holders of Common Stock and Preferred Stock;
- all Existing Equity Interests (Class 8) in the Predecessor were cancelled on the Effective Date; and
- all Section 510(b) Claims (Class 9) were cancelled on the Effective Date.

DIP Facility

Pursuant to the Plan, on the Effective Date, that certain Debtor-in-Possession Credit Agreement, dated as of November 17, 2020, by and among Predecessor, as borrower, the Bank of Nova Scotia, as administrative agent and the lenders party thereto (the "DIP Facility"), indefeasibly converted into the Exit Facility, and all commitments under the DIP Facility terminated. Each holder of an Allowed DIP Claim received, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed DIP Claim its Pro Rata share of participation in the Exit RBL/Term Loan A Facility.

Item 2.03 - Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

On the Effective Date, Gulfport and certain of its subsidiaries, as applicable, entered into certain direct financial obligations under the Indentures and under the Exit Credit Facility. The descriptions of the Indentures and the Exit Credit Facility set forth in Item 1.01 of this Current Report are incorporated herein by reference.

Item 3.02 - Unregistered Sales of Equity Securities

On the Effective Date, and subject to applicable rounding by DTC, pursuant to the Plan (capitalized terms used, but not defined, in this section have the meanings ascribed to them in the Plan):

- 119,679 shares of Common Stock were issued to the Unsecured Claims Distribution Trust;
- 11,897 shares of Common Stock were issued to holders of the Class 4B Claims;
- 19,714,204 shares of Common Stock were issued to holders of the Class 5B Claims;
- 33 shares of Preferred Stock were issued to holders of the Class 4B Claims;

- 54,967 shares of Preferred Stock were issued to holders of the Class 5B Claims; and
- 1,678,755 shares of Common Stock were issued to the Disputed Claims reserve.

As of the Effective Date, there were 19,845,780 shares of Common Stock and 55,000 shares of Preferred Stock issued and outstanding.

The shares of Common Stock and Preferred Stock were issued pursuant to the Plan and were issued pursuant to the exemption from the registration requirements of the Securities Act under section 1145 of the Bankruptcy Code and, to the extent such exemption was unavailable, in reliance on the exemption provided by section 4(a)(2) under the Securities Act. The descriptions of the Preferred Stock and the Preferred Terms in Item 5.03 of this Current Report are incorporated herein by reference.

Item 3.03 - Material Modifications to Rights of Security Holders

As provided in the Plan and related documentation, all notes, equity, agreements, instruments, certificates and other documents evidencing any claim against or interest in the Debtors were cancelled on the Effective Date and the obligations of the Debtors thereunder or in any way related thereto were fully released. The securities cancelled on the Effective Date include all of the Unsecured Notes. For further information, see the Explanatory Note and Items 1.02 and 5.03 of this Current Report, which are incorporated herein by reference.

Item 5.01 - Changes in Control of Registrant

On the Effective Date, all of the Existing Equity Interests and all of the Unsecured Notes were cancelled, and, in respect of the cancellation of such indebtedness and pursuant to the Plan and related documentation, (i) 19,726,101 shares of Common Stock representing all of the Common Stock issued and outstanding were issued to the holders of Allowed General Unsecured Claims against the Predecessor and its subsidiaries and Allowed Notes Claims against the Predecessor and its subsidiaries and (ii) 55,000 shares of

Preferred Stock representing all of the Preferred Stock issued and outstanding were issued to the holders of the Allowed General Unsecured Claims against the Predecessor's subsidiaries and Allowed Notes Claims Against the Predecessor's subsidiaries. For further information, see Items 1.02, 3.02 and 5.03 of this Current Report, which are incorporated herein by reference.

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

Departure of Directors

In accordance with the Plan, Alvin Bledsoe, David M. Wood, Deborah G. Adams, Valerie Jochen, Samatha Holroyd, C. Doug Johnson, Ben T. Morris and John W. Somerhalder II resigned from the Predecessor's board of directors on the Effective Date. There were no known disagreements between such directors and the Predecessor which led to their respective resignations.

Appointment of Directors

Gulfport's board of directors (the "Board") will consist of no less than five and no more than eleven members, the exact number to be set from time to time by the Board, selected in accordance with the Plan. As of the Effective Date, in accordance with the Plan, the following individuals were appointed to the Board: Timothy Cutt, David Wolf, Guillermo Martinez, Jason Martinez and David Reganato (the "Gulfport Directors" and each, a "Gulfport Director"). The Board consists of a single class of directors with the initial term of office to expire at the 2022 annual meeting of shareholders or upon such office being vacated in accordance with the Amended and Restated Bylaws of Gulfport (the "Bylaws"). David Wolf will serve as the lead independent director.

The current expected committees of the Board and directors appointed to each committee are as follows:

- Audit Committee: David Wolf (Chair), David Reganato, Guillermo Martinez, and Jason Martinez

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- Compensation Committee: Jason Martinez (Chair), David Reganato, David Wolf, and Guillermo Martinez
- Nominating, Environmental, Social and Governance Committee: Guillermo Martinez (Chair), David Reganato, David Wolf, and Jason Martinez

In connection with their appointment, each Gulfport Director is expected to enter into an indemnification agreement with Gulfport providing for indemnification and advancement of litigation and other expenses to the fullest extent permitted by law for claims relating to their service to Gulfport or its subsidiaries.

There is no other arrangement or understanding between the Gulfport Directors and any other persons pursuant to which they were appointed as a member of the Board. None of the Gulfport Directors have any family relationship with any director or executive officer of Gulfport. There is no relationship between Timothy Cutt, David Wolf, Guillermo Martinez, Jason Martinez and David Reganato that would require disclosure pursuant to Item 404(a) of Regulation S-K.

Chief Executive Officer and Chief Financial Officer Separations

On May 17, 2021, the Board reached agreements with David M. Wood and Quentin R. Hicks that Messrs. Wood and Hicks would no longer serve as Chief Executive Officer and a member of the Board, in the case of Mr. Wood, and Chief Financial Officer, in the case of Mr. Hicks. The terminations of Messrs. Wood and Hicks from Gulfport were without "cause" during a "change of control" period under the employment agreement, effective as of August 1, 2019, between Gulfport and Mr. Wood (the "Wood Employment Agreement") and the employment agreement, effective as of August 26, 2019, between Gulfport and Mr. Hicks (the "Hicks Employment Agreement"). Subject to the execution and non-revocation of the release substantially in the form attached to the Wood Employment Agreement and Hicks Employment Agreement by Messrs. Wood and Hicks, Messrs. Wood and Hicks will receive the severance payments set forth in Section 6.1.2(c) of the Wood Employment Agreement and Hicks Employment Agreement. The foregoing description of the terms and conditions of the severance payments under the Wood Employment Agreement and Hicks Employment Agreement does not purport to be complete and is qualified in its entirety by the full text of the Wood Employment Agreement, a copy of which is attached as Exhibit 10.9 to Gulfport's 10-Q filed on August 2, 2019 and is incorporated herein by reference, and the Hicks Employment Agreement, a copy of which is attached as Exhibit 10.1 to Gulfport's 8-K filed on August 12, 2019 and is incorporated herein by reference.

Appointment of Interim Chief Executive Officer

On May 17, 2021, the Board appointed Timothy Cutt as Interim Chief Executive Officer and Chair of the Board and entered into a letter agreement (the "Interim CEO Agreement"), each effective as of May 17, 2021. There are no transactions between Gulfport and Mr. Cutt that would require disclosure under Item 404(a) of Regulation S-K. There are no arrangements or understandings between Mr. Cutt and any other persons pursuant to which he was appointed as a director of Gulfport.

Under the Interim CEO Agreement, Mr. Cutt is generally expected to serve as Interim Chief Executive Officer until December 31, 2021 (the "Term"). During the Term, Mr. Cutt will receive an annualized base salary of \$750,000 and is eligible for an annual target bonus of \$750,000 (prorated for Mr. Cutt's period of service as Interim Chief Executive Officer). Following the Term, Mr. Cutt will be paid an annual cash retainer of \$150,000. In the event of a "change of control" (as defined in the Incentive Plan (defined below)) on or prior to May 17, 2022, Mr. Cutt will be entitled to receive payments equal to (i) \$750,000 less the base salary actually paid to Mr. Cutt prior to the change of control and (ii) \$750,000 less the prorated target amount Mr. Cutt was eligible to earn during the Term, in each case, subject to Mr. Cutt's continued employment through the change of control and his execution and non-revocation of a release of claims in favor of Gulfport. In addition, Mr. Cutt will receive a signing bonus of \$75,000 and an equity award covering a number of shares with a value equal to \$3,000,000 based on the volume-weighted average price of Gulfport's common stock during the 30 days following emergence, and consisting of 50% of time-based restricted stock units with a four-year bi-annual vesting schedule and 50% of performance-based units with performance thresholds to be determined by the compensation committee of the Board, each subject to accelerated vesting in the event of a change of control. Mr. Cutt will be subject to covenants with respect to non-solicitation of employees and customers during the Term and for 12 months following the Term, and a perpetual confidentiality covenant. The foregoing description of the Interim CEO Agreement is qualified in its entirety by reference to the full text of the Interim CEO Agreement, a copy of which is attached hereto as Exhibit 10.4 and is incorporated herein by reference.

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Appointment of Chief Financial Officer

On May 17, 2021, the Board appointed William Buese as Chief Financial Officer and entered into an employment agreement (the "Employment Agreement"), effective as of May 17, 2021. There are no transactions between Gulfport and Mr. Buese that would require disclosure under Item 404(a) of Regulation S-K.

The Employment Agreement provides for an initial term that extends through December 31, 2024; provided that the agreement will automatically renew for successive one-

year terms unless Gulfport or Mr. Buese provides written notice not to renew at least 90 days before the end of the initial term or any renewal term (the initial term, together with any renewal term, the "Employment Term"). If a change of control (as defined in the Employment Agreement) occurs during the Employment Term, the Employment Term will be extended to the later of the original expiration date of the Employment Term or the date that is 24 months after the effective date of the change of control. During the Employment Term, Mr. Buese will receive an annualized base salary of \$450,000 and is eligible for an annual target bonus of 90% of his base salary. In addition, Mr. Buese will receive a signing bonus of \$75,000 and an equity award covering a number of shares with a value equal to \$1,650,000 based on the volume-weighted average price of Gulfport's common stock during the 30 days following emergence, and consisting of 50% of time-based restricted stock units and 50% of performance-based units with performance thresholds to be determined by the compensation committee of the Board. Mr. Buese will be subject to covenants with respect to non-solicitation of employees and customers during the Employment Term and for 12 months following the Employment Term, and a perpetual confidentiality covenant

Under the Employment Agreement, if Mr. Buese's termination of employment is terminated without "cause" by Gulfport or by Mr. Buese for "good reason" during such time that is not within the 24 month period following a "change of control" (as such terms are defined in the Employment Agreement), Mr. Buese will be entitled to the following severance benefits: (i) a lump sum payment equal to one times the sum of his of annual base salary and target annual bonus; (ii) a pro-rata target annual bonus, payable in a lump sum; (iii) unless otherwise provided in the applicable award agreement, pro-rata vesting of his unvested equity awards (with performance award vesting based on performance through the termination date); (iv) a lump sum payment of any accrued but unused paid time off through the termination date; and (v) a lump sum payment equal to his monthly COBRA premium for a 12-month period. If, however, Mr. Buese's employment is terminated without cause by Gulfport or by Mr. Buese for good reason, in each case, within 24 months following a change of control, Mr. Buese will be entitled to the following severance benefits: (a) a lump sum payment equal to two times the sum of his annual base salary and target annual bonus; (b) pro-rata target annual bonus, payable in a lump sum; (c) unless otherwise provided in the applicable award agreement, immediate vesting of his unvested equity awards (with performance award vesting based on performance through the termination date); (d) a lump sum payment of any accrued but unused paid time off through the termination date; and (e) a lump sum payment equal to the his monthly COBRA premium for an 18-month period. Severance benefits payable under the Employment Agreements are generally conditioned on timely execution of a waiver and release of claims. "Good reason" is generally defined as (i) the elimination of Mr. Buese's position, a material reduction in the duties and/or reassignment of Mr. Buese to a new position of materially less authority; or (ii) a material reduction in Mr. Buese's base salary, in either case, subject to a cure period of 30 days. "Cause" is generally defined as (i) Mr. Buese's willful and continued failure to perform substantially his duties with Gulfport (other than any such failure resulting from incapacity due to physical or mental illness) or (ii) Mr. Buese's willful engaging in illegal conduct or gross misconduct which is materially and demonstrably injurious to Gulfport.

The foregoing description of the Employment Agreement is qualified in its entirety by reference to the full text of the Employment Agreement, a copy of which is attached hereto as Exhibit 10.5 and is incorporated herein by reference.

Incentive Plan

In accordance with the Plan, Gulfport adopted the Gulfport Energy Corporation 2021 Stock Incentive Plan (the "Incentive Plan") as of the Effective Date and is authorizing and reserving 2,828,123 shares of Common Stock for issuance to the Gulfport's employees and non-employee directors pursuant to equity incentive awards to be granted under the Incentive Plan, which may be in the form of incentive stock options, nonstatutory stock options, restricted stock, restricted stock units, stock appreciation rights, dividend equivalents and performance awards or any combination of the foregoing. The foregoing description of the Incentive Plan is qualified in its entirety by reference to the full text of the Incentive Plan, a copy of which is attached hereto as Exhibit 10.6 and is incorporated herein by reference.

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

On the Effective Date, pursuant to the Plan, Gulfport filed the A&R Certificate of Incorporation with the Delaware Secretary of State. Also on the Effective Date, in accordance with the Plan, Gulfport adopted the Bylaws.

Except as otherwise provided in the A&R Certificate of Incorporation or by applicable law, 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.

Subject to applicable law and the rights, if any, of holders of any outstanding series of Preferred Stock, 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.

Authorized Share Capital

As of the Effective Date, the authorized share capital of Gulfport is \$14,027.5 divided into 42,110,000 shares of Common Stock, with a par value of \$0.0001 each and 110,000 shares of preferred stock, with a par value of \$0.0001, of which 110,000 shares are designated as Series A Convertible Preferred Stock (the "Preferred Stock").

Prohibited Transfers

The Predecessor had significant tax assets, which Gulfport may be able to use to offset future tax liability. As of December 31, 2020, the Predecessor had tax attributes relating to U.S. federal net operating loss carryforwards of approximately \$1.9 billion (together with certain other tax attributes, collectively, the "Tax Attributes"). Certain Tax Attributes were eliminated or reduced as a result of the transactions contemplated by the Plan.

Gulfport's ability to utilize such remaining Tax Attributes to offset future tax liability may be significantly limited if Gulfport experiences an "ownership change" (as defined in the Treasury regulations ("Treasury Regulations") promulgated under section 382 of the United States Internal Revenue Code of 1986, as amended from time to time (the "Code")). In general, an ownership change will occur when the percentage of Gulfport's ownership (by value) by one or more "5-percent shareholders" (as defined in Treasury Regulations promulgated under Section 382 of the Code) has increased by more than 50 percentage points over the lowest percentage owned by such shareholders at any time during the prior three years (calculated on a rolling basis) or, if shorter, since the most recent ownership change (the "testing period"). An ownership occurred on the Effective Date. An entity that experiences an ownership change generally will be subject to an annual limitation on its pre-ownership change tax losses and credit carryforwards equal to the equity value of the corporation immediately before the ownership change, multiplied by the long-term, tax-exempt rate posted monthly by the Internal Revenue Service (subject to certain adjustments). The annual limitation would be increased each year to the extent that there is an unused limitation in a prior year. The limitation on Gulfport's ability to utilize its Tax Attributes arising from an ownership change under Section 382 of the Code would depend on the value of Gulfport's equity at the time of any ownership change. However, if Gulfport is eligible for, and decides to utilize, the exception under Section 382(l)(5) of the Code with respect to the ownership change occurring on the Effective Date, and there is another ownership change within two years after the Effective Date, then Gulfport's ability to utilize pre-Effective Date Tax Attributes thereafter would be effectively eliminated in their entirety.

For the purpose of determining whether there has been an "ownership change," the change in ownership as a result of purchases by "5-percent shareholders" will be aggregated with certain changes in ownership that occurred during the testing period ending on the date of such purchases. If Gulfport were to experience an "ownership change," it is possible that a significant portion of the Tax Attributes would expire before Gulfport is able to use them to offset future tax liability.

In order to preserve the benefits of the Tax Attributes, following any “Threshold Level Determination” (as defined in the A&R Certificate of Incorporation), which will be announced by means of a press release and the filing of a Current Report on Form 8-K with the Securities and Exchange Commission, the A&R Certificate of Incorporation generally imposes restrictions, subject to certain exceptions and waivers, on any direct or indirect transfer of (i) any interest that would be treated as “stock” of Gulfport pursuant to Treasury Regulations § 1.382-2(a)(3) or § 1.382-2T(f)(18) (“Capital Stock”) and (ii) any warrants, rights or options (including options within the meaning of Treasury Regulations § 1.382-4(d)(9) and § 1.382-2T(h)(4)(v)) to purchase securities of Gulfport (in each case, including certain transfers of any such Gulfport securities that result from the transfer of interests in other entities that own Gulfport securities) if the effect would be to:

- increase the direct or indirect ownership of Corporation Securities (as defined in the A&R Certificate of Incorporation), including any ownership by virtue of application of constructive ownership rules, with such direct, indirect and constructive ownership determined under the provisions of Section 382 of the Code and the Treasury Regulations thereunder (“Stock Ownership”), by any individual, corporation or other legal entity, including persons treated as an entity pursuant to Treasury Regulations § 1.382-3(a)(1)(i), and including any successor (by merger or otherwise) of such entity (a “Person”) to 4.9% percent or more of Gulfport’s Capital Stock (as defined in the A&R Certificate of Incorporation) then outstanding; or
- increase the percentage of Stock Ownership of a Person who owns, directly and constructively, 4.9% or more of Gulfport’s Capital Stock.

The transfer restrictions in the A&R Certificate of Incorporation have anti-takeover effects because, among other things, they will restrict the ability of a person, entity or group to accumulate 4.9% or more of Gulfport’s Capital Stock following a Threshold Level Determination. Accordingly, the overall effects of the transfer restrictions in the A&R Certificate of Incorporation may be to render more difficult, or discourage, a merger, tender offer, proxy contest or assumption of control by a substantial holder of Corporation Securities (as defined in the A&R Certificate of Incorporation).

Preferred Stock

Ranking

Each share of the Preferred Stock will be identical in all respects to every other share of the Preferred Stock, and will, with respect to dividend rights, redemption rights and rights upon liquidation, dissolution or winding-up of the affairs of Gulfport, rank senior to the Common Stock and each other class of Gulfport’s capital stock and any other series of Preferred Stock established after the Effective Date (all such shares, including, for the avoidance of doubt, the Common Stock, collectively, the “Junior Securities”), except for any capital stock or class or series of preferred stock designated as senior or *pari passu* to the Preferred Stock and approved pursuant to Exhibit A of the A&R Certificate of Incorporation (the “Preferred Terms”).

The distinctive designation of, and the number of shares of Preferred Stock that shall constitute, each series of Preferred Stock may be increased or decreased (except as otherwise provided by the Board in the resolution establishing such series and in any event not below the number of shares of such series then outstanding) from time to time by the Board without prior approval of the holders of such series.

Voting Rights

The holders of Preferred Stock shall be entitled to vote on all matters submitted to the stockholders for a vote, voting together with the holders of the Common Stock as a single class, with each share of Preferred Stock entitled to a number of votes equal to the voting power of one share of Common Stock, multiplied by the number of shares of Common Stock issuable upon conversion of the Preferred Stock as of the record date for such vote or, if no record date is specified, as of the date of such vote (in each case, including any Preferred Stock issuable in respect of any accrued but unpaid dividends to, but not including, such date).

So long as any shares of Preferred Stock are outstanding, Gulfport shall not take any of the following actions without the affirmative vote or consent of the holders of a majority of the outstanding shares of Preferred Stock, voting as a separate class:

- authorize, allow or undertake any liquidation, dissolution or winding-up of the affairs of Gulfport;
- issue or pay any dividend, distribution or other payment with respect to Junior Securities other than Common Stock; or
- amend or alter Gulfport’s A&R Certificate of Incorporation or the Preferred Terms to amend the terms of the Preferred Stock.

Dividends and Maturity

Holders of Preferred Stock are entitled to receive cumulative dividends payable quarterly in arrears with respect to each dividend period ending on and including the last calendar day of each three-month period ending March 31, June 30, September 30 and December 31, respectively (each such period, a “Dividend Period” and each such date, a “Dividend Payment Date”), at a rate of 10% per annum of the Liquidation Preference (as defined below) with respect to cash dividends and 15% per annum of the Liquidation Preference with respect to dividends paid in kind as additional shares of Preferred Stock (“PIK Dividends”). Gulfport must pay PIK Dividends for so long as the quotient obtained by dividing (i) Total Net Funded Debt (as defined in the Exit Credit Facility) by (ii) the last twelve (12) months of EBITDAX (as defined in the Exit Credit Facility) calculated as at the applicable record date is equal to or greater than 1.50. If such ratio is less than 1.50 such dividend shall be paid in either cash or as PIK Dividends, subject to certain conditions in the Preferred Terms. The record date for payment of quarterly dividends on the Preferred Stock will be the close of business on the 15th day of the calendar month of the applicable Dividend Payment Date.

To the extent that Gulfport pays a dividend or distribution on shares of Common Stock, whether in the form of cash, securities, debt, assets or options, warrants or other rights, but excluding any dividend or distribution payable solely in shares of Common Stock (which shall result in an adjustment to the Conversion Price), such dividend shall be payable to holders of shares of Common Stock and shares of Preferred Stock on a *pari passu* pro rata basis.

The Preferred Stock has no stated maturity and will remain outstanding indefinitely unless repurchased or redeemed by Gulfport or converted into Common Stock.

Conversion Rights

Each holder of shares of Preferred Stock has the right (the “Conversion Right”), at its option and at any time, to convert all or a portion of the shares of Preferred Stock that it holds into a number of shares of Common Stock equal to the quotient obtained by dividing (x) the product obtained by multiplying (i) the Liquidation Preference times (ii) an amount equal to one (1) plus the Per Share Makewhole Amount (as defined in the Preferred Terms) on the date of conversion, by (y) \$14.00 per share (as may be adjusted under the Preferred Terms) (the “Conversion Price”).

Liquidation Rights

The Preferred Stock are entitled to a liquidation preference of \$1,000 per share of Preferred Stock (the “Liquidation Preference”). Upon any Liquidation Event (as defined in the Preferred Terms), each holder of shares of the Preferred Stock will be entitled to payment out of the assets of Gulfport available for distribution, before any distribution or

payment out of such assets may be made to the holders of any Junior Securities, and subject to the rights of the holders of any Senior Securities (as defined in the Preferred Terms) or Parity Securities (as defined in the Preferred Terms) approved, if and to the extent required, by the holders of Preferred Stock and the rights of Gulfport's creditors, of an amount equal to the greater of (i) the Liquidation Preference payable with respect to the outstanding shares of Preferred Stock and any accrued and unpaid dividends thereon, whether or not declared or (ii) such amount per share of Preferred Stock as would have been payable had all shares of Preferred Stock been converted into Common Stock immediately prior to such Liquidation Event.

Optional Redemption

Following the Effective Date, upon or after the payment of the First-Out Payment in Full (as defined in the Exit Credit Facility), Gulfport shall have the right, but not the obligation, to redeem all, but not less than all, of the outstanding shares of Preferred Stock by notice to the holders of Preferred Stock, at the greater of (i) the aggregate value of the Preferred Stock, calculated by the Current Market Price (as defined in the Preferred Terms) of the number of shares of Common Stock into which, subject to redemption, such Preferred Stock would have been converted if such shares were converted pursuant to the Conversion Right at the time of such redemption and (ii) (y) if the date of such redemption is on or prior to the three year anniversary of the date hereof, the sum of the Liquidation Preference plus the sum of all unpaid PIK Dividends through the three year anniversary of the date hereof, or (x) if the date of such redemption is after the three year anniversary of the date hereof, the Liquidation Preference (the "Redemption Price").

Mandatory Redemption

Following the Effective Date, if there shall occur a Fundamental Change (as defined in the Preferred Terms), Gulfport shall, after the payment of the First-Out Payment in Full (as defined in the Exit Credit Facility) or to the extent not prohibited under the Exit Credit Facility, redeem all, but not less than all, of the outstanding shares of Preferred Stock by cash payment of the Redemption Price per share of Preferred Stock within three (3) business days of the occurrence of such Fundamental Change. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if Gulfport lacks sufficient cash to redeem all outstanding shares of Preferred Stock, Gulfport shall redeem a pro rata portion of each holder's shares of Preferred Stock.

Anti-Takeover Provisions

Some provisions of Delaware law, the A&R Certificate of Incorporation and the Bylaws (as summarized below) and under Prohibited Transfers (as summarized above) could make certain change of control transactions more difficult, including acquisitions of Gulfport by means of a tender offer, proxy contest or otherwise, as well as removal of the incumbent directors. These provisions may have the effect of preventing changes in management. It is possible that these provisions would make it more difficult to accomplish or deter transactions that a stockholder might consider in his or her best interest, including those attempts that might result in a premium over the market price for the Common Stock.

Number and Election of Directors

The Bylaws provide that the Board shall be comprised of no less than five and no more than eleven directors, with the number of directors to be fixed from time to time by resolution adopted by the Board.

Calling of Special Meeting of Stockholders

The Bylaws provide that special meetings of stockholders may be called only by (a) the Chair of the Board or Chief Executive Officer and President and (b) the Chair of the Board, Chief Executive Officer and 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 will 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.

Amendments to the Bylaws

The Board shall have the power to make, adopt, alter, amend and repeal from time to time the Bylaws by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board at which a quorum is present in any manner not inconsistent with the laws of the State of Delaware, subject to the right of the stockholders entitled to vote with respect thereto to adopt, amend and repeal Bylaws made by the Board.

Other Limitations on Stockholder Actions

At any annual or special meeting of the stockholders, only such business will be conducted as will have been properly brought before the meeting in accordance the Bylaws. 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. 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 Gulfport. To be timely, a stockholder's notice must be delivered to and received at the principal executive offices of Gulfport not less than sixty (60) days nor more than ninety (90) days prior to the first anniversary of the preceding year's annual meeting, provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days, or delayed by more than seventy (70) days, from the anniversary date of the previous year's meeting, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than one hundred twenty (120) days prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made.

Vacancies on the Board

The Board may fill any vacancy resulting from the non-election or resignation of a director as provided in the Bylaws if such vacancy has not been filled by action of the stockholders.

Authorized but Unissued Shares

Subject only to the requirements of the Delaware General Corporation Law ("DGCL") and the limits in the A&R Certificate of Incorporation, the Board 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 deems appropriate under the circumstances. Gulfport may use these additional shares of Common Stock for a variety of corporate purposes, including future public offerings to raise additional capital, acquisitions and employee benefit plans. The existence of authorized but unissued shares of Common Stock could render more difficult or discourage an attempt to obtain control of Gulfport by means of a proxy contest, tender offer, merger or otherwise.

Authorized and unissued shares of Preferred Stock may be issued from time to time in one or more additional series as the Board, by resolution or resolutions, may from time to time determine, each of said series to be distinctively designated.

Exclusive Forum

The A&R Certificate of Incorporation provides that unless Gulfport consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of Gulfport, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer of Gulfport to Gulfport or Gulfport's stockholders, creditors or other constituents, (iii) any action asserting a claim against Gulfport or any director or officer of Gulfport arising pursuant to any provision of the DGCL or the A&R Certificate of Incorporation or the Bylaws (as either may be amended and/or restated from time to time), or (iv) any action asserting a claim against Gulfport or any director or officer of Gulfport governed by the internal affairs doctrine; *provided*, that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state court sitting in the State of Delaware.

The foregoing descriptions of the A&R Certificate of Incorporation (including the description of the terms of the Preferred Stock included as Exhibit A to the A&R Certificate of Incorporation) and Bylaws do not purport to be complete and are qualified in their entirety by reference to the A&R Certificate of Incorporation (including Exhibit A thereto) and Bylaws, copies of which are attached hereto as Exhibit 3.1 and Exhibit 3.2, respectively, and are incorporated herein by reference.

Item 9.01 - Financial Statements and Exhibits

(d) Exhibits.

The following exhibits are filed in accordance with the provisions of Item 601 of Regulation S-K:

2.1*	Order (I) Confirming the Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and Its Debtor Subsidiaries and (II) Granting Related Relief (attached as Exhibit 2.1 to Gulfport Energy Corporation's Current Report on Form 8-K (File No. 000-19514) Current Report on Form 8-K filed with the SEC on April 29, 2021).
2.2*	Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and Its Debtor Subsidiaries (attached as Exhibit 2.2 to Gulfport Energy Corporation's Current Report on Form 8-K (File No. 000-19514) Current Report on Form 8-K filed with the SEC on April 29, 2021).
3.1	Amended and Restated Certificate of Incorporation of Gulfport Energy Corporation.
3.2	Amended and Restated Bylaws of Gulfport Energy Corporation.
4.1	1145 Indenture, dated as of May 17, 2021, by and among Gulfport Energy Corporation, UMB Bank, National Association, as trustee, and the guarantors party thereto (including the form of note attached thereto).
4.2	4(a)(2) Indenture, dated as of May 17, 2021, by and among Gulfport Energy Corporation, UMB Bank, National Association, as trustee, and the guarantors party thereto (including the form of note attached thereto).
10.1	Second Amended and Restated Credit Agreement, dated as of May 17, 2021, by and among Gulfport Energy Corporation, The Bank of Nova Scotia, the lenders party thereto, and the guarantors party thereto.
10.2	Registration Rights Agreement, dated as of May 17, 2021, by and among Gulfport Energy Corporation and the holders party thereto.
10.3	Cooperation Agreement, dated as of May 17, 2021, by and among Gulfport Energy Corporation and Silver Point Capital, L.P.
10.4	Interim CEO Agreement by and among Timothy Cutt and Gulfport, effective as of May 17, 2021.
10.5	Employment Agreement by and among William Buese and Gulfport, effective as of May 17, 2021.
10.6	Gulfport Energy Corporation 2021 Stock Incentive Plan.
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.

* Previously filed.

† Certain schedules and similar attachments have been omitted pursuant to Item 601(a)(5) of Regulation S-K and will be provided to the Commission upon request.

SIGNATURES

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

Date: May 17, 2021

Gulfport Energy Corporation

By: /s/ Patrick Craine
Name: Patrick Craine
Title: Executive Vice President, General Counsel
and Corporate Secretary

**AMENDED AND 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 date of filing of the Corporation’s original Certificate of Incorporation with the Secretary of State of the State of Delaware is April 30, 2021.

2. In accordance with the provisions of Section 303 of the DGCL, this Amended and Restated Certificate of Incorporation (the “*Certificate*”) has been filed pursuant to an order for relief with respect to the Corporation, which order for relief was entered in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, on April 28, 2021. Such order for relief provides for the issuance of capital stock for cash or exchange of other securities, rights or property and fixes and determines the rights, preferences, restrictions and other matters relating to such capital stock.

3. The Certificate restates and integrates and further amends the provisions of the certificate of incorporation of the Corporation to provide in its entirety as follows:

**ARTICLE I
NAME**

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

**ARTICLE II
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 III
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 IV
DURATION**

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

**ARTICLE V
AUTHORIZED CAPITAL**

The Corporation is hereby authorized to issue a total of forty-two million one hundred ten thousand (42,110,000) shares of capital stock which shall be subdivided into classes as follows:

1. Forty-two million (42,000,000) shares of the Corporation’s capital stock shall be denominated as Common Stock, have a par value of \$0.0001 per share (the “*Common Stock*”), and have the rights, powers and preferences set forth in this paragraph. Subject to applicable and law and the rights, if any, of holders of any outstanding series of Preferred Stock, 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. Subject to applicable and law and the rights, if any, of holders of any outstanding series of 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. Except as otherwise provided in this Certificate of Incorporation or by applicable law, 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.

2. One hundred ten thousand (110,000) shares of the Corporation’s authorized capital stock shall be denominated as Preferred Stock, par value of \$0.0001 per share (the “*Preferred Stock*”), of which one hundred ten thousand (110,000) are designated as Series A Convertible Preferred Stock, having the description set forth on Exhibit A attached hereto (the “*Series A Terms*”) and incorporated by reference herein. Except as otherwise required by law, holders of any series of Preferred Stock, as such, shall be entitled only to such voting rights, if any, as shall expressly be granted thereby by this Certificate of Incorporation (including the Series A Terms). Authorized and unissued shares of Preferred Stock may be issued from time to time in one or more additional 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 except as otherwise provided in this Certificate of Incorporation (including the Series A Terms) or by applicable law, 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:

- (a) 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;

- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) The terms of sinking fund or redemption or repurchase account, if any, to be provided for shares of such series of Preferred Stock;
- (g) 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
- (h) 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 series of Preferred Stock of the Corporation, the Board of Directors shall prepare and file with the Secretary of State of the State of Delaware and pursuant to the applicable provisions of the DGCL a certificate setting forth the rights and preferences of such 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 other than as expressly required by this Certificate of Incorporation (including the Series A Terms).

3. 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 by the Board of Directors in accordance with applicable law and except as otherwise provided in this Certificate of Incorporation (including the Series A Terms).

4. Except to the extent that such rights are specifically enumerated in a certificate setting forth the rights and preferences of a specific 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 or exercisable 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.

5. Except to the extent that such rights are specifically enumerated herein (including the Series A Terms and any subsequent certificate of designations) or in a certificate setting forth the rights and preferences of a specific series of Preferred Stock or other security of the Corporation, notwithstanding the provisions of Section 242(b)(2) of the DGCL, the authorized number of shares of any class or series of 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 voting power of the stock of the Corporation entitled to vote, and no separate vote of such class or series of stock the authorized number of which is to be increased or decreased shall be necessary to effect such change.

6. Notwithstanding anything in this Certificate of Incorporation to the contrary, the Corporation may not issue non-voting equity securities of any class, series or other designation to the extent prohibited by Section 1123(a)(6) of Chapter 11 of the United States Bankruptcy Code (11 U.S.C. §§ 101-1330), as amended (the "**Bankruptcy Code**"); provided, however, that the foregoing restriction (i) shall have no further force and effect beyond that required under such Section 1123(a)(6) of the Bankruptcy Code nor after such Section 1123(A)(6) of the Bankruptcy Code no longer applies to the Corporation, and (ii) may be amended or eliminated in accordance with applicable laws as from time to time may be in effect.

ARTICLE VI RIGHTS AND POWERS OF STOCKHOLDERS

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.

ARTICLE VII DIRECTORS

1. 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.

2. 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.

3. The election of directors of the Corporation need not be by written ballot, unless the By-Laws of the Corporation otherwise provide.

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

1. 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.

2. The Board shall have the power to make, adopt, alter, amend and repeal from time to time the By-Laws of the Corporation by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present in any manner not inconsistent with the laws of the State of Delaware, subject to the right of the stockholders entitled to vote with respect thereto to adopt, amend and repeal By-Laws made by the Board of Directors.

ARTICLE IX SECTION 203 – BUSINESS COMBINATIONS WITH INTERESTED STOCKHOLDERS

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

ARTICLE X EXCLUSIVE FORUM

1. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer of the Corporation to the Corporation or the Corporation's stockholders, creditors or other constituents, (iii) any action asserting a claim against the Corporation or any director or officer of the Corporation arising pursuant to any provision of the DGCL or this Certificate of Incorporation or the Bylaws (as either may be amended and/or restated from time to time), or (iv) any action asserting a claim against the Corporation or any director or officer of the Corporation governed by the internal affairs doctrine; provided, that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state court sitting in the State of Delaware. To the fullest extent permitted by law, any person purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consents to the provisions of this Section (1) of this Article X.

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2. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. To the fullest extent permitted by law, any person purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consents to the provisions of this Section (2) of this Article X.

ARTICLE XI RESTRICTIONS ON THE TRANSFER OF SHARES OF THE CORPORATION'S CAPITAL STOCK

To ensure the preservation of certain tax attributes for the benefit of the Corporation and its shareholders, certain restrictions on the transfer of Corporation Securities (as defined below) are hereby established as more fully set forth in this Article XI:

1. Definitions and Interpretation.

The following capitalized terms have the meanings ascribed below when used in this Article XI with initial capital letters (and any references in this Article XI to any portions of Treasury Regulations §§ 1.382-2T, 1.382-2, 1.382-3 and 1.382-4 shall include any successor provisions):

- (a) **"4.9% Shareholder"** means a Person whose Percentage Stock Ownership equals or exceeds 4.9% of the Corporation's then-outstanding Capital Stock, whether directly or indirectly, and including Capital Stock such Person would be deemed to constructively own or which otherwise would be aggregated with Capital Stock owned by such Person pursuant to Section 382 of the Internal Revenue Code, or any successor provision or replacement provision and the applicable Treasury Regulations thereunder.
- (b) **"5.0% Shareholder"** has the meaning set forth in Section 382(k)(7) of the Internal Revenue Code and the applicable Treasury Regulations thereunder.
- (c) **"Capital Stock"** means any interest that would be treated as "stock" of the Corporation pursuant to Treasury Regulations § 1.382-2(a)(3) or § 1.382-2T(f)(18).
- (d) **"Corporation Securities"** means (i) Capital Stock, including Common Stock and Preferred Stock (other than preferred stock described in Section 1504(a)(4) of the Internal Revenue Code) and (ii) warrants, rights or options (including options within the meaning of Treasury Regulations § 1.382-4(d)(9) and § 1.382-2T(h)(4)(v)) to purchase Securities of the Corporation.
- (e) **"Expiration Date"** means the earliest of (i) the repeal of Section 382 of the Internal Revenue Code or any successor statute, if the Board of Directors determines that this Article XI is no longer necessary or desirable for the preservation of Tax Benefits, (ii) the close of business on the first day of a taxable year of the Corporation as to which the Board of Directors determines that no Tax Benefits may be carried forward, and (iii) such date as the Board of Directors shall fix.

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- (f) **"Internal Revenue Code"** means the United States Internal Revenue Code of 1986, as amended from time to time.

- (g) “*owner shift*” has the meaning set forth in Section 382(g)(2) of the Internal Revenue Code and the applicable Treasury Regulations thereunder.
- (h) “*Percentage Stock Ownership*” means the percentage Stock Ownership interest of any Person or group (as the context may require) for purposes of Section 382 of the Internal Revenue Code as determined in accordance with the Treasury Regulations § 1.382-2T(g), (h) (but without regard to Treasury Regulations § 1.382-2T(h)(2)(i)(A)), (j) and (k) or any successor provision.
- (i) “*Person*” means any individual, firm, corporation or other legal entity, including persons treated as an entity pursuant to Treasury Regulations § 1.382-3(a)(1) (i), and including any successor (by merger or otherwise) of such entity.
- (j) “*Prohibited Distributions*” means any and all dividends or other distributions paid by the Corporation with respect to any Excess Securities received by a Purported Transferee.
- (k) “*Prohibited Transfer*” means any Transfer or purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this Article XI.
- (l) “*Stock Ownership*” means any direct or indirect ownership of Capital Stock, including any ownership by virtue of application of constructive ownership rules, with such direct, indirect and constructive ownership determined under the provisions of Section 382 of the Internal Revenue Code and the Treasury Regulations thereunder.
- (m) “*Tax Benefits*” means the net operating loss carryforwards, capital loss carryforwards, general business credit carryforwards, alternative minimum tax credit carryforwards and foreign tax credit carryforwards, as well as any loss or deduction attributable to a “net unrealized built-in loss” of the Corporation or any direct or indirect subsidiary thereof, within the meaning of Sections 382 and 383 of the Internal Revenue Code.
- (n) “*testing period*” has the meaning set forth in Section 382(i) of the Internal Revenue Code and the applicable Treasury Regulations thereunder.
- (o) “*Threshold Level Determination*” means a determination by the Board of Directors that there has been, or would be if any proposed Transfer or Transfers were effectuated, greater than or equal to 30 percentage points of owner shift involving the Corporation’s 5.0% Shareholders during the relevant testing period.
- (p) “*Transfer*” means any direct or indirect sale, transfer, assignment, conveyance, pledge or other disposition or other action taken by a Person (other than the Corporation) that alters the Percentage Stock Ownership of any Person. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treasury Regulations §§ 1.382-4(d)(9) and 1.382-2T(h)(4)(v)). To avoid doubt, a Transfer shall not include the creation or grant of an option by the Corporation, nor shall a Transfer include the issuance of Corporation Securities by the Corporation.
- (q) “*Transferee*” means any Person to whom Corporation Securities are Transferred.
- (r) “*Treasury Regulations*” means the regulations, including temporary regulations or any successor regulations promulgated under the Internal Revenue Code, as amended from time to time.

2. *Transfer and Ownership Restrictions.* If the Board of Directors makes a Threshold Level Determination, it shall promptly announce such Threshold Level Determination by means of a press release and the filing of a Current Report on Form 8-K with the Securities and Exchange Commission. In order to preserve the Tax Benefits, from and after the Threshold Level Determination and up until the Expiration Date, no Person (including the U.S. government or any agency or instrumentality thereof) other than the Corporation shall, except as provided in Section 3 of this Article XI, Transfer to any Person (and any such attempted Transfer, including through an agreement entered into prior to the Expiration Date, shall be void ab initio) any direct or indirect interest in any Corporation Securities to the extent that such Transfer (or any series of related Transfers of which such Transfer is a part), if effective, would cause the Transferee or any other Person to become a 4.9% Shareholder, or would cause the Percentage Stock Ownership of any 4.9% Shareholder to increase (any such Transfer, a “*4.9% Transaction*”). This Section 2 of this Article XI shall not preclude either the Transfer to the Depository Trust Company (“*DTC*”), Clearing and Depository Services (“*CDS*”) or any other securities intermediary, as such term is defined in § 8102(14) of the Uniform Commercial Code, of Corporation Securities not previously held through DTC, CDS or such intermediary or the settlement of any transactions in the Corporation Securities entered into through the facilities of a national securities exchange, any national securities quotation system or any electronic or other alternative trading system; provided that, if such Transfer or the settlement of the transaction would result in a Prohibited Transfer, such Transfer shall nonetheless be a Prohibited Transfer subject to all of the provisions and limitations set forth in the remainder of this Article XI.

3. *Exceptions to Transfer and Ownership Restrictions.*

- (a) Any Transfer of Corporation Securities that would otherwise be prohibited pursuant to Section 2 of this Article XI shall nonetheless be permitted if prior to such Transfer being consummated (or, in the case of an involuntary Transfer, as soon as practicable after such Transfer is consummated), the Board of Directors approves the Transfer in accordance with Section 3(b) of this Article XI (such approval may relate to a Transfer or series of identified Transfers and may provide the effective time of such Transfer).
- (b) The restrictions set forth in Section 2 of this Article XI shall not apply to a proposed Transfer that is a 4.9% Transaction if the transferor or the Transferee obtains the authorization of the Board of Directors in the manner described below:

(i). In connection therewith, any Person who desires to effect a transaction that may be a 4.9% Transaction (a “*Requesting Person*”) shall, at least fifteen business days prior to the date of such transaction for which the Requesting Person seeks authorization (the “*Proposed Transaction*”), request in writing (a “*Request*”) that the Board of Directors review the Proposed Transaction and authorize or not object to the Proposed Transaction in accordance with this Section 3(b) of this Article XI. A Request shall be delivered by registered mail, return receipt requested, to the Secretary of the Corporation at the Corporation’s principal executive office. Such Request shall be deemed to have been made when actually received by the Corporation. A Request shall include: (A) the name and address and telephone number of the Requesting Person; (B) the number of Corporation Securities beneficially owned by, and Percentage Stock Ownership of, the Requesting Person; (C) a reasonably detailed description of the Proposed Transaction or Proposed Transactions by which the Requesting Person would propose to effect a 4.9% Transaction and the proposed tax treatment thereof; and (D) the information described in clauses (A) and (B) of this paragraph with respect to the parties to the Proposed Transaction other than the Requesting Person.

(ii). The Board of Directors shall, in good faith, endeavor to respond to a Request within ten business days of receiving such Request; provided that the failure of the Board of Directors to make a determination within such period shall be deemed to constitute the denial by the Board of Directors of the Request.

(iii). The Requesting Person shall respond promptly to reasonable requests for additional information from the Corporation or the Board of Directors and its advisors to assist the Board of Directors in making its determination. The Board of Directors shall only authorize a Proposed Transaction if it determines in its sole discretion that granting the Request is in the best interests of the Corporation or it determines in good faith that the Proposed Transaction, considered alone or with other transactions (including, without limitation, past, concurrent, contemplated or anticipated transactions (whether by the Corporation, by

another Person pursuant to a Request or otherwise, whether or not the transaction was a Prohibited Transfer) and transactions involving Corporation Securities (including issuances and redemptions) not currently contemplated but which, in the business judgment of the Board of Directors, the Corporation should retain the flexibility to pursue) would not create a material risk that the Tax Benefits may be jeopardized as a result of the application of Sections 382 and 383 of the Tax Code, allowing for a reasonable margin of safety; provided, that, if multiple Requests are submitted to the Board of Directors at approximately the same time and all such Requests would not be approved pursuant to this sentence, the Board of Directors may determine any reasonable method to apply the provisions of this sentence to such Requests. As a condition of granting its approval pursuant to this Section 3 of this Article XI, the Board of Directors may, in its sole discretion, impose any conditions that it deems reasonable and appropriate in connection with authorizing any Proposed Transaction, including requiring an affidavit or representations and warranties from the transferor and/or Transferee, and/or opinions of counsel (at the sole cost and expense of the transferor and/or Transferee) rendered by counsel selected by (or acceptable to) the Board of Directors. Any Request may be submitted on a confidential basis and, except to the extent (A) required by applicable law or regulation, (B) required pursuant to a valid and effective subpoena, order or request issued by a court of competent jurisdiction or by a governmental or regulatory body or authority or (C) provided to any regulatory or governmental authorities with jurisdiction over the Corporation and its affiliates, the Corporation shall maintain the confidentiality of such Request and the determination of the Board of Directors with respect thereto for a period of three years from the date of the Request, unless the information contained in the Request or the determination of the Board of Directors with respect thereto otherwise becomes publicly available.

- (c) In addition to Section 3(b) of this Article XI, the Board of Directors may determine that the restrictions set forth in Section 2 of this Article XI shall not apply to any particular transaction or transactions, whether or not a request has been made to the Board of Directors, including a Request pursuant to Section 3(b) of this Article XI. Any determination of the Board of Directors hereunder may be made prospectively or retroactively.

4. *Excess Securities.*

- (a) Neither the Corporation nor any of its employees or agents shall record any Prohibited Transfer, and the purported transferee of such a Prohibited Transfer (the “*Purported Transferee*”) shall not be recognized as a shareholder of the Corporation for any purpose whatsoever in respect of the Corporation Securities that are the subject of the Prohibited Transfer (the “*Excess Securities*”). Until the Excess Securities are acquired by another Person in a Transfer that is not a Prohibited Transfer, the Purported Transferee shall not be entitled, with respect to such Excess Securities, to any rights of shareholders of the Corporation, including the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Securities shall be deemed to remain with the purported transferor unless and until the Excess Securities are transferred to the Agent pursuant to Section 5 of this Article XI or until an approval is obtained under Section 3 of this Article XI. After the Excess Securities have been acquired in a Transfer that is not a Prohibited Transfer, the Corporation Securities shall cease to be Excess Securities. For this purpose, any Transfer of Excess Securities not in accordance with the provisions of this Section 4 or 5 of this Article XI shall also be a Prohibited Transfer.

5. *Transfer to Agent.* If the Board of Directors determines that a Transfer of Corporation Securities constitutes a Prohibited Transfer then, upon written demand by the Corporation sent within 30 days of the date on which the Board of Directors determines that the attempted Transfer would result in Excess Securities, the Purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership of the Excess Securities within the Purported Transferee’s possession or control, together with any Prohibited Distributions, to an agent designated by the Board of Directors (the “*Agent*”). The Agent shall thereupon sell to a buyer or buyers, which may include the Corporation, the Excess Securities transferred to it in one or more arm’s-length transactions (on the public securities market on which such Excess Securities are traded, if possible, or otherwise privately); *provided, however*, that any such sale must not constitute a Prohibited Transfer; and *provided, further*, that the Agent shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent’s discretion, such sale or sales would disrupt the market for the Corporation Securities, would otherwise adversely affect the value of the Corporation Securities or would be in violation of applicable securities laws. If the Purported Transferee has resold the Excess Securities before receiving the Corporation’s demand to surrender Excess Securities to the Agent, the Purported Transferee shall be deemed to have sold the Excess Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion of such sales proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Section 6 of this Article XI if the Agent rather than the Purported Transferee had resold the Excess Securities (taking into account the actual costs incurred by the Agent).

6. *Application of Proceeds and Prohibited Distributions.* The Agent shall apply any proceeds of a sale by it of Excess Securities and, if the Purported Transferee has previously resold the Excess Securities, any amounts received by it from a Purported Transferee, together, in either case, with any Prohibited Distributions, as follows:

- (a) first, such amounts shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder;
- (b) second, any remaining amounts shall be paid to the Purported Transferee, up to the amount paid by the Purported Transferee for the Excess Securities (or, in the event the purported Transfer of the Excess Securities was, in whole or in part, a gift, inheritance or similar Prohibited Transfer without consideration, the fair market value, (1) calculated on the basis of the closing market price for the Corporation Securities on the day before the Prohibited Transfer or, (2) if the Corporation Securities are not listed or admitted to trading on any stock exchange but are traded in the over-the-counter market, calculated based upon the difference between the highest bid and lowest asked prices, as such prices are reported by the National Association of Securities Dealers through its NASDAQ system or any successor system on the day before the Prohibited Transfer or, if none, on the last preceding day for which such quotations exist, or (3) if the Corporation Securities are neither listed nor admitted to trading on any stock exchange nor traded in the over-the-counter market, then as determined in good faith by the Board of Directors); and
- (c) third, any remaining amounts shall be paid to one or more organizations qualifying under Section 501(c)(3) of the Internal Revenue Code (or any comparable successor provision) selected by the Board of Directors.

The Purported Transferee of Excess Securities shall have no claim, cause of action or any other recourse whatsoever against any purported transferor of Excess Securities. The Purported Transferee’s sole right with respect to such shares shall be limited to the amount payable to the Purported Transferee pursuant to this Section 6 of this Article XI. In no event shall the proceeds of any sale of Excess Securities pursuant to this Section 6 of this Article XI inure to the benefit of the Corporation or the Agent, except to the extent used to cover costs and expenses incurred by Agent in performing its duties hereunder.

7. *Modification of Remedies for Certain Indirect Transfers.* In the event of any Transfer that does not involve a transfer of securities of the Corporation within the meaning of Delaware law (“*Securities*” and individually, a “*Security*”) but that would cause the Transferee or any other Person to become a 4.9% Shareholder, or would increase the Percentage Stock Ownership of a 4.9% Shareholder, the application of Section 5 and Section 6 of this Article XI shall be modified as described in this Section 7 of this Article XI. In such case, no such Transferee shall be required to dispose of any interest that is not a Security, but such Transferee or the 4.9% Shareholder or other Person to whom the non-Security interests is attributed shall be deemed to have engaged in a Prohibited Transaction and shall be required to dispose of sufficient Securities (which Securities shall be disposed of in the inverse order in which they were acquired) to cause such Person, following such disposition, not to be in violation of this Article XI. Such

disposition shall be deemed to occur simultaneously with the Transfer giving rise to the application of this provision, and such number of Securities that are deemed to be disposed of shall be considered Excess Securities and shall be disposed of through the Agent as provided in Sections 5 and 6 of this Article XI except that the maximum aggregate amount payable to such 4.9% Shareholder or other Person that was the direct holder of such Excess Securities shall be the fair market value of such Excess Securities at the time of the purported Transfer. All expenses incurred by the Agent in disposing of such Excess Securities shall be paid out of any amounts due such 4.9% Shareholder or other Person. The purpose of this Section 7 of this Article XI is to extend the restrictions in Section 2 of this Article XI to situations in which a Transferee or any other Person becomes a 4.9% Shareholder, or the Percentage Stock Ownership of any 4.9% Shareholder increases, without a direct Transfer of Corporation Securities, and this Section 7 of this Article XI, along with the other provisions of this Article XI, shall be interpreted to produce the same results, with differences as the context requires, as a direct Transfer of Corporation Securities.

8. *Legal Proceedings and Prompt Enforcement.* If the Purported Transferee fails to surrender the Excess Securities or the proceeds of a sale thereof to the Agent within 30 days from the date on which the Corporation makes a written demand pursuant to Section 5 of this Article XI (whether or not made within the time specified in Section 5 of this Article XI), then the Corporation may take such actions as it deems appropriate to enforce the provisions hereof, including the institution of legal proceedings to compel the surrender. Nothing in this Section 7 of this Article XI shall (a) be deemed inconsistent with any Transfer of the Excess Securities provided in this Article XI being void ab initio, (b) preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand or (c) cause any failure of the Corporation to act within the time periods set forth in Section 5 of this Article XI to constitute a waiver or loss of any right of the Corporation under this Article XI. The Board of Directors may authorize such additional actions as it deems advisable to give effect to the provisions of this Article XI.

9. *Obligation to Provide Information.* The Corporation may require, as a condition to the registration of any Transfer of Corporation Securities or the payment of any distribution on any Corporation Securities, that the proposed Transferee or payee furnish to the Corporation all information reasonably requested by the Corporation with respect to such proposed Transferee's or payee's direct or indirect ownership interests in such Corporation Securities. The Corporation may make such arrangements or issue such instructions to its stock transfer agent as may be determined by the Board of Directors to be necessary or advisable to implement this Article XI, including authorizing such transfer agent to require an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of Corporation Securities and other evidence that a Transfer will not be prohibited by this Article XI as a condition to registering any Transfer.

10. *Legends.* The Board of Directors may require that any certificates issued by the Corporation evidencing ownership of shares of Capital Stock, or any other evidence issued by the Corporation of uncertificated shares of Capital Stock, that are subject to the restrictions on transfer and ownership contained in this Article XI bear the following legend:

THE CERTIFICATE OF INCORPORATION (THE "**CERTIFICATE OF INCORPORATION**") OF GULFPORT ENERGY CORPORATION (THE "CORPORATION") CONTAINS RESTRICTIONS PROHIBITING THE TRANSFER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) OF STOCK OF THE CORPORATION (INCLUDING THE CREATION OR GRANT OF CERTAIN OPTIONS, RIGHTS AND WARRANTS) WITHOUT THE PRIOR AUTHORIZATION OF THE BOARD OF DIRECTORS OF THE CORPORATION (THE "**BOARD OF DIRECTORS**") IF SUCH TRANSFER AFFECTS THE PERCENTAGE OF STOCK OF THE CORPORATION (WITHIN THE MEANING OF SECTION 382 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "**CODE**"), AND THE TREASURY REGULATIONS PROMULGATED THEREUNDER), THAT IS TREATED AS OWNED BY A 4.9% SHAREHOLDER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION). IF THE TRANSFER RESTRICTIONS ARE VIOLATED, THEN THE TRANSFER WILL BE VOID AB INITIO AND THE PURPORTED TRANSFEREE OF THE STOCK WILL BE REQUIRED TO TRANSFER EXCESS SECURITIES (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) TO THE CORPORATION'S AGENT. IN THE EVENT OF A TRANSFER THAT DOES NOT INVOLVE SECURITIES OF THE CORPORATION WITHIN THE MEANING OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE ("SECURITIES") BUT THAT WOULD VIOLATE THE TRANSFER RESTRICTIONS, THE PURPORTED TRANSFEREE (OR OTHER RECORD OWNER) OF SECURITIES TO WHICH SUCH NON-SECURITIES ARE ATTRIBUTABLE WILL BE REQUIRED TO TRANSFER SUFFICIENT SECURITIES PURSUANT TO THE TERMS PROVIDED FOR IN THE CERTIFICATE OF INCORPORATION TO CAUSE THE 4.9% SHAREHOLDER TO NO LONGER BE IN VIOLATION OF THE TRANSFER RESTRICTIONS. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO THE HOLDER OF RECORD OF THIS CERTIFICATE A COPY OF THE CERTIFICATE OF INCORPORATION CONTAINING THE ABOVE-REFERENCED TRANSFER RESTRICTIONS, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

The Board of Directors may also require that any certificates issued by the Corporation evidencing ownership of shares of Capital Stock, or any other evidence issued by the Corporation of uncertificated shares of Capital Stock, that are subject to conditions imposed by the Board of Directors under Section 3 of this Article XI also bear a conspicuous legend referencing the applicable restrictions.

The Corporation may make appropriate notations upon its stock transfer records or other evidence of ownership to instruct any transfer agent, registrar, securities intermediary or depository with respect to the requirements of this Article XI for any uncertificated Corporation Securities or Corporation Securities held in an indirect holding system.

11. *Authority of Board of Directors.*

- (a) All determinations and interpretations of the Board of Directors shall be interpreted or determined, as the case may be, by the Board of Directors, in its sole discretion and shall be conclusive and binding for all purposes of this Article XI.
- (b) The Board of Directors shall have the power to determine all matters necessary for assessing compliance with this Article XI, including (i) the identification of 4.9% Shareholders, (ii) whether a Transfer is a 4.9% Transaction or a Prohibited Transfer, (iii) the Percentage Stock Ownership in the Corporation of any 4.9% Shareholder, (iv) whether any instrument constitutes Corporation Securities, (v) the amount (or fair market value) due to a Purported Transferee pursuant to Section 6 of this Article XI, (vi) the Expiration Date and (vii) any other matters which the Board of Directors determines to be relevant; and the good faith determination of the Board of Directors on such matters shall be conclusive and binding for all the purposes of this Article XI. In addition, the Board of Directors may, to the extent permitted by applicable law, from time to time establish, modify, amend or rescind Bylaws, regulations and procedures of the Corporation not inconsistent with the provisions of this Article XI for purposes of determining whether any Transfer of Corporation Securities or non-Security interests in the Corporation would jeopardize or endanger the Corporation's ability to preserve and use the Tax Benefits and for the orderly application, administration and implementation of this Article XI.

- (c) Nothing contained in this Article XI shall limit the authority of the Board of Directors to take such other action to the extent permitted by applicable law as it deems necessary or advisable to protect the Corporation and its shareholders in preserving the Tax Benefits. Without limiting the generality of the foregoing, in the event of a change in applicable law making one or more of the following actions necessary or desirable, the Board of Directors may, by adopting a written resolution, (i) modify the ownership interest percentage in the Corporation or the Persons or groups covered by this Article XI, (ii) modify the definitions of any terms set forth in this Article XI or (iii) modify the terms of this Article XI as appropriate, in each case, in order to prevent an ownership change for purposes of Section 382 of the Internal Revenue Code as a result of any changes in applicable Treasury Regulations or otherwise; *provided, however*, that the Board of Directors shall not cause there to be such modification unless it determines, by adopting a written resolution, that such action is reasonably necessary or advisable to preserve the Tax Benefits or that the continuation of these restrictions is no longer reasonably necessary for the preservation of the Tax Benefits. Shareholders of the Corporation shall be notified of such determination through a filing with the Securities and Exchange Commission or such other method of notice as the Secretary of the Corporation shall deem appropriate.

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- (d) In the case of an ambiguity in the application of any of the provisions of this Article XI, including any definition used herein, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances. In the event this Article XI requires an action by the Board of Directors but fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article XI. All such actions, calculations, interpretations and determinations which are done or made by the Board of Directors in good faith shall be conclusive and binding on the Corporation, the Agent and all other parties for all other purposes of this Article XI. The Board of Directors may delegate all or any portion of its duties and powers under this Article XI to a committee of the Board of Directors as it deems necessary or advisable and, to the fullest extent permitted by applicable law, may exercise the authority granted by this Article XI through duly authorized officers or agents of the Corporation.
- (e) Nothing in this Article XI shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

12. *Reliance.* To the fullest extent permitted by applicable law, the Corporation and the members of the Board of Directors shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the chief executive officer, the chief financial officer, the chief accounting officer or the corporate controller of the Corporation and the Corporation's legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents in making the determinations and findings contemplated by this Article XI. The members of the Board of Directors shall not be responsible for any good faith errors made in connection therewith. For purposes of determining the existence and identity of, and the amount of any Corporation Securities owned by any shareholder, the Corporation is entitled to rely on the existence and absence of filings of Schedule 13D or 13G under the Securities and Exchange Act of 1934, as amended (or similar filings), as of any date, subject to its actual knowledge of the ownership of Corporation Securities.

13. *Benefits of this Article XI.* Nothing in this Article XI shall be construed to give to any Person other than the Corporation or the Agent any legal or equitable right, remedy or claim under this Article XI. This Article XI shall be for the sole and exclusive benefit of the Corporation and the Agent.

14. *Severability.* The purpose of this Article XI is to facilitate the Corporation's ability to maintain or preserve its Tax Benefits. If any provision of this Article XI or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article XI.

15. *Waiver.* With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this Article XI, (a) no waiver will be effective unless expressly contained in a writing signed by the waiving party and (b) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation, which restates, integrates and amends the certificate of incorporation of the Corporation, to be executed by its duly authorized officer, this 17th day of May, 2021.

GULFPORT ENERGY CORPORATION

By: /s/ Patrick Crane
Name: Patrick Craine
Title: General Counsel

[Signature Page to Amended and Restated Certificate of Incorporation]

Exhibit A

Following is a description of the designations, powers, preferences, relative and other special rights, qualifications, limitations, and restrictions of the Series A Convertible Preferred Stock. Any capitalized terms used but not defined in this Exhibit A have the respective meanings ascribed to them in the Certificate of Incorporation, and any terms defined separately in this Exhibit A are defined solely for purposes hereof and shall not apply to the remainder of the Certificate of Incorporation of which this Exhibit A forms a part.

1. *Ranking.* Each share of the Series A Preferred Stock shall be identical in all respects to every other share of the Series A Preferred Stock, and shall, with respect to dividend rights, redemption rights and rights upon liquidation, dissolution or winding-up of the affairs of the Corporation, rank senior to the Common Stock and each other class of the Corporation's capital stock and any other series of Preferred Stock established after the Effective Date (all such shares, including, for the avoidance of doubt, the Common Stock, collectively, the "Junior Securities"), except for any capital stock or class or series of preferred stock designated as senior or *pari passu* to the Series A Preferred Stock and approved pursuant to Section 8 below (in which case, such capital stock, or class or series of preferred stock, shall rank as so designated).

2. Dividends.

(a) *Regular Dividends.* Holders of Series A Preferred Stock shall be entitled to receive, to the fullest extent permitted by law, mandatory and cumulative dividends payable quarterly in arrears with respect to each dividend period ending on and including the last calendar day of each three-month period ending March 31, June 30, September 30 and December 31, respectively (each such period, a “Dividend Period” and each such date, a “Dividend Payment Date”), at the Dividend Rate per share of Series A Preferred Stock. The record date for payment of quarterly dividends on the Series A Preferred Stock will be the close of business on the 15th day of the calendar month of the applicable Dividend Payment Date, whether or not such date is a Business Day, and dividends shall only be payable to registered holders of record of the Series A Preferred Stock as such holders appear on the stock ledger of the Corporation at the close of business on the related record date. If any Dividend Payment Date is not a Business Day, the applicable payment shall be due on the next succeeding Business Day.

(b) Form of Dividends.

(i) For so long as the quotient obtained by dividing (i) Total Net Funded Debt (as defined in the Exit Facility on the date hereof) by (ii) the last twelve (12) months of EBITDAX (as defined in the Exit Facility on the date hereof) calculated as at the applicable record date for each Dividend Payment Period (such quotient, the “Net Debt/EBITDAX Quotient”) is equal to or greater than 1.50, dividends contemplated by Section 2(a) shall be paid in kind as a dividend of additional shares of Series A Preferred Stock (“PIK Dividends”) for each Dividend Period on the applicable Dividend Payment Date using a price per share equal to the Liquidation Preference; provided, that the Corporation may not issue any fractional shares of Series A Preferred Stock and instead the Corporation may, at the Corporation’s option and subject to the terms of the Exit Facility, as applicable, either (x) round any fractional share of Series A Preferred Stock to be issued up to the nearest whole share or (y) make a cash payment in lieu thereof in an amount equal to the product of (a) the fraction of a share of Series A Preferred Stock that would otherwise be issuable; multiplied by (b) the Liquidation Preference. The PIK Dividend shall compound to principal on a quarterly basis, and shall accrue on, and increase, the Liquidation Preference on a daily basis until the earlier of the Conversion Date and the date of a Liquidation Event. If and to the extent that the Corporation does not for any reason pay the entire dividend payable for a particular Dividend Period as a PIK Dividend (other than, subject to the terms of the Exit Facility, as applicable, for cash in lieu of fractional shares, as contemplated by the preceding sentence or as contemplated by Section 2(b)(ii)), on the applicable Dividend Payment Date for such period (whether or not the payment of dividends is permitted under applicable law or such dividends are declared by the Board of Directors of the Corporation), such unpaid dividends shall be automatically paid as PIK Dividends to the holders of the Series A Preferred Stock as of the record date for the applicable Dividend Payment Date, on the first date on which such PIK Dividends can be paid in accordance with applicable law. PIK Dividends shall be treated for all purposes as a single series with all other shares of Series A Preferred Stock, and shall have the same designations, rights, preferences, powers, restrictions and limitations as all other shares of Series A Preferred Stock, including, without limitation, with respect to the accrual and payment of dividends or distributions. If and to the extent that shares of Series A Preferred Stock shall be represented by a physical certificate, it shall not be necessary for the Corporation to issue additional physical certificates to represent any PIK Dividends, but the outstanding physical certificates may be deemed to represent all such PIK Dividends pro rata.

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(ii) If the Net Debt/EBITDAX Quotient is less than 1.50, Dividends contemplated by Section 2(a) shall be paid either in cash (“Cash Dividends”) or as PIK Dividends, subject to the terms of Section 2(b)(i) hereof and the Exit Facility.

(c) *Special Dividends, on As-Converted Basis.* If and to the extent the Corporation intends to pay any dividend or make a distribution on shares of Common Stock, whether in the form of cash, securities, debt, assets or options, warrants or other rights, but excluding any dividend or distribution payable solely in shares of Common Stock (which shall result in an adjustment to the Conversion Price as described in Section 4(f)(ii) below) or any dividend as provided in Section 2(a) above (a “Special Dividend”), then any such Special Dividend shall be payable to the holders of shares of Common Stock and Series A Preferred Stock on a *pari passu*, pro rata basis (treating each holder of shares of Series A Preferred Stock as being the holder of the number of shares of Common Stock into which such holder’s shares of Series A Preferred Stock would have been converted if such shares were converted pursuant to the provisions of Section 4 hereof as of the record date for payment of such dividend or distribution). The record date for payment of any Special Dividend to holders of Series A Preferred Stock will be the same as the record date for payment of the Special Dividend to holders of Common Stock, whether or not a Business Day. The payment date of any Special Dividend to holders of Series A Preferred Stock will be the same date on which payment of such dividend is made to holders of Common Stock (“Special Dividend Payment Date”).

(d) *Dividend Calculations.* Dividends on the Series A Preferred Stock shall be calculated on the basis of a 360-day year, consisting of twelve (12), thirty (30) calendar day periods, and shall accrue quarterly commencing on the Effective Date, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. When a dividend is paid or deemed paid as a PIK Dividend, the number of shares so payable per share of Series A Preferred Stock shall be: (i) for any full Dividend Period, the full Dividend Rate divided by four, and (ii) for any partial Dividend Period, the Dividend Rate divided by four multiplied by a fraction, the numerator of which is the number of days elapsed during the period with respect to which the dividend is payable and the denominator of which is 90.

(e) *Conversion Prior to or Following a Record Date.* Except as otherwise set forth in Section 4(l), if the Conversion Date for any shares of Series A Preferred Stock is prior to the close of business on the record date for a dividend as provided in paragraphs (a) or (c) above, the holder of such shares shall not be entitled to any dividend in respect of such record date. If the Conversion Date for any shares of Series A Preferred Stock is after the close of business on the record date for a dividend as provided in subsections (a) or (c) above but prior to the corresponding Dividend Payment Date or Special Dividend Payment Date, as applicable, the holder of such shares as of the applicable record date shall be entitled to receive such dividend, notwithstanding the conversion of such shares prior to the applicable Dividend Payment Date or Special Dividend Payment Date, as applicable.

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3. Transfer. If any shares of Series A Preferred Stock shall constitute “restricted securities,” as that term is defined in Rule 144 (or any successor rule) promulgated pursuant to the Securities Act, such shares shall be Transferred only pursuant to a registration statement filed with the SEC in accordance with the Securities Act and applicable state securities laws, or an exemption from the requirements of such registration.

4. Conversion Rights.

(a) *Optional Conversion by Holder.* A holder shall have the right (the “Conversion Right”), at its option and at any time, to convert all or a portion of the shares of Series A Preferred Stock that it holds into Common Stock. Upon exercise of the Conversion Right as provided in this Section 4 (an “Optional Conversion”), the Corporation shall deliver to the holder the number of shares of Common Stock per share of Series A Preferred Stock equal to the quotient obtained by dividing (x) the product obtained by multiplying (i) the Liquidation Preference times (ii) an amount equal to one (1) plus the Per Share Makewhole Amount on the Conversion Date, by (y) the Conversion Price in effect on the Conversion Date. Immediately following such conversion, the right of the holder, as a holder of the converted Series A Preferred Stock, shall, except as set forth in Section 2(e) above cease, and such holder, or the Person or Persons designated by it as provided in Section 4(b), shall be treated for all purposes as having become the owner(s) of such Common Stock with respect to the shares of Series A Preferred Stock that have been converted.

(b) *Manner of Conversion.* To convert Series A Preferred Stock, a holder must (A) deliver to the Corporation a written notice specifying (1) the number of shares of Series A Preferred Stock to be converted, (2) the number of shares of Series A Preferred Stock owned prior to the conversion at issue, (3) the number of shares of Series A Preferred Stock owned subsequent to the conversion at issue, (4) the date on which such conversion is to be effective and (5) the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued or otherwise to be recorded on the Common Stock Register (such notice, the "Conversion Notice"), (B) if the Series A Preferred Stock is represented by a certificate or certificates, surrender the certificate or certificates evidencing the shares of Series A Preferred Stock to be converted, duly endorsed in a form satisfactory to the Corporation, to the Transfer Agent via the DTC's Deposit/Withdrawal at Custodian system within two (2) Business Days of delivery of the Conversion Notice and (C) pay any transfer or similar tax required by subsection (d) below to be paid by the holder, if any. In the event that a holder fails to notify the Corporation of the number of shares of Series A Preferred Stock which it wishes to convert, (x) if its shares of Series A Preferred Stock are represented by a certificate or certificates, it shall be deemed to have elected to convert all shares represented by the certificate or certificates surrendered for conversion and (y) if its shares are not so represented, it shall be deemed to have elected to convert all shares registered in the name of the holder on the Preferred Stock Register. The date on which the holder satisfies the foregoing requirements is the "Conversion Date."

No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error.

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Without limiting the rights and remedies of a holder of Series A Preferred Stock hereunder and without limiting the right of a holder of Series A Preferred Stock to deliver a Notice of Conversion to the Corporation, a holder whose interest in the Series A Preferred Stock is a beneficial interest in certificate(s) representing the shares of Series A Preferred Stock held in book- entry form through DTC (or another established clearing corporation performing similar functions), may effect conversions made pursuant to this Section 4 by delivering to DTC (or such other clearing corporation, as applicable) the appropriate form for conversion, complying with the procedures to effect conversions that are required by DTC (or such other clearing corporation, as applicable).

As soon as practical, and in any event within three (3) Business Days, following the Conversion Date, (x) if the Common Stock is then represented by certificates and the Corporation so elects, the Corporation shall deliver a certificate for the number of full shares of Common Stock issuable upon the conversion, and otherwise the Corporation shall record such shares on the Common Stock Register, and (y) if the Series A Preferred Stock is then represented by certificates and the Corporation so elects, the Corporation shall deliver a new certificate representing the unconverted portion, if any, of the shares of Series A Preferred Stock represented by the certificate or certificates surrendered for conversion, and otherwise the Corporation shall record such shares on the Preferred Stock Register. The Person in whose name the Common Stock certificate is registered, or the Person in whose name the shares of Common Stock are recorded on the Common Stock Register, shall be treated as the stockholder of record on and after the Conversion Date. Except as otherwise provided herein, the holder of record of a share of Series A Preferred Stock at the close of business on a record date with respect to the payment of dividends on the Series A Preferred Stock in accordance with Section 2 hereof will be entitled to receive such dividends with respect to such share of Series A Preferred Stock on the corresponding Dividend Payment Date, notwithstanding the conversion of such share after such record date and prior to such dividend payment date. If a holder of Series A Preferred Stock converts more than one share at a time, the number of full shares of Common Stock issuable upon conversion shall be based on the total Liquidation Preferences of all shares of Series A Preferred Stock converted by such holder at such time.

(c) *Fractional Shares.* The Corporation may not issue any fractional shares of Common Stock upon conversion of Series A Preferred Stock. Instead, subject to the terms of the Exit Facility, as applicable, the Corporation may, at the Corporation's option, either (x) round any fractional share of Common Stock owed upon the conversion of Series A Preferred Stock up to the nearest whole share or (y) pay a cash adjustment to the holder of Series A Preferred Stock being converted based upon the Current Market Price on the Business Day prior to the Conversion Date.

(d) *Tax.* If a holder converts shares of Series A Preferred Stock, the Corporation shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon the conversion. However, the holder shall pay any such tax that is due because the shares are issued in a name other than the holder's name.

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(e) *Reservation of Shares; Listing.* The Corporation shall reserve (and shall keep available and free from preemptive rights) and shall continue to reserve out of its authorized but unissued Common Stock or its Common Stock held in treasury a sufficient number of shares of Common Stock to permit the conversion of the Series A Preferred Stock in full, including conversion of shares of Series A Preferred Stock issuable as PIK Dividends as adjusted pursuant to Section 4(f). All shares of Common Stock that may be issued upon conversion of Series A Preferred Stock shall be fully paid and non-assessable. The Corporation shall comply with all securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Series A Preferred Stock, and if at any time the Common Stock is listed on any national securities exchange or automated quotation system, the Corporation shall use its commercially reasonable efforts to list all shares of Common Stock that may be issued upon conversion of Series A Preferred Stock on such national securities exchange or automated quotation system on which the Common Stock is listed. All shares of Common Stock that are issued upon the exercise of Series A Preferred Stock shall, upon issuance, be validly issued, not subject to any preemptive rights, and, be free from all taxes, liens, security interests, charges, and other encumbrances with respect to the issuance thereof (collectively, "Encumbrances"), other than taxes in respect of any transfer occurring contemporaneously with such issue and Encumbrances created by the holder.

(f) *Specific Adjustments.* The Conversion Price shall be subject to adjustment as provided in this Section 4(f).

(i) *Subdivisions and Combinations.* In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock or combined into a lesser number of shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision or combination becomes effective shall be adjusted to equal the product of the Conversion Price in effect on such date and a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision or combination, and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such subdivision or combination. Such adjustment shall become effective retroactively to the close of business on the day upon which such subdivision or combination becomes effective.

(ii) *Dividends or Distributions Payable in Common Stock.* In case the Corporation shall pay or make a dividend or other distribution on Common Stock payable in shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator of which shall be the sum of such number of shares outstanding at the close of business on the date fixed for such determination and the total number of shares constituting such dividend or other distribution, such reduction to become effective retroactively to a date immediately following the close of business on the record date for the determination of the holders entitled to such dividends and distributions. For the purposes of this Section 4(f)(ii), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation. The Corporation will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Corporation.

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(iii) Issuances of Common Stock Below Conversion Price. In case the Corporation shall issue or sell Common Stock or Common Stock Equivalents at a price per share less than the Conversion Price per share on the date fixed for the determination of stockholders or other persons entitled to receive such Common Stock or Common Stock Equivalents (treating the price per share of Common Stock, in the case of the issuance of any Common Stock Equivalent, as equal to (x) the sum of the price for such Common Stock Equivalent plus any additional consideration payable (without regard to any anti-dilution adjustments) upon the conversion, exchange or exercise of such Common Stock Equivalent divided by (y) the number of shares of Common Stock initially underlying such Common Stock Equivalent), the Conversion Price in effect at the opening of business on the day following the date fixed for such determination shall be reduced by multiplying such Conversion Price by a fraction (I) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription, purchase or acquisition would purchase at such Conversion Price (or, in the case of Common Stock Equivalents, the number of shares of Common Stock which the aggregate consideration received by the Corporation upon the issuance of such Common Stock Equivalents and receivable by the Corporation upon the conversion, exchange or exercise of such Common Stock Equivalents would purchase at the Conversion Price) and (II) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription, purchase or acquisition (or, in the case of Common Stock Equivalents, the maximum number of shares of Common Stock into which such Common Stock Equivalents initially may convert, exchange or be exercised).

Such reduction shall become effective immediately on the issuance or sale of such Common Stock or Common Stock Equivalents. However, upon the expiration of any Common Stock Equivalent to purchase Common Stock, the issuance of which resulted in an adjustment in the Conversion Price pursuant to this Section 4(f)(iii), if any such Common Stock Equivalent shall expire and shall not have been exercised, the Conversion Price shall be recomputed immediately upon such expiration and effective immediately upon such expiration shall be increased to the price it would have been (but reflecting any other adjustments to the Conversion Price made pursuant to the provisions of this Section 4 after the issuance of such Common Stock Equivalents) had the adjustment of the Conversion Price made upon the issuance of such Common Stock Equivalents been made on the basis of offering for subscription or purchase only that number of shares of Common Stock actually purchased upon the exercise of such Common Stock Equivalents. No further adjustment shall be made upon exercise of any Common Stock Equivalent if any adjustment shall be made upon the issuance of such security. For the purposes of this Section 4(f)(iii), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation. The Corporation will not issue any Common Stock Equivalents in respect of shares of Common Stock held in the treasury of the Corporation. In case at any time any shares of Common Stock or Common Stock Equivalents or any rights or options to purchase any shares of Common Stock or Common Stock Equivalents shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions or discounts paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock or Common Stock Equivalents or any rights or options to purchase any Common Stock or Common Stock Equivalents shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the Fair Market Value of such consideration, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions or discounts paid or allowed by the Corporation in connection therewith. This Section 4(f)(iii) shall not apply to issuances of Common Stock or Common Stock

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Equivalents to employees, directors and consultants of the Corporation, solely in their capacity as such, pursuant to any bona fide stock or option plan authorized by the Plan or duly adopted by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose, provided that in any event, the aggregate amount of shares of (x) Common Stock and (y) shares of Common Stock issuable upon conversion, vesting, exercise and/or settlement (or any similar event) of Common Stock Equivalents, in each case issued pursuant to all such plans, shall not exceed 12.5% of the shares of fully diluted Common Stock outstanding at the time of any such issuance.

(iv) Self-Tender Offers and Exchange Offers. In case a tender offer or exchange offer made by the Corporation or any subsidiary of the Corporation for all or any portion of the Common Stock shall expire and such tender offer or exchange offer shall involve the payment by the Corporation or such subsidiary of consideration per share of Common Stock (which, if payable other than in cash shall be the Fair Market Value thereof) at the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds the average Daily VWAP over the five consecutive Trading Day period ending on, and including, the seventh Trading Day after the Expiration Time (the "Expiration Time Price"), the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the Expiration Time by a fraction of which (I) the numerator shall be the number of shares of Common Stock outstanding (without giving effect to the purchase or exchange of shares of Common Stock pursuant to such tender or exchange offer) on the Expiration Time multiplied by the Expiration Time Price and (II) the denominator shall be the sum of (x) the Fair Market Value of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time and (y) the product of the number of shares of Common Stock outstanding (after giving effect to the purchase or exchange of shares of Common Stock pursuant to such tender or exchange offer) on the Expiration Time and the Expiration Time Price, such reduction to become effective immediately prior to the opening of business on the day following the Expiration Time. For the purposes of this Section 4(f)(iv), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation. Except as provided in Section 4(l), if the application of this clause (iv) would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer or exchange offer under this clause (iv).

(v) In case the Corporation at any time or from time to time shall issue any Junior Securities other than Common Stock or Common Stock Equivalents, then, in each such case, the Conversion Price shall be adjusted in such manner and at such time as determined in good faith by the Board of Directors upon the advice of a nationally recognized investment bank or other financial advisor approved by holders of shares of Series A Preferred Stock representing a majority of the outstanding shares of Series A Preferred Stock at such time as is fair and equitable in the circumstances to the holders of Series A Preferred Stock and consistent with the spirit and purposes of the adjustments pursuant to Sections 4(f)(i) through Section 4(f)(iv).

(g) *Rounding*. All calculations under Section 4(f) shall be made to the nearest 1/1,000th of a cent or to the nearest 1/1,000th of a share, as the case may be.

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(h) *Reduction of Conversion Price*. The Corporation from time to time may reduce the Conversion Price for a period of not less than ten (10) Business Days if it considers such reductions to be advisable in order that any event treated for federal income tax purposes as a dividend of stock or stock rights will not be taxable to the holders of Common Stock by any amount.

(i) *Par Value*. No adjustment in the Conversion Price shall reduce the Conversion Price below the then par value of the Common Stock.

(j) *Notices*.

(i) If: (A) the Corporation takes any action which requires an adjustment in the Conversion Price pursuant to this Section 4, (B) the Corporation engages in a

Fundamental Change, whether or not the Conversion Price is required to be adjusted pursuant to this Section 4, or (C) there is a dissolution or liquidation of the Corporation, the Corporation shall notify holders of the Series A Preferred Stock of the proposed record or effective date, as the case may be at least ten (10) days before such date; provided, however, that the failure to provide such notice or any defect in it shall not affect the validity of any transaction referred to in clause (A), (B) or (C) of this Section 4(j).

(ii) Whenever the Conversion Price shall be adjusted, the Corporation shall file with the Transfer Agent for the Series A Preferred Stock, if other than the Corporation, a certificate from the Corporation, duly signed by an authorized officer of the Corporation, briefly stating the facts requiring the adjustment and the manner of computing it, and provide notice to the holders of Series A Preferred Stock as provided herein.

(k) *Deferral; Failure to Issue or Rescission.* In any case in which this Section 4 shall require that an adjustment as a result of any event that becomes effective from and after a record date, the Corporation may elect to defer until after the occurrence of such event the issuance to the holder of any shares of Series A Preferred Stock converted after such record date and before the occurrence of such event of the additional shares of Common Stock issuable upon such conversion over and above the shares issuable on the basis of the Conversion Price in effect immediately prior to adjustment; provided, however, that if such event shall not have occurred and authorization of such event shall be rescinded by the Corporation (including a decision by the Corporation not to issue Common Stock or pay dividends, make distributions, or take other actions contemplated by Section 4(f)), the Conversion Price shall be recomputed immediately upon such rescission to the price that would have been in effect had such event not been authorized with respect to all holders of Series A Preferred Stock, provided that such rescission or decision is permitted by and effective under applicable laws.

(l) *Makewhole.* For purposes of determining the number of shares of Common Stock issuable upon an Optional Conversion, there shall be deemed to have been issued in respect of all shares of Series A Preferred Stock at the time outstanding (x) PIK Dividends through the Dividend Payment Date immediately preceding the date of the Conversion Date in respect of such Optional Conversion, including PIK Dividends on such PIK Dividends, to the extent accrued and not previously paid, and (y) PIK Dividends on (I) the shares of Series A Preferred Stock at the time outstanding and (II) any shares deemed issued pursuant to the preceding clause (x) accruing from the Dividend Payment Date immediately preceding the date of the Conversion Date in respect of such Optional Conversion, and all PIK Dividends on such PIK Dividends (the total amount of shares of Series A Preferred Stock deemed to have been issued in accordance with this Section 4(l) or Section 7, the "Makewhole Amount").

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5. **Optional Redemption.** Following the Effective Date, upon or after an Exit Facility Repayment, the Corporation shall have the right, but not the obligation, to redeem (an "Optional Redemption") all, but not less than all, of the outstanding shares of Series A Preferred Stock by notice (an "Optional Redemption Notice") to the holders of Series A Preferred Stock, for the Per Share Redemption Price per share of Series A Preferred Stock, which price shall be payable in cash. The Optional Redemption shall be effective on the date specified in the Optional Redemption Notice, which shall be no earlier than 30 days and no later than 60 days from the date of such notice, with respect to any shares of Series A Preferred Stock that have not been converted prior to the date of the Optional Redemption.

6. **Mandatory Redemption.** Following the Effective Date, if there shall occur a Fundamental Change, the Corporation shall, after the Exit Facility Repayment or to the extent not prohibited under the Exit Facility, redeem (a "Mandatory Redemption") all, but not less than all, of the outstanding shares of Series A Preferred Stock by cash payment of the Per Share Redemption Price per share of Series A Preferred Stock within three (3) Business Days of the occurrence of such Fundamental Change. Notwithstanding the foregoing, in the event of a Mandatory Redemption pursuant to the preceding sentence, if the Corporation lacks sufficient cash to redeem all outstanding shares of Series A Preferred Stock, the Corporation shall redeem a pro rata portion of each holder's shares of Series A Preferred Stock, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Corporation possessed sufficient cash to redeem all such shares, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. The Mandatory Redemption shall be effective on the date of the Fundamental Change with respect to any shares of Series A Preferred Stock that have not been converted prior to the date thereof.

7. **Liquidation Event.** Upon any Liquidation Event of the Corporation, each holder of shares of the Series A Preferred Stock will be entitled to payment out of the assets of the Corporation available for distribution, before any distribution or payment out of such assets may be made to the holders of any Junior Securities, and subject to the rights of the holders of any Senior Securities or Parity Securities approved, if and to the extent required, by the holders of Series A Preferred Stock in accordance with Section 8 hereof and the rights of the Corporation's creditors, of an amount equal to the greater of (i) the Liquidation Preference payable with respect to the outstanding shares of Series A Preferred Stock and any accrued and unpaid dividends thereon, whether or not declared or (ii) such amount per share of Series A Preferred Stock as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such Liquidation Event. If, upon any Liquidation Event of the Corporation, the amounts payable with respect to the Series A Preferred Stock are not paid in full, the holders of the Series A Preferred Stock will share equally and ratably in any distribution of assets of the Corporation in proportion to the full Liquidation Preference and accumulated and unpaid dividends, if any, and other amounts payable in such event.

The following shall be regarded as "Liquidation Events" within the meaning of this Section 7: (a) the commencement of a voluntary or involuntary case with respect to the Corporation or any subsidiary holding all or substantially all of the Corporation's assets (on a consolidated basis) pursuant to or within the meaning of Title 11 of the United States Code, (b) the appointment of a custodian for all or substantially all of the assets of the Corporation and its Subsidiaries, taken as a whole, (c) a general assignment by the Corporation for the benefit of its creditors and (d) any other liquidation, dissolution or winding-up of the affairs of the Corporation. To the maximum extent that any liquidating distribution is made in a combination of cash and property other than cash, the liquidating distributions to the holders of the Series A Preferred shall be made in cash to the maximum extent possible, in preference and priority to the liquidating distribution payable to any other capital stock (including, without limitation, any Junior Securities), other than, if properly approved in accordance with Section 8, Parity Stock (in which case, such distribution in cash shall be made pro rata) or Senior Securities. Whenever the distribution provided for in this Section 7 shall be payable in property other than cash, the value of such distribution shall be the Fair Market Value.

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Neither the sale (for cash, shares of stock, securities or other consideration) of all or substantially all of the assets or business of the Corporation (other than in connection with the liquidation, winding-up or dissolution of the Corporation), nor the merger or consolidation of the Corporation into or with any other Person, shall be deemed to be a voluntary or involuntary liquidation, winding-up or dissolution of the Corporation for the purposes of this Section 7.

After the payment to any holder of Series A Preferred Stock of the full amount as contemplated by this Section 7 for each such share of such holder's Series A Preferred Stock, such holder (as such) shall have no right or claim to any of the remaining assets of the Corporation with respect to such shares of Series A Preferred Stock.

8. Voting Rights.

(a) *Voting with Common Stock.* The holders of Series A Preferred Stock shall be entitled to notice of all annual or special meetings of stockholders or action of stockholders by written consent without a meeting, given in accordance with the Corporation's bylaws and the DGCL, and except as otherwise required by applicable law, the holders of the Series A Preferred Stock shall be entitled to vote (which term shall include written consent without a meeting) on all matters submitted to the stockholders for a vote, voting together with the holders of the Common Stock as a single class, with each share of Series A Preferred Stock entitled to a number of votes equal to the voting power of one share of Common Stock, multiplied by the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock as of the record date for such vote or, if no record date is specified, as of the date of such vote (in each case, including any Series A Preferred Stock issuable in respect of any accrued but unpaid

dividends to, but not including, such date).

(b) *Class Voting.* So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly, by amendment, merger, reorganization, reclassification, recapitalization, conversion, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the affirmative vote or consent of the Requisite Holders voting as a separate class and any act or transaction entered into or purportedly consummated without such vote or consent shall be void ab initio and of no force and effect:

- (i) authorize, allow or undertake any liquidation, dissolution or winding-up of the affairs of the Corporation;
- (ii) issue or pay any dividend, distribution or other payment with respect to Junior Securities other than Common Stock; or
- (iii) amend or alter the Corporation's Certificate of Incorporation (or this Exhibit A) to amend the terms of the Series A Preferred Stock.

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9. *Information Rights.* The holders of the Series A Preferred Stock shall have the right to receive all reports, notices and other information delivered to the holders of the Common Stock, at the same time and in the same manner as the holders of the Common Stock.

10. *Amendment.* So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly, by amendment, merger, reorganization, reclassification, recapitalization, conversion, consolidation or otherwise, amend the terms of the Series A Preferred Stock in any manner that would alter or change the powers, preferences or special rights of the Series A Preferred Stock without (in addition to any other vote required by law or the Certificate of Incorporation) the affirmative vote or consent of the Requisite Holders. Any amendment to the terms of the Series A Preferred Stock, including, but not limited to, any amendment to this Exhibit A of the Certificate of Incorporation, of which this Exhibit A forms a part, entered into without such vote or consent shall be void ab initio and of no force and effect.

11. *Exclusion of Other Rights.* Except as may otherwise be required by law, the shares of Series A Preferred Stock shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in this Exhibit A (as it may be amended from time to time) and in the Certificate of Incorporation, of which this Exhibit A forms a part. The shares of Series A Preferred Stock shall have no preemptive or subscription rights.

12. *Headings of Subdivisions.* The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

13. *Severability of Provisions.* If any voting powers, preferences and relative, participating, optional and other special rights of the Series A Preferred Stock and qualifications, limitations and restrictions thereof set forth in this Exhibit A (as it may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof set forth in this Exhibit A (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional or other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect and no voting powers, preferences and relative, participating, optional or other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof unless so expressed herein.

14. *Re-issuance of Series A Preferred Stock.* The Board of Directors shall take all necessary action to promptly retire shares of Series A Preferred Stock that have been issued and reacquired by the Corporation in any manner, including shares purchased or redeemed or exchanged or converted, whereupon such retired shares shall resume the status of authorized but unissued shares of Preferred Stock of the Corporation undesignated as to series and may be designated or re-designated and issued or reissued, as the case may be, as part of any series of Preferred Stock of the Corporation, provided that any issuance of such shares as Series A Preferred Stock must be in compliance with the terms hereof.

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15. *Mutilated or Missing Series A Preferred Stock Certificates.* If physical certificates are issued for the Series A Preferred Stock and if any of such Series A Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Corporation shall issue, at the holder's expense, in exchange and in substitution for and upon cancellation of the mutilated Series A Preferred Stock certificate, or in lieu of and substitution for the Series A Preferred Stock certificate lost, stolen or destroyed, a new Series A Preferred Stock certificate of like tenor and representing an equivalent amount of shares of Series A Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Series A Preferred Stock certificate and indemnity and/or a bond, if requested, satisfactory to the Corporation and the Transfer Agent (if other than the Corporation).

16. *Taxes.* All payments and distributions (or deemed distributions) on the shares of Series A Preferred Stock (and any shares of Common Stock issued upon conversion thereof) shall be subject to withholding and backup withholding of tax to the extent required by law, and such amounts withheld, if any, shall be treated as received by the holders of Series A Preferred Stock. Notwithstanding the foregoing, the Corporation shall treat the Series A Preferred Stock as "common stock" for purposes of Section 305 of the Internal Revenue Code of 1986, as amended, and shall prepare all U.S. federal income and withholding tax returns and tax filings consistent with such treatment. To the fullest extent permitted by law, the Corporation shall pay any and all stock transfer and documentary stamp taxes that may be payable in respect of any issuance or delivery of shares of Series A Preferred Stock or shares of Common Stock or other securities issued on account of Series A Preferred Stock pursuant hereto or certificates representing such shares or securities. The Corporation shall not, however, be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Common Stock or other securities in a name other than that in which the shares of Series A Preferred Stock with respect to which such shares or other securities are issued or delivered were registered, and the Corporation shall not be required to make any such issuance or delivery unless and until the Person otherwise entitled to such issuance or delivery has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid or is not payable.

17. *Notices.* Except as otherwise set forth herein, all notices to be provided by the Corporation to holders of Series A Preferred Stock hereunder shall be delivered by a notice sent to holders of Series A Preferred Stock by first class mail, postage prepaid, or by electronic mail or facsimile, or by such other manner as may be permitted by the DGCL.

18. *Adjustment to Liquidation Preference.* The Liquidation Preference shall be subject to equitable adjustment in a manner not adverse to the holders of Series A Preferred Stock if and whenever there shall occur a stock split, combination, reclassification or other similar event involving the Series A Preferred Stock. Such adjustments shall be determined in good faith by the Board of Directors (or an authorized committee thereof) of the Corporation and submitted by the Board of Directors (or such authorized committee thereof) to the Transfer Agent.

19. *Certain Definitions.* As used in this Exhibit A, the following terms shall have the following meanings (with terms defined in the singular having comparable meanings when used in the plural and vice versa), unless the context otherwise requires:

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

“Common Stock Equivalent” means any security or obligation which is by its terms, directly or indirectly, convertible into or exchangeable or exercisable for, or evidencing the right to purchase, shares of Common Stock (other than such instruments issued pursuant to a dividend reinvestment plan or share purchase plan or similar plans), including, without limitation, any option, warrant or other subscription or purchase right with respect to Common Stock or any Common Stock Equivalent.

“Common Stock Register” means a register maintained by the Corporation, the Transfer Agent, DTC or other agent of the Corporation for the purpose of recording the holders of record of shares of Common Stock.

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“Conversion Price” means a price per share of Common Stock equal to \$14.00, subject to adjustment from time to time pursuant to the terms of Section 4 hereof.

“Current Market Price” means, on any day, the average of the Daily VWAP for the five (5) consecutive Trading Days ending the Trading Day immediately prior to the day in question, except with respect to issuances of Common Stock or Common Stock Equivalents to employees, directors and consultants, in which case Current Market Price shall be the Market Price on the date of grant.

“Daily VWAP” means the consolidated volume-weighted average price per share of Common Stock as displayed under the heading “Bloomberg VWAP” on the Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such Common Stock (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the Market Price of one share of such Common Stock on such Trading Day). The “volume weighted average price” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

“Dividend Rate” means, with respect to Cash Dividends, 10% per annum of the Liquidation Preference and, with respect to PIK Dividends, 15% per annum of the Liquidation Preference.

“DTC” means The Depository Trust Company.

“Effective Date” means May 17, 2021, or such other date upon which the Corporation’s Chapter 11 Plan of Reorganization becomes effective, being the initial issue date of the Series A Preferred Stock.

“Exit Facility” means Second Amended and Restated Credit Agreement, dated as of May 17, 2021, by and among Gulfport Energy Operating Corporation, a Delaware corporation, as borrower, Gulfport Energy Corporation, a Delaware corporation, as holdings, each of the lenders from time to time party thereto and The Bank of Nova Scotia, as administrative agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

“Exit Facility Repayment” shall mean “First-Out Payment in Full” as defined in the Exit Facility on the date hereof.

“Fair Market Value” means fair market value as determined by a nationally recognized investment banking firm, financial advisor or other appraiser selected in good faith by the Board of Directors and approved by holders of shares of Series A Preferred Stock representing a majority of outstanding shares of Series A Preferred Stock at such time; provided that the Fair Market Value of any cash dividend or distribution shall be the amount of such cash dividend or distribution.

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“Fundamental Change” means (a) a merger or consolidation (each, a “Combination”) in which (i) the Corporation is a constituent party or (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such Combination, except any such Combination involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such Combination continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such Combination, at least a majority, by voting power, of the equity securities of (1) the surviving or resulting party or (2) if the surviving or resulting party is a wholly owned subsidiary of another party immediately following such Combination, the parent of such surviving or resulting party; or (b) the sale, lease, transfer, assignment, conveyance, license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary or subsidiaries of the Corporation, of all or substantially all of the assets or business of the Corporation and its subsidiaries, taken as a whole (or, if substantially all of the business or assets of the Corporation and its subsidiaries, taken as a whole, are held by one or more subsidiaries, the sale or disposition (whether by consolidation, merger, conversion or otherwise) of such subsidiaries of the Corporation), except where such sale, lease, transfer or other disposition is made to the Corporation or one or more wholly owned subsidiaries of the Corporation.

“Issuance Date” means the date on which the Series A Preferred Stock were first issued.

“Liquidation Preference” means \$1,000 per share of Series A Preferred Stock.

“Market Price” means, with respect to the Common Stock or any other security, on any given day, the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, of the shares of the Common Stock or of such security, as applicable, on the NYSE on such day. If the Common Stock or such security, as applicable, is not listed on the NYSE as of any date of determination, the Market Price of the Common Stock or such security, as applicable, on such date of determination means the closing sale price on such date as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock or such security, as applicable, is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on such date on the principal U.S. national or regional securities exchange on which the Common Stock or such security, as applicable, is so listed or quoted, or if the Common Stock or such security, as applicable, is not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price on such date for the Common Stock or such security, as applicable, in the over-the-counter market as reported by OTC Markets LLC or similar organization, or, if that bid price is not available, the Market Price of the Common Stock or such security, as applicable, on that date shall mean the Fair Market Value per share as of such date of the Common Stock or such security.

“Parity Securities” means securities ranking on a parity with Series A Preferred Stock with respect to dividends and distributions or on the occurrence of a Liquidation Event.

“Per Share Makewhole Amount” means, as of any date, the Makewhole Amount calculated as of such date in respect of a single share of Series A Preferred Stock.

“Per Share Redemption Price” means, as of any date, the Redemption Price calculated as of such date in respect of a single share of Series A Preferred Stock.

“Person” means any individual, firm, corporation, partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, trust, governmental authority or other entity of any kind.

“Plan” means the Corporation’s Chapter 11 Plan of Reorganization.

“Preferred Stock Register” means a register maintained by the Corporation, the Transfer Agent, DTC or other agent of the Corporation for the purpose of recording the holders of record of shares of Series A Preferred Stock.

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“Redemption Price” means the greater of (i) the aggregate value of the Series A Preferred Stock, calculated by the Current Market Price of the number of shares of Common Stock into which, subject to redemption, such Series A Preferred Stock would have been converted if such shares were converted pursuant to the provisions of Section 4 hereof at the time of such redemption and (ii) (y) if the date of such redemption is on or prior to the Three Year Anniversary Date, the sum of the Liquidation Preference *plus* the sum of all unpaid PIK Dividends through the Three Year Anniversary Date, or (x) if the date of such redemption is after the Three Year Anniversary Date, the Liquidation Preference.

“Requisite Holders” means, at any time, the holders of shares of Series A Preferred Stock representing a majority of the outstanding shares of Series A Preferred Stock at such time with respect to matters described in Section 8(b) and Section 10.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Senior Securities” means securities ranking senior to the Series A Preferred Stock with respect to dividends or distributions or on the occurrence of a Liquidation Event.

“Three Year Anniversary Date” means the date that is three years from the Issuance Date.

“Trading Day” means any day on which trading in listed securities occurs on the principal U.S. national securities exchange on which the Common Stock is then listed or, if the Common Stock is not so listed, any day on which trading in listed securities occurs on the NYSE.

“Transfer” means, as a noun, any voluntary or involuntary transfer, sale, pledge, hypothecation, gift, or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge, hypothecate, give, or otherwise dispose of. A Transfer of shares of Series A Preferred Stock held by a stockholder shall also include any Transfer of such stockholder or any direct or indirect interest in a stockholder that constitutes a direct or indirect change of control of 50% or more of the voting rights of the stockholder.

“Transfer Agent” shall be Computershare Trust Company, N.A., the Corporation’s duly appointed transfer agent for the Series A Preferred Stock, unless and until a successor is selected by the Corporation as provided herein.

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AMENDED AND RESTATED BYLAWS
OF
GULFPORT ENERGY CORPORATION
A DELAWARE CORPORATION
(THE "CORPORATION")
ADOPTED AS OF MAY 17, 2021

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 the office of the corporation or individual acting as the Corporation's registered agent in Delaware as set forth in the Amended and Restated Certificate of Incorporation of the Corporation, as the same may be amended or restated from time to time (the "*Certificate of Incorporation*").

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.

(a) 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 Chair of the Board, the Chief Executive Officer and President or the Board pursuant to a resolution adopted by a majority of the Whole Board (as defined below). A special meeting of the stockholders shall also be called by the Secretary of the Corporation at the written request or requests (each, a "*Special Meeting Request*") of holders of at least 30% of the voting power of the outstanding capital stock of the Corporation entitled to vote on the matter or matters to be brought before the proposed special meeting (the "*Requisite Percentage*"). 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.

(b) A Special Meeting Request to the Secretary shall be signed and dated by each stockholder of record (or a duly authorized agent of such stockholder) requesting the special meeting (each, a "*Requesting Stockholder*"), shall comply with this Section 2.2(b), and shall include (i) a statement of the specific purpose or purposes of the special meeting, (ii) documentary evidence that the Requesting Stockholders own the Requisite Percentage as of the date of such written request to the Secretary. In addition, the Requesting Stockholders and the beneficial owners, if any, on whose behalf the Special Meeting Request(s) are being made shall reasonably promptly provide any other information reasonably requested by the Corporation.

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, as a different period may be required by applicable law. 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 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 one or more classes or series of stock voting separately as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such one or more classes or series shall constitute a quorum thereof for the transaction of such business. If a quorum shall not be present at any meeting of the stockholders, the person presiding over the meeting in accordance with Section 2.8 (the "*Chair*") 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 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.

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(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 Chair, 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.

(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 if such vacancy has not been filled by action of the stockholders.

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(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 the number of nominees exceeds the number of directors to be elected as of either (x) the time of the meeting or (y) the date that is 14 days in advance of the date that the Corporation files its definitive proxy statement (regardless of whether thereafter revised, amended or supplemented) with the Securities Exchange Commission.

(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 Chair 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 Chair, 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) **Meetings of Stockholders.** 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 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. 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 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 first anniversary of the preceding year's annual meeting, provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days, or delayed by more than seventy (70) days, from the anniversary date of the previous year's meeting, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than one hundred twenty (120) days prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) 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, (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (iii) the number of shares of the Corporation which are beneficially owned by the stockholder and (iv) 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. Notwithstanding anything in the Certificate of Incorporation or these Bylaws to the contrary, no business shall be conducted at any annual or special meeting except in accordance with the procedures set forth in this Section 2.7(a). The chair 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 Section 2.7(a), and if the chair of the annual meeting should so determine, he or she shall so declare at the meeting and any such business not properly brought before the meeting shall not be transacted.

(b) **Public Announcement.** For purposes of these Bylaws, "**public announcement**" means 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 Securities Exchange Act of 1934, as amended.

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Section 2.8 Conduct of Meetings. The Chair of each annual and special meeting of stockholders shall be the Chair of the Board or, in the absence (or inability or refusal to act) of the Chair of the Board, the Chief Executive Officer and President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer and President or if the Chief Executive Officer and President 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 Chair. 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 Chair 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 Chair, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the Chair, 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 Chair 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 Chair, 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 Chair. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the Chair may appoint any person to act as secretary of the meeting.

Section 2.9 Consents in Lieu of Meeting. Any 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 in accordance with this Section 2.9. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the first date on which a written consent is delivered to the Corporation in accordance with this Section 2.9, 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 and signed 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. A consent permitted by this Section 2.9 shall be delivered: (i) to the principal place of business of the Corporation; (ii) to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded; (iii) to the registered office of the Corporation in Delaware by hand or by certified or registered mail, return receipt requested; or (iv) subject to the next sentence, in accordance with Section 116 of the DGCL to an information processing system, if any, designated by the Corporation for receiving such consents. In the case of delivery pursuant to the foregoing clause (iv), such consent must set forth or be delivered with information that enables the Corporation to determine the date of delivery of such consent and the identity of the person giving such consent, and, if such consent is given by a person authorized to act for a stockholder or member as proxy, such consent must comply with the applicable provisions of Sections 212(c)(2) and (3) of the DGCL. 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 the Board.

Section 3.2 Advance Notice for Nomination of Directors. Only persons who are nominated in accordance with the procedures set forth in this Section 3.2 shall be eligible for election as directors of the Corporation. Nominations of persons for election to the Board may be made at a meeting of stockholders by or at the direction of the Board 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 Section 3.2. Such nominations, other than those made by or at the direction of the Board, 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 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 first anniversary of the preceding year's annual meeting, provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days, or delayed by more than seventy (70) days, from the anniversary date of the previous year's meeting, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than one hundred twenty (120) days prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the meeting is first made. Such stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (1) the name, business address and residence address of such person, (2) the principal occupation or employment of such person, (3) the number of shares, if any, of the Corporation which are beneficially owned by such person and (4) 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 (ii) as to the stockholder giving the notice (1) the name and address, as they appear on the Corporation's books, of such stockholder and (2) the number of shares of the Corporation which are beneficially owned by such stockholder. The chair 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 the chair should so determine, he or she shall so declare at the meeting and the defective nomination shall be disregarded.

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 for 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.

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ARTICLE IV BOARD MEETINGS

Section 4.1 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 4.2 Special Meetings. Special meetings of the Board (a) may be called by the Chair of the Board or Chief Executive Officer and President and (b) shall be called by the Chair of the Board, Chief Executive Officer and 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 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 4.3 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 4.4 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 4.5 Organization. The Board shall elect a Chair of the Board from among the directors. The chair of each meeting of the Board shall be the Chair of the Board or, in the absence (or inability or refusal to act) of the Chair of the Board, the Chief Executive Officer and President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer and President or if the Chief Executive Officer and President is not a director, the Chief Operating Officer (if he or she shall be a director) or in the absence (or inability or refusal to act) of the Chief Operating Officer or if the Chief Operating Officer is not a director, a chair 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 chair of the meeting may appoint any person to act as secretary of the meeting.

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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 and President, Vice Presidents, a Secretary, a Treasurer and such other officers 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 Board may empower the Chair of the Board, or Chief Executive Officer and President to also appoint such other officers 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 Chair of the Board, or Chief Executive Officer and President, as may be prescribed by the appointing officer. The compensation of all officers of the Corporation shall be fixed by the Board or a committee thereof with the proper authority.

(a) Chief Executive Officer and President. The Chief Executive Officer and President shall (i) have the overall supervision of the business of the Corporation and shall direct the affairs and policies of the Corporation, subject to any directions which may be given by the Board (ii) have authority to designate the duties and powers of officers and delegate special powers and duties to specified officers, so long as such designations shall not be inconsistent with the laws of the State of Delaware, the Certificate of Incorporation, these Bylaws or action of the Board, and (iii) in general have all other powers and shall perform all other duties incident to the chief executive officer of a corporation and such other powers and duties as may be prescribed by the Board from time to time.

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(b) Vice Presidents. Each vice president shall perform such duties as may from time to time be assigned to him or her by the Board and the Chief Executive Officer and President. If no Chief Executive Officer and President has been elected, or in the absence or inability to act of the Chief Executive Officer and President, the vice president (or if there is more than one vice president, in the order designated by the board and, absent such designation, in the order of their first election to that office) shall perform the duties and discharge the responsibilities of the president.

(c) Secretary. The secretary shall be the keeper of the corporate seal and records, and shall give notice of, attend and record minutes of meetings of stockholders and directors. He or she shall see that the seal is affixed to all documents on which the seal is required by law to be affixed, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws. He or she shall, in general, perform all duties incident to the office of secretary and such other duties as may be assigned to him or her by the Board or by the Chief Executive Officer and President. The assistant secretaries, if any, shall have such duties as shall be delegated to them by the secretary and, in the absence of the secretary, the senior of them present shall discharge the duties of the secretary.

(d) Treasurer. The treasurer shall be responsible for (i) the custody and safekeeping of all of the funds and securities of the Corporation, (ii) the receipt and deposit of all monies paid to the Corporation, (iii) where necessary or appropriate, the endorsement for collection on behalf of the Corporation of all checks, drafts, notes and other obligations payable to the Corporation, (iv) the disbursement of funds of the Corporation under such rules as the board may from time to time adopt, (v) maintaining the general books of account of the Corporation and (vi) the performance of such further duties as are incident to the office of treasurer or as may be assigned to him or her by the board or by the Chief Executive Officer and President. The assistant treasurers, if any, shall have such duties as shall be delegated to them by the treasurer, and in the absence of the treasurer, the senior one of them present shall discharge the duties of the treasurer.

(e) Divisional Officers. The Board or the Chief Executive Officer and President may from time to time appoint officers of various divisions of the Corporation. Divisional officers shall not by virtue of such appointment become officers of the Corporation. Subject to the direction of the Chief Executive Officer and President of the Corporation, the president of a division shall have general charge, control and supervision of all the business operations of his or her division, and the other divisional officers shall have such duties and authority as may be prescribed by the president of such division.

Section 6.2 Term of Office. All officers elected by the Board shall hold office from their time of election until their successors are duly elected and qualified or until their earlier death, resignation, retirement, 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 and President may also be removed, with or without cause, by the chief executive officer and president, 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 and President may be filled by the Chief Executive Officer and President, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

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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.

Section 6.5 Certain Actions. In accordance with Section 3.1, the business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such power of the Corporation and do all such lawful acts and things as are not prohibited by statute or by the Certificate of Incorporation or by these Bylaws, and no officer or employee of the Corporation shall take any of the following actions on behalf of the Corporation without the consent of the Board:

- (a) Establish, amend or otherwise modify the annual budget and plan of operation for the Corporation;
- (b) Establish, amend or otherwise modify key accounting principles or key accounting practices of the Corporation;
- (c) Establish, enter into, amend or otherwise modify long term incentive plans and option plans of the Corporation;
- (d) Establish, amend or otherwise modify pension plans or employee benefits schemes of the Corporation;
- (e) Issue securities in accordance with the authorized share capital of the Corporation in accordance with the Certificate of Incorporation and applicable laws and regulations;
- (f) Enter into, amend or otherwise modify material contracts in excess of \$5,000,000 individually or in a series of related agreements, except hedging contracts or drilling and completion contracts entered into in the ordinary course of business so long as such contracts are consistent with the Company's hedging strategy and capital budget, in each case approved by the Board;
- (g) Make aggregate investments outside of the latest Board approved annual budget and plan of operation for the Corporation in excess of 3.0% of the amounts allocated to investments in such annual budget and plan of operation;
- (h) Make (i) aggregate capital expenditures in excess of 103% of the amount allocated to capital expenditures in the latest Board approved annual budget and plan of operation for the Corporation or (ii) capital expenditures with respect to any individual project in excess of 105% of the amount allocated to such individual project in the latest Board approved annual budget and plan of operation for the Corporation, other than any expenditures incurred as a result of an environmental, health or safety emergency;
- (i) Enter into, amend or otherwise modify an employment agreement or arrangement pursuant to which the Corporation will owe \$300,000 or more per year, inclusive of bonuses and similar compensation arrangements;

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- (j) Initiate litigation, arbitration or similar proceeding or settle an action, suit or proceeding for an amount in excess of \$500,000; or
- (k) Approve, agree to enter into, or enter into any settlement that: (i) results in the imposition of injunctive or other equitable relief that affects the business of the Corporation, its subsidiaries and/or affiliates; (ii) does not expressly and unconditionally release the Corporation, its subsidiaries and affiliates from all liabilities and obligations with respect to a claim without prejudice; or (iii) includes any statement or admission or fact as to the culpability or failure to act by or on behalf of the Corporation, its subsidiaries and/or affiliates.

ARTICLE VII SHARE CERTIFICATES

Section 7.1 Shares of Stock; Uncertificated Shares. Except as otherwise provided in a resolution approved by the Board, all shares of capital stock of the Corporation shall be uncertificated and represented by book-entry entitlements as determined by the Board.

Section 7.2 Signatures. Any or all of the signatures on a 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, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 7.3 Lost Certificates. The Board may direct a new certificate or uncertificated shares be issued in place of any certificate theretofore 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 issuance of a new certificate or uncertificated shares, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate or uncertificated shares.

Section 7.4 Transfers.

- (a) Shares of the capital stock of the Corporation shall be transferable in the manner prescribed by, and subject to the transfer restrictions described by, applicable law, the Certificate of Incorporation and in these Bylaws.
- (b) Transfers of shares of the capital stock of the Corporation shall be made on the books of the Corporation, and in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof.

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- (c) No transfer of shares of capital stock of the Corporation shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 7.5 Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to

recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7.6 Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board.

Section 7.7 Authority for Additional Rules Regarding Transfer. The Board shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration of certificated or uncertificated shares of the stock of the Corporation, as well as for the issuance of new certificates in lieu of those which may be lost or destroyed, and may require of any stockholder requesting replacement of lost or destroyed certificates, bond in such amount and in such form as they may deem expedient to indemnify the Corporation, and/or the transfer agents, and/or the registrars of its stock against any claims arising in connection therewith.

ARTICLE VIII INDEMNIFICATION

To the fullest extent permitted by the DGCL:

Section 8.1 The Corporation shall indemnify any person (and such person's heirs, executors or administrators) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative or investigative, and whether formal or informal, including appeals, by reason of the fact that such person 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, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, for and against all reasonable expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement (other than judgments, fines and amounts paid in settlement in action brought by or on behalf of the Corporation to procure a judgment in its favor) actually and reasonably incurred by such person or such person's heirs, executors or administrators in connection with such action, suit or proceeding, including appeals. Notwithstanding the preceding sentence, except for an action to enforce rights to indemnification or advancement of expenses against the Corporation hereunder, the Corporation shall be required to indemnify a person described in such sentence in connection with any action, suit or proceeding (or part thereof) commenced by such person only if the commencement of such action, suit or proceeding (or part thereof) by such person was authorized by the Board. The Corporation may indemnify any person (and such person's heirs, executors or administrators) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative or investigative, and whether formal or informal, including appeals, by reason of the fact that such person is or was an employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, for and against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or such person's heirs, executors or administrators in connection with such action, suit or proceeding, including appeals.

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Section 8.2 The Corporation shall promptly pay expenses incurred by any person described in the first sentence of Section 8.1 in defending any action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, including appeals, upon presentation of appropriate documentation; provided, however, that, to the extent required by the DGCL, the payment of such expenses incurred by or on behalf of such person in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of such person to repay all amounts so advanced in the event that it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 8.3 The Corporation may purchase and maintain insurance on behalf of any person described in Section 8.1 against any liability asserted against such person, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article VIII or otherwise.

Section 8.4 The provisions of this Article VIII shall be applicable to all actions, claims, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after its adoption. The provisions of this Article VIII shall be deemed to be a contract between the Corporation and each director or officer who serves in such capacity at any time while this Article VIII and the relevant provisions of the DGCL and other applicable law, if any, are in effect, and any repeal or modification hereof shall not affect any rights or obligations then existing with respect to any state of facts or any action, suit or proceeding then or theretofore existing, or any action, suit or proceeding thereafter brought or threatened based in whole or in part on any such state of facts. If any provision of this Article VIII shall be found to be invalid or limited in application by reason of any law or regulation, it shall not affect the validity of the remaining provisions hereof. The rights of indemnification provided in this Article VIII shall neither be exclusive of, nor be deemed in limitation of, any rights to which an officer, director, employee or agent may otherwise be entitled or permitted by contract, this Certificate, vote of stockholders or directors or otherwise, or as a matter of law, both as to actions in such person's official capacity and actions in any other capacity while holding such office, it being the policy of the Corporation that indemnification of any person whom the Corporation is obligated to indemnify pursuant to the first sentence of Section 8.1 shall be made to the fullest extent permitted by law.

Section 8.5 For purposes of this Article VIII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries.

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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 in the manner required by Section 2.9. 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.

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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.

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(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 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.

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(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.

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 and 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 and 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 Corporation may, but shall not be required to, have a seal. If the Corporation has a seal, it 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.

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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 and President or the Secretary. The resignation shall take effect at the time specified therein (including a time determined upon the happening of an event 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 and 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 and 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 Entities. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities of other entities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chief Executive Officer and President or any Vice President, or any other person or persons authorized to do so from time to time by resolution of the Board. Any such officer or other person may, in the name of and on behalf of the Corporation, take all such action as he or she may deem advisable to vote in person or by proxy at any meeting of security holders of any entity 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 entity, 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, but in each case subject to any directions of the Board with respect to any such action in respect of such securities.

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

Gulfport Energy Operating Corporation

Issuer

8.0% Senior 1145 Notes due 2026

INDENTURE

Dated as of May 17, 2021

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 May 17, 2021, among Gulfport Energy Operating 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.

“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.

“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 May 17, 2024.

“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.

“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 Gulfport Energy Corporation, a Delaware corporation.

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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 May 17, 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, \$0.0 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 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;

“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

(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 \$525,023,460 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 4.02. As of the Issue Date, an aggregate of \$550,000,000 of 8.0% Senior 1145 Notes due 2026 were authorized for issuance.

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.

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.

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 4.02, 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 4.02 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 \$1 or any greater integral multiple of \$1 thereof. Securities of \$1 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

(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.

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 \$1 principal amount or any greater multiple of \$1. 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 \$1 of principal amount or any greater integral multiple of \$1 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.

(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.

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;
- (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;
- (3) such holders have offered the Trustee reasonable security or indemnity against any loss, liability or expense;

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- (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.

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;

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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;

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(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.

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(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 November 15 beginning with November 15, 2021, and in any event prior to December 1 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 November 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;
- (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.

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.

ARTICLE 8

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").

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;

(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.

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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 Defeas 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;

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- (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;

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(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.

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.

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(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.

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.

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(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.

(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 of or 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.

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(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, in equity, by statute or otherwise.

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.

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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 its obligations under its Subsidiary Guarantee and this Indenture.

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 Operating 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;

(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.

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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.

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.

[Signature Pages Follow]

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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 OPERATING CORPORATION

By: /s/ Timothy Cutt

Name: Timothy Cutt

Title: Interim Chief Executive Officer

GUARANTORS

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.
GULFPORT ENERGY CORPORATION
WESTHAWK MINERALS LLC

By: /s/ Timothy Cutt
Name: Timothy Cutt
Title: Interim Chief Executive Officer

UMB BANK, NATIONAL ASSOCIATION, AS TRUSTEE

By: /s/ Jacob H. Smith IV
Name: Jacob H. Smith IV
Title: Vice President

[Signature page to 2021 Indenture]

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 additional 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 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 \$525,023,460 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.

(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 \$1 principal amount and any greater integral multiple of \$1 thereof and registered in such names as the Depository shall direct. Any Definitive Security delivered in exchange for an interest in a Transfer Security shall, except as otherwise provided by Section 2.3(e) hereof, bear the 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.

EXHIBIT 1
to
1145 APPENDIX

[FORM OF FACE OF SECURITY]

[Global Securities Legend]

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]¹¹

Gulfport Energy Operating Corporation, a Delaware corporation, promises to pay to CEDE & CO., 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 May 17, 2026.

Interest Payment Dates: June 1 and December 1.

Record Dates: May 15 and November 15.

Additional provisions of this Security are set forth on the other side of this Security.

Dated:

GULFPORT ENERGY OPERATING CORPORATION

By: _____
Name: _____
Title: _____

¹ Add if Global Security

Trustee's Certificate of Authentication

UMB BANK, NATIONAL ASSOCIATION

as Trustee, certifies that this is one of the Securities referred to in the Indenture

By: _____
Name: _____
Title: _____

Dated:

[FORM OF REVERSE SIDE OF SECURITY]

8.0% Senior 1145 Notes due 2026

1. Interest

Gulfport Energy Operating 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 June 1 and December 1 of each year, commencing December 1, 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 May 17, 2021. 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 May 15 and November 15 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.

4. Indenture

The Company issued the Securities under an Indenture dated as of May 17, 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 May 17, 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 May 17 of the years set forth below:

Period	Redemption Price
2024	104.00%
2025 and thereafter	100.00%

(b) In addition, any time prior to May 17, 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 May 17, 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 10 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 \$1 principal amount may be redeemed in part but only in whole multiples of \$1. 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.

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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 \$1 principal amount and whole multiples of \$1 in excess of \$1. 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.

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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.

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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 Operating 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.

[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

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.

Exhibit B

[FORM OF GUARANTY AGREEMENT]

[] SUPPLEMENTAL INDENTURE

[] SUPPLEMENTAL INDENTURE (this “**Supplemental Indenture**”), dated as of [], 20[] among Gulfport Energy Operating Corporation, a Delaware corporation (the “**Company**”), the New Subsidiary Guarantors (as defined below), and UMB Bank, National Association, 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 May 17, 2021 ([as supplemented by], the “**Indenture**”), providing for the issuance of 8.0% Senior 1145 Notes due 2026 (the “**Securities**”);

WHEREAS, on May 17, 2021, the Company issued \$525,023,460 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]

IN WITNESS WHEREOF, the parties have caused this [] Supplemental Indenture to be duly executed as of the date first written above.

GULFPORT ENERGY OPERATING CORPORATION

By: _____
Name:
Title:

[NEW SUBSIDIARY GUARANTOR[S]]

By: _____
Name:
Title:

UMB BANK, NATIONAL ASSOCIATION, AS TRUSTEE

By: _____
Name:
Title:

[Signature Page to Guaranty Agreement]

Annex A

New Subsidiary Guarantor

Gulfport Energy Operating Corporation

Issuer

8.0% Senior Notes due 2026

INDENTURE

Dated as of May 17, 2021

UMB Bank, National Association

Trustee

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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

"1145 Securities" means the Company's 8.0% Senior Notes due 2026 governed by the 1145 Securities Indenture.

"1145 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 1145 Securities (where, for the avoidance of doubt, \$550,000,000 aggregate principal amount of 1145 Securities were issued on the Issue Date).

"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 4.03, 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 Consolidated Net Tangible Assets" means (without duplication), as of the date of determination:

(1) the sum of:

- (a) discounted future net revenue from proved oil and natural gas reserves of the Company and its Restricted Subsidiaries calculated in accordance with SEC guidelines before any state or federal income taxes, as estimated in a reserve report prepared as of the end of the fiscal year ending prior to the date of determination (or, if the date of determination is within 45 days after the end of the immediately preceding fiscal year and no reserve report as of the end of such fiscal year has at the time been prepared, as of the end of the second preceding fiscal year), which reserve report is prepared or audited by the Company's petroleum engineers or independent petroleum engineers, as increased by, as of

the date of determination, the discounted future net revenue calculated in accordance with SEC guidelines (utilizing the prices utilized in such year-end reserve report) of:

- (i) estimated proved oil and natural gas reserves of the Company and its Restricted Subsidiaries attributable to acquisitions consummated since the date of such reserve report, and
- (ii) estimated oil and natural gas reserves of the Company and its Restricted Subsidiaries attributable to extensions, discoveries and other additions and upward determinations of estimates of proved oil and natural gas reserves (including previously estimated development costs incurred during the period and the accretion of discount since the prior period end) due to exploration, development or exploitation, production or other activities which reserves were not reflected in such reserve report;

and decreased by, as of the date of determination, the discounted future net revenue attributable to:

- (iii) estimated proved oil and natural gas reserves of the Company and its Restricted Subsidiaries reflected in such reserve report produced or disposed of since the date of such reserve report, and
- (iv) reductions in the estimated oil and natural gas reserves of the Company and its Restricted Subsidiaries reflected in such reserve report since the date of such reserve report attributable to downward determinations of estimates of proved oil and natural gas reserves due to exploration, development or exploitation, production or other activities conducted or otherwise occurring since the date of such reserve report;

provided, however, that, in the case of each of the determinations made pursuant to clauses (i) through (iv), such increases and decreases shall be estimated by the Company's petroleum engineers or any independent petroleum engineer engaged by the Company for such purpose, in accordance with customary reserve engineering practices;

- (b) the capitalized costs that are attributable to oil and natural gas properties of the Company and its Restricted Subsidiaries to which no proved oil and natural gas reserves are attributed, based on the Company's books and records as of a date no earlier than the end of the most recent fiscal quarter for which internal financial statements of the Company have been made available prior to the date of determination;
- (c) the Net Working Capital as of the end of the most recent fiscal quarter for which internal financial statements of the Company have been made available prior to the date of determination; and
- (d) the greater of (i) the net book value as of a date no earlier than the end of the most recent fiscal quarter for which internal financial statements of the Company have been made available prior to the date of determination and (ii) the appraised value, as estimated by independent appraisers, of other tangible assets of the Company and its Restricted Subsidiaries as of a date within the immediately preceding 12 months (provided, however, that the Company shall not be required to obtain such an appraisal of such assets if no such appraisal has been performed); minus

(2) to the extent not otherwise taken into account in the immediately preceding clause (1), the sum of:

- (a) minority interests;
- (b) any net natural gas balancing liabilities of the Company and its Restricted Subsidiaries as of the effective date of the reserve report referred to in (1)(a) above;
- (c) the discounted future net revenue before any state or federal income taxes, as of the effective date of such reserve report, calculated in accordance with SEC guidelines (utilizing the same prices utilized in the Company's year-end reserve report), attributable to participation interests, overriding royalty interests or other interests of third parties in reserves, pursuant to participation, partnership, vendor financing or other agreements then in effect, or which otherwise are required to be delivered to third parties;
- (d) the discounted future net revenue before any state or federal income taxes, as of the effective date of such reserve report, calculated in accordance with SEC guidelines (utilizing the same prices utilized in the Company's year-end reserve report), attributable to reserves that are required to be delivered to third parties to fully satisfy the obligations of the Company and its Restricted Subsidiaries with respect to Volumetric Production Payments on the schedules specified with respect thereto; and

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- (e) the discounted future net revenue before any state or federal income taxes, as of the effective date of such reserve report, calculated in accordance with SEC guidelines, attributable to reserves subject to Dollar-Denominated Production Payments that, based on the estimates of production included in determining the discounted future net revenue specified in the immediately preceding clause (1)(a) (utilizing the same prices utilized in the Company's year-end reserve report), would be necessary to satisfy fully the obligations of the Company and its Restricted Subsidiaries with respect to Dollar-Denominated Production Payments on the schedules specified with respect thereto;

provided, that, with respect to each reference to reserve reports or prices in such reserve reports in the above clauses (1) and (2), the Company may, at its discretion, in lieu of commodity pricing of future net revenues based on SEC guidelines, use Modified ACNTA Prices after giving effect to commodity derivatives contracts in effect as of the date of determination, as determined in good faith by the Company, and such calculations may be based on then current estimates of costs determined in good faith by the Company in light of prevailing market conditions.

Whether the Company uses the successful efforts method of accounting or the full cost (or similar method) method of accounting, Adjusted Consolidated Net Tangible Assets will be calculated as if the Company were using the full cost method of accounting. Calculations of Adjusted Consolidated Net Tangible Assets shall be made subject to pro forma adjustment in a manner consistent with the pro forma adjustments in the definition of "Consolidated Coverage Ratio"

"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%.

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"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.

"Annualized EBITDA" means, for the purposes of calculating EBITDA for any period ending on or before December 31, 2021, the Company's actual EBITDA for such period multiplied by the factor determined for such Reference Period in accordance with the table below:

Reference Period	Factor
The one-quarter period ending on June 30, 2021	4
The two-quarter period ending on September 30, 2021	2
The three-quarter period ending on December 31, 2021	4/3

"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.

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"Asset Disposition" means any sale, lease, transfer or other disposition or issuance (or series of related sales, leases, transfers or other dispositions or issuances) by the

Company or any Restricted Subsidiary, including by means of a merger, consolidation or similar transaction (each, a “disposition”), of:

- (1) any shares of Capital Stock of a Restricted Subsidiary (other than directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary);
- (2) all or substantially all the assets of any division or line of business of the Company or any Restricted Subsidiary; or
- (3) any other assets of the Company or any Restricted Subsidiary outside of the ordinary course of business of the Company or such Restricted Subsidiary.

Notwithstanding the foregoing, the following shall be deemed not to be Asset Dispositions for purposes of Section 4.06: (A) a disposition by the Company or a Restricted Subsidiary to the Company or a Restricted Subsidiary; (B) a disposition that constitutes (i) a Restricted Payment that is not prohibited by Section 4.04 or (ii) a Permitted Investment; (C) a disposition of all or substantially all the assets of the Company in accordance with Section 5.01, or any disposition that constitutes a Change of Control; (D) a disposition in any single transaction or series of related transactions of assets with a Fair Market Value of less than \$35.0 million; (E) a disposition of cash or Temporary Cash Investments; (F) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien); (G) the trade or exchange by the Company or any Restricted Subsidiary of any Hydrocarbon and Mineral Property or any related assets or other assets commonly used in the Oil and Gas Business owned or held by the Company or such Restricted Subsidiary, or any Capital Stock of a Person all or substantially all of whose assets consist of one or more of such types of assets, for (i) assets of such types owned or held by another Person or (ii) the Capital Stock of another Person all or substantially all of whose assets consist of assets of such types and any cash or cash equivalents necessary in order to achieve an exchange of equivalent value; provided, however, that the Fair Market Value of the property or Capital Stock received by the Company or any Restricted Subsidiary in such trade or exchange (including any cash or cash equivalents) is substantially equal to the Fair Market Value of the property (including any cash or cash equivalents) so traded or exchanged; provided, further, that an amount equal to the amount of Net Available Cash from such disposition must be applied in accordance with the covenant described under Section 4.06; (H) any Production Payments and Reserve Sales created, issued or assumed in connection with the financing of the acquisition of oil and gas properties that are subject thereto (and within 90 days after such acquisition), if the owner or purchaser of such Production Payment and Reserve Sale has recourse solely to such oil and gas properties and to the proceeds thereof, subject to the obligation of the grantor or transferor of such Production Payment and Reserve Sale to operate and maintain the related oil and gas properties in a prudent manner or other customary standard, to deliver the associated production (if required) and to indemnify with respect to environmental, title and other matters customary in the Oil and Gas Business; (I) a disposition of oil and gas properties in connection with tax credit transactions complying with Section 45K or any successor or analogous provisions of the Code; (J) a disposition of the Capital Stock of or any Investment in any Unrestricted Subsidiary (other than Grizzly Holdings); (K) surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind; (L) any Sale/Leaseback Transaction with respect to an asset acquired after the Issue Date; provided, however, that such transaction occurs within 180 days after the date of the acquisition of such asset by the Company or such Restricted Subsidiary; (M) any disposition of defaulted receivables that arose in the ordinary course of business for collection; and (N) a disposition of property pursuant to condemnation or eminent domain (or deed in lieu thereof); provided, however, that an amount equal to the amount of Net Available Cash from such disposition must be applied in accordance with Section 4.06.

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For the avoidance of doubt: (i) any disposition of Hydrocarbons and Minerals; (ii) any abandonment, relinquishment, farm-in, farm-out, lease, sub-lease, pooling, unitization, deemed transfer of working interests under any joint operating agreement or other similar or other disposition of developed or undeveloped or both developed and undeveloped Hydrocarbon and Mineral Properties; (iii) the provision of services, equipment and other assets for the operation and development of the Company’s and its Restricted Subsidiaries’ oil and natural gas wells (notwithstanding that any such transaction may be recorded as an asset sale in accordance with full cost accounting guidelines); (iv) any assignment of a working, overriding royalty or net profits interest to an employee or consultant of the Company or any of its Restricted Subsidiaries in connection with the generation of prospects or the exploration or development of oil and natural gas projects; (v) the licensing or abandonment of intellectual property in the ordinary course of business; (vi) the granting of leases or subleases that do not interfere in any material respect with the business of the Company and its Restricted Subsidiaries; (vii) the disposition of equipment, assets, facilities or real property that is obsolete, worn out, no longer used, useful or economically practicable to maintain in the conduct of the business of the Company and its Restricted Subsidiaries and that is disposed of in each case in the ordinary course of business or to achieve cost savings or realize synergies or complementarities with Related Businesses; (viii) the liquidation of any assets received in settlement of claims owed to the Company or any Restricted Subsidiary; (ix) the disposition of, or voluntary or involuntary termination of, a Hedging Obligation, in each such case in the ordinary course of business of the Company or its Subsidiaries or as otherwise customary in the Oil and Gas Business; (x) the disposition of receivables (A) in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings or (B) pursuant to supply chain or “reverse” factoring programs or similar arrangements established by a customer of the Company or any Restricted Subsidiary; (xi) any foreclosure or any similar action with respect to the property or other assets of the Company or any Restricted Subsidiary; (xii) dispositions of Investments in joint ventures, to the extent required by, or made pursuant to customary buy/sell arrangements between joint venture parties set forth in joint venture arrangements and similar binding agreements, will not constitute an Asset Disposition.

“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.

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“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.

“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. For purposes of Section 4.10, a Capital Lease Obligation will be deemed to be Indebtedness secured by a Lien on the property being leased.

“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 any of the following events:

(1) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) other than any Permitted Holder is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Company; provided, however, that, for the purposes of this clause (1), a person shall be deemed (x) to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time and (y) to beneficially own any Voting Stock of a Person (the “specified person”) held by any other Person (the “parent entity”), if such person is the beneficial owner (as defined above in this clause (1)), directly or indirectly, of more than 50% of the Voting Stock of such parent entity; or

(2) the adoption of a plan relating to the liquidation or dissolution of the Company.

(3) the merger or consolidation of the Company with or into another Person or the merger of another Person with or into the Company, or the sale of all or substantially all the assets of the Company and its Restricted Subsidiaries (determined on a consolidated basis) to another Person other than a transaction following which (A) in the case of a merger or consolidation transaction, one or more holders of securities that represented 100% of the Voting Stock of the Company immediately prior to such transaction (or other securities into which such securities are converted as part of such merger or consolidation transaction) own directly or indirectly at least a majority of the voting power of the Voting Stock of the surviving Person in such merger or consolidation transaction immediately after such transaction and (B) in the case of a sale of assets transaction, each transferee is or becomes an obligor in respect of the Securities and a Subsidiary of the transferor of such assets;

but, notwithstanding the foregoing, Permitted Grizzly Dispositions shall not constitute or give rise to a Change of Control.

Notwithstanding the foregoing: (A) a transaction in which the Company or a Parent Company becomes a Subsidiary of another Person (other than a Person that is an individual, such Person that is not an individual, the “New Parent”) shall not constitute a Change of Control under clause (3) of this definition if (a) the equityholders of the Company or such Parent Company immediately prior to such transaction “beneficially own” (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly through one or more intermediaries, at least a majority of the voting power of the outstanding Voting Stock of such New Parent immediately following the consummation of such transaction, substantially in proportion to their holdings of the equity of the Company or such Parent Company prior to such transaction or (b) immediately following the consummation of such transaction, no “person” (as such term is defined above), other than a Permitted Holder or the New Parent, “beneficially owns” (as such term is defined above), directly or indirectly through one or more intermediaries, more than 50% of the voting power of the outstanding Voting Stock of the Company or the New Parent (it being understood that the New Parent may hold the equity of the Company through one or more intermediate holding companies); (B) any holding company whose only significant asset is equity interests of the Company or a Parent Company shall not itself be considered a “person” or “group” for purposes of this definition; (C) the transfer of assets between or among the Restricted Subsidiaries or the Company shall not itself constitute a Change of Control; (D) the term “Change of Control” shall not include a merger or consolidation of the Company (or a Parent Company) with, or the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the assets of the Company (or any Parent Company) to, an Affiliate incorporated or organized solely for the purpose of reincorporating or reorganizing the Company in another jurisdiction and/or for the sole purpose of forming or collapsing a holding company structure; and (E) a “person” or “group” shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement (or voting or option agreement related thereto) until the consummation of the transactions contemplated by such agreement.

“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.

“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.

“Consolidated Coverage Ratio” as of any date of determination means the ratio of

(1) the aggregate amount of EBITDA for the period of the most recent four consecutive fiscal quarters ending at least 45 days prior to the date of such determination to

(2) Consolidated Interest Expense for such four fiscal quarters; provided, however, that:

(A) if the Company or any Restricted Subsidiary has Incurred any Indebtedness since the beginning of such period that remains outstanding or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, or both, then EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness and the use of the proceeds thereof as if such Indebtedness had been Incurred on the first day of such period and such proceeds had been applied as of such date; provided, however, that the pro forma calculation of Consolidated Interest Expense shall not give effect to any Indebtedness Incurred on the date of determination pursuant to Section 4.03(b);

(B) if the Company or any Restricted Subsidiary has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of such period or if any Indebtedness is to be repaid, repurchased, defeased or otherwise discharged on the date of the transaction giving rise to the need to calculate the Consolidated Coverage Ratio, then EBITDA and Consolidated Interest Expense for such period shall be calculated on a pro forma basis as if such discharge had occurred on the first day of such period and as if the Company or such Restricted Subsidiary had not earned the interest income actually earned (if any) during such period in respect of cash or Temporary Cash Investments used to repay, repurchase, defease or otherwise discharge such Indebtedness; provided, however, that the pro forma calculation of Consolidated Interest Expense shall not give effect to the discharge on the date of determination of any Indebtedness to the extent such discharge results from the proceeds of Indebtedness Incurred pursuant Section 4.03(b);

(C) if, since the beginning of such period, the Company or any Restricted Subsidiary shall have made any Asset Disposition, then EBITDA for such period shall be reduced by an amount equal to EBITDA (if positive) directly attributable to the assets which were the subject of such Asset Disposition for such period, or increased by an amount equal to EBITDA (if negative) directly attributable thereto for such period, and Consolidated Interest Expense for such period shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Company or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged with respect to the Company and its continuing Restricted Subsidiaries in connection with such Asset Disposition for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Company and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale), and interest income in respect of cash or Temporary Cash Investments received in

connection with such Asset Disposition and not otherwise used (or required to be used) either to make a subsequent Investment or to purchase, repay, redeem or repurchase Indebtedness, shall be calculated on a pro forma basis as if such Asset Disposition had occurred on the first day of such period, with such cash or Temporary Cash Investments being deemed to have earned interest income at the same average rate as the Company's and the Restricted Subsidiaries' cash and Temporary Cash Investments actually earned interest over the period for which pro forma effect is being given;

(D) if, since the beginning of such period, the Company or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) or an acquisition of material assets, then EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition had occurred on the first day of such period; and

(E) if, since the beginning of such period, any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period) shall have made any Asset Disposition, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (C) or (D) above if made by the Company or a Restricted Subsidiary during such period, then EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto as if such Asset Disposition, Investment or acquisition had occurred on the first day of such period.

For purposes of this definition, whenever pro forma effect is to be given to an event, the pro forma calculations shall be determined in good faith by a responsible financial or accounting Officer of the Company.

If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness, but if the remaining term of such Interest Rate Agreement is less than 12 months, then such Interest Rate Agreement shall only be taken into account for that portion of the period equal to the remaining term thereof).

The Consolidated Interest Expense attributable to interest on any Indebtedness under a revolving credit facility the outstanding principal balance of which is required to be computed on a pro forma basis in accordance with the foregoing shall be computed based upon the average daily balance of such Indebtedness during the applicable period; provided, however, that such average daily balance shall be reduced by the amount of any repayment of Indebtedness under such revolving credit facility during the applicable period, to the extent such repayment permanently reduced the commitments or amounts available to be borrowed under such facility.

"Consolidated Interest Expense" means, for any period, the total interest expense of the Company and its consolidated Restricted Subsidiaries, plus, to the extent not included in such total interest expense, and to the extent incurred by the Company or its Restricted Subsidiaries, without duplication:

- (1) interest expense attributable to Capital Lease Obligations;
- (2) amortization of debt discount and debt issuance cost;
- (3) capitalized interest;
- (4) non-cash interest expense;
- (5) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing;
- (6) net payments pursuant to Interest Rate Agreements;
- (7) dividends accrued in respect of all Disqualified Stock of the Company and all Preferred Stock of any Restricted Subsidiary, in each case, held by Persons other than the Company or a Wholly Owned Subsidiary (other than dividends payable solely in Capital Stock (other than Disqualified Stock) of the Company);
- (8) interest incurred in connection with Investments in discontinued operations;
- (9) interest accruing on any Indebtedness of any other Person to the extent such Indebtedness is Guaranteed by (or secured by the assets of) the Company or any Restricted Subsidiary; and
- (10) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than the Company) in connection with Indebtedness Incurred by such plan or trust;

minus, to the extent included above, write-off of deferred financing costs and interest attributable to Dollar-Denominated Production Payments.

"Consolidated Net Income" means, for any period, the net income of the Company and its consolidated Subsidiaries; provided, however, that there shall not be included in such Consolidated Net Income:

- (1) any net income of any Person (other than the Company) if such Person is not a Restricted Subsidiary, except that:

(A) subject to the exclusion contained in clause (4) below, the Company's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income in an amount equal to the aggregate amount of cash actually distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend, interest payment or other distribution (subject, in the case of a dividend, interest payment or other distribution paid to a Restricted Subsidiary, to the limitations contained in clause (3) below); and

(B) the Company's equity in a net loss of any such Person for such period shall not be included in determining such Consolidated Net Income, except to the extent of the aggregate cash actually contributed to such Person by the Company or a Restricted Subsidiary during such period;

(2) solely for purposes of determining the aggregate amount available for Restricted Payments under Section 4.04(a)(3), any net income (or loss) of any Person acquired by the Company or a Subsidiary in a pooling of interests transaction (or any transaction accounted for in a manner similar to a pooling of interests) for any period prior to the date of such acquisition;

(3) any net income of any Restricted Subsidiary if such Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company, except that:

(A) subject to the exclusion contained in clause (4) below, the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income in an amount equal to the aggregate amount of cash actually distributed by such Restricted Subsidiary during such period to the Company or another Restricted Subsidiary as a dividend, interest payment or other distribution (subject, in the case of a dividend, interest payment or other distribution paid to another Restricted Subsidiary, to the limitation contained in this clause); and

(B) the net loss of any such Restricted Subsidiary for such period shall be included in determining such Consolidated Net Income;

(4) any gain or loss, together with any related provision for taxes on such gain or loss and all related fees and expenses, realized in connection with (A) the sale or other disposition of any assets of the Company, its consolidated Subsidiaries or any other Person that are not sold or otherwise disposed of in the ordinary course of business and (B) the disposition of any securities of any Person or the extinguishment of any Indebtedness of the Company or any of its Subsidiaries;

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(5) extraordinary or nonrecurring gains or losses, together with any related provision for taxes on such gains or losses and all related fees and expenses;

(6) the cumulative effect of a change in accounting principles;

(7) any asset impairment, write-off or write-down on or related to oil and gas properties under GAAP or SEC guidelines;

(8) any after-tax gain or loss realized on the termination of any employee pension benefit plan;

(9) any adjustments of a deferred tax liability or asset pursuant to ASC 740 that result from changes in enacted tax laws or rates;

(10) costs incurred in connection with acquisitions that were eligible for capitalization treatment under GAAP but instead were expensed at the time of incurrence, provided, however, that any such costs shall instead reduce Consolidated Net Income for any period to the extent of any amortization in such period that would have occurred if they had been capitalized;

(11) income or losses attributable to discontinued operations (including operations disposed of during such period whether or not such operations were classified as discontinued according to GAAP);

(12) non-cash charges relating to grants of performance shares, stock options, stock awards, stock purchase agreements, management compensation plans or other equity-based awards for officers, directors, employees or consultants of the Company or a Subsidiary (excluding any such non-cash charge to the extent that it represents an accrual or reserve for cash charges in any future period or amortization of a prepaid cash expense that was paid in a prior period) to the extent that such non-cash charges are deducted in computing such Consolidated Net Income; provided, however, that if the Company or any Restricted Subsidiary makes a cash payment in respect of a non-cash charge in any period, such cash payment shall (without duplication) be deducted from the Consolidated Net Income for such period;

(13) any unrealized non-cash gains or losses or charges in respect of Hedging Obligations (including those resulting from the application of ASC 815);

(14) gains and losses due to fluctuations in exchange rates or currency values; and

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(15) gains and losses due to fluctuations in the value of Post-Closing Payments, in each case, for such period. Notwithstanding the foregoing, for the purposes of Section 4.04 only, there shall be excluded from Consolidated Net Income (A) any repurchases, repayments or redemptions of Investments, proceeds realized on the sale of Investments or return of capital to the Company or a Restricted Subsidiary to the extent such repurchases, repayments, redemptions, proceeds or returns increase the amount of Restricted Payments permitted under such Section pursuant to Section 4.04(a)(3)(D) thereof, (B) any dividends or other distributions of assets received by the Company or a Restricted Subsidiary from Unrestricted Subsidiaries as dividends or other distributions by such Unrestricted Subsidiaries to the extent used to make Restricted Payments pursuant to Section 4.04(b)(12)(B), (C) any net after-tax gains and losses arising from the implementation of "fresh start" accounting (it being understood that, for the avoidance of doubt, the recognition of costs or expenses, amortization, depreciation or similar amounts from assets or liabilities adjusted in such "fresh start" accounting shall not be excluded), and (D) any gains, losses, charges or expenses arising from the Bankruptcy Cases.

"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 Section 4.03) 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.

"Currency Agreement" means any foreign exchange contract, currency swap agreement or other financial agreement or arrangement with respect to currency values.

"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.

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"Disqualified Stock" means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(1) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;

(2) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or

(3) is mandatorily redeemable or must be repurchased upon the occurrence of certain events or otherwise, in whole or in part;

in each case on or prior to the date that is 91 days after the date of the Stated Maturity of the Securities provided, however, that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to repurchase or redeem such Capital Stock upon the occurrence of an “asset sale” or “change of control” occurring prior to the date that is 91 days after the date of the Stated Maturity of the Securities shall not constitute Disqualified Stock if: (A) the “asset sale” or “change of control” provisions applicable to such Capital Stock are not more favorable to the holders of such Capital Stock than the terms applicable to the Securities in Sections 4.06 and 4.09 of this Indenture and (B) any such requirement only becomes operative after compliance with such terms applicable to the Securities, including the repurchase of any Securities tendered pursuant thereto.

The amount of any Disqualified Stock that does not have a fixed redemption, repayment or repurchase price shall be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Stock is to be determined pursuant to this Indenture; provided, however, that if such Disqualified Stock could not be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price shall be the book value of such Disqualified Stock as reflected in the most recent financial statements of such Person.

“Dollar-Denominated Production Payments” means production payment obligations recorded as liabilities in accordance with GAAP, together with all undertakings and obligations in connection therewith.

“EBITDA” for any period means the sum of Consolidated Net Income, plus the following to the extent deducted in calculating such Consolidated Net Income:

(1) all income tax expense of the Company and its consolidated Restricted Subsidiaries;

(2) Consolidated Interest Expense;

(3) depreciation, depletion and amortization expense of the Company and its consolidated Restricted Subsidiaries (excluding amortization expense attributable to a prepaid item that was paid in cash in a prior period); and

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(4) all other non-cash charges of the Company and its consolidated Restricted Subsidiaries (excluding any such non-cash charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period) less all non-cash items of income of the Company and its consolidated Restricted Subsidiaries (other than accruals of revenue by the Company and its consolidated Restricted Subsidiaries in the ordinary course of business);

in each case for such period and less, to the extent included in calculating such Consolidated Net Income and in excess of any costs or expenses attributable thereto and deducted in calculating such Consolidated Net Income, the sum of:

(A) the amount of deferred revenues that are amortized during such period and are attributable to reserves that are subject to Volumetric Production Payments; and

(B) amounts recorded in accordance with GAAP as repayments of principal and interest pursuant to Dollar-Denominated Production Payments.

Notwithstanding the foregoing, the provision for taxes based on the income or profits of, and the depreciation and amortization and non-cash charges of, a Restricted Subsidiary shall be added to Consolidated Net Income to compute EBITDA only to the extent (and in the same proportion, including by reason of minority interests) that the net income or loss of such Restricted Subsidiary was included in calculating Consolidated Net Income and only if a corresponding amount would be permitted at the date of determination to be dividended to the Company by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its stockholders.

For purposes of provisions under this Indenture requiring the calculation of EBITDA, for periods ending on or before December 31, 2021, EBITDA for such periods shall be the Annualized EBITDA.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended.

“Existing Credit Agreement” means the Second Amended and Restated Credit Agreement (as amended, supplemented or modified from time to time, together with all Exhibits and schedules thereto, the “Exit Credit Agreement”) as in effect on the Issue Date, by and among the Company, as borrower, The Bank of Nova Scotia as administrative agent (in such capacity, the “Administrative Agent”) and the other agents and lenders party thereto, together with the related documents thereto (including the revolving notes thereunder and any guarantees and security documents), as amended from time to time.

“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.

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“First Call Date” means May 17, 2024.

“Fitch” means Fitch Ratings, Inc. and any successor to its rating agency business.

“Foreign Subsidiary” means any Restricted Subsidiary of the Company that is not organized under the laws of the United States of America or any State thereof or the District of Columbia or any Subsidiary of a Foreign Subsidiary.

“GAAP” means generally accepted accounting principles in the United States of America as in effect as of the Issue Date, including those set forth in:

- (1) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants;
- (2) statements and pronouncements of the Financial Accounting Standards Board;
- (3) such other statements by such other entity as approved by a significant segment of the accounting profession; and

(4) the rules and regulations of the SEC governing the inclusion of financial statements (including pro forma financial statements) in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC. All ratios and computations based on GAAP contained in this Indenture shall be computed in conformity with GAAP.

Notwithstanding anything to the contrary in this definition or the definition of “Capital Lease Obligation,” notwithstanding any rule under GAAP (or the application thereof) before or after the Issue Date, no Operating Lease shall be treated as a finance or capital lease (or Indebtedness or a Capital Lease Obligation) for purposes of calculations under this Indenture; provided that the Company may, by written notice to the Trustee, elect to treat any Operating Lease as a finance or capital lease (or Indebtedness or a Capital Lease Obligation) for purposes of calculations under this Indenture, which election shall be irrevocable.

“Grizzly Holdings” means Grizzly Holdings, Inc., a Delaware corporation, and its successors.

“Grizzly Oil Sands ULC” means Grizzly Oil Sands ULC, a Canadian unlimited liability company, and its successors.

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“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.

“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 Notes due 2026 on the terms provided for in this Indenture.

“Hedging Obligations” of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Oil and Natural Gas Hedging Contract.

“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.

“Initial Parent Guarantor” means Gulfport Energy Corporation, a Delaware corporation.

“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. Solely for purposes of determining compliance with Section 4.03:

(1) the accrual of interest or dividends, the amortization of original issue discount or debt discount or the accretion of principal, accreted value or liquidation preference;

(2) the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Capital Stock in the form of additional Capital Stock of the same class and with the same terms;

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(3) the obligation to pay a premium in respect of Indebtedness arising in connection with the issuance of a notice of redemption or prepayment or the making of a mandatory offer to purchase such Indebtedness;

(4) unrealized losses or charges in respect of Hedging Obligations (including those resulting from the application of ASC 815); and

(5) increases in the amount of Indebtedness outstanding solely as a result of fluctuations in exchange rates or currency values;

in each case will be deemed not to be Incurrences of Indebtedness.

“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);

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(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.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement or other financial agreement or arrangement with respect to exposure to interest rates.

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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.

For purposes of the definition of "Unrestricted Subsidiary," the definition of "Restricted Payment" and Section 4.04:

(1) "Investment" shall include the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of any Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value at the time of such transfer.

"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 May 17, 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).

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Modified ACNTA Prices" means, as of any date of determination, the forward month prices for the most comparable Hydrocarbons and Minerals commodity applicable to such future production month for a five year period (or such shorter period if forward month prices are not quoted for a reasonably comparable Hydrocarbons and Minerals commodity for the full five year period), with such prices held constant thereafter based on the last quoted forward month price of such period, as such prices are (i) quoted on the New York Mercantile Exchange (or its successor) as of the applicable calculation date and (ii) adjusted for energy content, quality and basis differentials; provided that with respect to estimated future production for which prices are defined, within the meaning of SEC guidelines, by contractual arrangements excluding escalations based upon future conditions, then such contract prices shall be applied to future production subject to such arrangements.

“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;

(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.

“Net Working Capital” of the Company means:

(1) all current assets of the Company and its Restricted Subsidiaries, except current assets from commodity price risk management activities arising in the ordinary course of business; minus

(2) all current liabilities of the Company and its Restricted Subsidiaries, except current liabilities included in Indebtedness (including the Securities), current liabilities from commodity price risk management activities arising in the ordinary course of business, current liabilities recorded with respect to stock-based compensation and current liabilities that constitute estimated abandonment costs pursuant to ASC 410;

in each case, determined in accordance with GAAP.

“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.

“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.

“Oil and Gas Liens” means:

(1) Liens on any specific property or any interest therein, construction thereon or improvement thereto or products or proceeds thereof to secure all or any part of the costs (other than Indebtedness) incurred for surveying, exploration, drilling, extraction, development, operation, production, construction, alteration, repair or improvement of, in, under or on such property and the plugging and abandonment of wells located thereon (it being understood that, in the case of oil and gas producing properties, or any interest therein, costs incurred for “development” will include costs incurred for all facilities relating to such properties or to projects, ventures or other arrangements of which such properties form a part or that relate to such properties or interests);

(2) Liens on Hydrocarbon and Mineral Properties and Hydrocarbons and Minerals to secure obligations incurred or Guarantees of obligations incurred (in each case, other than Indebtedness) in connection with or necessarily incidental to commitments for the purchase or sale of, or the transportation or distribution of, Hydrocarbons and Minerals;

(3) Liens arising under partnership agreements, oil and gas leases and subleases, overriding royalty agreements, net profits agreements, production payment agreements, royalty trust agreements, incentive compensation programs on terms that are reasonably customary in the Oil and Gas Business for geologists, geophysicists and other providers of technical services to the Company or a Restricted Subsidiary, farm-out agreements, farm-in agreements, division orders, contracts for the sale, purchase, exchange, transportation, gathering or processing of Hydrocarbons and Minerals, unitizations and pooling designations, declarations, orders and agreements, development agreements, joint venture agreements, working interests, joint interest billing arrangements, production sale contracts, operating agreements, marketing agreements, royalty agreements, gas balancing or deferred production agreements, production sharing agreements, area of mutual interests agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or geophysical permits or agreements, licenses and sublicenses, and other agreements that are customary in the Oil and Gas Business; provided, however, that in all instances such Liens are limited to the assets that are the subject of the relevant agreement, program, order or contract;

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(4) Liens securing Production Payments and Reserve Sales; provided, however, that such Liens are limited to the property that is subject to such Production Payments and Reserve Sales, and such Production Payments and Reserve Sales either:

(a) were in existence on the Issue Date,

(b) were created in connection with the acquisition of property after the Issue Date and such Lien was incurred in connection with the financing of, and within 180 days after, the acquisition of the property subject thereto, or

(c) constitute Asset Dispositions made in compliance with Section 4.06; and

(5) Liens on pipelines or pipelines facilities that arise by operation of law.

“Oil and Natural Gas Hedging Contract” means futures contract, swap, option, floor, cap, collar, forward sale, forward purchase or other agreement or arrangement relating to, or the value of which is dependent upon, crude oil, condensate, natural gas, natural gas liquids or other Hydrocarbons and Minerals, steam, electricity, by-products of the utilization of Hydrocarbons and Minerals or other assets commonly created, recovered, produced or used in the Oil and Gas Business or revenues or costs (including basis) associated with the Oil and Gas Business, and equities, bonds, or indices based on any of the foregoing and any other derivative agreement or arrangement based on any of the foregoing.

“Operating Lease” means any leases that would have been treated as operating leases under GAAP immediately prior to the adoption of ASC 842 (had such leases been in effect at such time).

“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.

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“Permitted Business Investments” means Investments made in the ordinary course of, and of a nature that is or shall have become customary in, the Oil and Gas Business, either generally or in the particular geographical location or industry segment in which such Investment is made, in each case as determined in good faith by the Company, including investments or expenditures for actively exploiting, exploring for, acquiring, developing, producing, processing, gathering, marketing, transporting or otherwise dealing with Hydrocarbons and Minerals or Hydrocarbon and Mineral Properties (including with respect to plugging and abandonment) through agreements, transactions, interests or arrangements that permit one to share risk or costs, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of the Oil and Gas Business jointly with third parties, including:

(1) ownership of Hydrocarbon and Mineral Properties or any interest therein or gathering, transportation, processing, storage or related systems or ancillary real or personal property interests (including intellectual property), either directly or indirectly, including through entities the primary business of which is to own or operate any of the foregoing;

(2) the entry into and Investments in the form of or pursuant to operating agreements, joint ventures, processing agreements, working interests, royalty interests, mineral leases, farm-in agreements, farm-out agreements, development agreements, production sharing agreements, production sales and marketing agreements, area of mutual interest agreements, contracts for the sale, transportation or exchange of Hydrocarbons and Minerals, unitization agreements, pooling arrangements, joint bidding agreements, service contracts, partnership agreements (whether general or limited), subscription agreements, stock purchase agreements, stockholder agreements or other similar or customary agreements (including for limited liability companies), incentive compensation programs for geologists, geophysicists and other providers of technical services, and

other similar or customary agreements, transactions, properties, interests or arrangements, and Investments and expenditures in connection therewith or pursuant thereto, in each case made or entered into in the ordinary course of the Oil and Gas Business; and

(3) direct or indirect ownership interests in drilling rigs, fracturing units, vehicles, vessels and other equipment customarily used or useful in the Oil and Gas Business.

“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.

“Permitted Holder” means (1) any Person that, on the Issue Date, after giving effect to the Plan of Reorganization, owns, directly or indirectly, beneficially or of record, 5.0% or more of the aggregate ordinary Voting Stock of the Company, (2) any Affiliate of the Persons described in clause (1) and (3) any group of which one or more Permitted Holders under clause (1) or (2) above is a member, so long as such Permitted Holders beneficially own (for purposes of Rule 13d-3 under the Exchange Act) more than 50% of the Voting Stock of the Company beneficially owned (for purposes of Rule 13d-3 under the Exchange Act) by such group (but in each of clauses (1) through (3) above excluding any operating portfolio companies of the foregoing Persons). After any Change of Control Offer is made pursuant to Section 4.10, the Person who caused such Change of Control shall additionally be a Permitted Holder under clause (1) above.

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“Permitted Investment” means an Investment by the Company or any Restricted Subsidiary in:

(1) (i) the Company or a Restricted Subsidiary or (ii) a Person that will, upon the making of such Investment, become a Restricted Subsidiary provided, however, that the primary business of such Restricted Subsidiary is a Related Business;

(2) another Person if, as a result of such Investment, such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Company or a Restricted Subsidiary; provided, however, that such Person’s primary business is a Related Business;

(3) cash and Temporary Cash Investments;

(4) receivables owing to the Company or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;

(5) payroll, travel and similar extensions of credit to cover matters that are expected at the time of such extensions of credit ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(6) extensions of credit to employees, officers, directors, customers and suppliers made in the ordinary course of business of the Company or such Restricted Subsidiary;

(7) Capital Stock, obligations or securities received in settlement or resolution of obligations created in the ordinary course of business and owing to the Company or any Restricted Subsidiary or in satisfaction of judgments;

(8) any Person to the extent such Investment represents the non-cash portion of the consideration received for (i) an Asset Disposition as permitted pursuant to Section 4.06 or (ii) a disposition of assets not constituting an Asset Disposition;

(9) any Person where such Investment was acquired by the Company or any of its Restricted Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Company or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable or (b) as a result of a foreclosure by the Company or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

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(10) any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers’ compensation, performance and other similar pledges and deposits made in the ordinary course of business by the Company or any Restricted Subsidiary;

(11) any Person to the extent such Investments consist of Hedging Obligations not prohibited by Section 4.03;

(12) any extension, modification, exchange, conversion or renewal of an Investment or any Investment constituting proceeds of, or made with proceeds of, the disposition of an Investment, but in each case only to the extent not involving additional advances, contributions or other Investments of cash or other assets or other increases thereof (other than as a result of the appreciation, accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such original Investment);

(13) Guarantees of performance or other obligations (other than Indebtedness) arising in the ordinary course in the Oil and Gas Business, including obligations under oil and natural gas exploration, development, joint operating and related agreements and licenses or concessions related to the Oil and Gas Business;

(14) Permitted Business Investments;

(15) Guarantees issued or made in accordance with Section 4.03 other than Guarantees of Indebtedness of an Affiliate of the Company that is not a Restricted Subsidiary of the Company;

(16) obligations of one or more officers, directors, or employees of the Company or any of its Restricted Subsidiaries in connection with such individual’s acquisition of shares of Capital Stock of the Company (and Refinancings of the principal thereof and accrued interest thereon) so long as no net cash is paid by the Company or any of its Restricted Subsidiaries to such individuals in connection with the acquisition of any such obligations;

(17) Investments acquired after the Issue Date as a result of the acquisition by the Company or any of its Restricted Subsidiaries of another Person, including by way of a merger, amalgamation, or consolidation with or into the Company or any of its Restricted Subsidiaries, in a transaction that is not prohibited by Section 5.01 to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(18) advances and prepayments for asset purchases in the ordinary course of business;

(19) Grizzly Oil Sands ULC in the amounts required by, or Grizzly Holdings in amounts sufficient to permit Grizzly Holdings to make the Investments required by, the Grizzly Sponsor Contribution Agreement;

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(20) any Person to the extent consisting of Capital Stock of Grizzly Holdings or assets received from Grizzly Holdings;

(21) Investments received in connection with a Permitted Grizzly Disposition; and

(22) Persons to the extent that, at the time of each such Investment, the aggregate amount of such Investments made after the Issue Date, when taken together with all other Investments pursuant to this clause (22), does not exceed the greater of \$300.0 million and 15.0% of Adjusted Consolidated Net Tangible Assets, determined as of the date of such Investment.

For purposes of this definition, in the event that a proposed Investment (or portion thereof) meets the criteria of more than one of the categories of Permitted Investments described in clauses (1) through (22) above, the Company will be entitled to classify (but not reclassify) such Investment (or portion thereof) in one or more of such categories set forth above, but, notwithstanding the foregoing, any Investment made in a Person pursuant to clause (22) above may be reclassified as outstanding under clause (1) above (and no longer outstanding under clause (22) above) if such Person thereafter becomes a Restricted Subsidiary.

“Permitted Liens” means, with respect to any Person:

(1) pledges or deposits by such Person under workers’ compensation laws, unemployment insurance laws or similar legislation or regulation, or good-faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, plugging and abandonment obligations, or deposits to secure public or statutory obligations of such Person or deposits of cash or United States government bonds to secure surety bonds, appeal bonds, performance or return of money bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(2) (a) Liens incurred in the ordinary course of business (other than in connection with Indebtedness) or imposed by law, such as carriers’, operators’, repairmen’, vendors’, suppliers’, workers’, landlords’, warehousemen’s, mechanics’ and construction Liens, in each case for sums not yet overdue for more than 60 days or being contested in good faith by appropriate proceedings, (b) Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review or which do not constitute an Event of Default, (c) Liens incurred in the ordinary course of business (other than in connection with Indebtedness) relating to banker’s Liens, rights of set-off, rights of revocation, refund, chargeback or similar rights and remedies as to deposit accounts, instruments or other funds maintained with a creditor depository institution; provided, however, that such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Company in excess of those set forth by regulations promulgated by the Federal Reserve Board and (d) notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

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(3) Liens for taxes, assessments and governmental charges not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings;

(4) Liens in favor of issuers of surety or performance bonds or letters of credit or bankers’ acceptances issued pursuant to the request of and for the account of such Person in the ordinary course of its business; provided, however, that such letters of credit do not constitute Indebtedness;

(5) survey exceptions, encumbrances, servitudes, permits, conditions, covenants, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, roads, pipelines, transmission lines, transportation lines, distribution lines for the removal of gas, oil, coal or other minerals or timber, sewers, electric lines, telegraph and telephone lines and other similar purposes, or for the joint or common use of real estate rights of way, facilities and equipment, Liens related to surface leases and surface operations, or zoning or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real property or Liens that were not Incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) Liens securing Indebtedness Incurred to finance the construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment of such Person; provided, however, that the Lien may not extend to any other property owned by such Person or any of its Restricted Subsidiaries at the time the Lien is Incurred (other than assets and property affixed or appurtenant thereto, improvements, additions and accessions thereto and proceeds and distributions thereof), and the Indebtedness (other than any interest thereon) secured by the Lien may not be Incurred more than 180 days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of the property subject to the Lien;

(7) prior to the Termination Date, Liens to secure Indebtedness permitted under the provisions described in Section 4.03(b)(1) and related obligations;

(8) Liens existing on the Issue Date (other than Liens Incurred to secure obligations under the Existing Credit Agreement);

(9) Liens on property or shares of Capital Stock of another Person at the time such other Person becomes a Subsidiary of such Person (other than a Lien Incurred in connection with, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of transactions pursuant to which such Person becomes a Subsidiary); provided, however, that the Liens may not extend to any other property owned by such Person or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto and improvements, additions and accessions thereto and proceeds and distributions thereof);

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(10) Liens on property at the time such Person or any of its Subsidiaries acquires the property, including any acquisition by means of a merger or consolidation with or into such Person or a Subsidiary of such Person (other than a Lien Incurred in connection with, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of transactions pursuant to which such Person or any of its Subsidiaries acquired such property); provided, however, that the Liens may not extend to any other property owned by such Person or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto and improvements,

additions and accessions thereto and proceeds and distributions thereof);

(11) Liens securing Indebtedness or other obligations owing to the Company or a Restricted Subsidiary;

(12) Liens securing Hedging Obligations so long as such Hedging Obligations are not prohibited by Section 4.03;

(13) Oil and Gas Liens;

(14) Liens securing the Securities or any Subsidiary Guarantee;

(15) Liens on the Capital Stock of Unrestricted Subsidiaries;

(16) Liens arising under this Indenture in favor of the Trustee for its own benefit and similar Liens in favor of other trustees, agents and representatives arising under instruments governing Indebtedness permitted to be Incurred under this Indenture; provided, however, that such Liens are solely for the benefit of the trustees, agents, or representatives in their capacities as such and not for the benefit of the holders of such Indebtedness;

(17) Liens arising from the deposit of funds, cash equivalents or securities or other property in trust for the purpose of decreasing, discharging, redeeming or defeasing Indebtedness so long as such deposit of funds, cash equivalents or securities or other property and such decreasing, discharging, redeeming or defeasing of Indebtedness are not prohibited by Section 4.04;

(18) Liens to secure any Refinancing (or successive Refinancings) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clause (6), (8), (9), (10) or (14) of this definition; provided, however, that:

(A) such new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could have secured the original Lien (plus assets or property affixed or appurtenant thereto, improvements, additions and accessions thereto and proceeds and distributions thereof); and

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(B) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (x) the outstanding principal amount or, if greater, committed amount of such Indebtedness at the time the original Lien became a Permitted Lien and (y) an amount necessary to pay accrued but unpaid interest and any fees and expenses, including premiums, related to such Refinancing;

(19) Liens Incurred to secure cash management services in the ordinary course of business;

(20) Liens on assets pursuant to merger agreements, stock or asset purchase agreements and similar agreements limiting the disposition of such assets pending the closing of the transactions contemplated thereby;

(21) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(22) Liens on any cash earnest money deposits made by the Company or any Restricted Subsidiary in connection with any letter of intent or purchase agreement;

(23) prior to the Termination Date, Liens securing Indebtedness permitted under Section 4.03(b)(14) to the extent such Liens extend only to the assets that are the subject of the agreements described in such Section 4.03(b)(14);

(24) any interest or title of a lessor under any lease;

(25) Liens encumbering property or assets under construction arising from progress or partial payments by a customer of the Company or its Restricted Subsidiaries relating to such property or assets;

(26) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(27) leases, licenses, subleases and sublicenses of assets (including real property and intellectual property rights) that do not materially interfere with the ordinary conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole;

(28) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or any interest acquired pursuant to a Permitted Business Investment;

(29) Liens (A) on advances of cash or Temporary Cash Investments in favor of the seller of any asset to be acquired by the Company or any Restricted Subsidiary to be applied against the purchase price for such asset, (B) consisting of an agreement to dispose of any property in a disposition not prohibited by this Indenture and (C) on cash earnest money deposits made by the Company or any Restricted Subsidiary in connection with any letter of intent or purchase agreement not prohibited by this Indenture;

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(30) Liens reserved in oil and gas mineral leases for bonus or rental payments and for compliance with the terms of such leases;

(31) prior to the Termination Date, other Liens to the extent that, at the time of each such incurrence, the aggregate outstanding principal amount of the obligations secured thereby does not exceed the greater of (a) 15.0% of Adjusted Consolidated Net Tangible Assets determined as of the date of such incurrence and (b) \$300.0 million at any one time outstanding; and

(32) from and after the Termination Date, other Liens to the extent that, at the time of each such incurrence, the aggregate outstanding principal or face amount of the obligations secured thereby does not exceed the greater of (a) 15.0% of Adjusted Consolidated Net Tangible Assets determined as of the date of such incurrence, and (b) the aggregate principal or face amount of obligations outstanding on the Termination Date and at such time secured by Liens permitted under this definition of Permitted Liens clauses (7), (23) and (31).

In each case set forth above and in the definition of the term "Oil and Gas Liens," notwithstanding any stated limitation on the assets or property that may be subject to such Lien, a Permitted Lien or an Oil and Gas Lien on a specified asset or property or group or type of assets or property may include Liens on all improvements, repairs,

additions, attachments and accessions thereto, assets and property affixed or appurtenant thereto, construction thereon, parts, replacements and substitutions therefor, and all products and proceeds thereof, including dividends, distributions, interest and increases in respect thereof.

For the avoidance of doubt, where a Permitted Lien secures Indebtedness, Liens on the same assets subject to such Permitted Lien that secure Obligations related to any such Indebtedness shall also be permitted.

“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.

“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.

“Preferred Stock,” as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

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“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.

“Production Payments” means, collectively, Dollar-Denominated Production Payments and Volumetric Production Payments.

“Production Payments and Reserve Sales” means the grant or transfer to any Person of a Dollar-Denominated Production Payment, Volumetric Production Payment, royalty, overriding royalty, net profits interest, master limited partnership interest or other interest in oil and natural gas properties, reserves or the right to receive all or a portion of the production or the proceeds from the sale of production attributable to such properties or reserves.

“Purchase Money Indebtedness” means Indebtedness (including Capital Lease Obligations) (1) consisting of the deferred purchase price of property, conditional sale obligations, obligations under any title retention agreement, other purchase money obligations and obligations in respect of industrial revenue bonds or similar Indebtedness, in each case where the maturity of such Indebtedness does not exceed the anticipated useful life of the asset being financed, and (2) Incurred to finance the purchase, lease or improvement by the Company or a Restricted Subsidiary of such property; provided, however, that such Indebtedness is Incurred within 360 days after such acquisition of such property.

“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.

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“Refinancing Indebtedness” means Indebtedness that Refinances any Indebtedness of the Company or any Restricted Subsidiary existing on the Issue Date or Incurred in compliance with this Indenture, including Indebtedness that Refinances Refinancing Indebtedness; provided, however, that:

(1) such Refinancing Indebtedness has a Stated Maturity no earlier than the earlier of (a) the date 91 days after the Stated Maturity of the Securities and (b) the Stated Maturity of the Indebtedness being Refinanced;

(2) such Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the lesser of (a) the Average Life of the Securities at such time plus 91 days and (b) the Average Life of the Indebtedness being Refinanced;

(3) such Refinancing Indebtedness has an aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding (plus accrued interest thereon and fees and expenses, including any premium and defeasance costs) under the Indebtedness being Refinanced; and

(4) if the Indebtedness being Refinanced is subordinated in right of payment to the Securities, such Refinancing Indebtedness is subordinated in right of payment to the Securities at least to the same extent as the Indebtedness being Refinanced; provided further, however, that Refinancing Indebtedness shall not include (A) Indebtedness of a Restricted Subsidiary that is not a Subsidiary Guarantor that Refinances Indebtedness of the Company or a Subsidiary Guarantor and (B) Indebtedness of the Company or a Restricted Subsidiary that Refinances Indebtedness of an Unrestricted Subsidiary.

“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 Payment” with respect to any Person means:

(1) the declaration or payment, without duplication, of any dividends or any other distributions of any sort in respect of its Capital Stock (including any payment in connection with any merger or consolidation involving such Person) or similar payment to the direct or indirect holders of its Capital Stock (other than (A) dividends or

distributions payable solely in its Capital Stock (other than Disqualified Stock), (B) dividends or distributions payable to the Company or a Restricted Subsidiary and (C) to the holders of any class of its Capital Stock on a pro rata basis, dividends or other distributions made by a Subsidiary);

(2) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of any Capital Stock of the Company held by any Person (other than by a Restricted Subsidiary) or of any Capital Stock of a Restricted Subsidiary held by any Affiliate of the Company (other than by the Company or a Restricted Subsidiary and other than transactions involving all holders of any class of Capital Stock of such Restricted Subsidiary on a pro rata basis), including in connection with any merger or consolidation and including the exercise of any option to exchange any Capital Stock (other than into Capital Stock of the Company that is not Disqualified Stock);

(3) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment of any Subordinated Obligations of the Company or any Subsidiary Guarantor (other than (A) Subordinated Obligations held by the Company or a Restricted Subsidiary and (B) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition or retirement); or

(4) the making of any Investment (other than a Permitted Investment) in any Person.

“Restricted Subsidiary” means any Subsidiary of the Company that is not an Unrestricted Subsidiary.

“Sale/Leaseback Transaction” means an arrangement relating to property owned by the Company or a Restricted Subsidiary on the Issue Date or thereafter acquired by the Company or a Restricted Subsidiary whereby the Company or a Restricted Subsidiary transfers such property to a Person (other than the Company or a Restricted Subsidiary) and thereafter the Company or a Restricted Subsidiary leases it from such Person.

“SEC” means the U.S. Securities and Exchange Commission.

“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.

“Standard & Poor’s” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“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).

“Subordinated Obligation” means, with respect to a Person, any Indebtedness of such Person (whether outstanding on the Issue Date or thereafter Incurred) that is subordinate in right of payment to the Securities or a Subsidiary Guarantee of such Person, as the case may be, pursuant to a written agreement to that effect.

“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.

“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.

“Temporary Cash Investments” means any of the following:

(1) any investment in direct obligations of the United States of America or any agency or instrumentality thereof or obligations guaranteed by the United States of America or any agency or instrumentality thereof;

(2) investments in demand and time deposit accounts, bankers’ acceptances, overnight bank deposits, certificates of deposit and money market deposits maturing within 12 months of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any State thereof or any foreign country recognized by the United States of America, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of \$500.0 million (or the foreign currency equivalent thereof) and has outstanding debt which is rated “A” (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (registered pursuant Section 15E of the Exchange Act) or any money-market fund sponsored by a registered broker dealer or mutual fund distributor;

(3) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (1) above entered into with a bank or trust company meeting the qualifications described in clause (2) above;

(4) investments in commercial paper issued by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of “P-1” (or higher) according to Moody’s or “A-1” (or higher) according to Standard and Poor’s;

(5) investments in securities with maturities of nine months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and, at the time of acquisition, rated at least “A” by Standard & Poor’s or “A” by Moody’s (or equivalent ratings by any other nationally recognized rating agency);

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(6) investments in money market funds that invest substantially all their assets in securities of the types described in clauses (1) through (5) above; and

(7) investments in deposits available for withdrawal on demand with any commercial bank or similar institution that is organized under the laws of any country in which the Company or any Restricted Subsidiary maintains an office or is engaged in the Oil and Gas Business; provided, however, that (i) all such deposits have been made in such accounts in the ordinary course of business and (ii) such deposits do not at any one time exceed \$10.0 million in the aggregate.

“Trust Indenture Act” means the Trust Indenture Act of 1939 (15 U.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.

“Uniform Commercial Code” means the New York Uniform Commercial Code as in effect from time to time.

“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 below;

(2) any Subsidiary of an Unrestricted Subsidiary; and

(3) Grizzly Holdings;

in each case unless and until such time as such Subsidiary is designated a Restricted Subsidiary for the purposes of this Indenture. The Board of Directors may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Capital Stock or Indebtedness of, or holds any Lien on any property of, the Company or any other Restricted Subsidiary of the Company that is not a Subsidiary of the Subsidiary to be so designated; provided, however, that either (A) the Subsidiary to be so designated has total net assets of \$1,000 or less or (B) if such Subsidiary has total net assets greater than \$1,000, such designation would not be prohibited by Section 4.04 (the amount of any such Restricted Payment or Permitted Investment being calculated in the manner set forth in the definition of the term “Investment”).

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, however, that immediately after giving effect to such designation (A) the Company could Incur \$1.00 of additional Indebtedness under Section 4.03(a) and (B) no Default shall have occurred and be continuing. Any such designation by the Board of Directors shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors giving effect to such designation and an Officer’s Certificate certifying that such designation complied with the foregoing provisions.

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“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.

“Volumetric Production Payments” means production payment obligations recorded as deferred revenue in accordance with GAAP, together with all undertakings and obligations in connection therewith.

“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.

Term	Section
Affiliate Transaction	4.07
Asset Disposition Offer	4.06(b)
Assuming Parent	5.01
Change of Control Offer	4.09(b)
Change of Control Purchase Price	4.09(b)(1)
Company	Preamble
Deemed Date	4.03(f)
Guaranteed Obligations	10.01
Increased Amount	4.10
Initial Lien	4.10
Net Available Cash	4.06(d)
Offer Amount	4.06(c)(2)
Offer Period	4.06(c)(2)
Paying Agent	2.03
Purchase Date	4.06(c)
Registrar	2.03
Relevant Event	1.04
Section 5.01(a) Transaction	5.01(a)
Successor Company	5.01(1)
Termination Date	4.15(a)
Trustee	Preamble

Section 1.03 Trust Indenture Act.

Whenever this Indenture refers to a provision of the Trust Indenture Act and states that such provision is effective with respect to this Indenture, the provision is incorporated by reference in and made a part of this Indenture. Unless specifically referred to herein, the Trust Indenture Act shall not apply to this Indenture except to the extent required by law.

The interpretation of terms used in this Indenture that are not otherwise defined and are used or defined in the Trust Indenture Act shall not be influenced by the meanings ascribed to them by the Trust Indenture Act.

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

(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 \$0.0 million of 8.0% Senior 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.

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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.

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. 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.

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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.

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.

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.

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 \$1 or any greater integral multiple of \$1 thereof. Securities of \$1 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 1145 Securities Pro Rata with the Securities. The Company shall not redeem any or all of the Securities without also redeeming any or all, respectively, of the 1145 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 SEC Reports. Whether or not the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file with or furnish to the SEC, as applicable, subject to the next sentence, and provide the Trustee and Securityholders with, such annual and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such Sections (but without exhibits in the case of reports provided to Holders), such reports to be so filed and provided at the times specified for the filings of such reports under such Sections (after giving effect to all applicable extensions and cure periods) and containing all the information, audit reports and exhibits required for such reports.

If, at any time, the Company is not subject to the periodic reporting requirements of the Exchange Act for any reason, the Company shall nevertheless continue filing the reports specified in the preceding paragraph with the SEC within such time periods unless the SEC will not accept such a filing. The Company agrees that it will not take any action for the primary purpose of causing the SEC not to accept such filings. If, notwithstanding the foregoing, the SEC will not accept such filings for any reason, the Company will post the reports specified in the preceding paragraph on its website within the time periods (after giving effect to all applicable extensions and cure periods) that would apply if the Company were required to file those reports with the SEC.

Notwithstanding anything to the contrary contained in the immediately preceding paragraph, if the Company is not required to file reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, (i.e., is a “voluntary filer”), the reports described in the preceding paragraph shall not be required to contain certain disclosures relating to the Company’s controls and procedures, corporate governance, code of ethics, director independence, market for the Company’s equity securities and executive compensation and such reports (A) will not be required to comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the SEC, or Item 10(e) of Regulation S-K or Regulation G (with respect to any non-GAAP financial measures contained therein), (B) will not be required to contain the separate financial information for Applicable Guarantors or Subsidiaries whose securities are pledged to secure the Notes contemplated by Rule 3-05, Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X, (C) will not be required to contain information required by Item 601 of Regulation S-K, and (D) will not be required to include the schedules identified in Section 5-04 of Regulation S-X under the Securities Act.

At any time that any of the Company’s Subsidiaries are Unrestricted Subsidiaries, then the quarterly and annual financial information required by the preceding

paragraph will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company; provided, however, that such reasonably detailed presentation shall not be required if the Adjusted Consolidated Net Tangible Assets attributable to all Unrestricted Subsidiaries in the aggregate are less than 15.0% of the Company’s Adjusted Consolidated Net Tangible Assets.

In addition, the Company shall furnish to the Holders of the Securities and to prospective investors, upon the requests of such Holders, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Securities are not freely transferable under the Securities Act.

The Company shall be deemed to have furnished such reports to the Trustee and the Holders of the Securities if it has filed such reports with the SEC using the EDGAR (or any successor) filing system and such reports are publicly available through such filing system.

In the event that any direct or indirect parent company of the Company is or becomes a guarantor of the Securities (including, for the avoidance of doubt, the Initial Parent Guarantor), the Company may satisfy its obligations under this covenant by furnishing financial information relating to such parent; provided, however, that (a) such financial statements are accompanied by consolidating financial information for such parent, the Company, the Subsidiary Guarantors and the Subsidiaries of the Company that are not Subsidiary Guarantors in the manner prescribed by the SEC and (b) such parent is not engaged in any business in any material respect other than incidental to its ownership, directly or indirectly, of the Capital Stock of the Company.

So long as any Securities are outstanding, the Company shall also:

(1) as promptly as reasonably practicable after filing with the SEC or posting the annual and quarterly reports required by the first paragraph of this Section 4.02, hold a conference call to discuss such reports and the results of operations for the relevant reporting period; and

(2) issue a press release to the appropriate nationally recognized wire services prior to the date of the conference call required to be held in accordance with clause (1) of this paragraph, announcing the time and date of such conference call and including all information necessary to access the call.

This covenant shall be deemed not to impose any duty on the Company under the Sarbanes-Oxley Act of 2002 and the related SEC rules that would not otherwise be applicable.

Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee’s receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer’s Certificate).

For the avoidance of doubt, a Default or an Event of Default resulting from a failure to provide any report required by this Section 4.02 shall be cured upon the provision of such report prior to the acceleration of the Notes pursuant to Section 6.02.

Section 4.03 Limitation on Indebtedness.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Indebtedness; provided, however, that the Company and its Restricted Subsidiaries shall be entitled to Incur Indebtedness if, on the date of such Incurrence and after giving effect thereto on a pro forma basis, the Consolidated Coverage Ratio exceeds 2.00 to 1.00.

(b) Notwithstanding the foregoing paragraph (a), the Company and the Restricted Subsidiaries shall be entitled to Incur any or all of the following Indebtedness:

(1) Indebtedness Incurred by the Company and the Subsidiary Guarantors pursuant to Credit Agreements; provided, however, that, after giving effect to any such Incurrence, the aggregate principal amount of all Indebtedness Incurred under this clause (1) and then outstanding does not exceed the greater of (i) \$1,500 million and (ii) 35.0% of Adjusted Consolidated Net Tangible Assets determined as of the date of such Incurrence;

(2) Indebtedness owed to and held by the Company or a Restricted Subsidiary; provided, however, that (A) any subsequent issuance or transfer of any Capital Stock which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the obligor thereon, (B) if the Company is the obligor on such Indebtedness, unless such Indebtedness is owing to a Subsidiary Guarantor, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations with respect to the Securities and (C) if a Subsidiary Guarantor is the obligor on such Indebtedness, unless such Indebtedness is owing to the Company or another Subsidiary Guarantor, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations of such Subsidiary Guarantor with respect to its Subsidiary Guarantee;

(3) the Securities (but excluding any Additional Securities) and all Subsidiary Guarantees thereof;

(4) Indebtedness outstanding on the Issue Date (other than Indebtedness described in clause (1), (2) or (3) of this Section 4.03(b));

(5) Indebtedness of a Restricted Subsidiary outstanding on or prior to the date on which it became a Restricted Subsidiary or secured by a Lien on an asset acquired by the Company or by a Restricted Subsidiary (other than Indebtedness Incurred in connection with, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such entity became a Restricted Subsidiary or such asset was so acquired); provided, however, that on the date such entity became a Restricted Subsidiary or such asset was so acquired and after giving pro forma effect thereto, the Company would have been entitled to Incur at least \$1.00 of additional Indebtedness pursuant to Section 4.03(a);

(6) Refinancing Indebtedness in respect of Indebtedness Incurred pursuant to Section 4.03(a) or pursuant to clause (3), (4) or (5) of this Section 4.03(b) or this clause (6); provided, however, that to the extent such Refinancing Indebtedness directly or indirectly Refinances Indebtedness of a Restricted Subsidiary Incurred pursuant to clause (5), such Refinancing Indebtedness shall be Incurred only by a Restricted Subsidiary or, so long as such Restricted Subsidiary has no liability with respect to such Refinancing Indebtedness, by the Company or by a Subsidiary Guarantor;

(7) Hedging Obligations consisting of Interest Rate Agreements related to Indebtedness outstanding on the Issue Date or permitted to be Incurred by the Company and its Restricted Subsidiaries pursuant to this Indenture;

(8) Hedging Obligations consisting of Oil and Natural Gas Hedging Contracts and Currency Agreements, in each case entered into in the ordinary course of business for the purpose of limiting risks that arise in the ordinary course of business of the Company and its Subsidiaries;

(9) obligations in respect of workers’ compensation claims, health, disability or other benefits, unemployment or other insurance or self-insurance

obligations and other social security or similar legislation, old age pension or public liability obligations, statutory obligations, government contracts, trade contracts, regulatory obligations, leases, utility contracts and similar obligations, plugging and abandonment, appeal, performance, tender, bid and surety bonds, completion guarantees and other reimbursement obligations provided by, or for the account of, the Company or any Restricted Subsidiary in the ordinary course of business (in each case other than for an obligation for money borrowed), including any Guarantees, contingent reimbursement obligations or other contingent obligations with respect to letters of credit or bank guarantees functioning as or supporting or issued to assure payment or performance of any of the foregoing bonds or obligations;

(10) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(11) Indebtedness consisting of any Guarantee by the Company or a Subsidiary Guarantor of Indebtedness outstanding on the Issue Date or permitted by this Indenture to be incurred by the Company or a Subsidiary Guarantor; provided, however, that if the Indebtedness being guaranteed is subordinated to the Securities or a Subsidiary Guarantee, then the Guarantee thereof shall be subordinated to at least the same extent as the Indebtedness being Guaranteed;

(12) Purchase Money Indebtedness of the Company or a Restricted Subsidiary Incurred to finance the purchase, lease or improvement of property (real or personal), and any Refinancing Indebtedness Incurred to Refinance such Indebtedness, in an aggregate principal amount which, when added together with the amount of Indebtedness Incurred pursuant to this clause (12) and then outstanding, does not exceed the greater of (i) \$300.0 million and (ii) 15.0% of Adjusted Consolidated Net Tangible Assets determined as of the date of such Incurrence;

(13) Indebtedness in respect of the financing of insurance premiums with the providers of such insurance or their Affiliates in the ordinary course of business;

(14) Indebtedness arising from any agreement providing for indemnities, contribution, Guarantees, purchase price adjustments, holdbacks, earn-outs, deferred compensation, contingency payment obligations based on the performance of the acquired or disposed assets or similar obligations (in each case, other than Guarantees of Indebtedness) incurred or assumed by any Person in connection with the acquisition or disposition of assets;

(15) in-kind obligations relating to oil and natural gas balancing obligations arising in the ordinary course of business; and

(16) Indebtedness of the Company or any Restricted Subsidiary in an aggregate principal amount which, when taken together with all other Indebtedness outstanding on the date of such Incurrence under this clause (16), does not exceed the greater of (i) \$250.0 million and (ii) 15.0% of Adjusted Consolidated Net Tangible Assets determined as of the date of such Incurrence.

(c) Notwithstanding the foregoing, neither the Company nor any Subsidiary Guarantor shall Incur any Indebtedness pursuant to Section 4.03(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations of the Company or any Subsidiary Guarantor unless such Indebtedness shall be subordinated to the Securities or the applicable Subsidiary Guarantee to at least the same extent as such Subordinated Obligations.

(d) For purposes of determining compliance with this Section 4.03, in the event that an item of proposed Indebtedness or Disqualified Stock meets the criteria of more than one of the categories of described in clause 4.03(b) (or portions thereof), or is entitled to be incurred pursuant to Section 4.03(a), the Company may, in its sole discretion, divide, classify or reclassify, or later divide, classify, or reclassify, such Indebtedness or Disqualified Stock (or any portion thereof) in any manner that complies (as if such Indebtedness were incurred at the time of such reclassification) with this covenant.

(e) For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the making of Investments or any other covenant, limitation or ratio in this Indenture, the U.S. dollar-equivalent of the principal amount of Indebtedness, Investment or other amount denominated in a foreign currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, such Investment was made, or such other amount was expended or incurred. Notwithstanding any other provision of this Indenture, the maximum amount of Indebtedness that the Company or any Restricted Subsidiary may Incur pursuant to this Indenture shall be deemed not to be exceeded and all other covenants, limitations and ratios in this Indenture be deemed not to be breached or exceeded, solely as a result of fluctuations in exchange rates or currency values.

(f) In connection with the incurrence or issuance, as applicable, of (x) revolving loan Indebtedness under this covenant or (y) any commitment or other transaction relating to the incurrence or issuance of Indebtedness or Disqualified Stock under this covenant and the granting of any Lien to secure such Indebtedness, the Company or applicable Restricted Subsidiary may designate such incurrence or issuance and the granting of any Lien therefor as having occurred on the date of first incurrence of such revolving loan Indebtedness or commitment or intention to consummate such transaction (such date, the "Deemed Date"), and any related subsequent actual incurrence or issuance and granting of such Lien therefor will be deemed for all purposes under this Indenture to have been incurred or issued and granted on such Deemed Date, including, without limitation, for purposes of calculating the Consolidated Coverage Ratio, usage of any baskets hereunder (if applicable) and any other covenant, limitation or ratio in this Indenture (and all such calculations on and after the Deemed Date until the termination or funding of such commitment or until such transaction is consummated or abandoned or such election is rescinded shall be made on a pro forma basis giving effect to the deemed incurrence or issuance, the granting of any Lien therefor and related transactions in connection therewith).

Section 4.04 Limitation on Restricted Payments. (a) The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, make a Restricted Payment if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(1) a Default shall have occurred and be continuing (or would result therefrom);

(2) the Company is not entitled to Incur an additional \$1.00 of Indebtedness pursuant to Section 4.03(a); or

(3) the aggregate amount of such Restricted Payment and all other Restricted Payments since the Issue Date would exceed the sum of (without duplication):

(A) 50% of the Consolidated Net Income accrued during the period (treated as one accounting period) from the Issue Date to the end of the most recent fiscal quarter ending at least 45 days prior to the date of such Restricted Payment (or, in case such Consolidated Net Income shall be a deficit, minus 100% of such deficit); plus

(B) 100% of the aggregate Net Cash Proceeds or the Fair Market Value of property other than cash (including Capital Stock or other assets) received by the Company from the issuance or sale of its Capital Stock (other than Disqualified Stock) subsequent to the Issue Date (other than an issuance or sale to a

(C) the amount by which Indebtedness of the Company or a Restricted Subsidiary is reduced on the Company's consolidated balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) subsequent to the Issue Date of any Indebtedness of the Company or a Restricted Subsidiary convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the Fair Market Value of any other property, distributed by the Company upon such conversion or exchange); provided, however, that the foregoing amount shall not exceed the Net Cash Proceeds received by the Company or any Restricted Subsidiary from the sale of such Indebtedness (excluding any Net Cash Proceeds from sales to a Subsidiary of the Company or to an employee stock ownership plan or a trust established by the Company or any of its Subsidiaries for the benefit of their employees); plus

(D) an amount equal to the sum of (x) the net reduction subsequent to the Issue Date in the Investments (other than Permitted Investments) made by the Company or any Restricted Subsidiary in any Person resulting from repurchases, repayments, releases or redemptions of such Investments by such Person, proceeds realized on the sale of such Investment and proceeds representing the return of capital (excluding dividends and distributions), in each case received by the Company or any Restricted Subsidiary, and (y) if such Person is an Unrestricted Subsidiary, the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Unrestricted Subsidiary at the time subsequent to the Issue Date such Unrestricted Subsidiary is designated as, merged or consolidated into, or transfers or otherwise disposes of all or substantially all of its properties or assets to or is liquidated into, a Restricted Subsidiary; provided, however, that the foregoing sum shall not exceed, in the case of any such Person, the amount of Investments (excluding Permitted Investments) previously made (and treated as a Restricted Payment) subsequent to the Issue Date by the Company or any Restricted Subsidiary in such Person; plus

(E) \$100.0 million.

(b) The provisions of Section 4.04(a) shall not prohibit:

(1) any Restricted Payment made out of the Net Cash Proceeds of the substantially concurrent issuance or sale of, or made by conversion into or exchange for, Capital Stock of the Company (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Company or an employee stock ownership plan or to a trust established by the Company or any of its Subsidiaries for the benefit of their employees) or a substantially concurrent cash capital contribution received by the Company from one or more of its shareholders; provided, however, that (A) such Restricted Payment shall be excluded in the calculation of the amount of Restricted Payments and (B) the Net Cash Proceeds from such sale or such cash capital contribution (to the extent so used for such Restricted Payment) shall be excluded from the calculation of amounts under Section 4.04(a)(3)(B);

(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Obligations of the Company or of any Subsidiary Guarantor made by exchange for, or out of the proceeds of the substantially concurrent Incurrence of, Indebtedness of such Person which is permitted to be Incurred pursuant to Section 4.03; provided, however, that such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value shall be excluded in the calculation of the amount of Restricted Payments;

(3) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Disqualified Stock of the Company or a Subsidiary Guarantor made by conversion into or exchange for, or out of the proceeds of the substantially concurrent issuance or sale (other than to a Subsidiary of the Company or an employee stock ownership plan or to a trust established by the Company or any of its Subsidiaries for the benefit of their employees) of, Disqualified Stock of the Company which is permitted to be issued pursuant to Section 4.03; provided, however, that such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value shall be excluded in the calculation of the amount of Restricted Payments;

(4) dividends or distributions paid or consummations of redemptions within 60 days after the date of declaration thereof if at such date of declaration such dividend, distribution or redemption would have complied with this covenant; provided, however, that such dividend, distribution or redemption shall be included in the calculation of the amount of Restricted Payments;

(5) the purchase, repurchase, redemption or other acquisition or retirement of shares of Capital Stock of the Company or any of its Subsidiaries from employees, former employees, directors or former directors of the Company or any of its Subsidiaries (or permitted transferees of such employees, former employees, directors or former directors), pursuant to the terms of the agreements (including employment agreements) or plans (or amendments thereto) approved by the Board of Directors under which such individuals purchase or sell or are granted the option to purchase or sell, shares of such Capital Stock; provided, however, that the aggregate amount of such Restricted Payments (excluding amounts representing cancelation of Indebtedness or funded by "key man" life insurance policies) shall not exceed \$30.0 million in any calendar year, with unused amounts in any calendar year being permitted to be carried forward to succeeding calendar years subject to a maximum of \$60.0 million in any calendar year; provided further, however, that such Restricted Payments shall be excluded in the calculation of the amount of Restricted Payments;

(6) declarations and payments of dividends on Disqualified Stock or Preferred Stock of a Restricted Subsidiary issued pursuant to Section 4.03; provided, however, that such dividends shall be excluded in the calculation of the amount of Restricted Payments;

(7) repurchases, redemptions and other acquisitions and retirements of Capital Stock deemed to occur upon exercise, exchange or vesting of any equity compensation (including, without limitation, stock options, restricted stock, phantom stock, warrants, incentives, rights to acquire Capital Stock or other derivative securities) if such Capital Stock represents a portion of the exercise or other price or cost thereof, and repurchases, redemptions and other acquisitions and retirements of Capital Stock made in lieu of withholding for, or to satisfy taxes in connection with any exercise, exchange or vesting of stock options, restricted stock, phantom stock, warrants, incentives, rights to acquire Capital Stock or other derivative securities; provided, however, that such Restricted Payments shall be excluded in the calculation of the amount of Restricted Payments;

(8) cash payments in lieu of the issuance of fractional shares in connection with any transaction otherwise permitted by this Section 4.04; provided, however, that any such cash payment shall not be for the purpose of evading the limitation of this Section 4.04 (as determined in good faith by the Board of Directors); provided further, however, that such payments shall be excluded in the calculation of the amount of Restricted Payments;

(9) in the event of a Change of Control or an Asset Disposition, and if no Default shall have occurred and be continuing, and within 60 days after the completion of the offer to repurchase the Securities under Section 4.06 or 4.09 (including the purchase of all Securities tendered), the payment, purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations or Disqualified Stock of the Company or any Subsidiary Guarantor, in each case, at a purchase price not greater than 101% of the principal amount of such Subordinated Obligations or Disqualified Stock, plus any accrued and unpaid interest or dividends thereon; provided, however, that prior to such payment, purchase, repurchase, redemption, defeasance or other acquisition or retirement, the Company (or a third party to the extent permitted by this Indenture) has made a Change of Control Offer or an Asset Disposition Offer with respect to the Securities as a result of such Change of Control or

Asset Disposition and has repurchased all Securities validly tendered and not withdrawn in connection with such Change of Control Offer or Asset Disposition Offer; provided further, however, that such payments, purchases, repurchases, redemptions, defeasances or other acquisitions or retirements shall be excluded in the calculation of the amount of Restricted Payments;

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(10) payments of intercompany subordinated Indebtedness, the Incurrence of which was permitted under Section 4.03(b)(2); provided, however, that such payments shall be excluded in the calculation of the amount of Restricted Payments;

(11) payments to dissenting stockholders of the Company not to exceed \$20.0 million in the aggregate (A) pursuant to applicable law or (B) in connection with the settlement or other satisfaction of legal claims made pursuant to or in connection with a consolidation, merger or transfer of assets in connection with a transaction that is not prohibited by this Indenture; provided, however, that such payments shall be excluded in the calculation of the amount of Restricted Payments;

(12) the declaration and payment of dividends or other distributions of (A) shares of Capital Stock of, or Indebtedness owed to the Company or a Restricted Subsidiary by, Unrestricted Subsidiaries, or (B) assets received by the Company or a Restricted Subsidiary from Unrestricted Subsidiaries as dividends or other distributions by such Unrestricted Subsidiaries; provided, however, that such declaration and payment of dividends or other distributions shall be excluded in the calculation of the amount of Restricted Payments; provided further, however, that this clause (12) shall not apply to dividends or distributions of Capital Stock of, Indebtedness owed by, or assets received from, Grizzly Holdings;

(13) other Restricted Payments in an aggregate amount which, when taken together with all other Restricted Payments made pursuant to this clause (13) at any one time outstanding, does not exceed \$100.0 million; provided, however, that such amounts shall be excluded in the calculation of the amount of Restricted Payments;

(14) Investments in joint ventures or other Persons in an aggregate amount which, when taken together with all other Investments made pursuant to this clause (14) at any one time outstanding, does not exceed the greater of (x) \$200.0 million and (y) 10.0% of Adjusted Consolidated Net Tangible Assets; provided, however, that such amounts shall be excluded in the calculation of the amount of Restricted Payments; and

(15) in addition to the Restricted Payments permitted by the preceding clauses (1) through (14), other Restricted Payments so long as, (i) no Default or Event of Default has occurred and is continuing and (ii) at the time of and after giving effect to the making of such Restricted Payment and the consummation of all other related transactions, the Total Net Leverage Ratio would not exceed 1.25:1.00; provided, however, that such amounts shall be excluded in the calculation of the amount of Restricted Payments;

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(c) If any Person in which an Investment is made, which Investment constitutes a Restricted Payment or a Permitted Investment under clause (22) of such definition when made, thereafter becomes a Restricted Subsidiary, all such Investments previously made in such Person shall no longer be counted as Restricted Payments or Permitted Investments under such clause for purposes of calculating the aggregate amount of Restricted Payments made or Permitted Investments made pursuant to such clause.

(d) For the avoidance of doubt, at the Company's option, the amount of an Investment made may be calculated, from time to time, net of any return of or on capital thereon received by the Company and its Restricted Subsidiaries so long as the amount of such return is not included in the amount described in Section 4.04(a)(3).

(e) For purposes of determining compliance with this Section 4.04, in the event that a proposed Restricted Payment (or portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in Sections 4.04(b)(1) through 4.04(b)(15) above or one or more clauses of the definition of "Permitted Investments" (or portions of any of the foregoing), or is entitled to be made pursuant to Section 4.04(a), the Company will be entitled to classify or reclassify (based on circumstances existing at the time of such reclassification) such Restricted Payment or portion thereof in any manner that complies with this Section 4.04 and such Restricted Payment or portion thereof will be treated as having been made pursuant to only such clause or clauses (or portions thereof) or Section 4.04(a); provided that the Company and its Restricted Subsidiaries may reclassify all or a portion of such Restricted Payment or Permitted Investment in any manner that complies with this covenant (based on circumstances existing at the time of such reclassification), and following such reclassification such Restricted Payment or Permitted Investment shall be treated as having been made pursuant to only the clause or clauses (or portions thereof) to which such Restricted Payment or Permitted Investment has been reclassified.

Section 4.05 Limitation on Restrictions on Distributions from Restricted Subsidiaries. The Company shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause to become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a) pay dividends or make any other distributions on its Capital Stock to the Company or a Restricted Subsidiary or pay any Indebtedness owed to the Company, (b) make any loans or advances to the Company or (c) transfer any of its property or assets to the Company, except:

(1) with respect to clauses (a), (b) and (c),

(A) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date;

(B) any encumbrance or restriction with respect to a Restricted Subsidiary or any property or assets thereof pursuant to an agreement of such Restricted Subsidiary (including the Capital Stock thereof) outstanding on the date on which such Restricted Subsidiary was acquired by the Company or otherwise became a Restricted Subsidiary (other than agreements relating to Indebtedness Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Restricted Subsidiary was acquired by the Company or otherwise became a Restricted Subsidiary);

(C) any encumbrance or restriction pursuant to an agreement effecting a Refinancing of Indebtedness Incurred pursuant to an agreement referred to in Section 4.05(1)(A) or (B) or this clause (C) or contained in any amendment to or renewal or replacement of an agreement referred to in Section 4.05(1)(A) or (B) or this clause (C);

(D) any encumbrance or restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Restricted Subsidiary pending the closing of such sale or disposition;

(E) any encumbrance or restriction on the disposition or distribution of assets or property, including cash or other deposits, under agreements entered into in the ordinary course of the Oil and Gas Business of the types described in clause (2) of the definition of Permitted Business Investments;

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(F) any encumbrance or restriction contained in the terms of any agreement or instrument governing any Indebtedness for money borrowed or Hedging Obligation if either (i) the encumbrance or restriction applies only in the event of and during the continuance of a payment default or a default with respect to a financial covenant contained in such agreement or instrument or (ii) the Company determines at the time any such Indebtedness or Hedging Obligation is Incurred that any such encumbrance or restriction will not materially and adversely affect the Company's ability to make principal or interest payments on the Securities;

(G) customary supermajority voting provisions and other customary provisions with respect to the disposition or distribution of assets, each contained in corporate charters, bylaws, stockholders' agreements, limited liability company agreements, partnership agreements, joint venture agreements and other similar agreements entered into in the ordinary course of business of the Company and its Restricted Subsidiaries;

(H) any restrictions on cash, cash equivalents or other deposits or net worth requirements imposed by customers under contracts entered into in the ordinary course of business;

(I) provisions contained in any license, permit or other accreditation with a regulatory authority or directly or indirectly required by any applicable laws, statutes, rules, regulations, orders, requirements, guidelines, interpretations, directives and requests (whether or not having the force of law) from and of, and plans, memoranda and agreements with, any regulatory authority;

(J) provisions in agreements or instruments that prohibit the payment or making of dividends or other distributions other than on apro rata basis;

(K) any encumbrance or restriction contained in the terms of Preferred Stock of a Restricted Subsidiary that does not expressly restrict the ability of a Restricted Subsidiary to pay dividends or make any other distributions on its Capital Stock (other than requirements to pay dividends or liquidation preferences on such Preferred Stock prior to paying any dividends or making any other distributions on such other Capital Stock);

(L) customary subordination provisions governing Indebtedness permitted pursuant to Section 4.03;

(M) Liens permitted to be incurred hereunder that limit the right of the debtor to dispose of the assets subject to such Liens; and

(N) encumbrances on property that exist at the time such property was acquired by the Company or any Restricted Subsidiary;

provided that, for clauses (A)-(N) above, (i) any amendment, restatement, modification, renewal, supplement, refunding, replacement or refinancing, as applicable, of such encumbrances or restrictions (each, a "Replacement") shall also be permitted; provided that the Board of Directors of the Company determines (at the time of such Replacement) in good faith that such Replacement either (A) is not materially more restrictive, taken as a whole, with respect to such encumbrances or restrictions than those contained in the agreements or instruments subject to such Replacement or (B) will not materially and adversely affect the Company's ability to make principal and interest payments on the Securities and (ii) the permissibility of any encumbrance or restriction under this Section 4.03 shall be determined solely on the date such encumbrance or restriction is initially Incurred; and

(2) with respect to clause (c) only,

(A) any encumbrance or restriction consisting of customary nonassignment provisions in Hydrocarbon and Mineral Properties purchase and sale or exchange agreements or similar operational agreements, agreements of the types described in the defined term "Permitted Business Investments" and leases governing leasehold interests and licenses to the extent such provisions restrict the transfer of the lease or license or the property leased or licensed thereunder;

(B) any encumbrance or restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of any Capital Stock or assets of such Restricted Subsidiary pending the closing of such sale or disposition to the extent such encumbrance or restriction restricts the transfer of the property subject to such agreement;

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(C) any encumbrance or restriction contained in security agreements or mortgages securing Indebtedness or other obligations of a Restricted Subsidiary and related documents to the extent such encumbrance or restriction restricts the transfer of the property subject to such security agreements or mortgages;

(D) any encumbrance or restriction contained in any agreement or instrument assumed by the Company or any of its Restricted Subsidiaries or for which any of them becomes liable as in effect at the time of such transaction (except to the extent such agreement or instrument was entered into in connection with or in contemplation of such transaction), which encumbrance or restriction is not applicable to any assets other than assets acquired in connection with such transaction and all improvements, additions and accessions thereto and products and proceeds thereof;

(E) encumbrances and restrictions contained in contracts entered into in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of, or the ability of the Company or any Restricted Subsidiary to realize the value of, property or assets of the Company or any Restricted Subsidiary in any manner material to the Company and its Restricted Subsidiaries taken as a whole;

(F) any encumbrance or restriction contained in agreements governing or relating to reserves that are the subject of Production Payments and Reserve Sales;

(G) customary restrictions set forth in "lock up" agreements entered into in connection with securities offerings; and

(H) any encumbrance or restriction with respect to the Capital Stock of Grizzly Holdings.

In each case set forth above, notwithstanding any stated limitation on the assets or property that may be subject to such encumbrance or restriction, an encumbrance or restriction on a specified asset or property or group or type of assets or property may also apply to all improvements, repairs, additions, attachments and accessions thereto, assets and property affixed or appurtenant thereto, construction thereon, parts, replacements and substitutions therefor, and all products and proceeds thereof, including dividends, distributions, interest and increases in respect thereof.

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Section 4.06 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

(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 Section 4.03(b)(1)), 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.

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Notwithstanding the foregoing provisions of this Section 4.06, the Company and such Subsidiaries shall not be required to apply any amount of Net Available Cash in accordance with this Section 4.06 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 4.06 exceeds \$50.0 million.

Pending application of any amount of Net Available Cash pursuant to this Section 4.06, 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 4.06(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 4.06(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.

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 4.06(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 4.06(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 4.06(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 \$1 principal amount or any greater multiple of \$1. The Company shall not be required to make an Asset Disposition Offer pursuant to this Section 4.06 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.

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(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 \$1 of principal amount or any greater integral multiple of \$1 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).

(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 4.06(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.

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(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 4.06. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.06, the Company shall comply with the applicable securities laws and regulations and shall be deemed not to have breached its obligations under this Section 4.06 by virtue of its compliance with such securities laws or regulations.

Notwithstanding anything to the contrary in this Section 4.06, 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 Section may be satisfied by the application of funds from other sources.

Section 4.07 Limitation on Affiliate Transactions. (a) The Company shall not, and shall not permit any Restricted Subsidiary to, enter into any transaction (including the purchase, sale, lease or exchange of any property, employee compensation arrangements or the rendering of any service) with (which term, for purposes of this Section 4.07, shall include “for the benefit of” where appropriate in the context) any Affiliate of the Company involving aggregate consideration in excess of \$25.0 million (an “Affiliate Transaction”) unless:

(1) the terms of the Affiliate Transaction, taken as a whole, are no less favorable to the Company or such Restricted Subsidiary than those that could reasonably be expected to be obtained at the time of the Affiliate Transaction in arm’s-length dealings with a Person who is not an Affiliate;

(2) if such Affiliate Transaction involves an amount in excess of \$50.0 million, the terms of the Affiliate Transaction are set forth in writing and an officer of the Company disinterested with respect to such Affiliate Transaction shall have determined in good faith that the criteria set forth in Section 4.07(a)(1) are satisfied and shall have approved the relevant Affiliate Transaction as evidenced by an Officer’s Certificate delivered to the Trustee stating that such Affiliate Transaction complies with this Indenture; and

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(3) if such Affiliate Transaction involves an amount in excess of \$75.0 million, the terms of the Affiliate Transaction are set forth in writing and a majority of the members of the Board of Directors of the Company disinterested with respect to such Affiliate Transaction shall have determined in good faith that the criteria set forth in clause (1) are satisfied and shall have approved the relevant Affiliate Transaction, all as evidenced by a resolution of the Board of Directors.

(b) The provisions of Section 4.07(a) shall not prohibit:

(1) any Investment or other Restricted Payment (or any other payments excluded from such definitions or their component definitions), in each case not prohibited to be made pursuant to Section 4.04;

(2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment and consulting arrangements, stock options and stock ownership plans or other benefit plans approved by the Board of Directors;

(3) loans or advances to officers, directors and employees in the ordinary course of business of the Company or its Restricted Subsidiaries, but in any event not to exceed \$5.0 million in the aggregate outstanding at any one time;

(4) reasonable fees, compensation and other benefits paid to, severance arrangements with, and indemnity and similar arrangements provided on behalf of, officers, directors, employees and consultants of the Company or any Restricted Subsidiary of the Company as determined in good faith by the Company’s Board of Directors or senior management;

(5) any transaction with the Company, a Restricted Subsidiary or joint venture or other Person (other than an Unrestricted Subsidiary) that would constitute an Affiliate Transaction solely because the Company or a Restricted Subsidiary owns, directly or indirectly, an equity interest in or otherwise controls such Restricted Subsidiary, joint venture or other Person; provided that no Affiliate of the Company, other than the Company or a Restricted Subsidiary, shall have a beneficial interest or otherwise participate in such Restricted Subsidiary, joint venture or other Person other than through such Affiliate’s ownership of the Company;

(6) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Company and the granting of customary registration rights in connection therewith;

(7) any transaction with Affiliates pursuant to or contemplated by any agreement that is described in a filing with the SEC or with the Bankruptcy Court or pursuant to the Plan of Reorganization or the Bankruptcy Cases, any amendments, renewals or extensions of any such agreement (so long as such amendments, renewals or extensions are not materially less favorable to the Company or the Restricted Subsidiaries, taken as a whole, than the agreement so amended, renewed or extended), any amendments required by court order or other regulatory or legal process and all transactions pursuant thereto or contemplated thereby;

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(8) transactions with customers, clients, vendors, suppliers or other purchasers or sellers of goods or services, in each case, in their capacities as such and in the ordinary course of business (including pursuant to joint venture agreements);

(9) any transaction on arm's-length terms with any non-Affiliate that becomes an Affiliate as a result of such transaction;

(10) Permitted Grizzly Dispositions;

(11) transactions between the Company or any of its Restricted Subsidiaries and any Person that would not otherwise constitute an Affiliate Transaction except for the fact that a director or manager of such Person is also a director or manager of the Company or a Restricted Subsidiary if such director or manager abstains from voting as a director or manager of the Company or such Restricted Subsidiary, as applicable, on such transaction;

(12) pledges by the Company or any Restricted Subsidiary of (or any guarantee by the Company or any Restricted Subsidiary limited in recourse solely to) Capital Stock in Unrestricted Subsidiaries for the benefit of lenders or other creditors of the Unrestricted Subsidiaries; and

(13) agreements of the types described in the defined term "Permitted Business Investments," contracts for exploring for, drilling, developing, producing, processing, gathering, transporting, marketing or storing Hydrocarbons and Minerals or activities or services reasonably related or ancillary thereto, and other operational contracts, that are entered into in the ordinary course of business on terms substantially similar to those contained in similar contracts entered into by the Company or any of its Restricted Subsidiaries with unrelated third parties, or if neither the Company nor any Restricted Subsidiary has entered into a similar contract with a third party, then on terms no less favorable than those available from third parties on an arm's length basis, in each case as determined in good faith by the Company, and all transactions pursuant to or contemplated by such agreements and contracts.

Section 4.08 Limitation on Line of Business. The Company shall not, and shall not permit any Restricted Subsidiary to, engage in any business other than a Related Business, except to the extent that such business would not be material to the Company and its Restricted Subsidiaries, taken as a whole.

Section 4.09 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).

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(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, or deposit with the Trustee and cause to be paid, 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.

(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.

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(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).

Section 4.10 Limitation on Liens.

(a) The Company shall not, and shall not permit any Subsidiary Guarantor to, directly or indirectly, incur any Lien (the “Initial Lien”) of any nature whatsoever on any of its properties (including Capital Stock of a Restricted Subsidiary), whether owned at the Issue Date or thereafter acquired, securing any Indebtedness, other than Permitted Liens, without effectively providing that the Securities or such Subsidiary Guarantor’s Subsidiary Guarantee, as applicable, shall be secured equally and ratably with (or, at the Company’s election, prior to) the Indebtedness so secured for so long as such Indebtedness is so secured.

Any such Lien thereby created securing the Securities or any Subsidiary Guarantee pursuant to the preceding sentence shall be automatically and unconditionally released and discharged upon (i) the release and discharge of each Initial Lien to which it relates, (ii) in the case of such Lien securing any such Subsidiary Guarantee, the termination and discharge of such Subsidiary Guarantee in accordance with this Indenture or (iii) any sale, exchange or transfer to any Person not an Affiliate of the Company of the property or assets secured by such Initial Lien.

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(b) For purposes of determining compliance with this Section 4.10, (A) a Lien securing an item of Indebtedness need not be permitted solely by reference to paragraph (a) above or to one category (or portion thereof) of Permitted Liens described in clauses (1) through (32) of the definition of “Permitted Liens” but may be permitted in part under any combination thereof and (B) in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of this Section 4.10 above or one or more of the categories (or portions thereof) of Permitted Liens described in clauses (1) through (33) of the definition of “Permitted Liens,” the Company shall, in its sole discretion, divide, classify or reclassify, or later divide, classify, or reclassify, such Lien securing such item of Indebtedness (or any portion thereof) in any manner that complies (as if such Lien were incurred at the time of such reclassification) with this Section 4.10.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The “Increased Amount” of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or in the form of common equity of the Company or any direct or indirect parent of the Company and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rates or currency values or increases in the value of property securing Indebtedness described in the definition of “Indebtedness.”

Section 4.11 Future Guarantors. The Company shall cause each Restricted Subsidiary or direct or indirect parent company of the Company where such parent is not engaged in any business in any material respect other than incidental to its ownership, directly or indirectly, of the Capital Stock of the Company (other than, in each case, a Foreign Subsidiary) that enters into a Guarantee of any Credit Facility to, within 30 days thereafter, execute and deliver to the Trustee a Guaranty Agreement pursuant to which such Restricted Subsidiary or parent company will Guarantee payment of the Securities on the same terms and conditions as those set forth in Article 10 of this Indenture and applicable to the other Applicable Guarantors.

Section 4.12 Compliance Certificate. (a) The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officer’s Certificate stating that in the course of the performance by the signer of their duties as an Officer of the Company they would normally have knowledge of any Default and whether or not the signer knows of any Default that occurred during such period. If they do, the certificate shall describe the Default, its status and what action the Company is taking or proposes to take with respect thereto.

(b) So long as any of the Securities are outstanding, the Company shall deliver to the Trustee, within 30 days after the occurrence of a Default or Event of Default, an Officer’s Certificate specifying such Default or Event of Default, its status, and what action the Company is taking or proposes to take with respect thereto.

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Section 4.13 Further Instruments and Acts. Upon request of the Trustee, the Company shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

Section 4.14 Waiver of Stay or Extension Laws. The Company (to the extent it may lawfully do so) shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture. The Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.15 Termination of Covenants.

(a) On the day (such date, the “Termination Date”) after the Issue Date on which:

- (1) the Securities have an Investment Grade Rating from both Standard & Poor’s and Moody’s;
- (2) no Default has occurred and is continuing; and

(3) the Company has delivered to the Trustee the Officer’s Certificate described below, the covenants listed in this sentence will be permanently terminated and the Company and its Subsidiaries, as applicable, will not be subject to the provisions of Sections 4.03, 4.04, 4.05, 4.06, 4.07, 4.08 and Section 5.01(a)(3). On the Termination Date, the Company will provide an Officer’s Certificate to the Trustee regarding such occurrence. The Trustee shall have no obligation to independently determine or verify if the Termination Date has occurred or notify the Holders of the Termination Date. The Trustee may provide a copy of such Officer’s Certificate to any Holder of the Securities upon written request.

Section 4.16 Rating of Notes.

The Company shall use its best efforts to have the Securities rated by each of Standard & Poor's, Moody's and Fitch provided that if, after the Company using best efforts, two or more of such entities shall be unwilling or unable to issue a rating of the Securities, the Company shall use its best efforts to have the Securities rated by one or more additional nationally recognized rating agencies such that the Securities are rated by at least two entities) as promptly as practicable after the Issue Date, and in any case within 90 days of the Issue 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 (each, a "Section 5.01(a) Transaction"), unless:

(1) the resulting, surviving or transferee Person (the "Successor Company") shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by an indenture supplemental thereto, 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;

(2) immediately after giving pro forma effect to such transaction (and treating any Indebtedness which becomes an obligation of the Company or a Subsidiary as a result of such transaction as having been Incurred by the Company or such Subsidiary at the time of such transaction), no Default shall have occurred and be continuing;

(3) immediately after giving pro forma effect to such transaction, (x) the Successor Company would be able to Incur an additional \$1.00 of Indebtedness pursuant to Section 4.03(a) or (y) the Consolidated Coverage Ratio of the Company or the Successor Company will be equal to or greater than the Consolidated Coverage Ratio of the Company immediately prior to such transaction; and

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(4) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, together stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture (if any) comply with this Indenture;

provided, however, that clause (3) will not be applicable to (A) the Company or a Restricted Subsidiary consolidating with, merging into, conveying, transferring or leasing all or part of its assets to the Company or a Subsidiary Guarantor, (B) the Company merging with an Affiliate of the Company solely for the purpose and with the sole effect of reincorporating the Company in another jurisdiction or (C) reorganizing the Company as a different type of entity, provided that in the case where the surviving entity in such merger, amalgamation or consolidation is not a corporation, a corporation becomes (or has previously become) a co-issuer of the Securities.

For purposes of this Section 5.01(a), the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Restricted Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Restricted Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the assets of the Company; provided, however, that this Section 5.01(a) shall not be applicable to Permitted Grizzly Dispositions.

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.

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 in accordance with clause (1) above (in lieu of the Successor Company) and be treated for all purposes under this Indenture as the Successor Company if, (A) such Assuming Parent designates by a resolution of its Board of Directors which of its Subsidiaries (other than the Company and its Restricted Subsidiaries immediately prior to the time of the Section 5.01(a) Transaction, which shall be Restricted Subsidiaries of such Assuming Parent) will constitute Restricted Subsidiaries after giving effect to such assumption and (B) after giving effect to such Section 5.01(a), Transaction and the designation described in subclause (A) above, such Assuming Parent is in compliance with clauses (2), (3) and (4) above and the other provisions of this Indenture as if it were the Successor Company, as evidenced by the Officer's Certificate provided pursuant to clause (4) above (which, for the avoidance of doubt, may be relied upon as to factual matters by counsel providing the related Opinion of Counsel required pursuant to clause (4)). For the avoidance of doubt, (i) in connection with a Section 5.01(a) Transaction, only transactions by the Successor Company (or an Assuming Parent) and its Restricted Subsidiaries (other than the Company and its Restricted Subsidiaries) that are completed after the date of completion of the Section 5.01(a) Transaction shall be subject to the provisions of this Indenture and (ii) any amounts in the calculation in Section 4.04(a)(3) that are attributable to the Successor Company (or an Assuming Parent) and its Restricted Subsidiaries (other than the Company and its Restricted Subsidiaries) shall be counted for purposes of Section 4.04(a)(3) only from and after the date of completion of such Section 5.01(a) Transaction.

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(b) The Company shall not permit any Subsidiary 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 unless:

(1) the resulting, surviving or transferee Person (if not such Subsidiary) shall be a Person organized and existing under the laws of the jurisdiction under which such Subsidiary was organized or under the laws of the United States of America, or any State thereof or the District of Columbia, and such Person (if not the Company or a Subsidiary Guarantor) shall expressly assume, by a Guaranty Agreement, all the obligations of such Subsidiary, if any, under its Subsidiary Guarantee; provided, however, that this clause (1) shall not apply if such Person is not a Subsidiary of the Company 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 transaction;

(2) immediately after giving effect to such transaction or transactions on a pro forma basis (and treating any Indebtedness which becomes an

obligation of such Subsidiary as a result of such transaction as having been issued by such Subsidiary at the time of such transaction), no Default shall have occurred and be continuing; and

(3) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, together stating that such consolidation, merger or transfer and such Guaranty Agreement, if any, complies with this Indenture.

(c) The Company shall not permit any Parent 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 unless:

(1) the resulting, surviving or transferee Person (if not such Subsidiary) shall be a Person organized and existing under the laws of the jurisdiction under which such Subsidiary was organized or under the laws of the United States of America, or any State thereof or the District of Columbia, and such Person (if not the Company) shall expressly assume, by a Guaranty Agreement, all the obligations of such Parent Guarantor, if any, under its Parent Guarantee;

(2) immediately after giving effect to such transaction or transactions on pro forma basis (and treating any Indebtedness which becomes an obligation of such Parent Guarantor as a result of such transaction as having been issued by such Parent Guarantor at the time of such transaction), no Default shall have occurred and be continuing; and

(3) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, together stating that such consolidation, merger or transfer and such Guaranty Agreement, if any, complies with 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) the Company fails to comply for (i) 30 days after notice with any of its obligations in Sections 4.03, 4.04, 4.05, 4.06 (other than a failure to purchase Securities), 4.07, 4.08, 4.09 (other than a failure to purchase Securities), 4.10 or 4.11 or (ii) 120 days after notice with any of its obligations in Section 4.02;

(5) the Company or any Applicable Guarantor fails to comply for 60 days after notice with its other agreements contained in this Indenture;

(6) Indebtedness of the Company, any Applicable Guarantor or any Significant Subsidiary is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds \$100.0 million;

(7) the Company, any Applicable Guarantor or any 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) any judgment or decree for the payment of money in excess of \$100.0 million above the coverage under applicable insurance policies and indemnities, as to which the relevant insurer or indemnitor has not disclaimed responsibility, is entered against the Company or any Significant Subsidiary, remains outstanding for a period of 60 consecutive days following the entry of such judgment or decree and is not discharged, waived or stayed;

(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

(11) the occurrence of an Event of Default under the 1145 Securities 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.

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(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.

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.

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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.

(a) 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;
- (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.

(b) 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.

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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.

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 1145 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.

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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.

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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) 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.

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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 [Reserved].

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.

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(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;
- (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.

Section 7.10 Eligibility. 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.

ARTICLE 8

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.

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(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 Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.10 and 4.11 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) and the limitations contained in Section 5.01(a)(3) ("covenant defeasance option").

(c) 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) or because of the failure of the Company to comply with Section 5.01(a)(3). 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.

(d) 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.

(e) 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.

(a) 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;

(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);

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(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.

(b) 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.

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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 Defease 1145 Securities. The Company will not satisfy and discharge or defease the Securities under this Article 8 without also satisfying and discharging or defeasing, respectively, the 1145 Securities under the 1145 Securities Indenture on substantially the same terms at substantially the same time.

ARTICLE 9

Amendments

Section 9.01 Without Consent of Holders.

(a) 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;

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(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, or to effect or maintain such qualification, of this Indenture under the Trust Indenture Act (if the Company elects to qualify 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:

(1) reduce the amount of Securities whose Holders must consent to an amendment;

(2) reduce the rate of or extend the time for payment of interest on any Security;

(3) reduce the principal of or change the Stated Maturity of any Security;

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(4) 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);

(5) make any Security payable in money other than that stated in the Security;

(6) 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;

(7) make any change in Section 6.04 or 6.07 or the second sentence of this Section;

(8) make any change in the ranking or priority of any Security that would adversely affect the Securityholders; or

(9) 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 4.06, 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 4.09, 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 [Reserved].

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.

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.

(e) Each Applicable 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 of or 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 Applicable Guarantor shall not exceed the maximum amount that can be hereby guaranteed without rendering this Indenture, as it relates to such Applicable 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, in equity, by statute or otherwise.

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.

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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 would not be required to enter into a Guaranty Agreement pursuant to Section 4.11; 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.

(b) 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 its obligations under its Subsidiary Guarantee and this Indenture.

Section 10.07 Release of Parent Guarantor.

(a) 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

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(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 [Reserved].

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 Operating 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

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(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 [Reserved].

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;

(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.

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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 controlled by 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 Subsidiary 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.

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 Majeure. 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.

[Signature Pages Follow]

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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 OPERATING CORPORATION

By: /s/ Timothy Cutt
Name: Timothy Cutt
Title: Interim Chief Executive Officer

GUARANTORS

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.
GULFPORT ENERGY CORPORATION
WESTHAWK MINERALS LLC

By: /s/ Timothy Cutt
Name: Timothy Cutt
Title: Interim Chief Executive Officer

UMB BANK, NATIONAL ASSOCIATION, AS TRUSTEE

By: /s/ Jacob H. Smith IV
Name: Jacob H. Smith IV
Title: Vice President

RULE 144A/REGULATION S APPENDIX

PROVISIONS RELATING TO THE SECURITIES

1. Definitions

1.1 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.

“AI” means an “accredited investor”, as defined in Rule 501(a) of Regulation D under the Securities Act.

“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.

“Distribution Compliance Period”, with respect to any Securities, means the period of 40 consecutive days beginning on and including the later of (i) the day on which such Securities are first offered to Persons other than distributors (as defined in Regulation S under the Securities Act) in reliance on Regulation S and (ii) the issue date with respect to such Securities.

“QIB” means a “qualified institutional buyer” as defined in Rule 144A.

“Rule 144A Securities” means all Securities offered and sold to QIBs in reliance on Rule 144A.

“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.

“Transfer Restricted Securities” means Securities that bear or are required to bear the legend relating to restrictions on transfer relating to the Securities Act set forth in Section 2.3(e) hereto.

1.2 Other Definitions

Term	Defined in Section:
“ <u>Agent Members</u> ”	2.1(b)
“ <u>AI Global Security</u> ”	2.1(a)
“ <u>Permanent Regulation S Global Security</u> ”	2.1(a)
“ <u>Regulation S</u> ”	2.1(a)
“ <u>Regulation S Global Security</u> ”	2.1(a)
“ <u>Rule 144A</u> ”	2.1(a)
“ <u>Rule 144A Global Security</u> ”	2.1(a)
“ <u>Temporary Regulation S Global Security</u> ”	2.1(a)

2. The Securities.

2.1 (a) Form and Dating. The Securities will be issued initially only to (i) QIBs and AIs in reliance on Section 4(a)(2) under the Securities Act (“Section 4(a)(2)”) or Rule 506(c) under Regulation D promulgated under the Securities Act (“Regulation D”), and together with Section 4(a)(2), the “Private Placement Exemptions”) and (ii) Persons other than U.S. Persons (as defined in Regulation S) in reliance on Regulation S under the Securities Act (“Regulation S”). Securities may thereafter be transferred to, among others, QIBs in reliance on Rule 144A under the Securities Act (“Rule 144A”), AIs in reliance on Section 4(a)(1) of the Securities Act, and purchasers in reliance on Regulation S, subject to the restrictions on transfer set forth herein. Securities initially issued pursuant to the Private Placement Exemptions (A) to QIBs shall be issued initially in the form of one or more permanent global Securities in definitive, fully registered form (collectively, the “Rule 144A Global Security”) and to (B) AIs shall be issued initially in the form of one or more permanent global Securities in definitive, fully registered form (collectively, the “AI Global Security”); and Securities initially issued pursuant to Regulation S shall be issued initially in the form of one or more temporary global securities in fully registered form (collectively, the “Temporary Regulation S Global Security”), in each case 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. Except as set forth in this Section 2.1(a), beneficial ownership interests in the Temporary Regulation S Global Security will not be exchangeable for interests in the Rule 144A Global Security, the AI Global Security, a permanent global security (the “Permanent Regulation S Global Security”), and together with the Temporary Regulation S Global Security, the “Regulation S Global Security”) or any other Security prior to the expiration of the Distribution Compliance Period and then, after the expiration of the Distribution Compliance Period, may be exchanged for interests in a Rule 144A Global Security, an AI Global Security or the Permanent Regulation S Global Security only upon certification in form reasonably satisfactory to the Trustee that (i) beneficial ownership interests in such Temporary Regulation S Global Security are owned either by non-U.S. persons or U.S. persons who purchased such interests in a transaction that did not require registration under the Securities Act and (ii) in the case of an exchange for an AI Global Security, certification that the interest in the Temporary Regulation S Global Security is being transferred to an “accredited investor” under the Securities Act that is an accredited investor acquiring the securities for its own account or for the account of an accredited investor.

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Beneficial interests in Temporary Regulation S Global Securities or AI Global Securities may be exchanged for interests in Rule 144A Global Securities if (1) such exchange occurs in connection with a transfer of Securities in compliance with Rule 144A and (2) the transferor of the beneficial interest in the Temporary Regulation S Global Security or the AI Global Security, as applicable, first delivers to the Trustee a written certificate (in a form satisfactory to the Trustee) to the effect that the beneficial interest in the Temporary Regulation S Global Security or the AI Global Security, as applicable, is being transferred to a Person (a) who the transferor reasonably believes to be a QIB, (b) purchasing for its own account or the account of a QIB in a transaction meeting the requirements of Rule 144A, and (c) in accordance with all applicable securities laws of the States of the United States and other jurisdictions.

Beneficial interests in Temporary Regulation S Global Securities and Rule 144A Global Securities may be exchanged for an interest in AI Global Securities if (1) such exchange occurs in connection with a transfer of the securities in compliance with an exemption under the Securities Act and (2) the transferor of the Regulation S Global Security or Rule 144A Global Security, as applicable, first delivers to the trustee a written certificate (substantially in the form of Exhibit 2) to the effect that (A) the Regulation S Global Security or Rule 144A Global Security, as applicable, is being transferred (a) to an “accredited investor” within the meaning of 501(a) under the Securities Act that is an accredited investor acquiring the securities for its own account or for the account of such an accredited investor, in each case in a minimum principal amount of the securities of \$250,000, for investment purposes and not with a view to or for offer or sale in connection with any distribution in violation of the Securities Act and (B) in accordance with all applicable securities laws of the States of the United States and other jurisdictions.

Beneficial interests in a Rule 144A Global Security or an AI Global Security may be transferred to a Person who takes delivery in the form of an interest in a Regulation S Global Security, whether before or after the expiration of the Distribution Compliance Period, only if the transferor first delivers to the Trustee a written certificate (in the form provided in this Indenture) to the effect that such transfer is being made in accordance with Rule 903 or 904 of Regulation S or Rule 144 (if applicable).

The Rule 144A Global Security, the AI Global Security, the Temporary Regulation S Global Security and the Permanent Regulation S Global Security are collectively referred to herein as “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.

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(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 \$0.0 million 8.0% Senior 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 4.03 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,

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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:

(i) 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; and (ii) if such Definitive Securities are required to bear a restricted securities legend, they are being transferred or exchanged pursuant to an effective registration statement under the Securities Act, pursuant to Section 2.3(b) or pursuant to clause (A), (B) or (C) below, and are accompanied by the following additional information and documents, as applicable:

(A) if such Definitive Securities are being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect; or

(B) if such Definitive Securities are being transferred to the Company, a certification to that effect; or

(C) if such Definitive Securities are being transferred (x) pursuant to an exemption from registration in accordance with Rule 144A, Regulation S or Rule 144 under the Securities Act; or (y) in reliance upon another exemption from the requirements of the Securities Act: (i) a certification to that effect (in the form set forth on the reverse of the Security) and (ii) if the Company so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in Section 2.3(e)(i).

(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 Rule 144A Global Security, an AI Global Security or a Permanent Regulation S 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:

(i) certification, in the form set forth on the reverse of the Security, that such Definitive Security is either (A) being transferred to a QIB in accordance with Rule 144A, (B) being transferred to an AI or (C) being transferred after expiration of the Distribution Compliance Period by a Person who initially purchased such Security in reliance on Regulation S to a buyer who elects to hold its interest in such Security in the form of a beneficial interest in the Permanent Regulation S Global Security; and

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(ii) 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 Rule 144A Global Security (in the case of a transfer pursuant to clause (b)(i)(A)), AI Global Security (in the case of a transfer pursuant to clause (b)(1)(B)) or Permanent Regulation S Global Security (in the case of a transfer pursuant to clause (b)(i)(B)) to reflect an increase in the aggregate principal amount of the Securities represented by the Rule 144A Global Security, AI Global Security or Permanent Regulation S Global Security, as applicable, 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 Rule 144A Global Security, AI Global Security or Permanent Regulation S Global Security, as applicable, 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 Rule 144A Global Security, AI Global Security or Permanent Regulation S Global Security, as applicable, equal to the principal amount of the Definitive Security so canceled. If no Rule 144A Global Securities, AI Global Securities or Permanent Regulation S Global Securities, as applicable, 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 Rule 144A Global Security, AI Global Security or Permanent Regulation S Global Security, as applicable, 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 (including the certification requirements set forth on the reverse of the Securities intended to ensure that such transfers comply with Rule 144A, Regulation S or another applicable exemption under the Securities Act, as the case may be) and such other procedures as may from time to time be adopted by the Company.

(d) Restrictions on Transfer of Temporary Regulation S Global Securities. During the Distribution Compliance Period, beneficial ownership interests in Temporary Regulation S Global Securities may only be sold, pledged or transferred in accordance with the Applicable Procedures and only (i) to the Company, (ii) in an offshore transaction in accordance with Regulation S (other than a transaction resulting in an exchange for an interest in a Permanent Regulation S Global Security), or (iii) pursuant to an effective registration statement under the Securities Act, in each case in accordance with any applicable securities laws of any State of the United States.

(e) Legend.

(i) Except as permitted by the following paragraphs (ii), (iii) and (iv), each Security certificate evidencing the Global Securities (and all Securities issued in exchange therefor or in substitution thereof), in the case of Securities offered otherwise than in reliance on Regulation S shall bear a legend in substantially the following form:

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

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Each certificate evidencing a Security offered in reliance on Regulation S shall, in addition to the foregoing, bear a legend in substantially the following form:

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT.

Each Definitive Security shall also 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.

(ii) Upon any sale or transfer of a Transfer Restricted Security (including any Transfer Restricted Security represented by a Global Security) pursuant to Rule 144 under the Securities Act, the Registrar shall permit the transferee thereof to exchange such Transfer Restricted Security for a certificated Security that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Security, if the transferor thereof certifies in writing to the Registrar that such sale or transfer was made in reliance on Rule 144 (such certification to be in the form set forth on the reverse of the Security).

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(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.

(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.

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(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 \$1 principal amount and any greater integral multiple of \$1 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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EXHIBIT 1
to
RULE 144A/REGULATION S/AI APPENDIX

[FORM OF FACE OF SECURITY]

[Global Securities Legend]

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.

[[FOR REGULATION S GLOBAL SECURITY ONLY] UNTIL 40 DAYS AFTER THE LATER OF COMMENCEMENT OR COMPLETION OF THE OFFERING, AN OFFER OR SALE OF SECURITIES WITHIN THE UNITED STATES BY A DEALER (AS DEFINED IN THE SECURITIES ACT) MAY VIOLATE THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IF SUCH OFFER OR SALE IS MADE OTHERWISE THAN IN ACCORDANCE WITH RULE 144A THEREUNDER.]

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM.

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THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

[Restricted Securities Legend for Securities Offered in Reliance on Regulation S.]

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT.

[Temporary Regulation S Global Security Legend]

EXCEPT AS SET FORTH BELOW, BENEFICIAL OWNERSHIP INTERESTS IN THIS TEMPORARY REGULATION S GLOBAL SECURITY WILL NOT BE EXCHANGEABLE FOR INTERESTS IN THE PERMANENT REGULATION S GLOBAL SECURITY OR ANY OTHER SECURITY REPRESENTING AN INTEREST IN THE SECURITIES REPRESENTED HEREBY WHICH DO NOT CONTAIN A LEGEND CONTAINING RESTRICTIONS ON TRANSFER, UNTIL THE EXPIRATION OF THE "40-DAY DISTRIBUTION COMPLIANCE PERIOD" (WITHIN THE MEANING OF RULE 903(b)(2) OF REGULATION S UNDER THE SECURITIES ACT) AND THEN ONLY UPON CERTIFICATION IN FORM REASONABLY SATISFACTORY TO THE TRUSTEE THAT SUCH BENEFICIAL INTERESTS ARE OWNED EITHER BY NON-U.S. PERSONS OR U.S. PERSONS WHO PURCHASED SUCH INTERESTS IN A TRANSACTION THAT DID NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT. DURING SUCH 40-DAY DISTRIBUTION COMPLIANCE PERIOD, BENEFICIAL OWNERSHIP INTERESTS IN THIS TEMPORARY REGULATION S GLOBAL SECURITY MAY ONLY BE SOLD, PLEDGED OR TRANSFERRED (I) TO THE COMPANY, (II) OUTSIDE THE UNITED STATES IN A TRANSACTION IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, OR (III) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. HOLDERS OF INTERESTS IN THIS TEMPORARY REGULATION S GLOBAL SECURITY WILL NOTIFY ANY PURCHASER OF THIS SECURITY OF THE RESALE RESTRICTIONS REFERRED TO ABOVE, IF THEN APPLICABLE.

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AFTER THE EXPIRATION OF THE DISTRIBUTION COMPLIANCE PERIOD BENEFICIAL INTERESTS IN THIS TEMPORARY REGULATION S GLOBAL SECURITY MAY BE EXCHANGED FOR INTERESTS IN A RULE 144A GLOBAL SECURITY ONLY IF (1) SUCH EXCHANGE OCCURS IN CONNECTION WITH A TRANSFER OF THE SECURITIES IN COMPLIANCE WITH RULE 144A AND (2) THE TRANSFEROR OF THE REGULATION S GLOBAL SECURITY FIRST DELIVERS TO THE TRUSTEE A WRITTEN CERTIFICATE (IN THE FORM ATTACHED TO THIS CERTIFICATE) TO THE EFFECT THAT THE REGULATION S GLOBAL SECURITY IS BEING TRANSFERRED (A) TO A PERSON WHO THE TRANSFEROR REASONABLY BELIEVES TO BE A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, (B) TO A PERSON WHO IS PURCHASING FOR ITS OWN ACCOUNT OR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, AND (C) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

AFTER THE EXPIRATION OF THE DISTRIBUTION COMPLIANCE PERIOD, BENEFICIAL INTERESTS IN THIS TEMPORARY REGULATION S GLOBAL SECURITY MAY BE EXCHANGED FOR INTERESTS IN AN AI GLOBAL SECURITY ONLY IF (1) SUCH EXCHANGE OCCURS IN CONNECTION WITH A TRANSFER OF THE SECURITIES IN COMPLIANCE WITH AN EXEMPTION UNDER THE SECURITIES ACT AND (2) THE TRANSFEROR OF THE REGULATION S GLOBAL SECURITY FIRST DELIVERS TO THE TRUSTEE A WRITTEN CERTIFICATE (IN THE FORM ATTACHED TO THIS CERTIFICATE) TO THE EFFECT THAT THE REGULATION S GLOBAL SECURITY IS BEING TRANSFERRED (A) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(A) UNDER THE SECURITIES ACT THAT, PRIOR TO SUCH TRANSFER, FURNISHED THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE TRANSFER OF THIS SECURITY (THE FORM OF WHICH CAN BE OBTAINED FROM THE TRUSTEE) AND, IF SUCH TRANSFER IS IN RESPECT OF AN AGGREGATE PRINCIPAL AMOUNT OF SECURITIES LESS THAN \$250,000, AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

BENEFICIAL INTERESTS IN A RULE 144A GLOBAL SECURITY OR AN AI GLOBAL SECURITY MAY BE TRANSFERRED TO A PERSON WHO TAKES DELIVERY IN THE FORM OF AN INTEREST IN THE REGULATION S GLOBAL SECURITY, WHETHER BEFORE OR AFTER THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD, ONLY IF THE TRANSFEROR FIRST DELIVERS TO THE TRUSTEE A WRITTEN CERTIFICATE (IN THE FORM ATTACHED TO THIS CERTIFICATE) TO THE EFFECT THAT SUCH TRANSFER IS BEING MADE IN ACCORDANCE WITH RULE 903 OR 904 OF REGULATION S OR RULE 144 (IF AVAILABLE).

[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.

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[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

8.0% Senior Notes due 2026

Gulfport Energy Operating Corporation, a Delaware corporation, promises to pay to CEDE & CO., 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 May 17, 2026.

Interest Payment Dates: June 1 and December 1.

Record Dates: May 15 and November 15.

Additional provisions of this Security are set forth on the other side of this Security.

Dated:

GULFPORT ENERGY OPERATING CORPORATION

By: _____
Name:
Title:

¹ Add if Global Security

Trustee's Certificate of Authentication

UMB BANK, NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Securities referred to in the Indenture

By: _____
Name:
Title:

Dated:

[FORM OF REVERSE SIDE OF SECURITY]

8.0% Senior Notes due 2026

1. Interest

Gulfport Energy Operating 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 June 1 and December 1 of each year, commencing December 1, 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 May 17, 2021. 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 May 15 and November 15 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.

4. Indenture

The Company issued the Securities under an Indenture dated as of May 17, 2021, as such may be amended or supplemented from time to time (the "Indenture"), among the Company, the Applicable Guarantors and the Trustee. 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 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 4.03 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 4.09(h) of the Indenture, the Company shall not be entitled to redeem the Securities at its option.

(a) On and after May 17, 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 May 17 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 May 17, 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.

(c) Prior to May 17, 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 10 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 \$1 principal amount may be redeemed in part but only in whole multiples of \$1. 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 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 to be 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 Applicable Guarantors to the extent set forth in the Indenture.

9. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of \$1 principal amount and whole multiples of \$1 in excess of \$1. 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 10 days before a selection of Securities to be redeemed or 10 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.

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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 Applicable 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 Applicable Guarantees, to secure the Securities, to add additional covenants or surrender rights and powers conferred on the Company or the Applicable Guarantors, to comply with any requirement of the SEC in connection with qualifying the Indenture under the Trust Indenture Act (if the Company elects to so qualify the Indenture), 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, 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, 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 Applicable 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.

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15. Trustee Dealings with the Company

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 Applicable 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 Operating 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.

In connection with any transfer of any of the Securities evidenced by this certificate, the undersigned confirms that such Securities are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

- (1) to the Company; or
- (2) pursuant to an effective registration statement under the Securities Act of 1933; or
- (3) inside the United States to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on Rule 144A, in each case pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or
- (4) outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 904 under the Securities Act of 1933; or
- (5) pursuant to the exemption from registration provided by Rule 144 under the Securities Act of 1933.
- (6) pursuant to any other exemption from registration under the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered holder thereof; provided, however, that if box (4) or (5) is checked, the Trustee shall be entitled to require, prior to registering any such transfer of the Securities, such legal opinions,

certifications and other information as the Company has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act.

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 COMPLETED BY PURCHASER IF (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated:

Notice: _____
To be executed by an executive officer

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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 4.06 or 4.09 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 4.06 or 4.09 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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[FORM OF GUARANTY AGREEMENT]

[] SUPPLEMENTAL INDENTURE

[] SUPPLEMENTAL INDENTURE (this “*Supplemental Indenture*”), dated as of [], 20[] among Gulfport Energy Operating Corporation, a Delaware corporation (the “*Company*”), the New Applicable Guarantors (as defined below), and UMB Bank, National Association, a national banking association, as trustee under the Indenture referred to below (the “*Trustee*”).

WITNESSETH:

WHEREAS, the Company and the Applicable Guarantors have heretofore executed and delivered to the Trustee an indenture, dated as of May 17, 2021 ([as supplemented by], the “*Indenture*”), providing for the issuance of 8.0% Senior Notes due 2026 (the “*Securities*”);

WHEREAS, on May 17, 2021, the Company issued \$0 in principal amount of Securities;

WHEREAS, pursuant to Section [4.11][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 Applicable 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 Applicable Guarantors] [provide for the assumption by a successor corporation of the obligations of any Subsidiary Guarantor]; and WHEREAS, pursuant to Section [4.11][5.01(b)] of the Indenture, the Company and each of the New Applicable 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 Applicable 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 Applicable Guarantors.

(a) In accordance with Sections [4.11][5.01(b)] and 9.01[(2)][(4)] of the Indenture, each New Applicable Guarantor by its signature below hereby becomes a party to the Indenture as an Applicable 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 Applicable 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 an Applicable Guarantor.

(b) Each New Applicable Guarantor hereby agrees to all of the terms and conditions of the Indenture applicable to it as an Applicable Guarantor thereunder. Each reference to an “Applicable Guarantor,” “Parent Guarantor” or “Subsidiary Guarantor,” as applicable, in the Indenture shall be deemed to include each New Applicable Guarantor, as applicable.

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 Applicable 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]

IN WITNESS WHEREOF, the parties have caused this [] Supplemental Indenture to be duly executed as of the date first written above.

GULFPORT ENERGY OPERATING CORPORATION

By: _____

Name:

Title:

[NEW APPLICABLE GUARANTOR[S]]

By: _____
Name:
Title:

UMB BANK, NATIONAL ASSOCIATION, AS TRUSTEE

By: _____
Name:
Title:

[Signature Page to Guaranty Agreement]

Annex A

New Applicable Guarantor

Second Amended and Restated Credit Agreement

Dated as of May 17, 2021,

among

**Gulfport Energy Operating Corporation,
As Borrower,**

**Gulfport Energy Corporation,
as Holdings,**

**The Bank of Nova Scotia,
As Administrative Agent and**

**The Bank of Nova Scotia, JPMorgan Chase Bank, National Association,
KeyBank National Association, PNC Bank, National Association, and
Wells Fargo Bank, National Association
As Joint Lead Arrangers and Joint Bookrunners**

and

The Lenders Party Hereto From Time to Time

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THIS SECOND AMENDED AND RESTATED CREDIT AGREEMENT, dated as of May 17, 2021, is among Gulfport Energy Operating Corporation, a Delaware corporation (the “Borrower”); Gulfport Energy Corporation, a Delaware corporation (“Holdings”); each of the Lenders from time to time party hereto; and The Bank of Nova Scotia (in its individual capacity, “Scotiabank”), as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the “Administrative Agent”).

R E C I T A L S

A. WHEREAS, on November 13, 2020 (the “Petition Date”), the Borrower and certain of the Borrower’s direct and indirect subsidiaries (such subsidiaries, collectively with the Borrower, the “Debtors”) filed voluntary petitions with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”) for relief under Chapter 11 of Title 11 of the United States Code and commenced their chapter 11 proceedings (the “Chapter 11 Cases”).

B. WHEREAS, the Debtors shall emerge from bankruptcy on the date hereof upon the effectiveness of the Debtors’ Joint Chapter 11 Plan of Reorganization (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the “Plan of Reorganization”), which Plan of Reorganization was confirmed by the Bankruptcy Court on April 27, 2021.

C. WHEREAS, Scotiabank, in its capacity as administrative agent for the lenders thereunder (the “Prepetition Administrative Agent”) and as the L/C Issuer in respect of letters of credit issued thereunder, and other financial institutions named and defined therein as lenders, including Scotiabank in its capacity as a lender (the “Prepetition Lenders” and each a “Prepetition Lender”) entered into that certain Amended and Restated Credit Agreement, dated as of December 27, 2013 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time through the Petition Date, the “Prepetition Credit Agreement”). Pursuant to the terms of the Plan of Reorganization, the Prepetition Administrative Agent and the Prepetition Lenders agreed, in full and final satisfaction and settlement of all of their prepetition claims in accordance with the Plan of Reorganization and on the terms and conditions set forth herein and therein, to enter into a new first-out, first lien senior secured reserve-based revolving credit facility by amending and restating the Prepetition Credit Agreement. A portion of such prepetition claims arising under the Prepetition Credit Agreement will

be deemed to be Term Loans and the remaining portion of such prepetition claims arising under the Prepetition Credit Agreement will be deemed to be Revolving Loans.

D. **NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained herein and of the loans, extensions of credit and commitments hereinafter referred to, the parties hereto agree as follows:

ARTICLE I
Definitions and Accounting Matters

Section 1.01 Terms Defined Above. As used in this Agreement, each capitalized term defined above has the meaning indicated above.

1

Section 1.02 Certain Defined Terms. As used in this Agreement, the following capitalized and other terms have the meanings specified below:

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Acceptable Hedge Transactions” means, (i) with respect to Swap Agreements entered into for the applicable months of calendar year 2021, swap transactions covering identical volumes of natural gas and identical months with strike prices (exclusive of any component of credit spread incorporated into the strike prices) at the prevailing strip price quoted on the New York Mercantile Exchange (“NYMEX Strip”) and (ii) with respect to Swap Agreements entered into for each month of calendar years 2022 and 2023, (A) swap transactions covering identical volumes of natural gas and identical months with strike prices at NYMEX Strip, (B) deferred premium purchased puts for volumes of natural gas with a strike price not less than 10% below NYMEX Strip or (C) collars (other than “three-way collars”) covering identical volumes of natural gas and identical months with strike prices establishing a floor no lower than the lesser of (x) the most recent price deck established by the Administrative Agent in accordance with its customary lending criteria with respect to natural gas for the applicable month and (y) a price not less than 10% below the prevailing NYMEX Strip.

“Account Control Agreement” means, as to any Deposit Account, Commodity Account or Securities Account of any Credit Party, an agreement or agreements in form and substance reasonably acceptable to the Administrative Agent among such Credit Party owning such Deposit Account, Commodity Account or Securities Account, the Administrative Agent and, as applicable, the depository bank, commodity intermediary, securities intermediary, securities broker or any other Person with respect thereto, which agreement or agreements shall provide a first-priority perfected Lien (subject to Excepted Liens of the type described in clause (e) of the definition thereof) in favor of the Administrative Agent for the benefit of the Lenders in such Deposit Account, Commodity Account or Securities Account (in each case, other than an Excluded Account).

“Accounting Changes” means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Public Company Accounting Oversight Board, the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the Securities and Exchange Commission (or successors thereto, or agencies with similar functions).

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” has the meaning assigned to such term in the preamble.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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“Advance Payment Contract” means any contract whereby any Credit Party either receives or becomes entitled to receive (either directly or indirectly) any payment (an “Advance Payment”) to be applied toward payment of the purchase price of hydrocarbons produced or to be produced from Hydrocarbon Interests owned by any Credit Party and which Advance Payment is paid or to be paid in advance of actual delivery of such production to or for the account of the purchaser regardless of such production; provided that inclusion of the standard “take or pay” provision in any gas sales or purchase contract or any other similar contract shall not, in and of itself, constitute such contract as an Advance Payment Contract for the purposes hereof.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affected Loans” has the meaning assigned to such term in Section 5.05.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. Solely for purposes of this definition, any Person that owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of directors or other governing body of a Person (other than as a limited partner of such Person) will be deemed to “control” such other Person.

“Aggregate Elected Commitment Amounts” at any time shall equal the sum of the Elected Commitments, as the same may be increased, reduced or terminated pursuant to Section 2.06. As of the Effective Date, the Aggregate Elected Commitment Amounts are \$400,000,000.

“Aggregate Maximum Credit Amounts” at any time shall equal the sum of the Maximum Credit Amounts, as the same may be reduced or terminated pursuant to Section 2.06. The initial Aggregate Maximum Credit Amounts of the Lenders is \$1,500,000,000.

“Aggregate Maximum Revolving Credit Amounts” as of any date of determination, shall equal the sum of all of the Lenders’ Maximum Revolving Credit Amounts, as the same may be reduced, increased or terminated pursuant to Section 2.06. As of the Effective Date, the Aggregate Maximum Revolving Credit Amounts of all of the Revolving Credit Lenders is \$1,320,000,000.

“Agreement” means this Second Amended and Restated Credit Agreement, as the same may from time to time be amended, restated, amended and restated, supplemented or otherwise modified.

“Alternate Base Rate” means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1%, and (c) the Adjusted LIBO Rate for a one month Interest Period beginning on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate appearing on the Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar

deposits in the London interbank market), at which dollar deposits with a one month maturity are offered at approximately 11:00 a.m., London time, on such day (or the immediately preceding Business Day if such day is not a Business Day). Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively. Notwithstanding anything in this definition to the contrary, the "Alternate Base Rate" shall be deemed not to be less than two percent (2.0%) at any time.

"AML Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Lender, the Borrower, the Borrower's Subsidiaries or any other Credit Party or its Subsidiaries from time to time concerning or relating to anti-money laundering.

"Annualized EBITDAX" means, for the purposes of calculating EBITDAX for each Reference Period ending on or before March 31, 2022, the Borrower's actual EBITDAX for such Reference Period multiplied by the factor determined for such Reference Period in accordance with the table below:

Reference Period	Factor
The one-quarter period ending on June 30, 2021	4
The two-quarter period ending on September 30, 2021	2
The three-quarter period ending on December 31, 2021	4/3

"Anti-Corruption Laws" means all laws, rules, and regulations of the United States or any other jurisdiction applicable to the Borrower, the Borrower's Subsidiaries or any other Credit Party or its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Margin" means, for any day, (a) with respect to the Term Loans, (i) 3.50% for an ABR Loan or (ii) 4.50% for a Eurodollar Loan and (b) with respect to any ABR Loan or Eurodollar Loan that is a Revolving Loan, or with respect to the Commitment Fee Rate, as the case may be, the rate per annum set forth in the Borrowing Base Utilization Grid below based upon the Borrowing Base Utilization Percentage then in effect:

Borrowing Base Utilization Grid

Borrowing Base Utilization Percentage	≤25.0%	>25.0% ≤50.0%	>50.0% ≤75.0%	>75.0% ≤90.0%	>90.0%
ABR Loans	2.00%	2.25%	2.50%	2.75%	3.00%
Eurodollar Loans	3.00%	3.25%	3.50%	3.75%	4.00%
Commitment Fee Rate	0.50%	0.50%	0.50%	0.50%	0.50%

Each change in the Applicable Margin for Revolving Loans shall apply during the period commencing on the effective date of such change in the Borrowing Base Utilization Percentage and ending on the date immediately preceding the effective date of the next such change, provided, that if at any time the Borrower fails to deliver a Reserve Report pursuant to Section 8.12(a), then until delivery of such Reserve Report, the "Applicable Margin" with respect to Revolving Loans shall mean the rate per annum set forth on the grid when the Borrowing Base Utilization Percentage is at its highest level.

"Applicable Percentage" means, with respect to any Lender, at any time, the fraction expressed as a percentage obtained by dividing (a) the sum of such Lender's outstanding Term Loan plus such Lender's Revolving Credit Commitment, if any, by (b) the sum of the total outstanding Term Loans plus the total Revolving Credit Commitments; provided that for purposes of this definition, if the Revolving Credit Commitments are terminated pursuant to this Agreement, then each Lender's Revolving Credit Commitment and the total Revolving Credit Commitments shall be the amounts thereof immediately prior to giving effect to any such termination of such Revolving Credit Commitments. The Applicable Percentages of the Lenders as of the Effective Date are set forth on Annex I.

"Applicable Revolving Credit Percentage" means, with respect to any Revolving Credit Lender, the percentage of the Aggregate Maximum Revolving Credit Amounts represented by such Revolving Credit Lender's Maximum Revolving Credit Amount as such percentage as of the Effective Date is set forth on Annex I.

"Applicable Term Loan Percentage" means, with respect to any Term Lender, the percentage of the total Term Loans of all of the Term Lenders represented by such Term Lender's Term Loans as such percentage as of the Effective Date is set forth on Annex I.

"Approved Counterparty" means (a) any Lender or any Affiliate of a Lender, including with respect to any Swap Obligations existing as of the Effective Date and (b) any other Person whose long term senior unsecured debt rating is A-/A3 by S&P or Moody's (or their equivalent) or higher (or such counterparty's obligations under any Swap Agreement have been guaranteed by an entity with such ratings) and, in each case, any and all successors thereto.

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Approved Petroleum Engineers" means (a) Cawley, Gillespie & Associates, Inc., (b) Netherland, Sewell & Associates, Inc., (c) Ryder Scott Company Petroleum Consultants, L.P., and (d) any other independent petroleum engineers reasonably acceptable to the Administrative Agent.

"Arrangers" means The Bank of Nova Scotia, JPMorgan Chase Bank, National Association, KeyBank National Association, PNC Bank, National Association and Wells Fargo Bank, National Association, each in its capacity as a joint lead arranger and joint bookrunner.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 12.04(b)), and accepted by the Administrative Agent, in the form of Exhibit D or any other form approved by the Administrative Agent.

"Availability Blocker" means an amount equal to \$40,000,000.

“Availability Period” means the period from and including the Effective Date to but excluding the Termination Date.

“Available Free Cash Flow” means, as of any time of calculation thereof, the amount equal to: (a) Free Cash Flow as of the last day of the most recently ended fiscal quarter (the “Specified Quarter”) for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b) (such date a “Reporting Date”), minus (b) the sum of the aggregate amount of Investments made under Section 9.05(l), minus (c) the sum of the aggregate amount of Restricted Payments made under Section 9.04(a)(iv) that, in the case of clauses (b) and (c), (x) are made from such Free Cash Flow and (y) have occurred since the first day of the applicable Measurement Period through and including the time of calculation.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank Price Deck” means the Administrative Agent’s “base case” forward curve for oil, natural gas and other Hydrocarbons as of the most recent Proposed Borrowing Base Notice and furnished to the Borrower.

“Bankruptcy Code” shall mean Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

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“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof; provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Benchmark” means, initially, the LIBO Rate; provided that if a replacement of the Benchmark has occurred pursuant to Section 3.03(c), then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“Benchmark Replacement” means, for any Available Tenor:

(1) For purposes of Section 3.03(c)(i)(A), the first alternative set forth below that can be determined by the Administrative Agent:

(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, or

(b) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of LIBO Rate with a SOFR-based rate having approximately the same length as the interest payment period specified in Section 3.03(c)(i)(A); and

(2) For purposes of Section 3.03(c)(i)(B), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than one percent (1.00%), the Benchmark Replacement will be deemed to be one percent (1.00%) for the purposes of this Agreement and the other Loan Documents.

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“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Transition Event” means, with respect to any then-current Benchmark other than the LIBO Rate, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark announcing or stating that (a) such administrator of has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that

representativeness will not be restored.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation, in a substantially similar form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and the Securities Industry and Financial Markets Association.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America or any successor Governmental Authority.

“Borrower” has the meaning assigned to such term in the preamble.

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“Borrowing” means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect and (b) Term Loans made on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Base” means at any time an amount equal to the amount determined in accordance with Section 2.07, as the same may be adjusted from time to time pursuant to Section 2.07(e), Section 2.07(f) or Section 8.13(c).

“Borrowing Base Deficiency” occurs if at any time the total Revolving Credit Exposures *plus* the principal amount of outstanding Term Loans exceed the Borrowing Base then in effect. The amount of any Borrowing Base Deficiency is the amount by which the total Revolving Credit Exposures *plus* the principal amount of outstanding Term Loans exceed the Borrowing Base then in effect.

“Borrowing Base Properties” means the proved Oil and Gas Properties of the Borrower and its Restricted Subsidiaries included in the most recently delivered Reserve Report hereunder.

“Borrowing Base Utilization Percentage” means, as of any day, the fraction expressed as a percentage, the numerator of which is the sum of the Revolving Credit Exposures plus the outstanding aggregate principal amount of the Term Loans of the Lenders on such day, and the denominator of which is the Borrowing Base in effect on such day.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03 in substantially the form of Exhibit E.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or Houston, Texas are authorized or required by law to remain closed; and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a Eurodollar Loan or a notice by the Borrower with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which banks are open for dealings in dollar deposits in the London interbank market.

“Capital Leases” means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, recorded as capital leases on the balance sheet of the Person liable (whether contingent or otherwise) for the payment of rent thereunder, provided that all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the “ASU”) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized lease obligations in the financial statements to be delivered pursuant to Section 8.01.

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“Capital Lease Obligations” shall mean, with respect to any Person, the obligations of such Person to pay rent or other amounts under any Capital Lease, any lease entered into as part of any Sale and Leaseback Transaction or any Synthetic Lease, or a combination thereof, which obligations are (or would be, if such Synthetic Lease or other lease were accounted for as a Capital Lease) required to be classified and accounted for as Capital Leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof (or the amount that would be capitalized, if such Synthetic Lease or other lease were accounted for as a Capital Lease) determined in accordance with GAAP.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, any state, territory or commonwealth of the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) deposit accounts or deposits maturing within one year from the date of acquisition thereof with, including certificates of deposit, time deposits, Eurodollar time deposits or overnight bank deposits having maturities of twelve (12) months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States of any state thereof having combined capital and surplus of not less than \$500,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within 12 months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the United States government; or (e) money market or other mutual funds substantially all of whose assets comprise securities of the type described in clauses (a) through (d) above.

“Cash Management Agreement” means any agreement to provide cash management services, including, but not limited to, treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management services.

“Cash Receipts” means all cash received by or on behalf of any Credit Party or any of the Restricted Subsidiaries, including without limitation: (a) any amounts payable under or in connection with any Oil and Gas Properties; (b) cash representing operating revenue earned or to be earned by any Credit Party or any of the Restricted Subsidiaries; (c) proceeds from Loans; and (d) any other cash received by any Credit Party or any of the Restricted Subsidiaries from whatever source (including, without limitation, amounts received in respect of the Liquidation of any Swap Agreement).

“Casualty Event” means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Credit Parties or the Restricted Subsidiaries.

“Change in Control” means the occurrence of the following events: (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Exchange Act and the rules of the SEC thereunder as in effect on the date hereof) other than the Permitted Holders, of Equity Interests so that such Person or group owns 35% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings, (b) Holdings shall cease to own and control directly or indirectly 100% of the Equity Interests of the Borrower, (c) the Borrower shall cease to own and control directly or indirectly 100% of the Equity Interests of any Guarantor, except pursuant to a transaction permitted by Section 9.10 or Section 9.11, (d) occupation of a majority of the seats (other than vacant seats) on the board of directors of Holdings by Persons who were neither (i) nominated, appointed or approved for consideration by shareholders for election by the members of the board of directors of Holdings or (ii) appointed by directors so nominated, appointed or approved, or (e) any “change in control” under any documents governing any Material Debt.

“Change in Law” means the occurrence after the date of this Agreement or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation, implementation or application thereof by any Governmental Authority or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 5.01(b), by any lending office of such Lender or by such Lender’s or such Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith (whether or not having the force of law) or in implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted, promulgated, issued or implemented.

“Class” refers to whether such Loans are Revolving Loans or Term Loans.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

“Collateral” has the meaning provided for such term in the Security Instruments; provided that, with respect to the Mortgages, “Collateral” as defined herein shall include “Mortgaged Properties”; in each case excluding Excluded Assets.

“Commitment Fee Rate” has the meaning assigned to such term in the definition of Applicable Margin.

“Commodity Account” has the meaning assigned to such term in the UCC.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute and any regulations promulgated thereunder.

“Confirmation Order” has the meaning assigned to such term in Section 6.01(s).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Net Income” means with respect to the Borrower and its Consolidated Restricted Subsidiaries, for any period, the net income (or loss) of the Borrower and its Consolidated Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; provided, that there shall be excluded from such net income (to the extent otherwise included therein) the following (without duplication): (a) the income of any Person that is not a Subsidiary of the Borrower, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting; provided that Consolidated Net Income shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent subsequently converted into cash or Cash Equivalents) to the Borrower or any of its Consolidated Restricted Subsidiaries by such Person in such period; (b) the net income (but not loss) during such period of any Consolidated Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by that Consolidated Restricted Subsidiary is not at the time permitted by operation of the terms of its charter or any agreement, instrument, or Governmental Requirement applicable to such Consolidated Restricted Subsidiary or is otherwise restricted or prohibited; (c) the net income (or deficit) of any Person accrued prior to the date it becomes a Consolidated Restricted Subsidiary or is merged into or consolidated with the Borrower or any of its Consolidated Restricted Subsidiaries, (d) any after-tax effect of any extraordinary, non-recurring or unusual items (including gains or losses and all fees and expenses relating thereto) for such period; (e) any non-cash gains, losses, or adjustments under FASB ASC Topic 815 as a result of changes in the fair market value of derivatives; (f) any gains or losses attributable to write-ups or write-downs of assets, including ceiling test write-downs; (g) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period to the extent included in Consolidated Net Income; and (h) any net after tax effect of income (loss) from Dispositions (other than Hydrocarbons produced in the ordinary course of business) or Liquidations of Swap Agreements (other than such Liquidations as required pursuant to Section 9.16(a)(ii), Section 9.16(b) or Section 9.16(c)).

“Consolidated Restricted Subsidiaries” means any Restricted Subsidiaries that are Consolidated Subsidiaries.

“Consolidated Subsidiary” means each Subsidiary of the Borrower (whether now existing or hereafter created or acquired) the financial statements of which are (or should be) consolidated with the financial statements of the Borrower in accordance with GAAP.

“Consolidated Total Assets” shall mean, as of any date of determination, the amount that would, in conformity with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries at such date.

“Consolidated Unrestricted Subsidiaries” means any Unrestricted Subsidiaries that are Consolidated Subsidiaries.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Credit Bid” means an offer submitted by the Administrative Agent (on behalf of the Lenders), based upon the instruction of the Majority Lenders, to acquire the Property or Equity Interests of the Borrower or any Guarantor or any portion thereof in exchange for and in full and final satisfaction of all or a portion (as determined by the Administrative Agent, based upon the instruction of the Majority Lenders) of the claims and Secured Obligations under this Agreement and other Loan Documents.

“Credit Parties” means collectively the Borrower and each other Guarantor.

“Current Assets” means, as of any date of determination, without duplication, the sum of all amounts that would, in accordance with GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a consolidated balance sheet of the Borrower and its Consolidated Restricted Subsidiaries at such date, plus the unused total Revolving Credit Commitment, less the Availability Blocker until Successful Midstream Resolution, but excluding (a) all non-cash assets under FASB ASC Topic 815 and (b) current assets representing prepaid expenses as a result of one or more LC Disbursements made to the beneficiaries thereof in connection with a Midstream Dispute.

“Current Liabilities” means, as of any date of determination, without duplication, the sum of all amounts that would, in accordance with GAAP, be set forth opposite the caption “total current liabilities” (or any like caption) on a consolidated balance sheet of the Borrower and its Consolidated Restricted Subsidiaries on such date, but excluding (a) all non-cash obligations under FASB ASC Topic 815, (b) the current portion of the Loans under this Agreement, including any amortization, and the current portion (if any) of the Take-Back Notes, and (c) accounts payable in connection with any Midstream Dispute prior to the time that either (x) (1) the Bankruptcy Court or another court of competent jurisdiction shall have entered one or more Final Orders providing a resolution with respect to such Midstream Dispute or (2) the parties to such Midstream Dispute achieve a consensual resolution or (y) if such Midstream Dispute is a negotiation, such negotiation is resolved or terminated.

“Current Ratio” means, with respect to the Borrower and its Consolidated Restricted Subsidiaries, as of any date of determination, the ratio of (a) Current Assets as of such date to (b) Current Liabilities as of such date.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

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“Debt” means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers’ acceptances, debentures, loan agreements, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accounts payable, accrued expenses, liabilities or other obligations of such Person, in each such case to pay the deferred purchase price of Property or services (other than (i) accrued pension costs and other employee benefit and compensation obligations arising in the ordinary course of business and (ii) accounts payable incurred in the ordinary course of business which are either (A) not overdue by more than 60 days or (B) being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP); (d) all Capital Lease Obligations and Purchase Money Obligations; (e) all obligations under Synthetic Leases; (f) all Debt (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Debt is assumed by such Person; (g) all Debt (as defined in the other clauses of this definition) of others guaranteed by such Person or with respect to which such Person otherwise assures a creditor against loss of the Debt (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Debt and the maximum stated amount of such guarantee or assurance against loss; (h) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the Debt of others; (i) obligations to deliver commodities, goods or services, including, without limitation, Hydrocarbons, in consideration of one or more advance payments, other than gas balancing arrangements, take or pay arrangements for the gathering, processing or transportation of production, or other similar arrangements, in each case in the ordinary course of business (but only to the extent of such advance payments); (j) [reserved]; (k) any Debt of a partnership for which such Person is liable either by agreement, by operation of law or by a Governmental Requirement but only to the extent of such liability; (l) Disqualified Capital Stock of such Person; and (m) the undischarged balance of any production payment created by such Person or for the creation of which such Person directly or indirectly received payment. The Debt of any Person shall include all obligations of such Person of the character described above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is not included as a liability of such Person under GAAP. For avoidance of doubt, Debt does not include Wexford ULC Obligations.

“Debtor Relief Laws” shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States of America or other applicable jurisdictions from time to time in effect.

“Dedication” means an acreage dedication, wellbore dedication, unit dedication or other dedication of Oil and Gas Properties or other similar conveyance of an interest in real property which establishes or purports to establish a covenant running with the land or its equivalent under the applicable law of the relevant jurisdiction.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

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“Defaulting Lender” means any Revolving Credit Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Revolving Loans, (ii) fund any portion of its participations in Letters of Credit or (iii) pay over to any Lender Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Revolving Credit Lender notifies the Administrative Agent in writing that such failure is the result of such Revolving Credit Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or any Lender Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Revolving Credit Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Revolving Loan under this Agreement cannot be satisfied), (c) has failed, within three Business Days after request by a Lender Party, acting in good faith, to provide a certification in writing from an authorized officer of such Revolving Credit Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Revolving Loans and participations in then outstanding Letters of Credit under this Agreement; provided that such Revolving Credit Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Lender Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has, or whose Lender Parent has, become the subject of a Bankruptcy Event or a Bail-In Action.

“Deposit Account” has the meaning assigned to such term in the UCC.

“DIP Credit Agreement” means that certain Senior Secured Super-Priority Debtor-In-Possession Credit Agreement, dated as of November 17, 2020, among the Borrower, Scotiabank, as administrative agent, and the lenders party thereto.

“Disinterested Director” shall mean, with respect to any Person and transaction, a member of the board of directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“Disposition” means any conveyance, sale, lease, sale and leaseback, assignment (other than assignments intended to convey a Lien), farm-out, transfer, investment, contribution or other disposition of any Property, and including, for the avoidance of doubt, any Casualty Event. “Dispose” has a correlative meaning thereto.

“Disqualified Capital Stock” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event, matures or is mandatorily redeemable (other than upon (i) a “change in control,” that is subject to the prior First-Out Payment in Full or (ii) asset sale or other Disposition that is subject to the prior First-Out Payment in Full) for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Debt or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in the case of each of the foregoing, on or prior to the date that is 181 days after the earlier of (a) the Maturity Date and (b) the date on which there are no Loans, LC Exposure or other obligations hereunder outstanding and all of the Revolving Credit Commitments are terminated. The Preferred Equity shall not constitute Disqualified Capital Stock as of the Effective Date.

“dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary (whether a Restricted Subsidiary or an Unrestricted Subsidiary) that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

“Early Opt-in Effective Date” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Majority Lenders.

“Early Opt-in Election” means the occurrence of:

- (1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and
- (2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from the LIBO Rate and the provision by the Administrative Agent of written notice of such election to the Lenders.

“EBITDAX” means, for any period, on a consolidated basis for the Borrower and its Consolidated Restricted Subsidiaries, (a) Consolidated Net Income for such period plus, (b) to the extent reducing (and not excluded from) Consolidated Net Income, without duplication: (i) Interest Expense, (ii) income or franchise Taxes, (iii) depreciation, depletion, amortization for such period, (iv) exploration expenses (to the extent the Borrower adopts the successful efforts method of accounting); (v) extraordinary or non-recurring charges and losses in each case other than Restructuring Costs (or minus any extraordinary or non-recurring gains), (vi) other non-cash charges reducing Consolidated Net Income (including non-cash charges from the adoption of fresh start accounting in connection with the consummation of the Plan of Reorganization, and non-cash charges and expenses, arising from midstream contracts which the Borrower has filed a motion to reject with the Bankruptcy Court, but excluding any such non-cash charge (other than non-cash charges and expenses arising from midstream contracts which the Borrower has filed a motion to reject with the Bankruptcy Court) to the extent that it represents an accrual or reserve for a potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period); provided that with respect to any non-cash charges and expenses arising from any such midstream contracts, the cash payment in respect thereof in such future period shall be subtracted from EBITDAX, (vii) third party fees, costs and expenses paid for attorneys, accountants, lenders and other restructuring and strategic advisors in connection with the implementation of fresh start accounting, the Chapter 11 Cases, the Plan of Reorganization, the transactions contemplated thereby and any other reorganization items and restructuring costs (collectively, “Restructuring Costs”) incurred on or before June 30, 2021, and fees, costs and expenses incurred with regard to negotiation, execution and delivery of this Agreement and the other Loan Documents, including any amendments thereto in any four fiscal quarter period, (viii) costs, expenses, accruals, reserves and charges with respect to senior management changes and office closure, consolidation and relocation incurred on or before June 30, 2021, including but not limited to, severance payments, recruiting, signing and retention costs and redundancy costs, (ix) to the extent actually reimbursed by insurance, expenses with respect to liability on casualty events or business interruption, and (x) all reasonable transaction expenses related to Dispositions and acquisitions of assets, investments and debt and equity offerings by any Credit Party (in each case whether or not successful, provided that expenses related to unsuccessful Dispositions shall be limited to \$3,000,000 in the aggregate for the period from the Effective Date to the Maturity Date); minus (c) (i) all non-cash gains to the extent included in the calculation of Consolidated Net Income and increasing Consolidated Net Income for such period (excluding any such non cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash gain in any prior period) and (ii) without duplication (including any amounts reducing Consolidated Net Income for the relevant period), cash payments in respect of deficiency or make-whole amounts that are incurred by any Credit Party under take or pay arrangements for the gathering, processing or transportation of production, including such arrangements in respect of firm transportation contracts and Service Agreement Undertakings. For the purposes of calculating EBITDAX for any period of four (4) consecutive fiscal quarters (each, a “Reference Period”), (i) if during such Reference Period, the Borrower or any Consolidated Restricted Subsidiary shall have made any Material Disposition, EBITDAX for such Reference Period shall be reduced by an amount equal to the EBITDAX (if positive) attributable to the Property that is the subject of such Material Disposition for such Reference Period or increased by an amount equal to the EBITDAX (if negative) attributable thereto for such Reference Period, (ii) if during such Reference Period, the Borrower or any Consolidated Restricted Subsidiary shall have made a Material Acquisition, EBITDAX for such Reference Period shall be calculated after giving pro forma effect thereto as if such Material Acquisition occurred on the first day of such Reference Period and (iii) if during such Reference Period a Consolidated Subsidiary shall be redesignated as either a Consolidated Unrestricted Subsidiary or a Consolidated Restricted Subsidiary, EBITDAX shall be calculated after giving pro forma effect to such redesignation, as if such redesignation had occurred on the first day of such Reference Period.

EBITDAX shall be calculated for each four-fiscal quarter period using the EBITDAX for the four most recently ended fiscal quarters (or with respect to fiscal quarters ending on or before December 31, 2021, Annualized EBITDAX).

“EDGAR” means the Electronic Data Gathering Analysis and Retrieval system operated by the SEC.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which (a) the conditions specified in Section 6.01 are satisfied (or waived in accordance with Section 12.02) and (b) the initial funding or deemed funding of the Loans occurs.

“Elected Commitment” means, as to each Revolving Credit Lender, the amount set forth opposite such Revolving Credit Lender’s name on Annex I under the caption “Elected Commitment”, as the same may be increased, reduced or terminated from time to time in connection with an optional increase, reduction or termination of the Aggregate Elected Commitment Amounts pursuant to Section 2.06(b) or (c).

“Elected Commitment Increase Certificate” has the meaning given to such term in Section 2.06(c)(ii)(F).

“Enforcement Action” means any action to enforce any Secured Obligations or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of account debtors, setoff or recoupment, Credit Bid, action in a Credit Party’s Insolvency Proceeding or otherwise).

“Engineering Reports” has the meaning assigned to such term in Section 2.07(c)(i).

“Environmental Laws” means any and all Governmental Requirements pertaining in any way to human health and safety (to the extent relating to exposure to Hazardous Materials), the protection of the environment or the preservation or reclamation of natural resources, including without limitation, the Oil Pollution Act of 1990 (“OPA”), as amended, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976 (“RCRA”), as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, and the Hazardous Materials Transportation Act, as amended, and comparable state laws.

“Environmental Permit” means any permit, registration, certificate, license, approval, consent, exemption, waiver, variance, or other authorization of a Governmental Authority required under applicable Environmental Laws.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute, and the rules and regulations promulgated thereunder.

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“ERISA Affiliate” means each trade or business (whether or not incorporated) which together with the Credit Parties would be deemed to be a “single employer” within the meaning of Section 4001(b)(1) of ERISA or Sections 414(b) or (c) of the Code or, solely for purposes of Section 412 of the Code, Section 414 of the Code.

“ERISA Event” means (a) a reportable event described in Section 4043(c) of ERISA and the regulations issued thereunder with respect to which the reporting requirement has not been waived by applicable regulations, (b) the withdrawal of the Credit Parties or any ERISA Affiliate from a Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA, (c) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, (d) the institution of proceedings to terminate a Plan by the PBGC, (e) receipt by the Credit Parties or any ERISA Affiliate of a notice of withdrawal liability pursuant to Section 4202 of ERISA with respect to any Multiemployer Plan or the receipt by a Credit Party or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA, (f) the failure of a Plan to meet the minimum funding standards under Section 412 of the Code or Section 302(c) of ERISA (determined without regard to Section 412(c) of the Code or Section 302(c) of ERISA), (g) the failure of a Plan to satisfy the requirements of Section 401(a)(29) of the Code, Section 436 of the Code or Section 206(g) of ERISA, (h) the incurrence of liability or the imposition of a Lien pursuant to Section 436 or 430(k) of the Code or pursuant to ERISA with respect to any Plan, (i) any other event or condition which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or (j) any Credit Party engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to a Benefit Plan.

“Erroneous Payment” has the meaning assigned to such term in Section 11.12(a).

“Erroneous Payment Deficiency Assignment” has the meaning assigned to such term in Section 11.12(d).

“Erroneous Payment Impacted Class” has the meaning assigned to such term in Section 11.12(d).

“Erroneous Payment Return Deficiency” has the meaning assigned to such term in Section 11.12(d).

“Erroneous Payment Subrogation Rights” has the meaning assigned to such term in Section 11.12(d).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

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“Event of Default” has the meaning assigned to such term in Section 10.01.

“Excepted Liens” means: (a) Liens for Taxes, assessments or other governmental charges or levies which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens in connection with workers’ compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) statutory landlord’s liens, operators’, vendors’, carriers’, warehousemen’s, repairmen’s,

mechanics', suppliers', workers', materialmen's, construction or other like Liens arising by operation of law in the ordinary course of business or incident to the exploration, development, operation and maintenance of Oil and Gas Properties each of which is in respect of obligations that are not more than 30 days delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (d) contractual Liens which arise in the ordinary course of business under operating agreements, joint venture agreements, oil and gas partnership agreements, oil and gas leases, farm-out agreements, division orders, contracts for the sale, transportation or exchange of oil and natural gas, unitization and pooling declarations and agreements, area of mutual interest agreements, royalty agreements, overriding royalty agreements, marketing agreements, processing agreements, net profits agreements, development agreements, gas balancing or deferred production agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or other geophysical permits or agreements, and other agreements which are usual and customary in the oil and gas business and are for claims which are not more than 30 days delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP, provided that any such Lien referred to in this clause does not (x) materially impair the use of the Property covered by such Lien for the purposes for which such Property is held by the Credit Parties or the Restricted Subsidiaries or (y) materially impair the value of any material Property subject thereto, excluding, for purposes of this clause (y), any transactions permitted under Sections 9.05, 9.09 or 9.11 of this Agreement; (e) Liens arising solely by virtue of any statutory or common law provision or customary deposit account terms (pursuant to a depository institution's standard documentation that is provided to its customers generally or pursuant to Account Control Agreements) relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution, provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by the Credit Parties or the Restricted Subsidiaries to provide collateral to the depository institution; (f) easements, rights of way, restrictions, servitudes, permits, restrictive covenants, exceptions or reservations in any Property of the Credit Parties or the Restricted Subsidiaries (including for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines for the removal of gas, oil, coal or other minerals or timber, and other like purposes, or for the joint or common use of real property, zoning restrictions, rights of way, facilities and equipment, and Liens related to surface leases and surface operations) that do not secure any monetary obligations and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Credit Parties or the Restricted Subsidiaries or materially impair the value of any material Property subject thereto; (g) Liens on cash or securities pledged to secure performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature incurred in the ordinary course of business; (h) judgment and attachment Liens on any Property, including Oil and Gas Property, not giving rise to an Event of Default; provided that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced; (i) Liens pursuant to merger agreements, stock purchase agreements, asset sale agreements and similar agreements (1) limiting the transfer of properties and assets pending consummation of the subject transaction or (2) in respect of earnest money deposits, good faith deposits, purchase price adjustment escrows and similar deposits and escrow arrangements made or established thereunder; (j) Liens arising from precautionary Uniform Commercial Code financing statement filings entered into by the Borrower and the Subsidiaries covering Property under true leases entered into in the ordinary course of business covering only the Property under lease; (k) Liens to secure plugging and abandonment obligations; and (l) Liens encumbering insurance policies and the proceeds thereof securing the financing of insurance premiums; provided, further Liens described in clauses (a) through (e) shall remain "Excepted Liens" only for so long as no action to enforce such Lien has been commenced; provided further, (x) no intention to subordinate the first priority Lien granted in favor of the Administrative Agent and the Lenders is to be hereby implied or expressed by the permitted existence of any Excepted Liens, (y) in no event shall "Excepted Liens" secure Debt for borrowed money and (z) Dedications shall not be "Excepted Liens".

"Excess Cash" means, as of the date of any determination, cash and Cash Equivalents of the Credit Parties other than (a) any cash allocated for, reserved or otherwise set aside to pay royalty obligations, working interest obligations, vendor payments, suspense payments, similar payments as are customary in the oil and gas industry, severance and ad valorem Taxes, payroll, payroll Taxes, other Taxes, and employee wage and benefit payment obligations of Holdings, the Borrower or any Restricted Subsidiary due and owing as of such date (or to be due and owing within five Business Days of such date) and for which Holdings, the Borrower or such Restricted Subsidiary has issued checks or has initiated wires or ACH transfers, (b) any cash allocated for, reserved or otherwise set aside to pay other amounts (other than obligations described in clause (a) above) permitted to be paid by Holdings, the Borrower or its Restricted Subsidiaries in accordance with this Agreement and the other Loan Documents due and owing as of such date (or to be due and owing within five Business Days of such date) to Persons who (x) are not Affiliates of the Credit Parties or (y) are holders under any Permitted Debt (solely with respect to interest payments under such Permitted Debt) and, in each case, for which obligations Holdings, the Borrower or any Restricted Subsidiary has issued checks or has initiated wires or ACH transfers but that have not yet been subtracted from the balance in the relevant account of Holdings, the Borrower or any Restricted Subsidiary, (c) any cash of Holdings, the Borrower or any Restricted Subsidiary constituting pledges and/or deposits securing any binding and enforceable purchase and sale agreement with any Persons who are not Affiliates of the Credit Parties, in each case to the extent permitted by this Agreement, (d) cash deposited with the Issuing Bank to cash collateralize Letters of Credit and (e) any amounts in an Excluded Account that is an Excluded Account solely because in the aggregate all such Excluded Accounts do not have a balance greater than \$2,500,000.

"Excess Cash Threshold" means, as of the date of any determination, the amount that is equal to \$30,000,000, *plus* an amount equal to \$30,000,000, with respect to expenses described in clauses (a) and (b) of the definition of Excess Cash, that the Borrower projects in good faith that it will issue checks or initiate wires or ACH transfers to pay within five Business Days following such date of determination.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Accounts" means, with respect to the Credit Parties or any Restricted Subsidiary, each Deposit Account set forth on Schedule 7.25 (as the same may be supplemented by the Borrower from time to time upon delivery of a written supplement to the Administrative Agent) as an "Excluded Account" and that is not subject to an Account Control Agreement, to the extent exclusively constituting (a) accounts exclusively used for payroll, payroll taxes or other employee wage and benefit payments, (b) accounts exclusively holding assets subject to an escrow or purchase price adjustment mechanism, (c) segregated accounts, the balance of which consists exclusively of funds due and owing to unaffiliated third parties in connection with royalty payment obligations owed to such third parties, or working interest payments received from unaffiliated third parties, solely to the extent such amounts constitute property of such third party held in trust, (d) accounts having balances not greater than \$2,500,000 in the aggregate for all such accounts and (e) the Professional Escrow Account (as defined in the Plan of Reorganization).

"Excluded Assets" shall mean:

(a) any fee owned real property and any leasehold rights and interests in real property (other than Oil and Gas Properties);

(b) motor vehicles (and other assets covered by certificates of title or ownership), in each case, except to the extent the security interest in such assets can be perfected by the filing of an "all assets" Uniform Commercial Code financing statement;

(c) those assets over which the granting of security interests in such assets would be prohibited by any contract, applicable law or regulation but only to the extent and for so long as a grant of a security interest therein in favor of the Administrative Agent would (x) violate or invalidate such contract, cause the acceleration or the termination thereof or create a right of termination in favor of any other party thereto (other than the Borrower or any of its Subsidiaries) or (y) violate such applicable law or regulation, other than to the extent such prohibition is rendered ineffective under the UCC or other applicable law notwithstanding such prohibition;

(d) particular assets if and for so long as, if reasonably agreed by the Administrative Agent and the Borrower, the cost of creating a pledge or security interest in such assets exceed the practical benefits to be obtained by the Lenders therefrom; and

(e) except as provided in Section 8.14, any assets located outside the United States to the extent that such assets require action under the law of any non-U.S. jurisdiction to create or perfect a security interest in such assets under such non-U.S. jurisdiction, including any intellectual property registered in any non-U.S. jurisdiction;

provided, however, that Excluded Assets shall not include any proceeds, substitutions or replacements of any Excluded Assets referred to in clauses (a) through (d) (unless such proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in clauses (a) through (d)).

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“Excluded Subsidiary” means any direct or indirect subsidiary of any Credit Party that (a) is an Unrestricted Subsidiary, (b) is Grizzly Oil Sands, (c) is not a Wholly-Owned Subsidiary or (d) is an Immaterial Subsidiary.

“Excluded Swap Obligation” has the meaning assigned to such term in the Guaranty and Collateral Agreement.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on (or measured by) its net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, any U.S. federal withholding Tax that is imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Revolving Credit Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit, or Revolving Credit Commitment (other than pursuant to an assignment request by the Borrower under Section 5.04(b)), or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.03, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office (c) any Taxes attributable to a Recipient’s failure to comply with Section 5.03(e) and (d) any Taxes imposed under FATCA.

“Existing Letters of Credit” means those certain letters of credit as described on Schedule 1.02(a).

“Extraordinary Expenses” means all costs, expenses or advances that the Administrative Agent may incur during a Default or Event of Default, or during the pendency of an Insolvency Proceeding of a Credit Party, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against the Administrative Agent, any Lender, any Credit Party, any representative of creditors of a Credit Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidance of the Administrative Agent’s Liens with respect to any Collateral), Loan Documents, Letters of Credit or other Secured Obligations, including any lender liability or other claims; (c) the exercise of any rights or remedies of the Administrative Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of Taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Secured Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees of outside counsel, appraisal fees, brokers’ and auctioneers’ fees and commissions, accountants’ fees, environmental study fees, wages and salaries paid to employees of any Credit Party or independent contractors in liquidating any Collateral, and reasonable travel and other expenses.

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“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (and any amended or successor version to the extent substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it; provided, that, if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Federal Reserve Bank of New York’s Website” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“Fee Letter” means (a) that certain Fee Letter dated November 17, 2020, between The Bank of Nova Scotia, and the Borrower and (b) that certain Fee Letter dated May 17, 2021, between The Bank of Nova Scotia, and the Borrower.

“Final Order” means, as applicable, an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the relevant subject matter, that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for a new trial, reargument, or rehearing has been timely taken; or as to which, any appeal that has been taken or any petition for certiorari that has been or may be filed has been withdrawn with prejudice, resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought, or the new trial, reargument, or rehearing has been denied, resulted in no stay pending appeal or modification of such order, or has otherwise been dismissed with prejudice; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order will not preclude such order from being a Final Order.

“Financial Advisor” means Opportune LLP and any of its Affiliates.

“Financial Officer” means, for any Person, the chief financial officer, principal accounting officer, or treasurer of such Person (or in the case of any Person that is a partnership, of such Person’s general partner). Unless otherwise specified, all references to a Financial Officer herein mean a Financial Officer of the Borrower.

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“Financial Statements” means the financial statement or statements of the Borrower and its Consolidated Subsidiaries referred to in Section 7.04(a).

“First-Out Payment in Full” means the date of the occurrence of the last to occur of the following events: (i) the expiration or termination of the Revolving Credit Commitments and Aggregate Maximum Revolving Credit Amounts, (ii) payment in full, in cash, of the outstanding principal of, and accrued and unpaid interest on, all Loans, (iii) payment in full, in cash, of fees and other Secured Obligations (other than contingent indemnity obligations for which no claim has been made and Secured Obligations described in the following clauses (iv) through (vii)), (iv) the expiration or termination or collateralization (in a manner reasonably acceptable to the applicable Issuing Bank) of all outstanding Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the applicable L/C Issuer shall have been made), (v) the reimbursement by the Borrower of all LC Disbursements, (vi) either (A) the expiration or termination of all Secured Swap Agreements and the payment of all amounts thereunder to the Secured Swap Parties and written notice from the Borrower to the Administrative Agent that such payment has occurred, or (B) the collateralization or other arrangements having been made satisfactory to the applicable Secured Swap Parties in their respective reasonable discretion and written notice from the Borrower to the Administrative Agent that the such collateralization or other satisfactory arrangements have been made, and (vii) the expiration or termination or collateralization (in a manner reasonably acceptable to the applicable Secured Cash Management Provider) of all Secured Cash Management Agreements.

“Foreign Lender” means any Lender that is not a U.S. Person.

“Foreign Subsidiary” means any Subsidiary (whether a Restricted Subsidiary or an Unrestricted Subsidiary) that is not a Domestic Subsidiary.

“Free Cash Flow” means, with respect to any time of calculation thereof, the sum of the following as of the most recent Reporting Date for the Measurement Period then ended: (a) EBITDAX for such Measurement Period, minus (b) the increase (or plus the decrease) in non-cash working capital for such Measurement Period, minus (c) the sum, without duplication, of the amounts for such Measurement Period of (i) voluntary and scheduled cash repayments of Debt (other than the Revolving Loans) which cannot be reborrowed pursuant to the terms of such Debt, (ii) capital expenditures paid in cash, (iii) consolidated interest expense paid in cash, (iv) taxes paid in cash, (v) exploration expenses paid in cash, and (vi) to the extent not included in the foregoing, all other cash amounts that otherwise served to increase EBITDAX for such Measurement Period.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time subject to the terms and conditions set forth in Section 1.05.

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“Gas Balancing Agreement” means any agreement or arrangement whereby any Credit Party, or any other party having an interest in any hydrocarbons to be produced from Hydrocarbon Interests in which any Credit Party owns an interest, has a right to take more than its proportionate share of production therefrom.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies exercising such powers or functions, such as the European Union or the European Central Bank).

“Governmental Requirement” means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, rules of common law, or other directive or requirement, whether now or hereinafter in effect of any Governmental Authority.

“Grizzly Oil Sands” means Grizzly Oil Sands ULC, a corporation formed under the laws of Alberta, Canada.

“Guarantor” means Holdings and each Restricted Subsidiary that is a party to the Guaranty and Collateral Agreement as a “Guarantor” and “Grantor” (as such terms are defined in the Guaranty and Collateral Agreement) and guarantees the Secured Obligations (including pursuant to Section 6.01 and Section 8.14(b)); provided that Grizzly Oil Sands shall not be a Guarantor.

“Guaranty and Collateral Agreement” means the Guaranty and Collateral Agreement, substantially in the form attached hereto as Exhibit C, executed by the Borrower, the Guarantors and the Administrative Agent, as the same may be amended, restated, amended and restated, modified or supplemented from time to time.

“Hazardous Material” means any chemical, material, substance or waste regulated, or as to which liability may be imposed, under any applicable Environmental Law due to its hazardous or dangerous properties or characteristics, including, without limitation: (a) any chemical, compound, material, substance or waste defined as, or included in the definition or meaning of, “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic waste,” “extremely hazardous substance,” “toxic substance,” “contaminant,” or “pollutant,” or words of similar meaning or effect, found in any applicable Environmental Law; (b) petroleum hydrocarbons, petroleum products or byproducts, natural gas, and crude oil; and (c) radioactive materials, asbestos containing materials, polychlorinated biphenyls, or radon.

“Highest Lawful Rate” means, with respect to each Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Notes or on other Secured Obligations under laws applicable to such Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws allow as of the date hereof.

“Holdings” has the meaning assigned to such term in the recitals.

“Hydrocarbon Interests” means all rights, titles, interests and estates now or hereafter acquired in and to oil and gas leases, oil, gas and mineral leases, or other liquid or gaseous hydrocarbon leases, mineral fee interests, overriding royalty and royalty interests, net profit interests and production payment interests, including any reserved or residual interests of whatever nature. Unless otherwise indicated herein, each reference to the term “Hydrocarbon Interests” shall mean Hydrocarbon Interests of the Borrower and the Restricted Subsidiaries, as the context requires.

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“Hydrocarbons” means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom and all other minerals which may be produced and saved from or attributable to the Oil and Gas Properties of the Credit Parties, including all oil in tanks, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Hydrocarbon Interests of the Credit Parties or other properties constituting Oil and Gas Properties of the Credit Parties.

“Immaterial Subsidiary” shall mean any Restricted Subsidiary that is not a Material Subsidiary.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit

Party under any Loan Document, and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 12.03(b).

“Information” has the meaning assigned to such term in Section 12.11.

“Initial Reserve Report” means the Reserve Report as of January 1, 2021, prepared by one or more Approved Petroleum Engineers with respect to the oil and gas reserves attributable to the Oil and Gas Properties of the Borrower and the Restricted Subsidiaries.

“Insolvency Proceeding” means any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

“Intellectual Property” shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States of America, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, service-marks, technology, know-how and processes, recipes, formulas, trade secrets, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04 in substantially the form of Exhibit F.

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“Interest Expense” means, for any period, the sum (determined without duplication) of the aggregate gross interest expense of the Borrower and the Consolidated Restricted Subsidiaries for such period, including (a) to the extent included in interest expense under GAAP, unless otherwise provided in (iii) below: (i) amortization of debt discount, (ii) capitalized interest and (iii) the portion of any payments or accruals under Capital Leases allocable to interest expense, plus the portion of any payments or accruals under Synthetic Leases allocable to interest expense whether or not the same constitutes interest expense under GAAP and (b) cash dividend payments made by any Credit Party or the Restricted Subsidiaries in respect of any Disqualified Capital Stock; but excluding non-cash gains, losses or adjustments under FASB ASC Topic 815 as a result of changes in the fair market value of derivatives.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months (or, with the consent of each Lender, twelve months) thereafter, as the Borrower may elect; provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim Redetermination” has the meaning assigned to such term in Section 2.07(b).

“Interim Redetermination Date” means the date on which a Borrowing Base that has been redetermined pursuant to an Interim Redetermination becomes effective as provided in Section 2.07(d).

“Investment” means, for any Person: (a) any direct or indirect acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests of any other Person; (b) the making of any deposit, advance, loan or capital contribution to, assumption of Debt of, purchase or other acquisition of any other Debt or equity participation or interest in, or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business); (c) the purchase or acquisition (in one or a series of transactions) of Property of another Person that constitutes a business unit, line of business or division of such Person; or (d) the entering into of any guarantee of, or other contingent obligation (including the deposit of any Equity Interests to be sold) with respect to, Debt or other obligations of any other Person and (without duplication) any amount committed to be advanced, lent, or extended to such Person (valued at the lesser of the amount of the Debt that is the subject of such guarantee or contingent obligation and the maximum stated amount of such guarantee or contingent obligation).

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“Investment Conditions” means that: (a) no Default, Event of Default or Borrowing Base Deficiency has occurred and is continuing or would result therefrom; (b) at least 20% of the Revolving Credit Commitments is available to be borrowed (after taking into account the effect of Section 6.02(d)); and (c) the Pro Forma Net Leverage Ratio is equal to or less than 2.00 to 1.00.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means (a) Scotiabank and (b) any other Lender reasonably acceptable to the Administrative Agent and the Borrower that has agreed in its sole discretion to become an Issuing Bank hereunder pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent, in each case, in its capacity as an issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.08(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. Each reference herein to the “Issuing Bank” shall be deemed to be a reference to the relevant Issuing Bank.

“LC Commitment” at any time means \$150,000,000.

“LC Disbursement” means a payment made by any Issuing Bank pursuant to a Letter of Credit issued by such Issuing Bank.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Revolving Credit Percentage of the total LC Exposure at such time.

“LC Maturity Date” means the date that is five (5) Business Days prior to the Maturity Date.

“Lender Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Lender Party” means the Administrative Agent, each Issuing Bank or any Lender.

“Lenders” means the Persons listed on Annex I, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption, and any Person that shall have become a party hereto pursuant to an Assignment and Assumption.

“Letter of Credit” means any standby letter of credit issued pursuant to this Agreement, including the Existing Letters of Credit.

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“Letter of Credit Agreements” means all letter of credit applications and other agreements (including any amendments, modifications or supplements thereto) submitted by the Borrower, or entered into by the Borrower, with any Issuing Bank relating to any Letter of Credit issued by such Issuing Bank.

“LIBO Rate” means, subject to the implementation of a Benchmark Replacement in accordance with Section 3.03(c), with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be the rate (rounded upwards, if necessary, to the next 1/100 of 1%) at which dollar deposits of an amount comparable to such Eurodollar Borrowing and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that, notwithstanding the foregoing, if the LIBO Rate (including any Benchmark Replacement with respect thereto) shall be less than one percent (1.0%), such rate shall be deemed to be one percent (1.0%) for the purposes of this Agreement. Unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 3.03(c), in the event that a Benchmark Replacement with respect to the LIBO Rate is implemented then all references herein to LIBO Rate shall be deemed references to such Benchmark Replacement.

“Lien” means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and whether such obligation or claim is fixed or contingent, and including but not limited to (a) the lien or security interest arising from a deed of trust, mortgage, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or (b) production payments and the like payable out of Oil and Gas Properties. The term “Lien” shall include easements, restrictions, servitudes, permits, restrictive covenants, exceptions or reservations in each case with respect to real property. For the purposes of this Agreement, the Credit Parties and the Restricted Subsidiaries shall be deemed to be the owner of any Property which they have acquired or hold subject to a conditional sale agreement, or leases under a financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person in a transaction intended to create a financing.

“Liquidate” means, with respect to any Swap Agreement, (a) the sale, assignment, novation, unwind, termination or other monetization of all or any part of such Swap Agreement or (b) the creation of an offsetting position against all or any part of such Swap Agreement. The terms “Liquidated” and “Liquidation” have correlative meanings thereto.

“Loan Documents” means this Agreement, the Notes, the Letter of Credit Agreements, the Letters of Credit, the Security Instruments, the Fee Letter and any other document, instrument or agreement (other than Secured Swap Agreements or Secured Cash Management Agreements) now or hereafter delivered by or on behalf of a Credit Party under this Agreement.

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“Loans” means the Revolving Loans and Term Loans made by the Lenders to the Borrower pursuant to this Agreement.

“Majority Lenders” means, at any time while no Loans or LC Exposure are outstanding, Lenders having more than fifty percent (50.0%) of the sum of the Aggregate Maximum Credit Amounts; and at any time while any Loans or LC Exposure are outstanding, Lenders holding more than fifty percent (50.0%) of the outstanding aggregate principal amount of the Loans and participation interests in Letters of Credit (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)); provided that, if at any time there are two or fewer Lenders, then all Lenders shall constitute the Majority Lenders; provided further that the Maximum Credit Amount and the outstanding principal amount of the Loans of, and the participation interests in Letters of Credit held by, each Defaulting Lender (if any) shall be excluded from the determination of Majority Lenders to the extent set forth in Section 4.04(b)(ii).

“Material Acquisition” means any acquisition of Property or series of related acquisitions of Property that involves the payment of consideration by the Borrower and the Consolidated Restricted Subsidiaries in excess of \$20,000,000.

“Material Adverse Effect” means a material adverse change in, or material adverse effect on (a) the business, operations, Property or financial condition of the Credit Parties, taken as a whole, (b) the ability of the Credit Parties, taken as a whole, to perform their obligations under the Loan Documents (including payment obligations), (c) the validity or enforceability of any Loan Document or (d) the rights and remedies of the Administrative Agent, any Issuing Bank or any Lender under the Loan Documents.

“Material Debt” means any Debt (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Credit Parties and the Restricted Subsidiaries, in an aggregate principal amount exceeding \$20,000,000. For purposes of determining Material Debt, the “principal amount” of the obligations of the Credit Parties and the Restricted Subsidiaries in respect of any Swap Agreement at any time shall be the Swap Termination Value of such Swap Agreement.

“Material Disposition” means any Disposition of Property or series of related Dispositions of Property that yields gross proceeds to the Borrower and the Consolidated Restricted Subsidiaries in excess of \$20,000,000.

“Material Gas Imbalance” means, with respect to all Gas Balancing Agreements to which any Credit Party is a party or by which any Hydrocarbon Interest owned by any Credit Party is bound, a net gas imbalance to Borrower or any other Credit Party, individually or taken as a whole exceeding one half bcf of gas (stated on an mcf equivalent basis) with respect to the Credit Parties’ Oil and Gas Properties. Gas imbalances will be determined based on written agreements, if any, specifying the method of calculation thereof, or, alternatively, if no such agreements are in existence, gas imbalances will be calculated by multiplying (x) the volume of gas imbalance as of the date of calculation (expressed in thousand cubic feet) by (y) the heating value in BTU’s per thousand cubic feet, times the Henry Hub average daily spot price for the month

“Material Subsidiary” means, as of any date, any Restricted Subsidiary (a) that owns or has an interest in any Property assigned value in the Borrowing Base then in effect, as determined by the Administrative Agent; (b) that has any outstanding Debt for borrowed money or guarantees any Permitted Debt, any Permitted Refinancing Debt or the Debt of any other Person; or (c) that contributed greater than (i) two and a half percent (2.5%) of EBITDAX for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b) or (ii) two and a half percent (2.5%) of Consolidated Total Assets as of the last day of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b); provided that, if at any time the aggregate amount of EBITDAX or Consolidated Total Assets attributable to all Restricted Subsidiaries that are not Material Subsidiaries exceeds two and a half percent (2.5%) of EBITDAX for any such period or two and a half percent (2.5%) of Consolidated Total Assets as of the last day of any such fiscal quarter, then the Borrower shall (or, in the event the Borrower has failed to do so, the Administrative Agent shall), on the date on which financial statements for such fiscal quarter are delivered pursuant to Section 8.01(a) or Section 8.01(b), designate in writing to the Administrative Agent one or more of such Restricted Subsidiaries as “Material Subsidiaries” to eliminate any such excess, and such designated Subsidiaries shall for all purposes of this Agreement constitute Material Subsidiaries.

“Maturity Date” means May 17, 2024.

“Maximum Credit Amount” means, as to each Lender, sum of such Lender’s outstanding Term Loan plus such Lender’s Maximum Revolving Credit Amount.

“Maximum Revolving Credit Amount” means, as to each Revolving Credit Lender, the amount set forth opposite such Revolving Credit Lender’s name on Annex I under the caption “Maximum Revolving Credit Amounts”, as the same may be (a) reduced or terminated from time to time in connection with a reduction or termination of the Aggregate Maximum Revolving Credit Amounts pursuant to Section 2.06(b), (b) modified from time to time pursuant to any assignment permitted by Section 12.04(b), or (c) otherwise modified pursuant to the terms of this Agreement (including Section 2.07 hereof).

“Measurement Period” means, (a) with respect to each fiscal quarter ending on June 30, 2021, September 30, 2021, December 31, 2021, and March 31, 2022, the period commencing on the Effective Date and ending on the last day of such fiscal quarter then ended and (b) with respect to any fiscal quarter ending on or after June 30, 2022, the four fiscal quarter period then ended.

“Midstream Dispute” means those certain disputes, matters, actions, proceedings or negotiations with respect to the disputed future firm transport demand reservation fees owed by the Credit Parties under the firm transportation agreements of the Credit Parties, in effect on or prior to the Effective Date, including, without limitation, the motions to reject certain negotiated rate firm transportation agreements with the Remaining Midstream Rejection Counterparties, which are currently pending before the U.S. District Court for the Southern District of Texas, Houston Division following the withdrawal of the reference from the Bankruptcy Court under case numbers 20-35502, H-21-232.

“Minimum Volume-Equivalent Commitments” means, in connection with any Service Agreement Undertaking, minimum volume commitments or minimum revenue commitments that are required in order to avoid paying or accruing a deficiency or make-whole amount under such Service Agreement Undertaking, expressed in terms of volumes of production; provided that with respect to minimum revenue commitments, such revenue commitments shall be deemed to be the equivalent amount of volumes that the Borrower reasonably estimates would be necessary to satisfy such revenue commitment as determined by the Borrower and if requested by the Administrative Agent or Majority Lenders, certified by the Borrower.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency.

“Mortgage” means each mortgage, deed of trust or any other document creating and evidencing a Lien on real Property and other Property in favor of the Administrative Agent, for the benefit of the Secured Parties, which shall be in form and substance reasonably satisfactory to the Administrative Agent.

“Mortgaged Property” means any Property owned by the Borrower or any Guarantor which is subject to a Mortgage.

“Multiemployer Plan” means a multiemployer plan as defined in Section 3(37) of ERISA to which any Credit Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within the six calendar years preceding any relevant date, made or accrued an obligation to make contributions and liability to a Credit Party remains.

“Net Funded Leverage Ratio” means, with respect to the Borrower and its Consolidated Restricted Subsidiaries, as of any date of determination, the ratio of (a) Total Net Funded Debt as of such date to (b) EBITDAX for the period of four consecutive fiscal quarters ending on such date (or in the case of fiscal quarters ending on or before December 31, 2021, Annualized EBITDAX).

“Net Senior Secured Leverage Ratio” means, with respect to the Borrower and its Consolidated Restricted Subsidiaries, as of any date of determination, the ratio of (a) Total Net Senior Secured Debt as of such date to (b) EBITDAX for the period of four consecutive fiscal quarters ending on such date (or in the case of fiscal quarters ending on or before December 31, 2021, Annualized EBITDAX).

“New Borrowing Base Notice” has the meaning assigned to such term in Section 2.07(d).

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver, discharge, termination or amendment to any provision of this Agreement or any other Loan Document requested by the Borrower (including any increase, reaffirmation or decrease in the Borrowing Base) that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 2.07 or Section 12.02(b) and (ii) has been approved by the Majority Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Notes” means the Revolving Credit Notes and Term Loan Notes of the Borrower described in Section 2.02(d) and being substantially in the form of Exhibit A-1 and

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Oil and Gas Properties” means (a) Hydrocarbon Interests; (b) the Properties now or hereafter pooled or unitized with Hydrocarbon Interests; (c) all presently existing or future unitization, pooling agreements and declarations of pooled units and the units created thereby (including without limitation all units created under orders, regulations and rules of any Governmental Authority) which may affect all or any portion of the Hydrocarbon Interests; (d) all operating agreements, contracts and other agreements, including production sharing contracts and agreements, which relate to any of the Hydrocarbon Interests or the lands pooled or unitized therewith, or the production, sale, purchase, exchange, treatment, processing, handling, storage, transporting or marketing of Hydrocarbons from or attributable to such Hydrocarbon Interests or the lands pooled or unitized therewith; (e) all Hydrocarbons in and under and which may be produced and saved or attributable to the Hydrocarbon Interests or the lands pooled or unitized therewith, including all oil in tanks, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Hydrocarbon Interests or the lands pooled or unitized therewith; (f) all tenements, hereditaments, appurtenances and Properties in any manner appertaining, belonging, affixed or incidental to the Hydrocarbon Interests or the lands pooled or unitized therewith and (g) all Properties, rights, titles, interests and estates, real or personal, now owned or hereafter acquired and situated upon, or used, held for use or useful in connection with the operating, working or development of any of such Hydrocarbon Interests (excluding drilling rigs, automotive equipment, rental equipment or other personal Property which may be on such premises for the purpose of drilling a well or for other similar temporary uses) or the lands pooled or unitized therewith, or with the production, sale, purchase, exchange, treatment, processing, handling, storage, transporting or marketing of Hydrocarbons from or attributable to such Hydrocarbon Interests or the lands pooled or unitized therewith, including any and all oil wells, gas wells, injection wells or other wells, buildings, structures, fuel separators, liquid extraction plants, plant compressors, pumps, pumping units, pipelines, sales and flow lines, gathering lines and systems, field gathering systems, salt water disposal facilities, tanks and tank batteries, processing plants, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, facilities, appliances, tools, implements, cables, wires, towers, casing, tubing and rods, surface leases, rights-of-way, easements, servitudes, licenses and other surface and subsurface rights together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing. Unless otherwise indicated herein, each reference to the term “Oil and Gas Properties” shall mean Oil and Gas Properties of the Borrower and the Restricted Subsidiaries.

“Organizational Documents” means, with respect to any Person, its charter, certificate or articles of incorporation or formation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person, including any of the foregoing in connection with the Preferred Equity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to [Section 5.04\(b\)](#)).

“Participant” has the meaning assigned to such term in [Section 12.04\(c\)](#).

“Participant Register” has the meaning assigned to such term in [Section 12.04\(c\)](#).

“Patriot Act” has the meaning assigned to such term in [Section 12.16](#).

“Payment Recipient” has the meaning assigned to such term in [Section 11.12\(a\)](#).

“PBGC” means the Pension Benefit Guaranty Corporation, or any successor thereto.

“Permitted Debt” means Permitted Senior Notes, Take-Back Notes and any Permitted Refinancing Debt thereof.

“Permitted Holder” means each of the Persons identified on [Schedule 1.02\(b\)](#) and their respective Affiliates (other than Affiliate portfolio companies).

“Permitted Refinancing Debt” means senior or senior subordinated Debt or Debt securities (whether registered or privately placed and whether convertible into Equity Interests or not), in each case whether secured or unsecured, issued or incurred by the Borrower (for purposes of this definition, “new Debt”) incurred in exchange for, or proceeds of which are used to refinance, refund, renew, replace or extend all or any portion of any Permitted Debt (the “Refinanced Debt”); provided that (a) [reserved]; (b) such new Debt is in an aggregate principal amount not in excess of the aggregate principal amount then outstanding of the Refinanced Debt, plus an amount necessary to pay accrued and unpaid interest and any fees and expenses, including premiums (and, for the avoidance of doubt, make-whole amounts) related to such exchange, refinancing, refunding, renewal, replacement or extension and original issue discount, related to such new Debt; (c) such new Debt does not have any scheduled principal amortization prior to the date that is 181 days after the Maturity Date; (d) such new Debt does not mature sooner than the date that is 181 days after the Maturity Date; (e) no Subsidiary or other Person shall guarantee such new Debt unless such Subsidiary has guaranteed the Secured Obligations pursuant to the Guaranty and Collateral Agreement; (f) the terms and conditions of such new Debt and any guarantees thereof, taken as a whole, are not materially less favorable to the Borrower and its Restricted Subsidiaries as market terms for issuers of similar size and credit quality given the then prevailing market conditions as reasonably determined by the Borrower in good faith and are not more restrictive, taken as a whole, than those contained in this Agreement and the other Loan Documents or the Refinanced Debt, as reasonably determined by the Borrower in good faith; (g) if such new Debt is senior subordinated Debt, such Debt is expressly subordinate to the payment in full of all of the Secured Obligations on terms and conditions reasonably satisfactory to the Administrative Agent; (h) if any Debt incurred in reliance on [Sections 9.02\(f\), \(g\)](#) or [\(h\)](#) shall be secured, such Debt shall not be secured by any assets other than the Collateral; or (i) if the Refinanced Debt is unsecured, such new Debt shall be unsecured.

“Permitted Senior Notes” means any unsecured senior or unsecured senior subordinated Debt securities (whether registered or privately placed and whether convertible into Equity Interests or not) issued or incurred by the Borrower, as issuer, to the extent permitted by [Section 9.02\(f\)](#).

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity of whatever nature.

“Plan” means any employee pension benefit plan, as defined in Section 3(2) of ERISA, that is subject to Title IV of ERISA or Section 412 of the Code, other than a Multiemployer Plan, which (a) is currently or during the period of applicability of this Agreement sponsored, maintained or contributed to by a Credit Party or an ERISA

Affiliate or (b) was at any time during the six calendar years preceding the date of any relevant period, sponsored, maintained or contributed to by a Credit Party or an ERISA Affiliate if liability to a Credit Party remains.

“Plan Support Agreement” means that certain Restructuring Support Agreement, dated as of November 13, 2020, by and among the Borrower, the Consenting Noteholders (as defined therein) and the Consenting RBL Lenders (as defined therein).

“Preferred Equity” has the meaning assigned to such term in Section 6.01(s).

“Prepetition Administrative Agent” has the meaning assigned to such term in the recitals.

“Prepetition Credit Agreement” has the meaning assigned to such term in the recitals.

“Prepetition Indentures” means the indentures governing the Borrower’s 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.

“Prepetition Lenders” has the meaning assigned to such term in the recitals.

“Prepetition Loan Documents” means the “Loan Documents” as defined in the Prepetition Credit Agreement.

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“Prepetition Mortgages” means each of those certain mortgages and deeds of trust, fixture filings, assignments of as-extracted collateral, security agreements and financing statements executed and delivered by a Credit Party or a subsidiary of the Borrower, as the “grantor” or “mortgagor,” for the benefit of the Prepetition Administrative Agent, as amended, amended and restated, supplemented and modified prior to the date hereof, and recorded in the office designated for the filing of a record of a mortgage, deed of trust or financing statement in the applicable jurisdictions.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by Scotiabank as its prime rate in effect for dollar denominated loans in the United States for such day; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective. Such rate is set by Scotiabank as a general reference rate of interest, taking into account such factors as Scotiabank may deem appropriate; it being understood that many of the commercial or other loans of Scotiabank are priced in relation to such rate, that it is not necessarily the lowest or best rate actually charged to any customer and that Scotiabank may make various commercial or other loans at rates of interest having no relationship to such rate.

“Pro Forma Net Leverage Ratio” means, with respect to the Borrower and its Consolidated Restricted Subsidiaries, as of any date of determination, the ratio of (a) Total Net Funded Debt as of such date determined on a pro forma basis after giving effect to any applicable transactions to occur on such date to (b) EBITDAX for the period of four consecutive fiscal quarters most recently ended prior to such date for which financial statements have been delivered pursuant to Section 8.01(a) or (b) (or in the case of fiscal quarters ending on or before December 31, 2021, Annualized EBITDAX).

“Pro Forma Senior Secured Net Leverage Ratio” means, with respect to the Borrower and its Consolidated Restricted Subsidiaries, as of any date of determination, the ratio of (a) Total Net Senior Secured Debt as of such date determined on a pro forma basis after giving effect to any applicable transactions to occur on such date to (b) EBITDAX for the period of four consecutive fiscal quarters most recently ended prior to such date for which financial statements have been delivered pursuant to Section 8.01(a) or (b) (or in the case of fiscal quarters ending on or before December 31, 2021, Annualized EBITDAX).

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, cash, securities, accounts and contract rights.

“Proposed Borrowing Base” has the meaning assigned to such term in Section 2.07(c)(i).

“Proposed Borrowing Base Notice” has the meaning assigned to such term in Section 2.07(c)(ii).

“proved”, with respect to any Oil and Gas Properties, has the meaning assigned to the term “Proved Reserves” in the Definitions of Oil and Gas Reserves as promulgated by the Society of Petroleum Engineers (or any generally recognized successor) as in effect at the time in question.

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“Proved Reserves” has the meaning assigned to the term “Proved Reserves” in the Definitions of Oil and Gas Reserves (in this paragraph, the “Definitions”) as promulgated by the Society of Petroleum Engineers (or any generally recognized successor) as in effect at the time in question.

“Proved Developed Producing Reserves” means Proved Reserves which are categorized as both “Developed” and “Producing” in the Definitions.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” shall mean any Lender that does not wish to receive material non-public information with respect to the Borrower, any of the other Credit Parties, or their securities for purposes of United States Federal or state securities laws.

“Purchase Money Obligation” shall mean, for any Person, the obligations of such Person in respect of Debt (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any fixed or capital assets or the cost of installation, construction or improvement of any fixed or capital assets; provided, however, that (i) such Debt is incurred within 30 days after such acquisition, installation, construction or improvement of such fixed or capital assets by such Person and (ii) the amount of such Debt does not exceed the lesser of 100% of the fair market value of such fixed or capital asset or the cost of the acquisition, installation, construction or improvement thereof, as the case may be.

“PV-10” means, on any date of determination, with respect to any Proved Reserves expected to be produced from any Borrowing Base Properties, the net present value, discounted at 10% per annum, of the future net revenues expected to accrue to the Borrower’s and its Restricted Subsidiaries’ collective interests in such reserves during the remaining expected economic lives of such Proved Reserves, calculated in accordance with the Bank Price Deck.

“Qualifying Net Cash Proceeds” has the meaning set forth in Section 9.05(d).

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

“Redemption” means with respect to any Debt, the repurchase, redemption, payment, prepayment, repayment or defeasance or any other acquisition or retirement for value or satisfaction prior to the scheduled maturity thereof in any manner (or the segregation of funds with respect to any of the foregoing) of any such Debt. “Redeem” has the correlative meaning thereto.

“Reference Period” has the meaning assigned to such term in the definition of EBITDAX.

“Register” has the meaning assigned to such term in Section 12.04(b)(iv).

“Regulation D” means Regulation D of the Board, as the same may be amended, supplemented or replaced from time to time.

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“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors (including attorneys, accountants and experts), controlling Persons, holders of Equity Interests, partners, members, trustees, managers, administrators and other representatives of such Person and such Person’s Affiliates, and the respective successors and assigns of each of the foregoing.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or through the environment.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York or any successor thereto.

“Remaining Midstream Rejection Counterparties” means, collectively, ANR Pipeline Company, Columbia Gas Transmission, LLC Columbia Gulf Transmission, LLC, and Rover Pipeline, LLC.

“Remedial Work” has the meaning assigned to such term in Section 8.10(a).

“Reporting Date” has the meaning set forth in the definition of Available Free Cash Flow.

“Required Lenders” means, at any time while no Loans or LC Exposure are outstanding, Lenders having at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the sum of the Aggregate Maximum Credit Amounts; and at any time while any Loans or LC Exposure are outstanding, Lenders holding at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the outstanding aggregate principal amount of the Loans and participation interests in Letters of Credit (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)); provided that, if at any time there are no more than two Lenders, then all of the Lenders shall constitute the Required Lenders provided, further, that the Maximum Credit Amount and the outstanding principal amount of the Loans of, and the participation interests in Letters of Credit held by, each Defaulting Lender (if any) shall be excluded from the determination of Required Lenders to the extent set forth in Section 4.04(b)(ii).

“Required Revolving Credit Lenders” means, (a) at any time while no Revolving Loans or LC Exposure is outstanding, Revolving Credit Lenders having at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the Aggregate Maximum Revolving Credit Amounts; and (b) at any time while any Revolving Loans or LC Exposure is outstanding, Revolving Credit Lenders holding at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the outstanding aggregate principal amount of the Revolving Loans and participation interests in Letters of Credit (without regard to any sale by a Revolving Credit Lender of a participation in any Revolving Loan under Section 12.04(c)); provided that the Maximum Revolving Credit Amounts, the Revolving Credit Commitments and the principal amount of the Revolving Loans and participation interests in Letters of Credit of the Defaulting Lenders (if any) shall be excluded from the determination of the Required Revolving Credit Lenders to the extent set forth in Section 4.04(b)(ii).

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“Reserve Report” means a report, in form and substance reasonably satisfactory to the Administrative Agent, setting forth, as of each date on or about January 1st or July 1st (or such other date in the event of an Interim Redetermination) the oil and gas reserves attributable to the Oil and Gas Properties of the Borrower and the Restricted Subsidiaries, together with a projection of the rate of production and future net income, Taxes, operating expenses (including firm transportation costs), capital expenditures and abandonment expenses with respect thereto as of such date, based upon the Strip Price on such date of determination, adjusted for historical basis differential (not including firm transportation costs), quality and gravity, without giving effect to non-property related expenses such as general and administrative expenses, debt service, future income Tax expense and depreciation, depletion and amortization; provided that in connection with any Interim Redeterminations of the Borrowing Base pursuant to the last sentence of Section 2.04(b), (i.e., as a result of the Borrower having acquired Oil and Gas Properties with Proved Reserves which are to be Borrowing Base Properties having an aggregate value in excess of 5% of the Borrowing Base in effect immediately prior to such acquisition), the Borrower shall be required, for purposes of updating the Reserve Report, to set forth only such additional Proved Reserves and related information as are the subject of such acquisition.

“Reserve Report Certificate” has the meaning assigned to such term in Section 8.12(c).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means, as to any Person, the chief executive officer (or interim chief executive officer), the president, any Financial Officer or any vice president of such Person (or in the case of any Person that is a partnership, of such Person’s general partner). Unless otherwise specified, all references to a Responsible Officer herein means a Responsible Officer of the Borrower.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other Property) with respect to any Equity Interests of any Credit Party or any Restricted Subsidiaries, or any payment (whether in cash, securities or other Property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to any Credit Party’s or any Restricted Subsidiary’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such Equity Interests in the Credit Parties or the Restricted Subsidiaries.

“Restricted Subsidiary” means any Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

“Revolving Credit Commitment” means, with respect to each Revolving Credit Lender, the commitment of such Revolving Credit Lender to make Revolving Loans and to acquire participations in Letters of Credit hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Credit Exposure hereunder as such commitment may be (a) modified from time to time pursuant to Section 2.06 and (b) modified from time to time pursuant to assignments by or to such Lender pursuant to Section 12.04(b). The amount representing each Lender’s Revolving Credit Commitment shall at any time be the least of (i) such Lender’s Maximum Revolving

Credit Amount, (ii) such Lender's Applicable Revolving Credit Percentage of the then effective Borrowing Base less the amount of such Lender's Applicable Term Loan Percentage of the then outstanding Term Loans and (iii) such Lender's Elected Commitment. The total Revolving Credit Commitment is the aggregate amount of the Revolving Credit Commitments of all the Revolving Credit Lenders. Notwithstanding the foregoing, the Availability Blocker shall not be subtracted from the Revolving Credit Commitment, but in accordance with Section 6.02(d) the Availability Blocker shall limit the Borrower's ability to borrow Revolving Loans prior to Successful Midstream Resolution.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and its LC Exposure at such time.

“Revolving Credit Lenders” means, at any time, collectively, each Person that holds Revolving Credit Commitments or Revolving Credit Exposure, and “Revolving Credit Lender” means any of them individually.

“Revolving Loans” means the revolving loans (i) deemed made to the Borrower by the Revolving Credit Lenders pursuant to the Plan of Reorganization and Section 2.01(b)(i) as part of the restructuring and rearrangement of the Borrower's debt arising under the Prepetition Credit Agreement or DIP Credit Agreement, or any portion thereof and (ii) made to the Borrower by the Revolving Credit Lenders pursuant to Section 2.01(b)(ii).

“RP Conditions” means that: (a) no Default, Event of Default or Borrowing Base Deficiency has occurred and is continuing or would result therefrom; (b) at least 25% of the Revolving Credit Commitments is available to be borrowed (after taking into account the effect of Section 6.02(d)); (c) the Pro Forma Net Leverage Ratio is equal to or less than 1.50 to 1.00; (d) Successful Midstream Resolution shall have occurred and (e) the Term Loans shall have been repaid in full.

“S&P” means S&P Global Ratings, a division of S&P Global Inc., and any successor thereto that is a nationally recognized rating agency.

“Sale and Leaseback Transaction” means, with respect to any Person, any arrangement, directly or indirectly, whereby such Person shall sell or transfer any Property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such Property or other Property that it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

“Sanctioned Country” means, at any time, a country, region or territory which is, or whose government is, the subject or target of any countrywide or territory-wide Sanctions (as of the date of this Agreement, Cuba, Iran, Syria, North Korea, and the Crimea region of Ukraine).

“Sanctioned Person” means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (a) any Person listed in any Sanctions-related list of designated or identified Persons maintained by the United States (including by OFAC, the U.S. Department of State, the U.S. Department of Treasury or the U.S. Department of Commerce), the United Nations Security Council, (b) any Person located, operating, organized or resident in, or any Governmental Authority or governmental instrumentality of, a Sanctioned Country or (c) any Person directly or indirectly owned or controlled by any Person described in clauses (a) or (b) hereof.

“Sanctions” means economic or financial sanctions or trade embargoes or restrictive measures enacted, imposed, administered or enforced from time to time by (a) the U.S. government, including OFAC, the U.S. Department of State, or the U.S. Department of Commerce (b) the United Nations Security Council; or (c) any other relevant authority of a jurisdiction applicable to the Borrower, the Borrower's Subsidiaries or any other Credit Party or its Subsidiaries.

“Scheduled Redetermination” has the meaning assigned to such term in Section 2.07(b).

“Scheduled Redetermination Date” means the date on which the Borrowing Base that has been redetermined pursuant to a Scheduled Redetermination becomes effective as provided in Section 2.07(d).

“Scotiabank” has the meaning assigned to such term in the recitals.

“SEC” means the Securities and Exchange Commission or any successor Governmental Authority.

“Secured Cash Management Agreement” means a Cash Management Agreement between (a) any Credit Party or any Restricted Subsidiary and (b) a Secured Cash Management Provider.

“Secured Cash Management Obligations” means any and all amounts and other obligations owing by any Credit Party or any Restricted Subsidiary to any Secured Cash Management Provider under any Secured Cash Management Agreement.

“Secured Cash Management Provider” means a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent.

“Secured Obligations” means, without duplication, any and all amounts owing or to be owing by the Borrower or any other Credit Party (whether direct or indirect (including those acquired by assumption or novation), absolute or contingent, due or to become due, now existing or hereafter arising): (a) to the Administrative Agent, the Arrangers, any Issuing Bank or any Lender or any Related Party of any of the foregoing under any Loan Document; and all renewals, extensions and/or rearrangements of any of the above, (b) all Secured Swap Obligations and (c) all Secured Cash Management Obligations. For the avoidance of doubt, Secured Obligations shall include all (a) principal of and premium, if any, on the Loans, (b) LC Disbursements, LC Exposure, reimbursement obligations (including, without limitation, to reimburse LC Disbursements), obligations to post cash collateral in respect of Letters of Credit and other obligations of the Credit Parties with respect to Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by the Credit Parties under Loan Documents (including, without limitation, interest accruing at the then applicable rate provided in this Agreement after the maturity of the Loans and LC Exposure and interest accruing at the then applicable rate provided in this Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Credit Parties, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), (d) payments in respect of an early termination of Secured Swap Obligations, (e) Erroneous Payment Subrogation Rights and (f) other Debts, amounts, fees, expenses, indemnities, costs, obligations and liabilities of any kind owing by Credit Parties pursuant to the Loan Documents, any Secured Swap Agreement or any Secured Cash Management Agreement, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Issuing Banks, the Secured Swap Parties, the Secured Cash Management Providers and for purposes of Section 12.03(b), each Related Party thereof.

“Secured Swap Agreement” means any Swap Agreement between any Credit Party or any Restricted Subsidiary and any Secured Swap Party; provided that with respect to ABN AMRO BANK N.V. and its Affiliates, only the transactions existing as of the Effective Date under Swap Agreements shall be Secured Swap Agreements.

“Secured Swap Obligations” means all amounts and other obligations owing to any Secured Swap Party under any Secured Swap Agreement (other than Excluded Swap Obligations).

“Secured Swap Party” means any (a) Person that is a party to a Swap Agreement with any Credit Party or any Restricted Subsidiary that entered into such Swap Agreement before or while such Person was a Lender or an Affiliate of a Lender, whether or not such Person at any time ceases to be a Lender or an Affiliate of a Lender, as the case may be, (b) assignee of any Person described in clause (a) above so long as such assignee is a Lender or an Affiliate of a Lender at the time of such assignment or (c) Person that, only in respect of the transactions under the Specified Swap Agreements in effect on the Effective Date, is ABN AMRO BANK N.V. or any Affiliate thereof.

“Securities Account” has the meaning assigned to such term in the UCC.

“Security Instruments” means collectively (a) the Guaranty and Collateral Agreement, (b) the Mortgages, (c) each Account Control Agreement and (d) any and all other agreements or instruments now or hereafter executed by the Borrower or any other Credit Party (other than Secured Swap Agreements or Secured Cash Management Agreements or participation or similar agreements between any Lender and any other lender or creditor with respect to any Secured Obligations pursuant to this Agreement) pursuant to Section 8.11 or Section 8.14 in connection with, or as security for the payment or performance of the Secured Obligations, the Notes, this Agreement, or reimbursement obligations under the Letters of Credit, as such agreements may be amended, modified, supplemented or restated from time to time.

“Service Agreement Undertakings” means agreements, with a tenor exceeding six (6) months from the applicable date of determination, to pay fees and other consideration in respect of agreed quantities of marketing, transportation and/or other services in connection with reasonably anticipated (i) production from Oil and Gas Properties of the Borrower and the Restricted Subsidiaries and (ii) associated production of non-operators and royalty and similar interest owners, in each case which fees and other consideration are payable whether or not such services are utilized.

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“SOFR” means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

“Solvency Certificate” means the Solvency Certificate substantially in the form of Exhibit H.

“Solvent” means with respect to any Person, that (a) the aggregate assets of such Person at a fair valuation exceed the aggregate Debt of such Person, (b) such Person has not incurred, and does not intend to incur, and does not believe that they will incur or have incurred Debt beyond their ability to pay such Debt (after taking into account the timing and amounts of cash to be received by such Person and the timing and amounts to be payable on or in respect of such Person’s liabilities) as such Debt becomes absolute and matures, and (c) such Person does not have (and does not have reason to believe such Person will have at any time) unreasonably small capital for the conduct of its business.

“Specified Quarter” has the meaning set forth in the definition of Available Free Cash Flow.

“Specified Swap Agreements” means those Swap Agreements listed on Schedule 1.02(c), solely to the extent of transactions arising under such Swap Agreements which were in existence on the Effective Date.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject, with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Strip Price” means, as of any date, (a) for the 60-month period commencing with the month in which such date occurs, as quoted on the New York Mercantile Exchange (the “NYMEX”) and published in a nationally recognized publication for such pricing reasonably acceptable to the Administrative Agent (as such prices may be corrected or revised from time to time by the NYMEX in accordance with its rules and regulations), the corresponding monthly quoted futures contract price for months 0–60 and (b) for periods after such 60 month period, the average corresponding monthly quoted futures contract price for months 49–60; provided, however, in the event that the NYMEX no longer provides futures contract price quotes for 60 month periods, the longest period of quotes of less than 60 months shall be used to determine the strip period and held constant thereafter based on the average of contract prices for the last twelve months of such period, and, if the NYMEX no longer provides such futures contract quotes or has ceased to operate, the Administrative Agent shall designate another nationally recognized commodities exchange to replace the NYMEX for purposes of the references to the NYMEX herein which in the Administrative Agent’s reasonable opinion is the most comparable exchange to the NYMEX at such time.

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“Subordinated Intercompany Note” shall mean the Subordinated Intercompany Note, substantially in the form of Exhibit M.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any other Person (a) of which Equity Interests representing more than 50% of the ordinary voting power for the election of the board of directors (or equivalent governing body) (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) or, in the case of a partnership, any general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, in each case, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of the Borrower.

“Subsidiary Guarantor” means each Restricted Subsidiary of the Borrower that is a Guarantor.

“Successful Midstream Resolution” means (a) the Bankruptcy Court or another court of competent jurisdiction shall have entered one or more Final Orders or the Credit Parties shall have obtained a consensual resolution, in each case, in a form and substance satisfactory to the Administrative Agent by which (i) the future firm transport demand reservation fees owed by the Credit Parties over the life of all the firm transportation agreements of the Credit Parties, in effect on or prior to the Effective Date, taken as a whole, shall be permanently reduced by at least 50% of the amount of all such fees owed on October 31, 2020, as calculated on a net present value basis, discounted at 10% per annum and (ii) the future firm transportation average daily demand reservation volumes over the life of all the firm transportation agreements as of October 31, 2020, of the Credit Parties, taken as a whole, shall be permanently reduced by at least 35% and (b) the Borrower shall have provided to the Administrative Agent a certificate certifying to the occurrence of the events described in clause (a).

“Super Majority Revolving Credit Lenders” means, at any time while no Loans or LC Exposure is outstanding, Revolving Credit Lenders having more than eighty percent (80%) of the Aggregate Maximum Revolving Credit Amounts; and at any time while any Loans or LC Exposure is outstanding, Revolving Credit Lenders holding more than eighty percent (80%) of the outstanding aggregate principal amount of the Revolving Loans and participation interests in Letters of Credit (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)); provided that the Maximum Revolving Credit Amount, the Revolving Credit Commitments and the outstanding principal amount of the Loans of, and the participation interests in Letters of Credit held by, each Defaulting Lender (if any) shall be excluded from the determination of Super Majority Revolving Credit Lenders to the extent set forth in Section 4.04(b)(ii).

“Swap Agreement” means any transaction or agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, “over-the-counter” or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, emissions reduction, carbon sequestration or other environmental protection credits, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that none of (i) phantom stock nor similar plans providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Credit Parties or the Restricted Subsidiaries nor (ii) the issuance of preferred stock or the issuance of Equity Interests upon conversion of any preferred stock nor (iii) capped call nor call spread arrangements entered into in connection with convertible notes otherwise permitted to be issued hereunder nor (iv) deferred purchase price or purchase price adjustment arrangements entered into in connection with any acquisition permitted hereunder shall be a Swap Agreement. Notwithstanding the foregoing, ‘Swap Agreement’ shall not include any agreement or obligation to sell, at an index-based price, any commodity that is intended to be physically settled and is entered into in the ordinary course as part of the Borrower’s or its Restricted Subsidiaries’ marketing business.

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“Swap Obligations” means, with respect to the Borrower or any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap PV” means, with respect to any Swap Agreement, the present value as of the applicable measurement date, discounted at 9% per annum, of the future receipts expected to be paid to the Credit Parties or any Restricted Subsidiary under such Swap Agreement netted against the Bank Price Deck in effect as of the later of the Effective Date and the date of the most recent Proposed Borrowing Base Notice, as reasonably determined by the Administrative Agent; provided, however, that the “Swap PV” shall never be less than \$0.00.

“Swap Termination Value” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (i) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (ii) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined by the counterparties to such Swap Agreements.

“Synthetic Leases” means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, treated as operating leases on the financial statements of the Person liable (whether contingently or otherwise) for the payment of rent thereunder and which were properly treated as indebtedness for borrowed money for purposes of United States federal income Taxes, if the lessee in respect thereof is obligated to either purchase for an amount in excess of, or pay upon early termination an amount in excess of, 80% of the residual value of the Property subject to such operating lease upon expiration or early termination of such lease.

“Take-Back Notes” means the senior unsecured notes due 2026 in an aggregate amount not to exceed \$550,000,000 and issued on the Effective Date (the “Take-Back Notes”).

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings (including backup withholding) imposed, administered or assessed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Lenders” means, at any time, collectively, each Person that holds Term Loans, and “Term Lender” means any of them individually.

“Term Loan Notes” means the promissory notes of the Borrower required by Section 2.02(d) evidencing the Term Loans and being substantially in the form of Exhibit A-2.

“Term Loans” means the term loans deemed made to the Borrower by the Term Lenders on the Effective Date pursuant to the Plan of Reorganization and Section 2.01(a) as part of the restructuring and rearrangement of the Borrower’s debt arising under the Prepetition Credit Agreement or DIP Credit Agreement, or any portion thereof, as the context requires, in the aggregate principal amount of \$180,000,000 as of the Effective Date.

“Term SOFR” means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

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“Termination Date” means (a) with respect to the Revolving Loans, the earlier of (i) the Maturity Date of the Revolving Loans and (ii) the date of termination of the Revolving Credit Commitments and (b) with respect to the Term Loans, the Maturity Date of the Term Loans.

“Total Net Funded Debt” means, on any date of determination, means, as of any date of determination, for the Borrower and its Restricted Subsidiaries on a consolidated basis, (i) the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Secured Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Debt, (c) all direct obligations arising under letters of credit (including standby and commercial), bankers’ acceptances, and bank guaranties, in each case, but only to the extent of any unreimbursed drawings thereunder, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) Debt in respect of Capital Lease Obligations, (f) without duplication, all guarantees with respect to outstanding Debt of the types specified in clauses (a) through (e) above of Persons

other than the Borrower or any Restricted Subsidiary, and (g) all Debt of the types referred to in clauses (a) through (f) above of any partnership or other entity where owners of Equity Interests thereof have liability for the obligations of such entity in which the Borrower or a Restricted Subsidiary is a general partner or owner of such Equity Interests, unless (1) such Debt is expressly made non-recourse to the Borrower or such Restricted Subsidiary, or (2) such Debt is owed by such entity to the owners of the Equity Interests thereof, *minus* (ii) the amount of cash and short-term investments of Borrower and its Restricted Subsidiaries at the end of the relevant fiscal quarter with respect to which the Net Funded Leverage Ratio is being calculated, not to exceed \$30,000,000 in the aggregate. For avoidance of doubt, Total Net Funded Debt does not include Wexford ULC Obligations.

“Total Net Senior Secured Debt” means, as of any date of determination, for the Borrower and its Restricted Subsidiaries on a consolidated basis, the amount equal to the sum, without duplication, of (i) (x) the Secured Obligations to the extent described in clause (a) of the definition thereof, (y) the face amount of all Letters of Credit, and (z) any other Total Net Funded Debt described in clause (i) of the definition thereof that constitutes senior Debt secured by a Lien on assets or property of the Borrower or its Restricted Subsidiaries as of such date, *minus*, without duplication, (ii) the amount of cash and short-term investments of Borrower and its Restricted Subsidiaries at the end of the relevant fiscal quarter with respect to which the Net Senior Secured Leverage Ratio is being calculated, not to exceed \$30,000,000 in the aggregate.

“Transactions” means, with respect to (a) the Borrower, the execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder, and the grant of Liens by the Borrower on Mortgaged Properties and other Properties pursuant to the Security Instruments, (b) each Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Secured Obligations under the Guaranty and Collateral Agreement by such Guarantor and such Guarantor’s grant of the security interests and provision of collateral under the Security Instruments, and the grant of Liens by such Guarantor on Mortgaged Properties and other Properties pursuant to the Security Instruments, (c) the effectiveness and consummation of the Plan of Reorganization pursuant to the Confirmation Order and (d) each Credit Party, the payment of fees and expenses in connection with all of the foregoing.

“Treasury Regulations” means the Treasury regulations promulgated under the Code, as amended from time to time.

“Type” means, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Alternate Base Rate or the Adjusted LIBO Rate.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 5.03(e)(ii)(B)(3).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unrestricted Subsidiary” means any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary after the date hereof in accordance with, and subject to the satisfaction of the conditions set forth in, Section 1.06.

“Weighted Average Life to Maturity” shall mean, when applied to any Debt at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Debt.

“Wexford ULC Obligations” means any obligations which Grizzly Holdings, Inc. (a Restricted Subsidiary Controlled by Borrower) may owe to Grizzly Oil Sands Inc. (an entity Controlled by Wexford Capital LP) arising by virtue of the fact that both Grizzly Holdings, Inc. and Grizzly Oil Sands Inc. are owners of Equity Interests in Grizzly Oil Sands.

“Wholly-Owned Subsidiary” means any Restricted Subsidiary of which all of the outstanding Equity Interests (other than any directors’ qualifying shares mandated by applicable law), on a fully-diluted basis, are owned by the Borrower or one or more of the Wholly-Owned Subsidiaries of the Borrower or are owned by the Borrower and one or more of the Wholly-Owned Subsidiaries of the Borrower.

“Withholding Agent” means any Credit Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.03 Types of Loans and Borrowings For purposes of this Agreement, Loans and Borrowings, respectively, may be classified and referred to by Type (e.g., a “Eurodollar Loan” or a “Eurodollar Borrowing”).

Section 1.04 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated, replaced, substituted or otherwise modified (subject to any restrictions on such amendments, supplements, restatements, replacements, substitutions or modifications set forth in the Loan Documents), (b) any reference herein to any law shall be construed as referring to such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained in the Loan Documents), (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including” and (f) any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement. No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.05 Accounting Terms and Determinations; GAAP. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the Administrative Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent with the Financial Statements except for changes in which the Borrower's independent certified public accountants concur and which are disclosed to the Administrative Agent on the next date on which financial statements are required to be delivered to the Lenders pursuant to Section 8.01(a); provided that, unless the Borrower and the Majority Lenders shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants set forth in Section 9.01 are computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods. In the event that any Accounting Change shall occur and such change results in a change in the method or result of calculation of financial covenants, standards or terms, then the Lenders and the Credit Parties shall enter into negotiations in order to amend such provisions of the Loan Documents so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Credit Parties' financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Credit Parties, the Administrative Agent and the Majority Lenders, all financial covenants, standards and terms in the Loan Documents shall continue to be calculated or construed as if such Accounting Changes had not occurred.

Section 1.06 Designation and Conversion of Restricted and Unrestricted Subsidiaries.

(a) Unless designated in writing to the Administrative Agent by the Borrower in accordance with clause (b) below, any Person that becomes a Subsidiary of the Borrower or any of its Restricted Subsidiaries after the date hereof (whether by formation, acquisition or merger) shall be classified as a Restricted Subsidiary. On the date hereof, all Subsidiaries of the Borrower are Restricted Subsidiaries.

(b) Beginning on the date on which the first financial statements have been delivered pursuant to Section 8.01(b), the Borrower may designate, by prior or concurrent written notice thereof to the Administrative Agent, any Restricted Subsidiary (including a newly formed or newly acquired Subsidiary) as an Unrestricted Subsidiary, provided that (i) both before, and immediately after giving effect, to such designation, (A) no Default, Event of Default or Borrowing Base Deficiency exists or would result from such designation, (B) the Pro Forma Net Leverage Ratio shall not exceed 2.00 to 1.00 and the Borrower shall be in compliance, on a pro forma basis, with the financial covenant set forth in Section 9.01(c) (determined on a pro forma basis using Current Assets and Current Liabilities as of the last day of the Borrower's most recently ended fiscal quarter for which financial statements have been delivered pursuant to Section 8.01(a) or (b)) and (C) the representations and warranties of the Credit Parties and the Restricted Subsidiaries contained in this Agreement and each of the other Loan Documents shall be true and correct in all material respects (except that any representation and warranty that is qualified by materiality shall be true and correct in all respects) on and as of such date as if made on and as of the date of such designation (or, if stated to have been made expressly as of an earlier date, were true and correct in all material respects (except that any representation and warranty that is qualified by materiality shall be true and correct in all respects) as of such date); (ii) such Subsidiary is not a "restricted subsidiary" for purposes of any indenture or other agreement governing Debt of the Credit Parties or a Restricted Subsidiary; (iii) such designation shall be deemed to be an Investment in an amount equal to the fair market value of the Borrower's direct and indirect ownership interest in such Subsidiary on the date of such designation and such designation shall be permitted only to the extent such Investment is permitted under Section 9.05 on the date of such designation; (iv) such designation shall be deemed to be a Disposition pursuant to which the provisions of Section 2.07(f) shall apply; (v) after giving effect to such designation, the Borrower is in compliance with the requirements of Section 9.20; and (vi) the Administrative Agent shall have received a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying as to the satisfaction of the conditions and matters set forth in clauses (i) through (v) above (and in the case of clause (i)(B) above, setting forth reasonably detailed calculations demonstrating that the Pro Forma Net Leverage Ratio will not exceed 2.00 to 1.00 and the Borrower will be in compliance, on a pro forma basis, with the financial covenant set forth in Section 9.01(c) (determined on a pro forma basis using Current Assets and Current Liabilities as of the last day of the Borrower's most recently ended fiscal quarter for which financial statements have been delivered pursuant to Section 8.01(a) or (b))). Except as provided in this Section 1.06, no Subsidiary may be designated (and no Restricted Subsidiary may be redesignated) as an Unrestricted Subsidiary.

(c) If, at any time, any Unrestricted Subsidiary would fail to meet the requirements for an Unrestricted Subsidiary set forth in Section 9.20, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement (and, for the avoidance of doubt, any Investment, Debt and Liens of such Subsidiary existing at such time shall be deemed to be incurred by such Subsidiary as of such time and, if such Investments, Debt and Liens are not permitted to be incurred as of such time under Article IX, an Event of Default shall occur).

(d) Beginning on the date on which the first financial statements have been delivered pursuant to Section 8.01(b), the Borrower may designate, by prior or concurrent written notice thereof to the Administrative Agent any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that (i) both before, and immediately after giving effect, to such designation, (A) no Default, Event of Default or Borrowing Base Deficiency exists or would result from such designation, (B) the Pro Forma Net Leverage Ratio shall not exceed 2.00 to 1.00 and the Borrower shall be in compliance, on a pro forma basis, with the financial covenant set forth in Section 9.01(c) (determined on a pro forma basis using Current Assets and Current Liabilities as of the last day of the Borrower's most recently ended fiscal quarter for which financial statements have been delivered pursuant to Section 8.01(a) or (b)) and (C) the representations and warranties of the Credit Parties and the Restricted Subsidiaries contained in this Agreement and each of the other Loan Documents shall be true and correct in all material respects (except that any representation and warranty that is qualified by materiality shall be true and correct in all respects) on and as of such date as if made on and as of the date of such designation (or, if stated to have been made expressly as of an earlier date, were true and correct in all material respects (except that any representation and warranty that is qualified by materiality shall be true and correct in all respects) as of such date), (ii) the designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Investment, Debt, or Liens of such Subsidiary existing at such time, and the Borrower shall be in compliance with Article IX after giving effect to such designation, (iii) immediately after giving effect to such designation, the Borrower and such Subsidiary shall be in compliance with the requirements of Section 8.14 and (iv) the Administrative Agent shall have received a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying as to the satisfaction of the conditions and matters set forth in clauses (i)-(iii) above (and in the case of clause (i)(B) above, setting forth reasonably detailed calculations demonstrating that the Pro Forma Net Leverage Ratio will not exceed 2.00 to 1.00 and the Borrower will be in compliance, on a pro forma basis, with the financial covenant set forth in Section 9.01(c) (determined on a pro forma basis using Current Assets and Current Liabilities as of the last day of the Borrower's most recently ended fiscal quarter for which financial statements have been delivered pursuant to Section 8.01(a) or (b))).

Section 1.07 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II The Credits

Section 2.01 Term Loans and Revolving Credit Commitments.

(a) Term Loans. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Prepetition Lender that is a

party hereto on the Effective Date severally agrees to restructure and rearrange a portion of the Debt owing to it under the Prepetition Credit Agreement and the DIP Credit Agreement as a Term Loan hereunder in an amount for each such Prepetition Lender equal to such Prepetition Lender's pro rata share of \$180,000,000 of Term Loans as set forth on Annex I attached hereto. The Term Loans shall be deemed to be made in a single advance on the Effective Date. Once repaid or prepaid, in whole or in part, the Term Loans may not be reborrowed. No Term Lender shall have any commitment to make (or assume) any Term Loans other than as described in this Section 2.01(a).

(b) Revolving Credit Commitments.

(i) On the Effective Date, subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Prepetition Lender severally agrees to restructure and rearrange the portion of the Debt owing to it under the Prepetition Credit Agreement and the DIP Credit Agreement that is not restructured and rearranged as Term Loans pursuant to Section 2.01(a) as Revolving Loans hereunder by committing to make, from time to time in accordance with clause (ii) below, Revolving Loans to the Borrower hereunder in an amount equal to the lesser of (x) such Revolving Credit Lender's Maximum Revolving Credit Amount and (y) such Revolving Credit Lender's Revolving Credit Commitment. On the Effective Date, pursuant to the Plan of Reorganization, Revolving Loans shall be deemed to be advanced by the Revolving Credit Lenders in an aggregate principal amount equal to the Debt owing under the Prepetition Credit Agreement *less* the amount of the Debt owing under the Prepetition Credit Agreement that is repaid on the Effective Date *less* the amount of the Term Loans advanced pursuant to Section 2.01(a), and such amount is \$122,750,636.

(ii) Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make Revolving Loans to the Borrower during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Credit Commitment or (b) the total Revolving Credit Exposures exceeding the total Revolving Credit Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, repay and reborrow the Revolving Loans.

(c) Notwithstanding anything herein to the contrary, the restructuring and rearrangement of the Debt under the Prepetition Credit Agreement and the DIP Credit Agreement pursuant to this Agreement shall fully and finally convert the RBL Claims and Allowed DIP Claims (each as defined in the Plan of Reorganization) of each Lender party hereto.

Section 2.02 Loans and Borrowings.

(a) Borrowings; Several Obligations. Each Loan shall be made as part of a Borrowing consisting of Loans made or deemed made by the Lenders ratably in accordance with their respective Applicable Revolving Credit Percentages and Applicable Term Loan Percentages, as applicable. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Revolving Credit Commitments are several and no Lender shall be responsible for any other Lender's failure to make Revolving Loans as required.

(b) Types of Loans. Subject to Section 3.03, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Minimum Amounts; Limitation on Number of Borrowings. At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$250,000 and not less than \$1,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Revolving Credit Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.08(e). Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of ten Eurodollar Borrowings outstanding. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(d) Notes. Upon the request of a Lender, the Loans made by such Lender shall be evidenced by a Revolving Credit Note and/or Term Loan Note, as applicable, of the Borrower in substantially the form of Exhibit A-1 and Exhibit A-2, dated (i) as of the date of this Agreement in the case of any Lender party hereto as of the date of this Agreement, (ii) as of the effective date of the Assignment and Assumption in the case of any Lender that becomes a party hereto pursuant to an Assignment and Assumption and (iii) in the case of any Lender that becomes a party hereto in connection with an increase in the Aggregate Elected Commitment Amounts pursuant to Section 2.06(c), as of the effective date of such increase, in each case payable to such Lender in a principal amount equal to its Maximum Revolving Credit Amount as in effect on such date or the principal amount of the Term Loans held by such Lender, and otherwise duly completed. In the event that any Lender's Maximum Revolving Credit Amount increases or decreases for any reason (whether pursuant to Section 2.06, Section 12.04(b) or otherwise), the Borrower shall, upon the request of such Lender, deliver or cause to be delivered on the effective date of such increase or decrease, a new Note payable to such Lender in a principal amount equal to its Maximum Revolving Credit Amount after giving effect to such increase or decrease, and otherwise duly completed, and such Lender shall promptly return to the Borrower the previously issued Note held by such Lender. In the event any Term Lender's share of the outstanding Term Loans increases for any reason (whether pursuant to Section 12.04(b) or otherwise), the Borrower shall, upon request of such Term Lender, deliver or cause to be delivered, to the extent such Term Lender is then holding a Term Loan Note, on the effective date of such increase, a new Term Loan Note payable to such Term Lender or its registered assigns in a principal amount equal to such Term Lender's outstanding Term Loans as of such date. The date, amount, Type, interest rate and, if applicable, Interest Period of each Term Loan and Revolving Loan made by each Term Lender and Revolving Credit Lender, respectively, and all payments made on account of the principal thereof, shall be recorded by such Term Lender or Revolving Credit Lender, as applicable, on its books for such Term Lender's Term Loan Note and such Revolving Credit Lender's Revolving Credit Note, as applicable. Failure to make any such recordation shall not affect any Lender's or the Borrower's rights or obligations in respect of such Loans or affect the validity of any transfer by any Lender of its Term Loan Note and/or Revolving Credit Note.

Section 2.03 Requests for Borrowings. Each Borrowing shall be subject to each of the conditions set forth in Section 6.02. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., Houston time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 10:00 a.m., Houston time, on the date of the proposed Borrowing; provided that no such notice shall be required for any deemed request of an ABR Borrowing to finance the reimbursement of an LC Disbursement as provided in Section 2.08(e). Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, fax or electronic communication to the Administrative Agent of a written Borrowing Request signed by the Borrower; provided that any Borrowing requested on or prior to the Effective Date may be conditioned on the occurrence of the Effective Date. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(a) the aggregate amount of the requested Borrowing (and, with respect to the Borrowing Request on the Effective Date, the amount of the requested Term Loan Borrowing and the amount of the requested Revolving Loan Borrowing);

(b) the date of such Borrowing, which shall be a Business Day;

(c) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(d) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

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(e) the amount of the then effective Borrowing Base, the amount of the then effective Aggregate Elected Commitment Amounts, the current total Revolving Credit Exposures (without regard to the requested Borrowing) and the pro forma total Revolving Credit Exposures (giving effect to the requested Borrowing);

(f) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.05; and

(g) each of the conditions set forth in Section 6.02 has been satisfied.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Each Borrowing Request shall constitute a representation by the Borrower that the amount of the requested Borrowing shall not cause the total Revolving Credit Exposures to exceed the total Revolving Credit Commitments (*i.e.*, the least of (A) the Aggregate Maximum Revolving Credit Amounts less the aggregate principal amount of Term Loans then outstanding, (B) the then effective Borrowing Base and (C) the then effective Aggregate Elected Commitment Amounts).

Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 Interest Elections.

(a) Conversion and Continuance. Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) Interest Election Requests. To make an election pursuant to this Section 2.04, the Borrower shall deliver to the Administrative Agent by hand delivery, fax or electronic communication an Interest Election Request signed by the Borrower by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable.

(c) Information in Interest Election Requests. Each telephonic and written Interest Election Request shall specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to Section 2.04(c)(iii) and (iv) shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

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(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Notice to Lenders by the Administrative Agent. Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Effect of Failure to Deliver Timely Interest Election Request and Events of Default and Borrowing Base Deficiencies on Interest Election If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, (i) if an Event of Default has occurred and is continuing: (A) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing (and any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective) and (B) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto; and (ii) if a Borrowing Base Deficiency exists: (A) outstanding Borrowings in excess of the Borrowing Base then in effect may not be converted or continued as Eurodollar Borrowings and (B) unless sooner repaid, any Eurodollar Borrowing in excess of the Borrowing Base then in effect shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.05 Funding of Borrowings.

(a) Funding by Lenders. Except in respect of Revolving Loans deemed made on the Effective Date, each Revolving Credit Lender shall make each Revolving Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., Houston time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Revolving Credit Lenders. The Administrative Agent will make such Revolving Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to a Deposit Account of the Borrower subject to an Account Control Agreement and designated by the Borrower in the applicable Borrowing Request; provided that ABR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.08(e) shall be remitted by the Administrative Agent to the Issuing Bank that made such LC Disbursement. Nothing herein shall be deemed to obligate any Revolving Credit Lender to obtain the funds for its Revolving Loan in any particular place or manner or to constitute a representation by any Revolving Credit Lender that it has obtained or will obtain the funds for its Revolving Loan in any particular place or manner.

(b) Presumption of Funding by the Lenders. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.05(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period.

Section 2.06 Termination and Reduction of Aggregate Maximum Revolving Credit Amounts; Increase, Reduction and Termination of Aggregate Elected Commitment Amounts.

(a) Scheduled Termination of Commitments. Unless previously terminated, the Maximum Revolving Credit Amounts shall terminate on the Maturity Date. If at any time the Aggregate Maximum Revolving Credit Amounts or the Borrowing Base are terminated or reduced to zero, then the Revolving Credit Commitments shall terminate or reduce on the effective date of such termination or reduction.

(b) Optional Termination and Reduction of Aggregate Maximum Revolving Credit Amounts.

(i) The Borrower may at any time terminate, or from time to time reduce, the Aggregate Maximum Revolving Credit Amounts provided that (A) each reduction of the Aggregate Maximum Revolving Credit Amounts shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000, (B) the Borrower shall not terminate or reduce the Aggregate Maximum Revolving Credit Amounts if, (1) after giving effect to any concurrent prepayment of the Loans in accordance with Section 3.04(c), the total Revolving Credit Exposures would exceed the total Revolving Credit Commitments or (2) the Aggregate Maximum Revolving Credit Amount would be less than \$5,000,000 (unless, with respect to this clause (2), the Aggregate Maximum Revolving Credit Amounts are reduced to \$0) and (C) upon any reduction of the Aggregate Maximum Revolving Credit Amounts that would otherwise result in the Aggregate Maximum Revolving Credit Amounts being less than the Aggregate Elected Commitment Amounts, the Aggregate Elected Commitment Amounts shall be automatically reduced (ratably among the Lenders in accordance with each Lender's Applicable Revolving Credit Percentage) so that they equal the Aggregate Maximum Revolving Credit Amounts as so reduced.

(ii) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Aggregate Maximum Revolving Credit Amounts under Section 2.06(b)(i) by delivery of a notice of cancellation in substantially the form of Exhibit J hereto at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.06(b)(ii) shall be irrevocable; provided that a notice of reduction or termination of the Aggregate Maximum Revolving Credit Amounts delivered by the Borrower may state that such notice is conditioned upon (i) the effectiveness of other credit facilities or other securities offerings or (ii) the consummation of a Change in Control, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Aggregate Maximum Revolving Credit Amounts shall be permanent and may not be reinstated. Each reduction of the Aggregate Maximum Revolving Credit Amounts shall be made ratably among the Lenders in accordance with each Lender's Applicable Revolving Credit Percentage.

(c) Increases, Reductions and Terminations of Aggregate Elected Commitment Amounts.

(i) Subject to the conditions set forth in Section 2.06(c)(ii), the Borrower may increase the Aggregate Elected Commitment Amounts then in effect by increasing the Elected Commitment of a Lender and/or by causing a Person that is acceptable to the Administrative Agent that at such time is not a Lender to become a Lender (any such Person that is not at such time a Lender and becomes a Lender, an "Additional Lender"). Notwithstanding anything to the contrary contained in this Agreement, in no case shall an Additional Lender be a natural person, the Borrower or any Affiliate of the Borrower.

(ii) Any increase in the Aggregate Elected Commitment Amounts shall be subject to the following additional conditions:

(A) such increase shall not be less than \$15,000,000 unless the Administrative Agent otherwise consents, and no such increase shall be permitted if after giving effect thereto the Aggregate Elected Commitment Amounts exceed the Borrowing Base then in effect;

(B) following any Scheduled Redetermination Date, the Borrower may not increase the Aggregate Elected Commitment Amounts more than once before the next Scheduled Redetermination Date (for the sake of clarity, all increases in the Aggregate Elected Commitment Amount effective on a single date shall be deemed a single increase in the Aggregate Elected Commitment Amount for purposes of this Section 2.06(c)(ii)(B));

(C) no Default or Event of Default shall have occurred and be continuing on the effective date of such increase;

(D) on the effective date of such increase, no Eurodollar Borrowings shall be outstanding or if any Eurodollar Borrowings are outstanding, then the effective date of such increase shall be the last day of the Interest Period in respect of such Eurodollar Borrowings unless the Borrower pays any compensation required by Section 5.02;

(E) no Lender's Elected Commitment may be increased without the consent of such Lender;

(F) if the Borrower elects to increase the Aggregate Elected Commitment Amounts by increasing the Elected Commitment of a Lender, the Borrower and such Lender shall execute and deliver to the Administrative Agent a certificate substantially in the form of Exhibit K (an "Elected Commitment Increase Certificate"); and

(G) if the Borrower elects to increase the Aggregate Elected Commitment Amounts by causing an Additional Lender to become a party to this Agreement, then the Borrower and such Additional Lender shall execute and deliver to the Administrative Agent a certificate substantially in the form of Exhibit L (an "Additional Lender Certificate"), together with an Administrative Questionnaire and a processing and recordation fee of \$3,500 (provided that the Administrative Agent may, in its discretion, elect to waive such processing and recordation fee in connection with any such increase), and the Borrower shall (1) if requested by the Additional Lender, deliver a Note payable to such Additional Lender in a principal amount equal to its Maximum Credit Amount, and otherwise duly completed and (2) pay any applicable fees as may have been agreed to between the Borrower and the Additional Lender, and, to the extent

applicable and agreed to by the Borrower, the Administrative Agent.

(iii) Subject to acceptance and recording thereof pursuant to Section 2.06(c)(iv), from and after the effective date specified in the Elected Commitment Increase Certificate or the Additional Lender Certificate (or if any Eurodollar Borrowings are outstanding, then the last day of the Interest Period in respect of such Eurodollar Borrowings, unless the Borrower has paid any compensation required by Section 5.02): (A) the amount of the Aggregate Elected Commitment Amounts shall be increased as set forth therein, and (B) in the case of an Additional Lender Certificate, any Additional Lender party thereto shall be a party to this Agreement and have the rights and obligations of a Lender under this Agreement and the other Loan Documents. In addition, the Lender or the Additional Lender, as applicable, shall purchase a pro rata portion of the outstanding Revolving Loans (and participation interests in Letters of Credit) of each of the other Revolving Credit Lenders (and such Revolving Credit Lenders hereby agree to sell and to take all such further action to effectuate such sale) such that each Revolving Credit Lender (including any Additional Lender, if applicable) shall hold its Applicable Percentage of the outstanding Loans (and participation interests) after giving effect to the increase in the Aggregate Elected Commitment Amounts (and the resulting modifications of each Lender's Maximum Revolving Credit Amount pursuant to Section 2.06(c)(iv) or Section 2.06(c)(v)).

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(iv) Upon its receipt of a duly completed Elected Commitment Increase Certificate or an Additional Lender Certificate, executed by the Borrower and the Revolving Credit Lender or by the Borrower and the Additional Lender party thereto, as applicable, the processing and recording fee referred to in Section 2.06(c)(ii), if required, the Administrative Questionnaire referred to in Section 2.06(c)(ii) and the break-funding payments from the Borrower, if any, required by Section 5.02, if applicable, the Administrative Agent shall accept such Elected Commitment Increase Certificate or Additional Lender Certificate and record the information contained therein in the Register required to be maintained by the Administrative Agent pursuant to Section 12.04(b)(iv). No increase in the Aggregate Elected Commitment Amounts shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 2.06(c)(iv).

(v) Upon any increase in the Aggregate Elected Commitment Amounts pursuant to Section 2.06(c)(iv), (A) each Lender's Maximum Revolving Credit Amount shall be automatically deemed amended to the extent necessary so that each such Lender's Applicable Revolving Credit Percentage equals the percentage of the Aggregate Elected Commitment Amounts represented by such Lender's Elected Commitment, in each case after giving effect to such increase, and (B) Annex I to this Agreement shall be deemed amended to reflect the Elected Commitment of each Lender (including any Additional Lender) as thereby increased, any changes in the Lenders' Maximum Revolving Credit Amounts pursuant to the foregoing clause (A), and any resulting changes in the Lenders' Applicable Revolving Credit Percentages.

(vi) The Borrower may from time to time terminate or reduce the Aggregate Elected Commitment Amounts; provided that (A) each reduction of the Aggregate Elected Commitment Amounts shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (B) the Borrower shall not reduce the Aggregate Elected Commitment Amounts if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 3.04(c), the total Revolving Credit Exposures would exceed the Aggregate Elected Commitment Amounts as reduced.

(vii) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Aggregate Elected Commitment Amounts under Section 2.06(c)(vi) at least three Business Days prior to the effective date of such termination or reduction (or such lesser period as may be reasonably acceptable to the Administrative Agent), specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.06(c)(vii) shall be irrevocable; *provided* that a notice of termination of the Aggregate Elected Commitment Amounts delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or the closing of a specified transaction, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date of such termination) if such condition is not satisfied. Any termination or reduction of the Aggregate Elected Commitment Amounts shall be permanent and may not be reinstated, except pursuant to Section 2.06(c)(i). Each reduction of the Aggregate Elected Commitment Amounts shall be made ratably among the Lenders in accordance with each Lender's Applicable Revolving Credit Percentage.

(viii) Upon any redetermination or other adjustment in the Borrowing Base pursuant to this Agreement that would otherwise result in the Borrowing Base becoming less than the Aggregate Elected Commitment Amounts, the Aggregate Elected Commitment Amounts shall be automatically reduced (ratably among the Lenders in accordance with each Lender's Applicable Revolving Credit Percentage) so that they equal such redetermined Borrowing Base (and Annex I shall be deemed amended to reflect such amendments to each Lender's Elected Commitment and the Aggregate Elected Commitment Amounts).

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(ix) Contemporaneously with any increase in the Borrowing Base pursuant to this Agreement, if (A) the Borrower elects to increase the Aggregate Elected Commitment Amount and (B) each Lender has consented to such increase in its Elected Commitment, then the Aggregate Elected Commitment Amount shall be increased (ratably among the Lenders in accordance with each Lender's Applicable Revolving Credit Percentage) by the amount requested by the Borrower without the requirement that any Lender deliver an Elected Commitment Increase Certificate or that the Borrower pay any amounts under Section 5.02, and Annex I shall be deemed amended to reflect such amendments to each Lender's Elected Commitment and the Aggregate Elected Commitment Amount. The Administrative Agent shall record the information regarding such increases in the Register required to be maintained by the Administrative Agent pursuant to Section 12.04(b)(iv).

(x) If, after giving effect to any reduction in the Aggregate Elected Commitment Amounts pursuant to this Section 2.06(c), the total Revolving Credit Exposures exceeds the total Revolving Credit Commitments, then the Borrower shall (A) prepay the Borrowings of Revolving Loans on the date of such termination or reduction in an aggregate principal amount equal to such excess, and (B) if any excess remains after prepaying all of the Borrowings of Revolving Loans as a result of an LC Exposure, transfer to the Administrative Agent on behalf of the Lenders an amount equal to such excess to be held as cash collateral as provided in Section 2.08(j).

Section 2.07 Borrowing Base.

(a) Initial Borrowing Base. For the period from and including the Effective Date to but excluding the first Scheduled Redetermination Date, the amount of the Borrowing Base shall be \$580,000,000; *provided* that, notwithstanding the foregoing, the Borrowing Base may be subject to further adjustments from time to time pursuant to Section 2.07(e), Section 2.07(f) or Section 8.13(c), and amendments otherwise in accordance with this Agreement.

(b) Scheduled and Interim Redeterminations. The Borrowing Base shall be redetermined in accordance with this Section 2.07 and subject to Section 2.07(d), such redetermined Borrowing Base shall become effective and applicable to the Borrower, the Administrative Agent, each Issuing Bank and the Lenders semi-annually on May 1st and November 1st of each year (or in each case, as soon thereafter as is reasonably practical), commencing November 1, 2021 (or as soon thereafter as is reasonably practical) (each a "Scheduled Redetermination"). In addition, following the first Scheduled Redetermination, the Borrower may, by notifying the Administrative Agent thereof, and the Administrative Agent may, at the direction of the Required Lenders, by notifying the Borrower thereof, one time each calendar year, each elect to cause the Borrowing Base to be redetermined (each, an "Interim Redetermination") in accordance with this Section 2.07. In addition to, and not including and/or limited by the annual Interim Redetermination allowed above, following the first Scheduled Redetermination the Borrower may, by notice to the Administrative Agent thereof, at any time between Scheduled Redeterminations, request an additional Interim Redetermination upon any acquisition of proved Oil and Gas Properties having an aggregate value attributable to such Oil and Gas Properties in excess of 5% of the Borrowing Base in effect immediately prior to such acquisition (it being understood that for purposes of the foregoing, the designation of an Unrestricted Subsidiary owning Oil and Gas Properties with Proved Reserves as a Restricted Subsidiary shall be deemed to constitute an acquisition by the

Borrower of Oil and Gas Properties with Proved Reserves); provided that, in connection with an Interim Redetermination occurring in connection with such threshold being satisfied, the Borrower, may, as set forth in the definition of Reserve Report, elect only to provide a Reserve Report in respect of the acquired properties (in which case the most recent Reserve Report shall be used for the existing Borrowing Base Properties).

(c) Scheduled and Interim Redetermination Procedure. Each Scheduled Redetermination and each Interim Redetermination shall be effectuated as follows:

(i) Upon receipt by the Administrative Agent of (A) the Reserve Report and the certificate required to be delivered by the Borrower to the Administrative Agent, in the case of a Scheduled Redetermination, pursuant to Section 8.12(a) and (c), and, in the case of an Interim Redetermination, pursuant to Section 8.12(b) and (c), and (B) such other reports, data and supplemental information, including, without limitation, the information provided pursuant to Section 8.12(c), as may, from time to time, be reasonably requested by the Administrative Agent or the Required Revolving Credit Lenders (the Reserve Report, such certificate and such other reports, data and supplemental information being the “Engineering Reports”), the Administrative Agent shall evaluate the information contained in the Engineering Reports and shall, in good faith, propose a new Borrowing Base (the “Proposed Borrowing Base”) based upon such information and such other information (including, without limitation, the hedging positions of the Credit Parties, the status of title information with respect to the Oil and Gas Properties as described in the Engineering Reports and the existence of any other Debt or Service Agreement Undertakings) as the Administrative Agent, in good faith, deems appropriate and consistent with its normal oil and gas lending criteria as it exists at the particular time and include adjustments to reflect hedging activities of the Credit Parties. In no event shall the Proposed Borrowing Base exceed the Aggregate Maximum Credit Amounts. For the avoidance of doubt, in the case of an Interim Redetermination, the Administrative Agent may utilize the Engineering Reports delivered in connection with the last Scheduled Redetermination, provided, however, the Administrative Agent may in its sole discretion request Borrower-generated supplemental Engineering Reports in connection with such Interim Redetermination.

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(ii) The Administrative Agent shall notify the Borrower and the Lenders of the Proposed Borrowing Base (the “Proposed Borrowing Base Notice”):

(A) in the case of a Scheduled Redetermination (1) if the Administrative Agent shall have received the Engineering Reports required to be delivered by the Borrower pursuant to Section 8.12(a) and (c) in a timely and complete manner, then on or before April 15th and October 15th of such year following the date of delivery of such Engineering Reports or (2) if the Administrative Agent shall not have received the Engineering Reports required to be delivered by the Borrower pursuant to Section 8.12(a) and (c) in a timely and complete manner, then promptly after the Administrative Agent has received complete Engineering Reports from the Borrower and has had a reasonable opportunity to determine the Proposed Borrowing Base in accordance with Section 2.07(c)(i) and in any event, within fifteen (15) days after the Administrative Agent has received the required Engineering Reports; and

(B) in the case of an Interim Redetermination, promptly, and in any event, within fifteen (15) days after the Administrative Agent has received the required Engineering Reports.

(iii) Any Proposed Borrowing Base must be approved or deemed to have been approved by the Lenders (in each Lender’s sole discretion) as provided in this Section 2.07(c)(iii). Upon receipt of the Proposed Borrowing Base Notice, each Revolving Credit Lender shall have fifteen (15) days to agree with the Proposed Borrowing Base or disagree with the Proposed Borrowing Base by proposing an alternate Borrowing Base. If at the end of such fifteen (15) days, any Revolving Credit Lender has not communicated its approval or disapproval in writing to the Administrative Agent, such silence shall be deemed to be (A) if the Proposed Borrowing Base would increase the Borrowing Base then in effect, a disapproval of the Proposed Borrowing Base, or (B) if the Proposed Borrowing Base would maintain or decrease the Borrowing Base then in effect, an approval of the Proposed Borrowing Base. If, at the end of such 15-day period, all of the Revolving Credit Lenders, in the case of a Proposed Borrowing Base that would increase the Borrowing Base then in effect, or the Required Revolving Credit Lenders, in the case of a Proposed Borrowing Base that would decrease or maintain the Borrowing Base then in effect, have approved or deemed to have approved, as aforesaid, then the Proposed Borrowing Base shall become the new Borrowing Base effective on the date specified in Section 2.07(d). If, however, at the end of such fifteen (15) day period, all of the Revolving Credit Lenders or the Required Revolving Credit Lenders, as applicable, have not approved or been deemed to have approved the Proposed Borrowing Base, as aforesaid, then the Administrative Agent shall review the Revolving Credit Lenders’ responses to ascertain the highest Borrowing Base then acceptable to (x) in the case of a decrease or reaffirmation, a number of Revolving Credit Lenders sufficient to constitute the Required Lenders and (y) in the case of an increase, all of the Revolving Credit Lenders, and such amount shall become the new Borrowing Base, effective on the date specified in Section 2.07(d); provided, however that nothing contained herein shall require that the Revolving Credit Commitment of any Revolving Credit Lender be increased without its prior written consent in connection therewith and Annex I and the Register shall each be amended to reflect such changes in Revolving Credit Commitments and the Applicable Percentages of the Revolving Credit Lenders.

(d) Effectiveness of a Redetermined Borrowing Base. After a redetermined Borrowing Base is approved or is deemed to have been approved by all of the Revolving Credit Lenders or the Required Revolving Credit Lenders, as applicable, pursuant to Section 2.07(c)(iii), the Administrative Agent shall notify the Borrower and the Lenders (the “New Borrowing Base Notice”) of the amount of the redetermined Borrowing Base, and such amount shall become the new Borrowing Base, effective and applicable to the Borrower, the Administrative Agent, each Issuing Bank and the Lenders on the Business Day next succeeding delivery of the New Borrowing Base Notice.

Such amount shall then become the Borrowing Base until the next Scheduled Redetermination Date, the next Interim Redetermination Date or the next reduction or adjustment to the Borrowing Base, as applicable, under Section 2.07(e), Section 2.07(f) or Section 8.13(c), or the next amendment of the Borrowing Base in accordance with the terms of this Agreement, whichever occurs first.

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(e) Reduction of Borrowing Base Upon Issuance of Permitted Debt. After the Effective Date, if any Credit Party incurs any Debt constituting Permitted Debt in reliance on Section 9.02(f), then the Borrowing Base then in effect shall be reduced immediately upon the date of such incurrence by an amount equal to the product of 0.25 multiplied by an amount equal to the stated principal amount of such Permitted Debt. The Borrowing Base as so reduced shall become the new Borrowing Base immediately upon the date of such incurrence, effective and applicable to the Borrower, the Administrative Agent, the Issuing Banks and the Lenders on such date until the next redetermination or modification thereof hereunder. For purposes of this Section 2.07(e), if any such Debt is issued at a discount or otherwise sold for less than “par”, the reduction shall be calculated based upon the stated principal amount without reference to such discount.

(f) Reduction of Borrowing Base Related to Dispositions of Borrowing Base Properties and/or Liquidation of Swap Agreements. If (i) any Swap Agreement to which the Borrower, any Credit Party or any Restricted Subsidiary is a party is Liquidated or (ii) the Borrower, any Credit Party or any Restricted Subsidiary Disposes (to a Person who is not a Credit Party) of any Borrowing Base Properties or (iii) any Credit Party Disposes (to a Person who is not a Credit Party) of Equity Interests in the Borrower or any Restricted Subsidiary which either (x) owns Borrowing Base Properties or (y) is a party to a Swap Agreement, and (A) the Swap PV of the Liquidated portion of such Swap Agreement (or in the case of any Disposition of Equity Interests in the Borrower or any Restricted Subsidiary party to a Swap Agreement, the Swap PV of the Swap Agreements to which the Borrower or such Restricted Subsidiary is a party) or (B) the PV-10 value attributable to such Disposed Borrowing Base Properties in the most recently delivered Reserve Report hereunder (including as a condition precedent to the Effective Date) (or in the case of any Disposition of Equity Interests in the Borrower or any Restricted Subsidiary owning Borrowing Base Properties, the value attributable to such Borrowing Base Properties owned by the Borrower or such Restricted Subsidiary in the most recently delivered Reserve Report hereunder), as applicable, when combined with the sum of (I) the aggregate Swap PV of the Liquidated portion of all other Swap Agreements Liquidated since the later of the Effective Date and most recent Scheduled Redetermination Date (including in the case of any Disposition of Equity Interests in the

Borrower or any Restricted Subsidiary party to a Swap Agreement, the Swap PV attributable to such Swap Agreements) and (II) the aggregate value in the most recently delivered Reserve Report of all other Borrowing Base Properties Disposed of since the later of the Effective Date and most recent Scheduled Redetermination Date (including in the case of any Disposition of Equity Interests in Restricted Subsidiaries owning Borrowing Base Properties in the most recently delivered Reserve Report hereunder, the aggregate value attributable to such Borrowing Base Properties), exceeds five percent (5%) of the Borrowing Base as then in effect (as determined by the Administrative Agent), individually or in the aggregate, then, unless waived by the Required Lenders, the Borrowing Base then in effect shall be reduced by the Borrowing Base value attributable to such Swap Agreement Liquidations and Borrowing Base Property or, in the case of Equity Interest Dispositions, the Borrowing Base value attributable to the Borrowing Base Properties and Swap Agreements owned or held by the applicable Credit Party whose Equity Interests were subject to such Disposition, as the case may be, as determined in good faith by the Administrative Agent and notified to the Lenders, which Borrowing Base value amount shall be deemed binding and effective unless objected to by the Required Lenders within five Business Days following such notice. The Borrowing Base as so reduced shall become the new Borrowing Base immediately upon the later of (x) the date of such Disposition or Liquidation, as the case may be and (y) the date of approval by the Required Lenders, effective and applicable to the Borrower, the Administrative Agent, the Issuing Banks and the Lenders on such date until the next redetermination, adjustment or other amendment of the Borrowing Base hereunder.

Section 2.08 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request any Issuing Bank to, and such Issuing Bank shall, issue dollar-denominated Letters of Credit for the account of the Borrower or the Restricted Subsidiaries, in a form reasonably acceptable to the Administrative Agent and such Issuing Bank, at any time and from time to time prior to the LC Maturity Date; provided further that the Borrower may not request the issuance, amendment, renewal or extension of Letters of Credit hereunder if a Borrowing Base Deficiency exists at such time or would exist as a result thereof. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, an Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. Each issuance, amendment, renewal or extension of a Letter of Credit shall be subject to the conditions set forth in Section 6.02; provided, that each Existing Letter of Credit shall be deemed to have been issued hereunder as of the Effective Date. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or fax (or transmit by electronic communication, if arrangements for doing so have been approved by the relevant Issuing Bank) to any Issuing Bank and the Administrative Agent (not less than three (3) Business Days in advance of the requested date of issuance, amendment, renewal or extension (or such shorter period of time as may be acceptable to the Administrative Agent and the applicable Issuing Bank in its sole discretion)) a notice:

(i) requesting the issuance of a Letter of Credit or identifying the Letter of Credit issued by such Issuing Bank to be amended, renewed or extended;

(ii) specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day);

(iii) specifying the date on which such Letter of Credit is to expire (which shall comply with Section 2.08(c));

(iv) specifying the amount of such Letter of Credit;

(v) specifying the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit;

(vi) specifying the amount of the then effective Borrowing Base and the then effective Aggregate Elected Commitment Amounts and whether a Borrowing Base Deficiency exists at such time, the current total Revolving Credit Exposures (without regard to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit) and the *pro forma* total Revolving Credit Exposures (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit); and

(vii) confirming the conditions set for in Section 6.02 have been satisfied.

A Letter of Credit shall be issued, amended, renewed or extended only if (and each notice shall constitute a representation and warranty by the Borrower that) after giving effect to the requested issuance, amendment, renewal or extension, as applicable, (i) the LC Exposure shall not exceed the LC Commitment and (ii) the total Revolving Credit Exposures shall not exceed the total Revolving Credit Commitments.

If requested by any Issuing Bank, the Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit; provided that, in the event of any conflict between such application and the terms of this Agreement, the terms of this Agreement shall control.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) unless satisfactorily collateralized or backstopped in the applicable Issuing Bank's sole discretion, the date selected by the Borrower that is no more than one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, no more than one year after such renewal or extension) and (ii) the LC Maturity Date; provided that such expiration date may occur later than the LC Maturity Date so long as arrangements that are reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank to cash collateralize (or backstop) such Letter of Credit have been made (provided, however, that no Lenders shall be obliged to fund participations in respect of any Letter of Credit after the Maturity Date). If the Borrower so requests in any applicable notice given pursuant to Section 2.08(b) and the Issuing Bank agrees to do so, the Issuing Bank may issue a Letter of Credit that has automatic renewal provisions; provided, however, that any Letter of Credit that has automatic renewal provisions must permit the Issuing Bank to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day in each such twelve-month period to be agreed upon by the Borrower and the Issuing Bank at the time such Letter of Credit is issued. Once any such Letter of Credit that has automatic renewal provisions has been issued, the Lenders shall be deemed to have authorized (but may not require) the Issuing Bank to permit the renewal of such Letter of Credit at any time to an expiry date not later than thirty (30) days prior to the Maturity Date; provided, further, that the Issuing Bank shall not permit any such renewal if (i) the Issuing Bank has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof, or (ii) it has received notice (which may be by telephone or in writing) on or before the day that is two (2) Business Days before the date that the Issuing Bank is permitted to send a notice of non-renewal from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 6.02 is not then satisfied.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank that issues such Letter of Credit or the Revolving Credit Lenders, each Issuing Bank that issues a Letter of Credit hereunder hereby grants to each Revolving Credit Lender, and each Revolving Credit Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Credit Lender's Applicable Revolving Credit Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Credit Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of any Issuing Bank that issues a

Letter of Credit hereunder, such Revolving Credit Lender's Applicable Revolving Credit Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in Section 2.08(e), or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations pursuant to this Section 2.08(d) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default, the existence of a Borrowing Base Deficiency or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

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(e) Reimbursement. If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit issued by such Issuing Bank, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 1:00 p.m., Houston time, on the date such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., Houston time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 1:00 p.m., Houston time, on (i) the Business Day the Borrower receives such notice, if such notice is received prior to 10:00 a.m., Houston time, or (ii) the Business Day immediately following the day the Borrower receives such notice, if such notice is not received prior to such time; provided that, unless the Borrower has notified the Administrative Agent that it intends to reimburse all or part of such LC Disbursement without using Loan proceeds or has submitted a Borrowing Request with respect thereto, if such LC Disbursement is not less than \$1,000,000, the Borrower shall be deemed to have requested, and the Borrower does hereby request under such circumstances, that such payment be financed with an ABR Borrowing of a Revolving Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Credit Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Revolving Credit Lender's Applicable Revolving Credit Percentage thereof. Promptly following receipt of such notice, each Revolving Credit Lender shall pay to the Administrative Agent its Applicable Revolving Credit Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.05 with respect to Revolving Loans made by such Revolving Credit Lender (and Section 2.05 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Credit Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank that issued such Letter of Credit the amounts so received by it from the Revolving Credit Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this Section 2.08(e), the Administrative Agent shall distribute such payment to the Issuing Bank that issued such Letter of Credit or, to the extent that Revolving Credit Lenders have made payments pursuant to this Section 2.08(e) to reimburse such Issuing Bank, then to such Revolving Credit Lenders and such Issuing Bank as their interests may appear. Any payment made by a Revolving Credit Lender pursuant to this Section 2.08(e) to reimburse any Issuing Bank for any LC Disbursement (other than the funding of ABR Borrowings as contemplated above) shall not constitute a Revolving Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement. Any LC Disbursement not reimbursed by the Borrower or funded as a Revolving Loan prior to 1:00 p.m., Houston time, shall bear interest for such day at the Alternate Base Rate plus the Applicable Margin. In the event that the Borrower fails to cash collateralize (or backstop) any Letter of Credit that is outstanding on the LC Maturity Date pursuant to arrangements that are reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank, the full amount of the LC Exposure in respect of such Letter of Credit shall be deemed to be an unreimbursed LC Disbursement subject to the provisions of this Section 2.08 except that such Issuing Bank shall hold the proceeds received from the Lenders as contemplated above as cash collateral for such Letter of Credit to reimburse any drawing under such Letter of Credit and shall use such proceeds *first*, to reimburse itself for any drawings made in respect of such Letter of Credit following the LC Maturity Date, *second*, to the extent such Letter of Credit expires or is returned undrawn while any such cash collateral remains, to the repayment of obligations in respect of any Loans that have not paid at such time and *third*, to the Borrower or as otherwise directed by a court of competent jurisdiction.

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(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.08(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit issued by such Issuing Bank against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or any Letter of Credit Agreement, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.08(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; provided that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of any Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised all requisite care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank that issued such Letter of Credit may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit issued by such Issuing Bank. Such Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by fax or electronic communication) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Revolving Credit Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, until the Borrower shall have reimbursed such Issuing Bank for such LC Disbursement (either with its own funds or a Borrowing under Section 2.08(e)), the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans that are Revolving Loans. Interest accrued pursuant to this Section 2.08(h) shall be for the account of such Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Credit Lender pursuant to Section 2.08(e) to reimburse such Issuing Bank shall be for the account of such Revolving Credit Lender to the extent of such payment.

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(i) Replacement of an Issuing Bank. Any Issuing Bank may be replaced or resign at any time by written agreement among the Borrower, the Administrative

Agent, such resigning or replaced Issuing Bank and, in the case of a replacement, the successor Issuing Bank. The Administrative Agent shall notify the Revolving Credit Lenders of any such resignation or replacement of an Issuing Bank. At the time any such resignation or replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the resigning or replaced Issuing Bank pursuant to Section 3.05(b). In the case of the replacement of an Issuing Bank, from and after the effective date of such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the resignation or replacement of an Issuing Bank hereunder, the resigning or replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation or replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If (i) any Event of Default shall occur and be continuing and the Borrower receives notice from the Administrative Agent or the Majority Lenders demanding the deposit of cash collateral pursuant to this Section 2.08(j), or (ii) the Borrower is required to cash collateralize the excess attributable to an LC Exposure in connection with any prepayment pursuant to Section 3.04(c), (iii) the Borrower is required to cash collateralize a Defaulting Lender's LC Exposure pursuant to Section 4.04(b)(iii)(B) or (iv) upon the request of the Majority Lenders, if as of the LC Maturity Date, there are any Letters of Credit Outstanding, then the Borrower shall deposit with or deliver to the Administrative Agent (as a first priority, perfected security interest (subject to Excepted Liens of the type described in clause (e) of the definition thereof)), in the name of the Administrative Agent and for the benefit of the Issuing Banks and the Lenders, at a location and pursuant to documentation in form and substance satisfactory to the Administrative Agent, an amount in cash equal to, in the case of an Event of Default or the case of clause (iv) above, the LC Exposure, in the case of a payment required by Section 3.04(c), the amount of such excess as provided in Section 3.04(c) or in the case of a Defaulting Lender's LC Exposure, pursuant to Section 4.04(b)(iii)(B), such Defaulting Lender's LC Exposure, as applicable, as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default described in Section 10.01(h) or Section 10.01(i). The Borrower hereby grants to the Administrative Agent, for the benefit of each Issuing Bank and the Lenders, an exclusive first priority and continuing perfected security interest in and Lien on such account and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in such account, all deposits or wire transfers made thereto, any and all investments purchased with funds deposited in such account, all interest, dividends, cash, instruments, financial assets and other Property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing, and all proceeds, products, accessions, rents, profits, income and benefits therefrom, and any substitutions and replacements therefor. The Borrower's obligation to deposit amounts pursuant to this Section 2.08(j) shall be absolute and unconditional, without regard to whether any beneficiary of any such Letter of Credit has attempted to draw down all or a portion of such amount under the terms of a Letter of Credit, and, to the fullest extent permitted by applicable law, shall not be subject to any defense or be affected by a right of set-off, counterclaim or recoupment which the Credit Parties or their respective Subsidiaries may now or hereafter have against any such beneficiary, any Issuing Bank, the Administrative Agent, the Lenders or any other Person for any reason whatsoever. Such deposit shall be held as collateral securing the payment and performance of the Credit Parties' obligations under this Agreement and the other Loan Documents. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account; provided that investments of funds in such account in investments of the type described in clause (a) and (b) of the definition of Cash Equivalents as permitted by Section 9.05(c) may be made at the option of the Borrower at its direction, risk and expense; otherwise, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse, on a pro rata basis, each Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other obligations of the Borrower and the Guarantors, if any, under this Agreement or the other Loan Documents. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default or pursuant to Section 4.04(b)(iii)(B) as a result of a Defaulting Lender's LC Exposure, and the Borrower is not otherwise required to cash collateralize the excess attributable to an LC Exposure in connection with any prepayment pursuant to Section 3.04(c), then such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after (i) all Events of Default have been waived or the events giving rise to such cash collateralization pursuant to Section 4.04(b)(iii)(B) have been satisfied or resolved or (ii) or arrangements satisfactory to the relevant Issuing Bank have been made for the substitution of new payment assurances.

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ARTICLE III Payments of Principal and Interest; Prepayments; Fees

Section 3.01 Repayment of Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Termination Date.

Section 3.02 Interest.

(a) ABR Loans. The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(b) Eurodollar Loans. The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default and Borrowing Base Deficiency Rate. Notwithstanding the foregoing, if either (A) an Event of Default pursuant to Section 10.01(a), (b), (h), (i) or (j) has occurred and is continuing, or (B) any other Event of Default has occurred and the Majority Lenders, or the Administrative Agent at the direction of the Majority Lenders, has delivered a notice to the Borrower notifying the Borrower of an election to charge default interest hereunder, then all Loans outstanding shall bear interest, after as well as before judgment, at a rate per annum equal to two percent (2%) plus the rate applicable to ABR Loans as provided in Section 3.02(a) (including the Applicable Margin), but in no event to exceed the Highest Lawful Rate (such interest to be retroactive to the date of such Event of Default). References in this Section 3.02(c) to the Applicable Margin refer, in the case of Term Loans, to the Applicable Margin for Term Loans and refer, in the case of all other amounts owing under any Loan Documents (including but not limited to Revolving Loans), to the Applicable Margin for Revolving Loans.

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date, and in any case, on the Termination Date; provided that (i) interest accrued pursuant to Section 3.02(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than an optional prepayment of an ABR Loan prior to the Termination Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Interest Rate Computations. All interest hereunder shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error, and be binding upon the parties hereto.

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Section 3.03 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or LIBO Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Majority Lenders that the Adjusted LIBO Rate or LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or fax or other electronic communication as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and shall be deemed to be a request for an ABR Borrowing, and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

(c) Effect of Benchmark Transition Event.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document:

(A) Replacing USD LIBOR. On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of LIBO Rate’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month LIBO Rate tenor settings. On the earlier of (i) the date that all Available Tenors of LIBO Rate have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if the then-current Benchmark is LIBO Rate, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(B) Replacing Future Benchmarks. Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Majority Lenders. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower’s receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to ABR Loans. During the period referenced in the foregoing sentence, the component of the Alternate Base Rate based upon the Benchmark will not be used in any determination of the Alternate Base Rate.

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(ii) Benchmark Replacement Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.03(c) including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(c).

(iv) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or the LIBO Rate), then the Administrative Agent remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Administrative Agent may reinstate such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

Section 3.04 Prepayments.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Borrowing of Revolving Loans in whole or in part, subject to prior notice in accordance with Section 3.04(b) and payment of applicable breakage costs, if any, under Section 5.02. The Borrower shall have the right at any time and from time to time to prepay, without premium or penalty subject to Section 3.05(d) and Section 5.02, any Borrowing of Term Loans in whole or in part, to be applied in direct order of maturity, subject to (i) prior notice in accordance with Section 3.04(b), (ii) unless such prepayment results in First-Out Payment in Full, the Borrower shall be in *pro forma* compliance with the financial covenants in Section 8.01 (after giving effect to such prepayment) and (iii) no Default or Event of Default shall have occurred and be continuing or would result therefrom; *provided* that either (x) no Revolving Loans are outstanding on a *pro forma* basis for such prepayment or (y) such prepayment is made from, and substantially contemporaneously with the receipt of, (i) the net cash proceeds of any Debt constituting Permitted Debt incurred in reliance on Section 9.02(f) or (ii) Qualifying Net Cash Proceeds not otherwise applied.

(b) Notice and Terms of Optional Prepayment. The Borrower shall notify the Administrative Agent by telephone (confirmed by delivery of a notice of prepayment in substantially the form of Exhibit J hereto via fax or electronic communication) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 12:00 noon, Houston time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 noon, Houston time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid (and whether Revolving Loans or Term Loans are being prepaid); *provided* that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon (i) the effectiveness of other credit facilities or other securities offerings or (ii) the consummation of a Change in Control, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 3.02 and payment of applicable breakage costs, if any, under Section 5.02.

(c) Mandatory Prepayments.

(i) If, after giving effect to any termination or reduction of the Aggregate Maximum Revolving Credit Amounts, the total Revolving Credit Commitments or the Borrowing Base pursuant to Section 2.06(b), the total Revolving Credit Exposure exceeds the total Revolving Credit Commitments, then the Borrower shall, on the same Business Day, (A) prepay the Borrowings of Revolving Loans on the date of such termination or reduction in an aggregate principal amount equal to such excess, and (B) if any excess remains after prepaying all of the Borrowings of Revolving Loans as a result of an LC Exposure, cash collateralize such excess as provided in Section 2.08(j).

(ii) Upon any Scheduled Redetermination or Interim Redetermination or adjustment to the amount of the Borrowing Base in accordance with Section 8.13(c) or any Borrowing Base reduction in accordance with Section 8.13(c), if the total Revolving Credit Exposure *plus* the principal amount of outstanding Term Loans exceeds the redetermined or adjusted Borrowing Base, then, after receiving a New Borrowing Base Notice in accordance with Section 2.07(d) or a notice of adjustment pursuant to Section 8.13(c), as the case may be (the date of receipt of any such notice, the "Deficiency Notification Date"), the Borrower shall at its option take one of the following actions (subject to Section 3.04(c)(v) and (vi)):

(A) prepay the Borrowings in an aggregate principal amount equal to such Borrowing Base Deficiency (and to the extent that any excess remains after prepaying all of the Borrowings of Revolving Loans as a result of an LC Exposure, cash collateralize such excess as provided in Section 2.08(j)) within thirty (30) days following the Deficiency Notification Date;

(B) prepay the Borrowings in six consecutive equal monthly installments, the first installment being due and payable on the 30th day after the Deficiency Notification Date and each subsequent installment being due and payable on the same day in each of the subsequent calendar months, with each payment being equal to one-sixth (1/6th) of such Borrowing Base Deficiency, so that the Borrowing Base Deficiency is reduced to zero within six months of the Deficiency Notification Date; provided that, if any excess remains after prepaying all of the Borrowings of Revolving Loans as a result of any LC Exposure, the Borrower shall pay to the Administrative Agent on behalf of the Lenders an amount equal to such excess to be held as cash collateral as provided in Section 2.08(j);

(C) within thirty (30) days following the Deficiency Notification Date, provide additional engineering information acceptable to the Required Lenders, with respect to, and grant to the Administrative Agent as security for the Secured Obligations a first-priority Lien on, additional Oil and Gas Properties acceptable to the Required Lenders in their sole discretion not evaluated in the most recently delivered Reserve Report (and not already subject to a Lien of the Security Instruments) pursuant to Security Instruments acceptable to the Administrative Agent with sufficient Borrowing Base value (as determined by the Required Lenders) to cure the Borrowing Base Deficiency; provided that in no event may the Borrower elect the option specified in this clause (C) if fewer than ninety (90) days remain until the Maturity Date; or

(D) (i) deliver, within ten (10) Business Days after the Deficiency Notification Date, written notice to the Administrative Agent indicating the Borrower's election to combine the options provided in clauses (B) and (C) above, and indicating the amount to be prepaid and the amount to be provided as additional Collateral, and (ii) make such payment and deliver such additional Collateral within the time periods required under clauses (B), (C) and/or (D) above;

provided that, notwithstanding the options set forth above, in all cases, the Borrowing Base Deficiency must be eliminated on or prior to the Termination Date.

The Borrower shall provide to the Administrative Agent, within ten (10) days following its receipt of the applicable New Borrowing Base Notice in accordance with Section 2.07(d) or the date the adjustment occurs pursuant to Section 8.13(c), as applicable, written notice indicating which of the options specified in clauses (A), (B), (C) or (D) the Borrower elects to take in order to eliminate the Borrowing Base Deficiency. In the event the Borrower fails to provide such written notice to the Administrative Agent within the ten (10) day period referred to above, the Borrower shall be deemed to have irrevocably elected the option set forth in clause (B) above. The failure of the Borrower to comply with any of the options elected (including any deemed election) pursuant to the provisions of this Section 3.04(c)(ii) and specified in such notice (or relating to such deemed election) shall constitute an Event of Default; provided that, once the Borrowing Base Deficiency is cured, the Borrower shall not be required to continue to take any such actions specified in clauses (A) through (D).

(iii) Upon any adjustments to the Borrowing Base pursuant to Section 2.07(e) or Section 2.07(f) if the total Revolving Credit Exposure *plus* the principal amount of outstanding Term Loans exceeds the Borrowing Base as adjusted, then the Borrower shall (A) prepay the Borrowings of Revolving Loans in an aggregate principal amount equal to such excess, and (B) if any excess remains after prepaying all of the Borrowings of Revolving Loans as a result of an LC Exposure, cash collateralize such excess as provided in Section 2.08(j). The Borrower shall be obligated to make such prepayment and/or cash collateralize such excess on the Business Day immediately following the date that any Credit Party or any Restricted Subsidiary receives any net, after-Tax cash proceeds as a result of (1) the applicable issuance of Debt, in the case of any adjustment to the Borrowing Base pursuant to Section 2.07(e), or (2) the consummation of a Disposition of Oil and Gas Properties or Equity Interests or Liquidation of Swap Agreement, as applicable, in the case of any adjustment to the Borrowing Base pursuant to Section 2.07(f); provided that all payments required to be made pursuant to this Section 3.04(c)(iii) must be made on or prior to the Termination Date.

(iv) If the Borrower and its Restricted Subsidiaries have Excess Cash in an amount in excess of the Excess Cash Threshold on Thursday of each week and any Loans are outstanding, the Borrower shall immediately prepay on the following Business Day a principal amount of the Loans in an amount equal to the lesser of (x) the outstanding amount of the Loans at such time and (y) the aggregate amount of Excess Cash in excess of the Excess Cash Threshold; provided that prepayments under this clause (iv) shall be without premium or penalty (including any breakage under Section 5.02).

(v) Prior to the occurrence of Successful Midstream Resolution, if the Revolving Credit Exposure exceeds an amount equal to the difference of (a) the aggregate Revolving Credit Commitments *minus* (b) the amount of the Availability Blocker, the Borrower shall immediately prepay on the following Business Day a principal amount of the Loans in an amount equal to such excess Revolving Credit Exposure.

(vi) Each prepayment of Borrowings pursuant to this Section 3.04(c) shall be applied, first, ratably to any ABR Borrowings then outstanding, and, second, to any Eurodollar Borrowings then outstanding, and if more than one Eurodollar Borrowing is then outstanding, to each such Eurodollar Borrowing in order of priority beginning with the Eurodollar Borrowing with the least number of days remaining in the Interest Period applicable thereto and ending with the Eurodollar Borrowing with the most number of days remaining in the Interest Period applicable thereto.

(vii) Each prepayment of Borrowings pursuant to this Section 3.04(c) shall be applied first to any Borrowings of Revolving Loans until such Borrowings have been repaid in full (and to the extent that any excess remains after prepaying all of the Borrowings of Revolving Loans as a result of an LC Exposure, cash

collateralize such excess as provided in Section 2.08(j) and thereafter to outstanding Term Loans in direct order of maturity. Each prepayment of Borrowings pursuant to this Section 3.04(c) shall be applied ratably to the applicable Loans included in the prepaid Borrowings. Prepayments pursuant to this Section 3.04(c) shall be accompanied by accrued and unpaid interest to the extent required by Section 3.02.

(d) Amortization of Term Loans; Payment at Maturity. The Borrower shall repay the Term Loans on each three-month date that occurs after the Effective Date (each such date being referred to as a “Term Loan Installment Date”), in each case, in an amount equal to \$15,000,000 and, on the Maturity Date, the remainder of the principal amount of the Term Loans outstanding on such date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment. Any prepayment of the Term Loans (other than pursuant to this Section 3.04(d)) shall be applied as a credit against the immediately succeeding amortization payment installment or installments, as the case may be, in direct order of maturity.

(e) No Premium or Penalty. Prepayments permitted or required under this Section 3.04 shall be without premium or penalty.

Section 3.05 Fees.

(a) Commitment Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Credit Lender (subject to Section 4.04(b)(i)) a commitment fee, which shall accrue at the applicable Commitment Fee Rate on the average daily amount of the unused amount of the Revolving Credit Commitment of such Revolving Credit Lender during the period from and including the date of this Agreement to but excluding the Termination Date. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the Termination Date, commencing on June 30, 2021. All commitment fees shall be computed on the basis of a year of 360 days, unless such computation would cause interest on the Secured Obligations to exceed the Highest Lawful Rate, in which case such commitment fees shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Credit Lender (subject to Section 4.04(b)(iii)) a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Margin used to determine the interest rate applicable to Eurodollar Revolving Loans on the average daily amount of such Revolving Credit Lender’s LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the date of this Agreement to but excluding the later of the date on which such Revolving Credit Lender’s Revolving Credit Commitment terminates and the date on which such Revolving Credit Lender ceases to have any LC Exposure, (ii) to each Issuing Bank a fronting fee, which shall accrue at the rate of 0.20% per annum on the average daily amount of such Issuing Bank’s LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Credit Commitments and the date on which there ceases to be any LC Exposure; provided that in no event shall such fee be less than \$500 during any quarter and (iii) to each Issuing Bank, for its own account, its standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued by such Issuing Bank or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the date of this Agreement; provided that all such fees shall be payable on the Termination Date and any such fees accruing after the Termination Date shall be payable on demand. During the continuation of an Event of Default, if the Majority Lenders (or the Administrative Agent at the direction of the Majority Lenders) have elected to charge the default rate on the then outstanding Loans pursuant to Section 3.02(c), the participation fees payable pursuant to Section 3.05(b)(i) shall increase by 2.00% per annum over the then applicable rate (with such increase to be retroactive to the date of the applicable Event of Default). Any other fees payable to an Issuing Bank pursuant to this Section 3.05(b) shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case such fees shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account or the account of any party specified therein, fees payable in the amounts and at the times set forth in the Fee Letters.

(d) Consent Fee. The Borrower agrees to pay to the Administrative Agent, for the account of each Lender that executed (or is an assignee of a Prepetition Lender that executed) the Consent Letter dated as of April 22, 2021 by and among the such Lenders or Prepetition Lenders and the Administrative Agent prior to 6 p.m. Houston time on April 22, 2021 (each such Lender, a “Consenting Lender”), a consent fee that shall be earned and due and payable in full on the Effective Date in an amount equal to 0.25% of each such Consenting Lender’s allocation of the Borrowing Base.

ARTICLE IV Payments; Pro Rata Treatment; Sharing of Set-offs.

Section 4.01 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 5.01, Section 5.02, Section 5.03 or otherwise) prior to 1:00 p.m., Houston time, on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim (except for Taxes, if any, pursuant to Section 5.03(a), provided that the Borrower has complied with all of the requirements of such Section to the extent applicable). Fees, once paid, shall be fully earned and shall not be refundable under any circumstances, absent manifest error. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices specified in Section 12.01, except payments to be made directly to an Issuing Bank as expressly provided herein and except that payments pursuant to Section 5.01, Section 5.02, Section 5.03 and Section 12.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of

its Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall take an assignment of, or purchase participations in the Loans and participations in LC Disbursements of other Lenders, in each case, for cash at face value, to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued but unpaid interest on their respective Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this Section 4.01(c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section 4.01(c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 4.02 Presumption of Payment by the Borrower. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or any Issuing Bank that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or such Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or such Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Section 4.03 Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(b), Section 2.08(d), Section 2.08(e), Section 4.01(c), Section 4.02, Section 5.03(h) or Section 12.03(c), then the Administrative Agent may, in its sole discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender (for the benefit of the Administrative Agent or the applicable Issuing Bank) to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 4.04 Payments and Deductions to a Defaulting Lender.

(a) If a Defaulting Lender (or a Lender who would be a Defaulting Lender but for the expiration of the relevant grace period) as a result of the exercise of a set-off shall have received a payment in respect of its Revolving Credit Exposure which results in its Revolving Credit Exposure being less than its Applicable Percentage of the aggregate Revolving Credit Exposures, then no payments will be made to such Defaulting Lender until such time as such Defaulting Lender shall have complied with Section 4.04(b) and all amounts due and owing to the Lenders have been equalized in accordance with each Lender's respective pro rata share of the Secured Obligations. Further, if at any time prior to the acceleration or maturity of the Loans, the Administrative Agent shall receive any payment in respect of principal of a Loan or a reimbursement of an LC Disbursement while one or more Defaulting Lenders shall be party to this Agreement, the Administrative Agent shall apply such payment first to the Borrowing(s) for which such Defaulting Lender(s) shall have failed to fund its pro rata share until such time as such Borrowing(s) are paid in full or each Lender (including each Defaulting Lender) is owed its Applicable Percentage of all Loans then outstanding. After acceleration or maturity of the Loans, subject to the first sentence of this Section 4.04(a), all principal will be paid ratably as provided in Section 10.02(c).

(b) Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(i) Fees shall cease to accrue on the unfunded portion of the Revolving Credit Commitment of such Defaulting Lender pursuant to Section 3.05(a).

(ii) The Revolving Credit Commitments, the Maximum Revolving Credit Amount and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether the Lenders, Super Majority Revolving Credit Lenders, the Majority Lenders, the Required Revolving Credit Lenders or the Required Lenders, as applicable, have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 12.02); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender and which affects such Defaulting Lender, shall require the consent of such Defaulting Lender; and provided further that no Defaulting Lender shall participate in any redemption or affirmation of the Borrowing Base, but the Revolving Credit Commitment of a Defaulting Lender may not be increased without the consent of such Defaulting Lender.

(iii) If any LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(A) all or any part of the LC Exposure of such Defaulting Lender shall be automatically reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (for the purposes of such reallocation, the Defaulting Lender's Revolving Credit Commitment shall be disregarded in determining the Non-Defaulting Lender's Applicable Percentage) but only to the extent (1) the sum of all Non-Defaulting Lenders' Revolving Credit Exposures plus such Defaulting Lender's LC Exposure does not exceed the total of all Non-Defaulting Lenders' Revolving Credit Commitments and (2) the sum of each Non-Defaulting Lender's Revolving Credit Exposure plus its reallocated share of such Defaulting Lender's LC Exposure does not exceed such Non-Defaulting Lender's Revolving Credit Commitment; provided that, subject to Section 12.19, no such reallocation will constitute a waiver or release of any claim the Borrower, any other Credit Party, the Administrative Agent, any Issuing Bank or any Lender may have against such Defaulting Lender or cause such Defaulting Lender to be a Non-Defaulting Lender;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, then the Borrower shall within one Business Day following notice by the Administrative Agent cash collateralize for the benefit of each Issuing Bank such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (A) above) in accordance with the procedures set forth in Section 2.08(e) for so long as such LC Exposure is outstanding;

(C) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to this Section 4.04 then the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 3.05(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(D) if the LC Exposure of the Non-Defaulting Lenders is reallocated pursuant to this Section 4.04(b), then the fees payable to the Lenders pursuant to Section 3.05(a) and Section 3.05(b) shall be adjusted in accordance with such Non-Defaulting Lenders' Applicable Percentages after giving effect to such reallocation; and

(E) if any Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to this Section 4.04(b)(iii), then, without prejudice to any rights or remedies of any Issuing Bank or any Lender hereunder, all commitment fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Revolving Credit Commitment that was utilized by such LC Exposure) and all letter of credit fees payable under Section 3.05(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Banks (ratably) until such LC Exposure is cash collateralized and/or reallocated.

(iv) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article X or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank hereunder; *third*, to cash collateralize the Issuing Banks' LC Exposure with respect to such Defaulting Lender in accordance with Section 4.04(b)(iii)(B); *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and cash collateralize the Issuing Banks' future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 4.04(b)(iii)(B); *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Bank as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 6.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Obligations are held by the Lenders pro rata in accordance with the Revolving Credit Commitments without giving effect to Section 4.04(b)(iii). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 4.04(b)(iv) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) So long as any Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Revolving Credit Commitments of the Non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 4.04(b), and participating interests in any such newly issued or increased Letter of Credit shall be allocated among Non-Defaulting Lenders in a manner consistent with Section 4.04(b)(iii)(A) (and Defaulting Lenders shall not participate therein).

(d) In the event that the Administrative Agent, the Borrower and the Issuing Banks each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender and such Lender is no longer a Defaulting Lender, then the LC Exposures of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date, if necessary, such Lender shall purchase at par such of the Loans and/or participations in Letters of Credit of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans and/or participations in Letters of Credit in accordance with its Applicable Percentage.

ARTICLE V Increased Costs; Break Funding Payments; Taxes; Illegality

Section 5.01 Increased Costs.

(a) Eurodollar Changes in Law. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve (including marginal, special, emergency or supplemental reserves), special deposit, compulsory loan, insurance charge, or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its Loans, Loan principal, Letters of Credit, Revolving Credit Commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the Issuing Bank(s) or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Loans made by such Lender; and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or otherwise), then, pursuant to Section 5.01(c), upon the written request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or liquidity or on the capital or liquidity of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) Certificates. A certificate of a Lender or any Issuing Bank setting forth in reasonable detail the basis of its request and the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in Section 5.01(a) or (b) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or any Issuing Bank pursuant to this Section 5.01 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. No Lender or Issuing Bank may make any demand pursuant to this Section 5.01 more than 180 days after the Termination Date.

Section 5.02 Break Funding Payments. Except for any prepayment made pursuant to Section 3.04(c), in the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as the result of the request by the Borrower pursuant to Section 5.04(b), (c) the conversion of any Eurodollar Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, or (d) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.02 and reasonably detailed calculations therefor, upon request of the Borrower, shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 5.03 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any Withholding Agent shall be required by applicable law to deduct or withhold any Taxes from such payments, as determined in good faith by the applicable Withholding Agent, then (i) in the case of Indemnified Taxes, the sum payable by such Credit Party shall be increased as necessary so that after such deductions or withholdings of Indemnified Taxes (including such deductions and withholdings applicable to additional sums payable under this Section 5.03(a)) have been made, the applicable Recipient receives an amount equal to the sum it would have received had no such deductions or withholdings for Indemnified Taxes been made, (ii) the applicable Withholding Agent shall make all deductions or withholdings required by applicable law and (iii) the applicable Withholding Agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of Section 5.03(a), the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of such Other Taxes.

(c) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03, but without duplication of any amount indemnified or paid under this Agreement) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability under this Section 5.03(c) delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower or a Guarantor to a Governmental Authority pursuant to this Section 5.03, the Borrower shall deliver to the Administrative Agent the original or a copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under this Agreement or any other Loan Document shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.03(c)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN (or any successor form) or IRS Form W-8BEN-E (or any successor form), as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or any successor form) or IRS Form W-8BEN-E (or any successor form), as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant

(2) executed copies of IRS Form W-8ECI (or any successor form) and, when applicable in the case of the Administrative Agent, IRS Form W-8IMY (or successor form) certifying that it is a “U.S. branch” and that the payments it receives for the account of others are not effectively connected with the conduct of a trade or business in the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a U.S. Person for U.S. federal withholding purposes pursuant to Treasury Regulation Section 1.1441-1(b)(2)(iv)(A);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit I-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10-percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN (or any successor form) or IRS Form W-8BEN-E (or any successor form), as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or any successor form), accompanied by IRS Form W-8ECI (or any successor form), IRS Form W-8BEN (or any successor form) or IRS Form W-8BEN-E (or any successor form), as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS Form W-9 (or any successor form), and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Status of Administrative Agent. On or prior to the date on which the Administrative Agent becomes the Administrative Agent under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), the Administrative Agent will deliver to the Borrower either (i) an executed copy of IRS Form W-9, or (ii) if legally entitled to do so, (a) with respect to any amounts received on its own account, an executed copy of an applicable IRS Form W-8, and (y) with respect to any amounts received for or on account of any Lender, an executed copy of IRS Form W-8IMY certifying on Part I, Part II, and Part VI thereof that it is a U.S. branch that has agreed to be treated as a U.S. Person for U.S. federal withholding purposes with respect to payments received by it from the Borrower in its capacity as Administrative Agent, as applicable. The Administrative Agent shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide the certification described in the prior sentence.

(g) Treatment of Certain Refunds. If any party determines in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.03 (including by the payment of additional amounts pursuant to this Section 5.03), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section 5.03 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 12.04(c) relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 5.03(h).

(i) Defined Terms. For purposes of this Section 5.03, the term “Lender” includes any Issuing Bank and the term “applicable law” includes FATCA.

(j) Survival. Each party’s obligations under this Section 5.03 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Credit Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 5.04 Designation of Different Lending Office; Replacement of Lenders.

(a) Designation of Different Lending Office. If (i) any Lender requests compensation under Section 5.01, or (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (A) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future and (B) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If (i) any Lender requests compensation under Section 5.01, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, (iii) any Lender asserts an illegality under Section 5.05, (iv) any Lender becomes a Defaulting Lender, (v) any Lender is a Non-Consenting Lender, or (vi) any Lender does not approve a Proposed Borrowing Base that would increase the Borrowing Base then in effect pursuant to Section 2.07(c)(iii) when the Super Majority Revolving Credit Lenders have approved such Proposed Borrowing Base pursuant to Section 2.07(c)(iii), then in any such case, the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 12.04), all its interests, rights and obligations under this Agreement to an assignee or assignees that shall assume such obligations (which assignee may be another Lender, if such Lender accepts such assignment); provided that (A) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (B) in the case of any such assignment resulting from a claim for compensation under Section 5.01, for payments required to be made pursuant to Section 5.03 or an illegality under Section 5.05, such assignment will result in a reduction in such compensation or payments or avoid the illegality, (C) such assignment does not conflict with applicable law, (D) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent, and (E) in the case of any assignment resulting from a Lender not approving an increase to or reaffirmation of the Borrowing Base as contemplated by clause (vi) above, the applicable assignee shall have consented to the increase or reaffirmation of the Borrowing Base. Notwithstanding the foregoing, a Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each Lender hereby agrees to make such assignment and delegations required under this Section 5.04(b). Notwithstanding the foregoing, a Lender shall not be required to make any such assignment and delegation if such Lender (or its Affiliate) is a Secured Swap Party or a Secured Cash Management Provider with any outstanding Secured Swap Obligations or Secured Cash Management Obligations, respectively, unless on or prior thereto, all such Secured Swap Agreements or Secured Cash Management Agreements have been terminated or novated to another Person and such Lender (or its Affiliate) shall have received payment of all amounts, if any, payable to it in connection with such termination or novation (or, in each case, other arrangements satisfactory to such Secured Swap Party or Secured Cash Management Provider, as applicable, shall have been made with respect to such outstanding Secured Swap Obligations or Secured Cash Management Obligations).

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Section 5.05 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain Eurodollar Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrower and the Administrative Agent thereof and such Lender’s obligation to make such Eurodollar Loans shall be suspended (the “Affected Loans”) until such time as such Lender may again make and maintain such Eurodollar Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (and, if such Lender so requests by notice to the Borrower and the Administrative Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans) and, to the extent that Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender’s Affected Loans shall be applied instead to its ABR Loans.

ARTICLE VI
Conditions Precedent

Section 6.01 Effective Date. The amendment and restatement of the Prepetition Credit Agreement by this Agreement and the obligations of the Lenders to make Loans (or to be deemed to have made Loans) and of any Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 12.02):

(a) The Administrative Agent shall have received from each party hereto counterparts (in such number as may be requested by the Administrative Agent) of this Agreement signed on behalf of such party.

(b) To the extent requested by a Lender, the Administrative Agent shall have received duly executed Notes payable to such Lender in a principal amount equal to its Maximum Revolving Credit Amount or Term Loans, as applicable, dated as of the date hereof.

(c) The Administrative Agent shall have received from each party thereto duly executed counterparts (in such number as may be requested by the Administrative Agent) of the Guaranty and Collateral Agreement and the other Security Instruments (other than those listed on Schedule 6.03, if any) deemed necessary or advisable by the Administrative Agent. In connection with the execution and delivery of the Security Instruments, the Administrative Agent shall:

(i) be reasonably satisfied that the Security Instruments will create first priority, perfected Liens (subject only to Excepted Liens and other Liens permitted by Section 9.03) on at least 95% of the PV-10 value of the Borrowing Base Properties evaluated in the Initial Reserve Report;

(ii) subject to Section 6.03, have received certificates, together with undated, blank stock powers for any such certificate, representing all of the issued and outstanding Equity Interests owned by the Credit Parties and to the extent such Equity Interests are certificated; and

(iii) have received from each party thereto duly executed counterparts of an Account Control Agreement (or an amendment and/or assignment of any existing Account Control Agreement) for each Deposit Account and Securities Account listed on Schedule 7.25 other than any Excluded Accounts.

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(d) The Administrative Agent shall have received UCC financing statements for the Borrower and each Guarantor to be filed in each such Person's state of incorporation or formation, or principal place of business, as applicable.

(e) The Administrative Agent shall have received a certificate of the Secretary or a Responsible Officer of the Borrower and of each Guarantor setting forth (i) resolutions of the managers, board of directors or other managing body with respect to the authorization of the Borrower or such Guarantor to execute and deliver the Loan Documents to which it is a party and to enter into the Transactions, (ii) the individuals (A) who are authorized to sign the Loan Documents to which the Borrower or such Guarantor is a party and (B) who will, until replaced by another individual duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the other Loan Documents to which it is a party, (iii) specimen signatures of such authorized individuals, and (iv) for the Borrower and each Guarantor, the articles or certificate of incorporation or formation (certified by the Secretary of State of the jurisdiction of organization or in a form to be filed with the Secretary of State of the jurisdiction of organization on the Effective Date, in which case a copy of such articles or certificate of incorporation or formation certified by the Secretary of State of the jurisdiction of organization shall be provided promptly following the Effective Date) and the bylaws, operating agreement, partnership agreement or other Organizational Document, as applicable, in each case, certified as being true and complete. The Administrative Agent and the Lenders may conclusively rely on such certificate until the Administrative Agent receives notice in writing from the Borrower to the contrary.

(f) The Administrative Agent shall have received a certificate of the chief executive officer (or interim chief executive officer) or chief financial officer of the Borrower and each of the other Credit Parties certifying that on the Effective Date (i) all representations and warranties of the Borrower and each such other Credit Party in the Loan Documents are true and correct in all material respects, except those representations and warranties which include a materiality qualifier, which shall be true and correct as so qualified, (ii) no Default or Event of Default has occurred or is continuing or will result from the making of the Loans or the Transactions contemplated by the Loan Documents, (iii) the Credit Parties and the Restricted Subsidiaries have received all consents and approvals required by Section 7.03 and (iv) since November 13, 2020, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect (other than as a result of the events leading up to, directly arising from, or direct effects of, the commencement or continuance of the Chapter 11 Cases).

(g) The Administrative Agent shall have received a Solvency Certificate from the chief executive officer (or interim chief executive officer) or chief financial officer of the Borrower certifying that (i) the Borrower individually is Solvent and (ii) the Borrower and the other Credit Parties taken as a whole are Solvent.

(h) The Administrative Agent shall have received certificates with respect to the existence, qualification and good standing or other comparable status of the Borrower and each of the other Credit Parties from the appropriate State agency of such Credit Party's jurisdiction of organization and such other jurisdictions as may be reasonably requested by the Administrative Agent.

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(i) The Administrative Agent shall have received an opinion of (x) Kirkland & Ellis LLP, New York counsel to the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, as to such customary matters regarding this Agreement, the Security Instruments and the other Loan Documents and the Transactions as the Administrative Agent or its counsel may reasonably request and (y) The Title Law Group, PLLC, Oklahoma and Ohio counsel to the Borrower, with respect to mortgages and other recorded instruments to perfect interests in real property in form and substance reasonably satisfactory to the Administrative Agent.

(j) Subject to Section 6.03, the Administrative Agent shall have received a customary insurance certificate evidencing coverage of the Credit Parties and their respective Subsidiaries evidencing that the Borrower is carrying insurance in accordance with Section 8.07 and naming the Administrative Agent in such capacity for the Lenders as loss payee on all property insurance policies and naming the Administrative Agent and the Lenders as additional insureds on all liability policies.

(k) The Administrative Agent shall have received (i) a pro forma unaudited consolidated balance sheet of the Borrower as of the most recently ended calendar month prior to the Effective Date for which financial statements are available, prepared in good faith after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet), (ii) a certificate of the chief executive officer (or interim chief executive officer) or a Financial Officer of the Borrower in substantially the form of Exhibit B certifying that, on a pro forma basis after giving effect to the Transactions, (A) Holdings and the Borrower and its Restricted Subsidiaries do not have any Excess Cash in excess of \$30,000,000, (B) the aggregate Revolving Credit Commitments available to be borrowed after the Effective Date and after giving effect to Section 6.02(d) shall be at least \$80,000,000, (C) the Net Funded Leverage Ratio for the most recently ended twelve-month period ending on the calendar month most recently ended prior to the Effective Date for which financial statements are available, calculated (i) on a pro forma basis after giving effect to the Transactions and cost savings from rejection of midstream contracts with respect to which the Bankruptcy Court has entered Final Orders authorizing the rejections of such midstream contracts and the entry into any replacement contracts and (ii) including (to the extent it would otherwise be excluded from Consolidated Net Income and not added back to EBITDAX) any net after tax effect of income from Liquidations of Swap Agreements on or prior to the Effective Date, shall not exceed 2.00 to 1.00 (as demonstrated by reasonably detailed calculations), and (iii) the Initial Reserve Report accompanied by a certificate covering the matters described in Section 8.12(c).

(l) The Administrative Agent shall have received appropriate UCC and other Lien and judgment search certificates from the jurisdiction of organization reflecting no prior Liens encumbering the Properties of such Credit Party other than those being assigned or released on or prior to the Effective Date or Liens permitted by Section 9.03.

(m) The Administrative Agent shall have received satisfactory title information setting forth the status of title to at least 85% of the PV-10 value of the Borrowing Base Properties evaluated in the Initial Reserve Report; provided, that the Administrative Agent hereby acknowledges that as of the Effective Date, the requirement under this clause (m) has been satisfied.

(n) The Administrative Agent shall be reasonably satisfied with the environmental condition of the Oil and Gas Properties of the Borrower.

(o) The Arrangers, the Administrative Agent and the Lenders shall have received all upfront, arrangement and agency fees and other fees and amounts due and payable on or prior to the Effective Date, including reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder (including, without limitation, the fees and expenses of Latham & Watkins LLP, counsel to the Administrative Agent, Opportune LLP and any other counsel or advisors to the Administrative Agent) and the Administrative Agent shall have received satisfactory evidence as to the payment in full on the Effective Date of all material administrative expense claims, priority claims and other claims required to be paid upon the Effective Date pursuant to the Confirmation Order.

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(p) The Borrower shall have deposited an amount not less than \$40,020.00 with Latham & Watkins LLP, counsel to the Administrative Agent, or its designee, to be held and applied toward payment of costs and expenses for recordation of the Security Instruments, as provided pursuant to Section 12.03(a). If such deposit exceeds the amount of such costs and expenses, the excess shall be returned to the Borrower. If such deposit is less than such costs and expenses, the deficit shall be paid by Borrower pursuant to Section 12.03(a).

(q) The Administrative Agent and the Lenders shall have received, and be reasonably satisfied in form and substance with, all documentation and other

information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including but not restricted to the Patriot Act.

(r) To the extent the Borrower or any Guarantor qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Administrative Agent and the Lenders shall have received such Beneficial Ownership Certification at least five (5) Business Days prior to the Effective Date.

(s) (i) The Bankruptcy Court shall have entered an order (such order, the “Confirmation Order”) in form and substance reasonably satisfactory to the Administrative Agent confirming this Agreement, the other Loan Documents and the Plan of Reorganization (which Plan of Reorganization is reasonably satisfactory to the Arrangers) and all material related orders, in each case, in form and substance reasonably satisfactory to the Administrative Agent, and the Confirmation Order shall be in full force and effect, unstayed and final, and as to which no appeal, petition for certiorari, or other proceeding for a new trial, reargument or rehearing has been timely taken, and shall not have been amended, supplemented or otherwise modified without the written consent of the Administrative Agent, (ii) all conditions to the Effective Date (as defined in the Plan of Reorganization) of the Plan of Reorganization shall have been satisfied (or will be satisfied upon the occurrence of the Effective Date) or waived in accordance with the terms set forth therein, (iii) the Effective Date (as defined in the Plan of Reorganization) shall have occurred or shall occur substantially contemporaneously with the Effective Date hereof, and (iv) all transactions contemplated in the Plan of Reorganization or the Confirmation Order to occur on the Effective Date (as defined in the Plan of Reorganization) shall have occurred or shall occur substantially contemporaneously with the Effective Date and in compliance with applicable law and Bankruptcy Court and regulatory approvals. Without limiting the generality of the foregoing, the Plan of Reorganization shall not be satisfactory to the Arrangers unless all outstanding obligations under the Borrower’s Prepetition Indentures shall be exchanged for (i) common Equity Interests of the Borrower and (ii) the Take-Back Notes and the Borrower shall have received the gross proceeds from the issuance of convertible preferred Equity Interests (the “Preferred Equity”) in a minimum amount of \$50,000,000, in each case, consistent with the Plan Support Agreement.

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(t) The Confirmation Order shall approve this Agreement and authorize the Credit Parties’ execution and delivery hereof and the Loan Documents.

(u) The Borrower shall have paid to the Prepetition Lenders all other payments as provided for in the Plan Support Agreement and the Plan of Reorganization, which amounts shall be applied to the repayment of the claims of the Prepetition Lenders arising under the Prepetition Credit Agreement, including, without limitation, the Secured Obligations (as defined in the Prepetition Credit Agreement) in accordance with the Plan of Reorganization.

(v) The DIP Credit Agreement shall be repaid in full and terminated and the commitments thereunder terminated, and all security interests related thereto shall have been terminated substantially concurrently with the Effective Date.

(w) The Borrower shall have entered into swap agreements constituting Acceptable Hedge Transactions covering notional volumes of natural gas representing not less than (x) 80% of projected production from Proved Developed Producing Reserves for each fiscal quarter of the calendar year ending on or prior to December 31, 2021 and (y) 60% of projected production from Proved Developed Producing Reserves for each fiscal quarter of the calendar year 2022, in each case as such projected production is set forth in the reserve report provided by the Borrower in October of 2020 and such Acceptable Hedge Transactions shall continue in effect on the Effective Date (collectively, the “Closing Date Hedges”).

(x) The Credit Parties shall not have sold any oil and gas properties (except as authorized pursuant to the De Minimis Asset Sale Order (as defined in the Plan Support Agreement) in an aggregate amount not to exceed gross proceeds of \$10,000,000 for all such sales) or terminated any hedge transactions since the interim effective date of the DIP Credit Agreement such that the notional volumes of all remaining hedge transactions represents less than (x) 80% of projected production from Proved Developed Producing Reserves for each fiscal quarter of the calendar year ending on or prior to December 31, 2021 and (y) 60% of projected production from Proved Developed Producing Reserves for each fiscal quarter of the calendar year 2022.

(y) the Subordinated Intercompany Note executed by the parties thereto accompanied by an undated instrument of transfer duly executed in blank and satisfactory to the Administrative Agent.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 12.02) on or prior to June 1, 2021 (and, in the event such conditions are not so satisfied or waived, the Revolving Credit Commitments shall terminate at such time). For purposes of determining compliance with the conditions specified in this Section 6.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

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Section 6.02 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing (including the initial funding on the Effective Date), and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default, Event of Default or Borrowing Base Deficiency shall have occurred and be continuing.

(b) Each of the representations and warranties of the Borrower and the Guarantors, set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects (except for those which have a materiality qualifier, which shall be true and correct in all respects as so qualified) on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, such representations and warranties shall continue to be true and correct in all material respects (except for those which have a materiality qualifier, which shall be true and correct in all respects as so qualified) as of such specified earlier date, and, if requested by the Administrative Agent or the Majority Lenders, the chief executive officer (or interim chief executive officer) or chief financial officer of the Borrower shall deliver to the Administrative Agent a certificate certifying to the foregoing.

(c) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, the Borrower and its Restricted Subsidiaries shall not have Excess Cash in an amount greater than the Excess Cash Threshold.

(d) Prior to the date that Successful Midstream Resolution has occurred, immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, the total Revolving Credit Exposures shall not exceed an amount equal to (i) the aggregate Revolving Credit Commitments *minus* (ii) the amount of the Availability Blocker.

(e) The receipt by the Administrative Agent of a Borrowing Request in accordance with Section 2.03 or a request for a Letter of Credit in accordance with Section 2.08(b), as applicable.

Each request for a Borrowing and each request for the issuance, amendment, renewal or extension of any Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in Section 6.02(a), (b), (c) and (d).

Section 6.03 Post-Closing Obligations. Within the time periods specified on Schedule 6.03 (as each may be extended in writing by the Administrative Agent in its sole discretion), each Credit Party shall, and shall cause each Restricted Subsidiary to, provide the documentation, and complete the undertakings, as are set forth on Schedule 6.03.

ARTICLE VII Representations and Warranties

The Credit Parties jointly and severally represent and warrant to the Lenders that:

Section 7.01 Organization; Powers. Each of the Credit Parties and the Restricted Subsidiaries is (a) duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority, and has all governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except in the case of clauses (b) and (c), where such failure could not reasonably be expected to have a Material Adverse Effect.

Section 7.02 Authority; Enforceability. After giving effect to the Confirmation Order and the Plan of Reorganization, the Transactions are within the Borrower's and each Guarantor's corporate, partnership or limited liability company powers and have been duly authorized by all necessary corporate, limited liability company or partnership and, if required, shareholder action (including, without limitation, any action required to be taken by any class of directors of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which the Borrower or any Guarantor is a party has been duly executed and delivered by the Borrower or such Guarantor, as applicable, and constitutes a legal, valid and binding obligation of the Borrower or such Guarantor, as applicable, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 7.03 Approvals; No Conflicts. After giving effect to the Confirmation Order and the Plan of Reorganization, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the Transactions, except (i) such as have been obtained or made and are in full force and effect, (ii) the filings and recordings necessary to perfect the Liens created hereby and by the Security Instruments, (iii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder or could not reasonably be expected to have a Material Adverse Effect and (iv) the filing of any required documents with the SEC, (b) will not violate any applicable law or regulation or the charter, by-laws or other Organizational Documents of the Credit Parties or any Restricted Subsidiary or any order of any Governmental Authority (except, with respect to applicable law or regulations, for such violations that would not reasonably be expected to have a Material Adverse Effect), (c) will not violate or result in a default under any indenture, agreement or other instrument evidencing or governing Material Debt binding upon the Credit Parties, the Restricted Subsidiaries or their respective Properties, or give rise to a right thereunder to require any payment to be made by the Credit Parties or any Restricted Subsidiary and (d) will not result in the creation or imposition of any Lien on any Property of the Credit Parties or any Restricted Subsidiary (other than the Liens created by the Loan Documents). The Confirmation Order is in full force and effect, not subject to any stay, nor has the Confirmation Order been amended or modified in any manner adverse to the Administrative Agent or the Lenders without the consent of the Administrative Agent.

Section 7.04 Financial Position; No Material Adverse Effect

(a) The Borrower has heretofore furnished to the Lenders the consolidated balance sheet and statements of operations, stockholders' equity and cash flows for the Borrower and its Consolidated Subsidiaries as of and for the fiscal year ended December 31, 2020, reported on by Grant Thornton LLP, independent public accounts, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such date and for such periods in accordance with GAAP.

(b) Since November 13, 2020, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect (other than as a result of the events leading up to, directly arising from, or direct effects of, the commencement or continuance of the Chapter 11 Cases).

(c) As of the Effective Date, no Credit Party or any Restricted Subsidiary has any Material Debt (including Disqualified Capital Stock), or any material contingent liabilities, off-balance sheet liabilities or partnerships, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except (i) the Secured Obligations, (ii) the Take-Back Notes or (iii) as referred to or reflected or provided for in the Financial Statements delivered under Section 7.04(a).

Section 7.05 Litigation. After giving effect to the Confirmation Order and the Plan of Reorganization and except as set forth on Schedule 7.05, there are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Credit Parties or the Restricted Subsidiaries, threatened in writing against or affecting the Credit Parties or the Restricted Subsidiaries (a) not fully covered by insurance (except for normal deductibles) as to which there is a reasonable possibility of an adverse determination that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (b) that involve any Loan Document or the Transactions. Since the Effective Date, there has been no change in the status of the matters disclosed in Schedule 7.05 that, individually or in the aggregate, has resulted in, or would reasonably be expected to result in, a Material Adverse Effect.

Section 7.06 Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) the Credit Parties and their respective Subsidiaries and each of their respective Properties and operations thereon are in compliance with all applicable Environmental Laws;

(b) the Credit Parties and their respective Subsidiaries have obtained all Environmental Permits required for their respective operations and each of their Properties, with all such Environmental Permits being currently in full force and effect, and none of the Credit Parties and their respective Subsidiaries has received any written notice that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be denied;

(c) there are no claims, demands, suits, orders, inquiries, or proceedings concerning any violation of, or any liability (including as a potentially responsible party) under, any applicable Environmental Laws that are pending or, to the knowledge of any Credit Party, threatened in writing against the Credit Parties and their respective Subsidiaries or any of their respective Properties;

(d) there has been no unauthorized Release of Hazardous Materials at, on, under or from any of the Credit Parties' or their respective Subsidiaries' Properties that has given rise to any liability or obligation of any Credit Party or Subsidiary under applicable Environmental Laws regarding the investigation, remediation, abatement, removal, or monitoring of Hazardous Materials at such Properties; and

(e) neither the Credit Parties nor their respective Subsidiaries has received any written notice asserting an alleged liability or obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Release of Hazardous Materials at, under, on or from any real properties offsite the Credit Parties' or their respective Subsidiaries' Properties.

Section 7.07 Compliance with the Laws and Agreements; No Defaults

(a) After giving effect to the Confirmation Order and the Plan of Reorganization, each of the Credit Parties and the Restricted Subsidiaries is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) No Default or Event of Default has occurred and is continuing.

Section 7.08 Investment Company Act. None of the Credit Parties or any of the Restricted Subsidiaries is an "investment company" or a company "controlled" by an "investment company," within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 7.09 Taxes. Each of the Credit Parties and their Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to be filed by such Credit Party or its Subsidiaries (taking into account all applicable extensions) and has paid or caused to be paid all Taxes due and payable by such Credit Party or its Subsidiaries, except (a) Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 7.10 ERISA. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect:

(a) The Credit Parties have complied in all material respects with ERISA and, where applicable, the Code regarding each Benefit Plan, if any.

(b) Each Benefit Plan, if any, is, and has been, maintained in substantial compliance with ERISA and, where applicable, the Code.

(c) No ERISA Event has occurred or is reasonably expected by the Credit Parties or any ERISA Affiliate to occur.

(d) No failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA, whether or not waived, exists with respect to any Plan.

(e) None of the Credit Parties or any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date hereof sponsored, maintained or contributed to, any Multiemployer Plan.

(f) None of the Credit Parties sponsors, maintains or contributes to an employee welfare benefit plan, as defined in Section 3(1) of ERISA, which is maintained to provide benefits to former employees of such entities that may not be terminated by the Credit Parties in their sole discretion without any material liability.

Section 7.11 Disclosure; No Material Misstatements. None of the reports, financial statements, certificates or other written information, taken as a whole, furnished by or on behalf of the Credit Parties and their respective Subsidiaries to the Administrative Agent or any Lender pursuant to this Agreement or any other Loan Document or delivered by the Borrower, any other Credit Party or any of their respective Subsidiaries to the Administrative Agent or any Lender hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in the light of the circumstances under which they were made, not materially misleading on the date when furnished; provided that with respect to financial estimates, projected or forecasted financial information and other forward-looking information, the Credit Parties each represents and warrants only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that (a) such projections and forecasts, as to future events, are not to be viewed as facts, that actual results during the period(s) covered by any such projections or forecasts may differ significantly from the projected or forecasted results and that such differences may be material and that such projections and forecasts are not a guarantee of financial performance, and (b) no representation is made with respect to information of a general economic or general industry nature. There are no statements or conclusions in any Reserve Report or in any information delivered in connection therewith which are based upon or include materially misleading information of a material fact or fail to take into account material information regarding the material matters reported therein, it being understood that projections concerning volumes attributable to the Oil and Gas Properties of the Borrower and the Restricted Subsidiaries and production and cost estimates contained in each Reserve Report and in other information delivered in connection therewith are necessarily based upon professional opinions, estimates and projections and that no warranty is made with respect to such opinions, estimates and projections.

Section 7.12 Insurance. The Credit Parties have, and have caused all of the Restricted Subsidiaries to have, (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements and all material agreements and (b) insurance coverage in at least amounts and against such risk that are usually insured against by companies similarly situated and engaged in the same or a similar business for the assets and operations of the Credit Parties and the Restricted Subsidiaries. The Administrative Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies and the Administrative Agent has been named as loss payee with respect to property loss insurance.

Section 7.13 Restriction on Liens. Except as permitted by Section 9.13(f), neither the Credit Parties nor the Restricted Subsidiaries is a party to any agreement or

arrangement or is subject to any order, judgment, writ or decree, which either prohibits or purports to prohibit any of the Credit Parties or the Restricted Subsidiaries from granting Liens to the Administrative Agent and the Lenders on or in respect of their Properties to secure the Secured Obligations, or restricts any Restricted Subsidiary from paying dividends or making any other distributions in respect of its Equity Interests to the Credit Parties or any Restricted Subsidiary, or restricts any Restricted Subsidiary from making loans or advances or transferring any Property to the Credit Parties or any Restricted Subsidiary, or which requires the consent of or notice to other Persons in connection therewith.

Section 7.14 Subsidiaries. As of the Effective Date or as of the date of the most recent certificate delivered pursuant to Section 8.01(c), except as set forth on Schedule 7.14 or as disclosed in writing to the Administrative Agent (which shall promptly furnish a copy to the Lenders), and which disclosure (including updates included in certificates delivered pursuant to Section 8.01(c)) shall be a supplement to Schedule 7.14, none of the Credit Parties has any direct or indirect Subsidiaries or Unrestricted Subsidiaries. The Borrower does not have any direct or indirect Foreign Subsidiaries except for Grizzly Oil Sands. Each Subsidiary Guarantor is a Wholly-Owned Subsidiary of the Borrower. Each Subsidiary listed on Schedule 7.14 (as supplemented) is (a) a Restricted Subsidiary unless specifically designated as an Unrestricted Subsidiary therein and (b) a Material Subsidiary unless specifically designated as an Immaterial Subsidiary therein.

Section 7.15 Location of Business and Offices. As of the Effective Date or as of the date of the most recent certificate delivered pursuant to Section 8.01(k), the jurisdiction of organization, correct legal name as listed in the public records of its jurisdiction of organization, organizational identification number in its respective jurisdiction of organization, federal tax identification number, if applicable, and the principal place of business and chief executive office, in each case of each Credit Party and its respective Subsidiaries is set forth on Schedule 7.14 (or as set forth in a notice delivered pursuant to Section 8.01(k)) and delivered in accordance with Section 12.01.

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Section 7.16 Properties: Titles, Etc.

(a) After giving effect to the Confirmation Order and the Plan of Reorganization, each of the Borrower and the Restricted Subsidiaries has good and defensible title to its Oil and Gas Properties evaluated in the most recently delivered Reserve Report (other than those disposed of in compliance with Section 9.11 since delivery of such Reserve Report) and good title to all its material personal Properties, in each case, free and clear of all Liens except Liens permitted by Section 9.03. After giving full effect to Liens permitted by Section 9.03, the Borrower or the Restricted Subsidiary specified as the owner owns the net interests in production attributable to the Hydrocarbon Interests as reflected in the most recently delivered Reserve Report or otherwise indicated to the Administrative Agent in connection with the Reserve Report, other than any reduction in such interests after the date such Reserve Report was delivered resulting from any Disposition permitted under this Agreement or from non-consent election, and the ownership of such Properties shall not in any material respect obligate it to bear the costs and expenses relating to the maintenance, development and operations of each such Property in an amount in excess of the working interest of each Property set forth in the most recently delivered Reserve Report that is not offset by a corresponding proportionate increase in its net revenue interest in such Property.

(b) After giving effect to the Confirmation Order and the Plan of Reorganization, all leases and agreements necessary for the conduct of the business of the Credit Parties and the Restricted Subsidiaries are valid and subsisting, in full force and effect, except to the extent any failure to be valid and subsisting and in full force and effect could not reasonably be expected to have a Material Adverse Effect, and there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such lease or agreement, which could reasonably be expected to have a Material Adverse Effect.

(c) After giving effect to the Confirmation Order and the Plan of Reorganization, the rights and Properties presently owned, leased or licensed by the Credit Parties and the Restricted Subsidiaries including, without limitation, all easements and rights of way, include all rights and Properties reasonably necessary to permit the Credit Parties and the Restricted Subsidiaries to conduct their business, except to the extent any failure to satisfy the foregoing could not reasonably be expected to have a Material Adverse Effect.

(d) After giving effect to the Confirmation Order and the Plan of Reorganization, all of the Properties of the Credit Parties and the Restricted Subsidiaries (other than the Oil and Gas Properties, which are addressed in Section 7.17) which are reasonably necessary for the operation of their businesses are in good working condition and are maintained in accordance with prudent business standards, except to the extent any failure to satisfy the foregoing could not reasonably be expected to have a Material Adverse Effect.

(e) Each of the Credit Parties and the Restricted Subsidiaries owns, or is licensed to use, all trademarks, trade names, copyrights, patents and other intellectual Property material to its business, and the use thereof by the Credit Parties and the Restricted Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Credit Parties and the Restricted Subsidiaries either own or have valid licenses or other rights to use all databases, geological data, geophysical data, engineering data, seismic data, maps, interpretations and other technical information used in their businesses as presently conducted, subject to the limitations contained in the agreements governing the use of the same, which limitations are customary for companies engaged in the business of the exploration and production of Hydrocarbons, with such exceptions as could not reasonably be expected to have a Material Adverse Effect.

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Section 7.17 Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the Oil and Gas Properties (and Properties unitized therewith) of the Borrower and the Restricted Subsidiaries have been maintained, operated and developed in a good and workmanlike manner and in conformity with all Governmental Requirements and in conformity with the provisions of all leases, subleases or other contracts comprising a part of the Hydrocarbon Interests and other contracts and agreements forming a part of the Oil and Gas Properties of the Borrower and the Restricted Subsidiaries. Specifically in connection with the foregoing, except as could not reasonably be expected to have a Material Adverse Effect, (a) no Oil and Gas Property of the Borrower and the Restricted Subsidiaries is subject to having allowable production reduced below the full and regular allowable production (including the maximum permissible tolerance) because of any overproduction (whether or not the same was permissible at the time) and (b) none of the wells comprising a part of the Oil and Gas Properties (or Properties unitized therewith) of the Borrower and the Restricted Subsidiaries is deviated from the vertical more than the maximum permitted by Governmental Requirements, and such wells are, in fact, bottomed under and are producing from, and the well bores are wholly within, such Oil and Gas Properties (or in the case of wells located on Properties unitized therewith, such unitized Properties). All pipelines, wells, gas processing plants, platforms and other material improvements, fixtures and equipment owned in whole or in part by the Borrower and the Restricted Subsidiaries that are necessary to conduct normal operations are being maintained in a state adequate to conduct normal operations, and with respect to such of the foregoing which are operated by the Borrower and the Restricted Subsidiaries, in a manner consistent with the Borrower's and the Restricted Subsidiaries' past practices (other than those the failure of which to maintain in accordance with this Section 7.17 could not reasonably be expected to have a Material Adverse Effect).

Section 7.18 Gas Imbalances, Prepayments. As of the Effective Date, except as set forth on Schedule 7.18 (a) there is no Material Gas Imbalance, and (b) the aggregate amount of all Advance Payments received by any Credit Party under Advance Payment Contracts that have not been satisfied by delivery of production does not exceed \$1,000,000. As of the Effective Date, except as set forth on Schedule 7.18, there are no Service Agreement Undertakings.

Section 7.19 Marketing of Production. Except for contracts listed and in effect on the Effective Date on Schedule 7.19, and thereafter either disclosed in writing to the Administrative Agent or included in the most recently delivered Reserve Report Certificate (with respect to all of which contracts the Borrower represents that it or its

Restricted Subsidiaries are receiving a price for all production sold thereunder which is computed substantially in accordance with the terms of the relevant contract and are not having deliveries curtailed substantially below the subject Property's delivery capacity), no material agreements exist which are not cancelable on sixty (60) days' notice or less without penalty or detriment for the sale of production from the Borrower's and the Restricted Subsidiaries' Hydrocarbons (including, without limitation, calls on or other rights to purchase, production, whether or not the same are currently being exercised) that (a) pertain to the sale of production at a fixed price and (b) have a maturity or expiry date of more than seven (7) months from the Effective Date or the date of disclosure or delivery of such Reserve Report Certificate, as applicable.

Section 7.20 Swap Agreements, Schedule 7.20, as of the date hereof, and after the date hereof, each report required to be delivered by the Borrower pursuant to Section 8.01(d) (as of the relevant period end), sets forth, a true and complete list of all Swap Agreements of the Borrower, any other Credit Party and each of the Restricted Subsidiaries, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value thereof, all credit support agreements relating thereto (including any margin required or supplied), if applicable, and the counterparty to each such agreement.

Section 7.21 Use of Loans and Letters of Credit. The proceeds of the Loans made or deemed made, and any Letters of Credit issued, (i) on the Effective Date, shall be used in accordance with the Plan of Reorganization and (ii) thereafter, (a) to provide working capital for exploration and production operations, (b) to finance capital expenditures, including capital projects and additional acquisitions, in each case to the extent permitted by the terms of this Agreement and (c) for other lawful general corporate purposes. The Credit Parties and the Restricted Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan or Letter of Credit will be used for any purpose which violates Regulation T, U or X of the Board.

Section 7.22 Solvency. Immediately after giving effect to the Confirmation Order, the Plan of Reorganization and the Transactions, and immediately prior to and after giving effect to each Borrowing and each issuance, amendment, renewal, or extension of a Letter of Credit, (i) the Borrower is Solvent and (ii) the Borrower and the other Credit Parties taken as a whole, are Solvent.

Section 7.23 Anti-Corruption. Neither the Credit Parties nor their respective Subsidiaries, nor any director, officer, or employee, nor to the knowledge of the Credit Parties, any agent of the Credit Parties or their respective Subsidiaries is in violation of or is aware of or is taking any action, directly or knowingly, indirectly, in violation of any applicable Anti-Corruption Laws, including without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA.

Section 7.24 AML and Sanctions. Neither any of the Credit Parties nor any of their respective Subsidiaries, nor any director, officer, or employee, nor to the knowledge of the Credit Parties, any agent or Affiliate of the Credit Parties or their respective Subsidiaries is (i) a Sanctioned Person or (ii) in violation of any AML Laws or Sanctions. The Borrower will not directly or, knowingly, indirectly use the proceeds from the Loans or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, in a manner that will cause a violation of AML Laws, Anti-Corruption Laws or applicable Sanctions by any Person participating in the transactions contemplated by this Agreement, whether as lender, issuing bank, borrower, guarantor, agent, or otherwise. The Borrower represents that neither it nor any of the other Credit Parties nor any of their respective Subsidiaries or Affiliates is engaging in or intends to engage in any dealings or transactions with, or for the benefit of, any Sanctioned Person or with or in any Sanctioned Country in violation of Sanctions. No Borrowing or Letter of Credit relates, directly or, knowingly, indirectly, to any unlawful activities or business of or with a Sanctioned Person or with or in a Sanctioned Country; and, the Credit Parties and their respective Subsidiaries are conducting their business in material compliance with all applicable Anti-Corruption Laws.

Section 7.25 Accounts. Set forth on Schedule 7.25 lists all Deposit Accounts, including any Excluded Accounts, Commodity Accounts and Securities Accounts maintained by or for the benefit of the Credit Parties or any Restricted Subsidiary as of the Effective Date.

Section 7.26 Security Instruments.

(a) Guaranty and Collateral Agreement. The provisions of the Guaranty and Collateral Agreement are effective to create, in favor of the Administrative Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and security interest in, all of the Collateral covered thereby, and (i) when financing statements and other filings in appropriate form are filed in the offices specified in the Guaranty and Collateral Agreement and (ii) upon the taking of possession or control by the Administrative Agent of the Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Administrative Agent to the extent possession or control by the Administrative Agent is required by the Guaranty and Collateral Agreement or hereunder), the Liens created by the Guaranty and Collateral Agreement shall constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Credit Parties in the Collateral covered thereby (other than such Collateral in which a security interest cannot be perfected under the Uniform Commercial Code as in effect at the relevant time in the relevant jurisdiction), in each case free of all Liens other than Excepted Liens and other Liens permitted by Section 9.03, and prior and superior to all other Liens other than Liens permitted by Section 9.03.

(b) Mortgages. Each Mortgage is effective to create, in favor of the Administrative Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Mortgaged Property thereunder and the proceeds thereof, subject only to Excepted Liens and other Liens permitted by Section 9.03, and when the Mortgages are recorded or filed in the offices specified on Schedule 7.26 (or, in the case of any Mortgage executed and delivered after the date thereof in accordance with the provisions of Section 8.11 and Section 8.14, when such Mortgage is recorded or filed in the appropriate offices), the Mortgages shall constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Borrower and Subsidiaries in the Mortgaged Property and the proceeds thereof, in each case prior and superior in right to any other person, other than Liens permitted by Section 9.03.

(c) Valid Liens. Each Security Instrument delivered pursuant to Section 8.11 and Section 8.14, upon execution and delivery thereof, is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Collateral thereunder, and when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable Governmental Requirements, such Security Instruments will constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Credit Parties in such Collateral, in each case with no other Liens except for Liens permitted by Section 9.03.

(d) All of the warranties of all Credit Parties set forth in the Security Instruments are true and correct in all material respects (except that any representation and warranty that is qualified by materiality shall be true and correct in all respects).

Section 7.27 International Operations. Holdings, the Borrower and its Restricted Subsidiaries do not own, and have not acquired or made any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any Oil and Gas Properties located outside of the geographical boundaries of the United States, tribal lands or in the offshore federal waters of the United States of America.

Section 7.28 Beneficial Ownership Certification. As of the Effective Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

ARTICLE VIII Affirmative Covenants

Until the Revolving Credit Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder and all other amounts payable under the Loan Documents have been paid in full (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made as of the time of determination) and all Letters of Credit shall have expired, terminated or have been cash collateralized (or as to which other arrangements satisfactory to the Administrative Agent and each Issuing Bank shall have been made) and all LC Disbursements shall have been reimbursed, each of the Credit Parties covenants and agrees with the Lenders, and covenants and agrees with the Lenders to cause the Restricted Subsidiaries, that:

Section 8.01 Financial Statements; Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) Annual Financial Statements. As soon as available and not later than ninety (90) days after the end of each fiscal year of the Borrower, the Borrower and its Consolidated Subsidiaries' audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in comparative form the figures for the previous fiscal year, all reported on by Grant Thornton LLP or other independent public accountants of recognized national standing, without a "going concern" or like qualification, emphasis on the matter or exception (except to the extent such "going concern" qualification is solely attributable to the Maturity Date occurring within the next twelve months or a projected financial covenant default within the next twelve months) and without any qualification or exception as to the scope of such audit to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

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(b) Quarterly Financial Statements. As soon as available, but in any event and not later than forty-five (45) days (or sixty (60) days with respect to the first two fiscal quarters after the Effective Date) after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, commencing with the fiscal quarter ending June 30, 2021, the Borrower and its Consolidated Subsidiaries' consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial position and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(c) Certificate of Financial Officer -- Compliance. Concurrently with any delivery of financial statements under Section 8.01(a) or Section 8.01(b), commencing with the fiscal quarter ended June 30, 2021, a certificate of a Financial Officer of the Borrower in substantially the form of Exhibit B hereto (i) certifying as to whether a Default or Event of Default has occurred and is continuing as of the date of such certificate and, if a Default or Event of Default has occurred and is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 9.01, (iii) stating whether any change in GAAP or in the application thereof has occurred since the Effective Date which materially changes the calculation of any covenant or affects compliance with the terms of this Agreement and, if applicable, specifying the effect of such change on the financial statements accompanying such certificate, (iv) if, during the applicable period, all of the Consolidated Subsidiaries of the Borrower are not Consolidated Restricted Subsidiaries, additional financial information (which may be in the form of footnotes to the consolidated financial statements referred to in Section 8.01(a) or Section 8.01(b) above) setting forth calculations excluding the effects of any Unrestricted Subsidiaries that constitute Consolidated Subsidiaries and containing such calculations for any Unrestricted Subsidiaries as reasonably requested by the Administrative Agent, including any supporting documents used to prepare such calculations, (v) setting forth a specification of any change in the identity of the Restricted Subsidiaries, Material Subsidiaries, Guarantors, and Unrestricted Subsidiaries as of the end of such period, as the case may be, from the Restricted Subsidiaries, Material Subsidiaries, Guarantors and Unrestricted Subsidiaries, respectively, identified on the Effective Date or in the most recently delivered certificate pursuant to this Section 8.01(c) (and, to the extent necessary, designating sufficient additional Restricted Subsidiaries as Material Subsidiaries so as to comply with the definition of "Material Subsidiary") and (vi) setting forth reasonably detailed calculations of Available Free Cash Flow for such fiscal quarter most recently ended.

(d) Swap Agreements. Concurrently with the delivery of each Reserve Report required by Section 8.12, a true and complete list of all Swap Agreements, as of a recent date prior to such date, of the Borrower, each other Credit Party and each of the Restricted Subsidiaries, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value therefore, any new credit support agreements relating thereto not listed on Schedule 7.20, if applicable, any margin required or supplied under any credit support document, if applicable, and the counterparty to each such agreement.

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(e) Certificate of Insurer – Insurance Coverage. Concurrently with any delivery of financial statements under Section 8.01(a), an ACORD evidence of insurance certificate of such insurance coverage from the insurer providing such insurance in form and substance reasonably satisfactory to the Administrative Agent, and, if requested by the Administrative Agent or any Lender, copies of all of the applicable policies.

(f) SEC and Other Filings. To the extent applicable, promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Credit Parties and the Restricted Subsidiaries with the SEC, or with any national securities exchange, or distributed by the Credit Parties and the Restricted Subsidiaries to shareholders generally, as the case may be.

(g) Notices Under Material Instruments. Promptly after the furnishing or receipt thereof, a copy of any notice of default received from any holder or holders of any Material Debt (other than the Secured Obligations) or any trustee or agent on its or their behalf, to the extent such notice has not otherwise been delivered to the Administrative Agent hereunder.

(h) Other Accounting Reports. Promptly upon receipt thereof, a copy of each other report or letter (except standard and customary correspondence) submitted to the Borrower or any of its Subsidiaries by independent accountants in connection with any annual, interim or special audit made by them of the books of the Borrower or any such Subsidiary, and a copy of any response by, or on behalf of, the Borrower or any such Subsidiary to such report or letter.

(i) Notice of Sales or Acquisitions of Oil and Gas Properties or Liquidation of Swap Agreements. In the event the Borrower or any Restricted Subsidiary intends to (i) Dispose of any Borrowing Base Properties (or any Equity Interests in any Restricted Subsidiary owning interests in Borrowing Base Properties) having an aggregate value in excess of 5% of the Borrowing Base in effect immediately prior to such Disposition or (ii) acquire any Oil and Gas Properties (or any Equity Interests in any Person owning interests in Oil and Gas Properties) having an aggregate value in excess of 5% of the Borrowing Base in effect immediately prior to such acquisition, prior written notice of such Disposition or acquisition, the price thereof, the anticipated date of closing, and any other details thereof reasonably requested by the Administrative Agent or any Lender. In the event that the Borrower, any other Credit Party or any Restricted Subsidiary receives any notice of early termination of any Swap Agreement to which it is a party from any of its counterparties, or any Swap Agreement to which the Borrower, any other Credit Party or any Restricted Subsidiary is a party is Liquidated, in each case, upon which the Lenders relied in determining the most recent Borrowing Base, and the aggregate Swap PV of all such terminations or Liquidations exceeds five percent (5%) of the Borrowing Base as then in effect, prompt written notice of the receipt of such early termination notice or such Liquidation (and in the case of a voluntary Liquidation of any Swap Agreement, prior written notice thereof), as the case may be, together with a reasonably detailed description or explanation thereof and any other details thereof requested by the Administrative Agent or any Lender.

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(j) Notice of Casualty Events. Prompt written notice, and in any event within three Business Days (or such later date as the Administrative Agent may agree to in its sole discretion), of the occurrence of any Casualty Event in respect of Borrowing Base Properties having an aggregate value in excess of 5% of the Borrowing Base in effect immediately prior to such Casualty Event.

(k) Information Regarding Credit Parties. Prompt written notice of (and in any event within five (5) days after the items set forth in clauses (ii), (iii) and (v) below, and five Business Days' prior written notice of the items set forth in clauses (i) and (iv) below (or, in each case, such later date as the Administrative Agent may agree to in its sole discretion)) any change (i) in any Credit Party's corporate name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of any Credit Party's chief executive office or principal place of business, (iii) in any Credit Party's identity or corporate structure, (iv) in any Credit Party's jurisdiction of organization or such Person's organizational identification number in such jurisdiction of organization, and (v) in any Credit Party's federal tax identification number, if any.

(l) Production Report and Lease Operating Statements. Concurrently with the delivery of any Reserve Report to the Administrative Agent pursuant to Section 8.12(a), a report setting forth, for each calendar month during the then-current fiscal year to date, the volume of production and sales attributable to production (and the prices at which such sales were made and the revenues derived from such sales) for each such calendar month from the Oil and Gas Properties of the Borrower and the Restricted Subsidiaries, and setting forth the related ad valorem, severance and production Taxes and lease operating expenses attributable thereto and incurred for each such calendar month.

(m) Notices of Certain Changes. Promptly, but in any event at least one (1) Business Day prior to the execution thereof (or such later date as the Administrative Agent may agree to in its sole discretion), copies of any written material amendment, modification or supplement to any agreement governing any Material Debt (other than extensions of an administrative, technical or immaterial nature, or amendments, modifications or waivers to correct or cure ambiguities, errors, omissions or defects or to fix incorrect cross references or similar inaccuracies), or any material amendment, modification or supplement to the certificate or articles of incorporation, by-laws, any preferred stock designation or any other organic document of the Credit Parties or the Restricted Subsidiaries.

(n) Annual Budgets. Concurrently with any delivery of financial statements under Section 8.01(a), a detailed quarterly business plan and budget, in a form reasonably satisfactory to the Administrative Agent, for such fiscal year of the Borrower and its Consolidated Restricted Subsidiaries on a consolidated basis, including forecasts prepared by management of the Borrower.

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(o) Notice of Permitted Debt Issuance. Written notice on or prior to the incurrence of any Permitted Debt incurred in reliance on Section 9.02(f) or Section 9.02(h), the amount thereof and the anticipated date of closing and any material agreements governing such Permitted Debt.

(p) Other Requested Information. (i) Promptly following any request therefor, (x) such other information regarding the operations, business affairs and financial condition of the Credit Parties or the Restricted Subsidiaries (including, without limitation, any Plan and any reports or other information required to be filed under ERISA), or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any Lender may reasonably request and (y) information and documentation reasonably requested by the Administrative Agent on behalf of any Lender and required for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the Beneficial Ownership Regulation and (ii) upon Holdings or the Borrower's knowledge thereof, if Holdings or the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, prompt written notice of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein (or, if applicable, Holdings or the Borrower ceasing to fall within an express exclusion to the definition of "legal entity customer" under the Beneficial Ownership Regulation).

(q) EDGAR Postings. In lieu of delivery of paper counterparts of financial statements or other information required to be delivered to the Administrative Agent and each Lender pursuant to this Section 8.01, to the extent such financial statements or other information has been published on EDGAR and/or on its website, the Borrower may send to the Administrative Agent and each Lender notice that such financial statements or other information is available on EDGAR or its website and delivery of such notice shall satisfy the Borrower's requirements under this Section 8.01 to deliver to the Administrative Agent and each Lender paper counterparts of such financial statements and other information; provided, however, that if any Lender is unable to access EDGAR or the Borrower's website, the Borrower agrees to provide such Lender with paper copies of the information required to be furnished pursuant to this Section 8.01 promptly following notice from the Administrative Agent that such Lender has requested the same. Any other information required to be delivered pursuant to this Section 8.01 shall be deemed to have been delivered on the date on which the Borrower provides notice to the Administrative Agent that such information has been posted on "EDGAR" or the Borrower's website or another website identified in such notice and accessible by the Administrative Agent without charge (and the Borrower hereby agrees to provide such notice).

Section 8.02 Notices of Material Events. The Credit Parties will furnish to the Administrative Agent and each Lender, promptly after any Credit Party obtains knowledge thereof, but in any event within five (5) Business Days thereof (or such later date as the Administrative Agent may agree to in its sole discretion), written notice of the following:

(a) the occurrence of any Default or Event of Default;

(b) (i) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against the Credit Parties or any Subsidiary not previously disclosed in writing to the Administrative Agent as to which there is a reasonable possibility of an adverse determination that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect and (ii) any material adverse development in any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against the Credit Parties or any Subsidiary (whether or not previously disclosed to the Lenders) that, in the case of either (i) or (ii) above, if adversely determined, could reasonably be expected to result in a Material Adverse Effect; and

- (c) any other development that has had or could reasonably be expected to result in a Material Adverse Effect.

Each notice delivered under this Section 8.02 shall be accompanied by a statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 8.03 Existence; Conduct of Business. Each Credit Party will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect (a) its legal existence and (b) the rights, licenses, permits, privileges and franchises material to the conduct of its business and maintain, if necessary, its qualification to do business in each other jurisdiction in which any of its Oil and Gas Properties is located or the ownership of its Properties requires such qualification, except in the case of clause (b) only, where the failure to so satisfy the foregoing requirements could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 9.10 or any Disposition permitted under Section 9.11.

Section 8.04 Payment of Obligations. The Credit Parties will, and will cause each of the Restricted Subsidiaries to, pay or discharge all their obligations and liabilities, including all Taxes imposed on such Credit Party or Restricted Subsidiary, before the same shall become delinquent, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings diligently conducted, and such Credit Party or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) the failure to pay or discharge the same could not reasonably be expected to result in a Material Adverse Effect.

Section 8.05 Performance of Obligations under Loan Documents. The Borrower will repay the Loans according to the terms thereof, and the Credit Parties will, and will cause each of the Restricted Subsidiaries to, do and perform every act and discharge all of the obligations to be performed and discharged by them under the Loan Documents, including this Agreement, at the time or times and in the manner specified.

Section 8.06 Operation and Maintenance of Properties; Subordination of Affiliated Operators' Liens. Each Credit Party will, and will cause each of the Restricted Subsidiaries to:

(a) operate its Oil and Gas Properties and other material Properties or cause such Oil and Gas Properties and other material Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable proration requirements and Environmental Laws, and all applicable laws, rules and regulations of every other Governmental Authority from time to time constituted to regulate the development and operation of its Oil and Gas Properties and the production and sale of Hydrocarbons and other minerals therefrom, except, in each case, where the failure to so operate or comply could not reasonably be expected to have a Material Adverse Effect;

(b) except to the extent disposed of pursuant to a transaction permitted by this Agreement, keep and maintain all Property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(c) promptly pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all delay rentals, royalties, expenses and obligations accruing under the leases or other agreements affecting or pertaining to its material Oil and Gas Properties and will do all other things necessary to keep unimpaired their rights with respect thereto and prevent any forfeiture thereof or default thereunder except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(d) promptly perform or make reasonable and customary efforts to cause to be performed, in accordance with industry standards and in all material respects, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Oil and Gas Properties and other Properties except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(e) cause each Affiliate of the Borrower (other than the Credit Parties) which operates any of the Borrower's or its Restricted Subsidiaries' Oil and Gas Properties to subordinate, pursuant to agreements in form and substance satisfactory to the Administrative Agent, any operators' Liens or other Liens in favor of such Affiliate in respect of such Oil and Gas Properties to the Liens in favor of the Administrative Agent for the benefit of the Secured Parties; and

(f) to the extent neither the Borrower nor one of its Restricted Subsidiaries is the operator of any of its Oil and Gas Property, the Borrower shall use reasonable efforts to cause the operator to comply with this Section 8.06, but the failure of the operator to so comply will not, in and of itself, constitute a Default or Event of Default hereunder.

Section 8.07 Insurance. The Borrower and each other Credit Party will, and will cause each of the Restricted Subsidiaries to, maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. The loss payable clauses or provisions in said insurance policy or policies insuring any of the Collateral shall be endorsed in favor of and made payable to the Administrative Agent as its interests may appear and such policies shall name or otherwise include the Administrative Agent and the Lenders as "additional insureds" and provide that the insurer will endeavor to give at least thirty (30) days prior notice of any cancellation thereof to the Administrative Agent (or ten (10) days prior notice of any cancellation on account of non-payment).

Section 8.08 Books and Records; Inspection Rights. The Borrower and each other Credit Party will, and will cause each of the Restricted Subsidiaries to, keep proper books of record and account in accordance with GAAP. The Borrower and each other Credit Party will, and will cause each of the Restricted Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided that the Credit Parties shall not be required to reimburse any cost or expense related thereto more than once in any calendar year (unless an Event of Default has occurred and is continuing).

Section 8.09 Compliance with Laws.

- (a) The Borrower and each other Credit Party will, and will cause each of the Restricted Subsidiaries to, comply with all laws, rules, regulations and orders of

any Governmental Authority applicable to them or their Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) The Credit Parties will maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Credit Parties, their respective Subsidiaries and their respective directors, officers, employees and agents with AML Laws, Anti-Corruption Laws and applicable Sanctions.

Section 8.10 Environmental Matters.

(a) Except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect, the Borrower and each other Credit Party and each of their Subsidiaries shall at its sole expense (including such contribution from third parties as may be available): (i) comply, and shall cause its Properties and operations and each Subsidiary and each Subsidiary's Properties and operations to comply, with all applicable Environmental Laws; (ii) obtain or file, and shall cause each Subsidiary to obtain or file, applications for all Environmental Permits required to be obtained or filed in connection with the operation or use of the Borrower's, any other Credit Parties', or their respective Subsidiaries' Properties; and (iii) commence and prosecute to completion, and shall cause each Subsidiary to commence and prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the "Remedial Work") in the event any Remedial Work is required under applicable Environmental Laws because of or in connection with any Release of Hazardous Material on, under, about or from any of the Borrower's, any other Credit Parties', or their respective Subsidiaries' Properties; provided, however, that the Borrower and each other Credit Party and each of the Restricted Subsidiaries shall not be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

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(b) Each Credit Party will promptly, and in any event within ten (10) Business Days of receiving written notice thereof (or such later date as the Administrative Agent may agree to in its sole discretion), notify the Administrative Agent and the Lenders in writing of any action, investigation or inquiry initiated by any Governmental Authority or any demand or lawsuit filed by any landowner or other third party under any applicable Environmental Laws against the Borrower, any other Credit Party or their respective Subsidiaries or their Properties if the Borrower reasonably anticipates that such action will result in liability (whether individually or in the aggregate) in excess of \$20,000,000, not fully covered by insurance, subject to normal deductibles.

Section 8.11 Further Assurances.

(a) The Borrower and each other Credit Party at its sole expense will, and will cause each of its Restricted Subsidiaries to, promptly execute and deliver to the Administrative Agent all such other documents, agreements and instruments reasonably requested by the Administrative Agent to comply with, cure any defects (in regards to errors and mistakes), or accomplish the conditions precedent, covenants and agreements of the Credit Parties or the Restricted Subsidiaries, as the case may be, in the Loan Documents, including the Notes, or to further evidence and more fully describe the collateral intended as security for the Secured Obligations, or to correct any mistakes in this Agreement or the Security Instruments or to perfect, protect or preserve any Liens created pursuant to this Agreement or any of the Security Instruments or the priority thereof, or to make any recordings, file any notices or obtain any consents, all as may be reasonably necessary or appropriate, in the reasonable discretion of the Administrative Agent, in connection therewith.

(b) The Borrower and each other Credit Party hereby authorizes the Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Mortgaged Property without the signature of the Borrower or any other Credit Party where permitted by law. A carbon, photographic or other reproduction of the Security Instruments or any financing statement covering the Mortgaged Property or any part thereof shall be sufficient as a financing statement where permitted by law. Each Credit Party acknowledges and agrees that any financing statement may describe the Collateral as "all assets" of the Borrower or the applicable Guarantor or words of similar effect as may be required by the Administrative Agent. The Administrative Agent will promptly send the Borrower any financing or continuation statements it files without the signature of the Borrower or any other Credit Party and the Administrative Agent will promptly send the Borrower the filing or recordation information with respect thereto.

(c) The Borrower and each other Credit Party hereby authorizes the Administrative Agent to file one or more financing or continuation statements, and amendments thereto, including without limitation, copies of the order of the Bankruptcy Court or abstracts thereof confirming the Plan of Reorganization authorizing the continuation of the Prepetition Mortgages, relative to all or any part of the Mortgaged Property without the signature of the Borrower or any other Credit Party where permitted by law. A carbon, photographic or other reproduction of the Security Instruments or any financing statement covering the Mortgaged Property or any part thereof shall be sufficient as a financing statement where permitted by law.

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Section 8.12 Reserve Reports.

(a) On or before April 1st and October 1st of each year, commencing October 1, 2021, the Borrower shall furnish to the Administrative Agent and the Lenders a Reserve Report as of the immediately preceding January 1 or July 1, as applicable. The Reserve Report as of January 1 of each year shall be prepared by one or more Approved Petroleum Engineers and the July 1 Reserve Report of each year shall be prepared by or under the supervision of the chief engineer of the Borrower who shall certify such Reserve Report to be true and accurate in all material respects and to have been prepared, except as otherwise specified therein, in accordance with the procedures used in the immediately preceding January 1 Reserve Report.

(b) In the event of an Interim Redetermination, the Borrower shall furnish to the Administrative Agent and the Lenders a Reserve Report prepared by or under the supervision of the chief engineer of the Borrower who shall certify such Reserve Report to be true and accurate in all material respects and to have been prepared, except as otherwise specified therein, in accordance with the procedures used in the immediately preceding January 1st Reserve Report. For any Interim Redetermination requested by the Borrower pursuant to Section 2.07(b), the Borrower shall provide such Reserve Report with an "as of" date as reasonably required by the Administrative Agent as soon as possible, but in any event no later than thirty (30) days following the receipt of such request.

(c) With the delivery of each Reserve Report (other than the Initial Reserve Report), the Borrower shall provide to the Administrative Agent and the Lenders a certificate from a Responsible Officer, in substantially the form of Exhibit G hereto (the "Reserve Report Certificate"), certifying that in all material respects: (i) the information provided by the Borrower in connection with the preparation of such Reserve Report and any other information delivered in connection therewith by the Borrower is true and correct, and any projections based upon such information have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable, subject to uncertainties inherent in all projections, (ii) the Borrower and the Restricted Subsidiaries own good and defensible title to the Oil and Gas Properties evaluated in such Reserve Report and such Properties are free of all Liens except for Liens permitted by Section 9.03, (iii) except as set forth on an exhibit to the certificate, on a net basis there are no gas imbalances, take or pay or other prepayments in excess of the volume specified in Section 7.18 with respect to the Oil and Gas Properties evaluated in such Reserve Report that would require the Borrower or the Restricted Subsidiaries to deliver Hydrocarbons either generally or produced from such Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor, (iv) none of the Oil and Gas Properties evaluated in the immediately preceding Reserve Report have been sold since the date of the last Borrowing Base redetermination except as set forth on an exhibit to the certificate, which certificate shall list all of the Oil and Gas Properties sold and

in such detail as reasonably required by the Administrative Agent, (v) attached to the certificate is a list of all marketing agreements entered into subsequent to the later of the date hereof or the most recently delivered Reserve Report that the Borrower could reasonably be expected to have been obligated to list on Schedule 7.19 had such agreement been in effect on the Effective Date, (vi) attached thereto is a schedule of the Oil and Gas Properties evaluated by such Reserve Report that are Mortgaged Properties and demonstrating that the percentage of the total value of the Oil and Gas Properties evaluated by such Reserve Report that such Mortgaged Properties represent is in compliance with Section 8.14(a) and (vii) attached thereto is a schedule of all Service Agreement Undertakings then in effect, indicating any Dedications in respect thereof and the volumes required to be delivered thereunder together with any volume surpluses or deficiencies.

Section 8.13 Title Information.

(a) On or before the delivery to the Administrative Agent and the Lenders of each Reserve Report required by Section 8.12, to the extent requested by the Administrative Agent, the Borrower will deliver title information in form and substance reasonably acceptable to the Administrative Agent covering enough of the Oil and Gas Properties evaluated by such Reserve Report that were not included in the immediately preceding Reserve Report, so that the Administrative Agent shall have received together with title information previously delivered to the Administrative Agent, reasonably satisfactory title information on at least 85% of the PV-10 value of the Borrowing Base Properties evaluated by such Reserve Report.

(b) If the Borrower has provided title information for additional Properties under Section 8.13(a), the Borrower shall, within 60 days of notice from the Administrative Agent that title defects or exceptions exist with respect to such additional Properties, either (i) cure any such title defects or exceptions (including defects or exceptions as to priority) which are not permitted by Section 9.03, (ii) substitute acceptable Mortgaged Properties with no title defects or exceptions (other than Liens which are permitted by Section 9.03 having an equivalent value) or (iii) deliver title information in form and substance reasonably acceptable to the Administrative Agent so that the Administrative Agent shall have received, together with title information previously delivered to the Administrative Agent, reasonably satisfactory title information on at least 85% of the PV-10 value of the Borrowing Base Properties evaluated by such Reserve Report.

(c) If the Borrower is unable to cure any title defect requested by the Administrative Agent or the Lenders to be cured within the 60-day period or the Borrower does not comply with the requirements to provide acceptable title information as required by Section 8.13(a) and Section 8.13(b), such default shall not be a Default, but instead the Administrative Agent and/or the Majority Lenders shall have the right to exercise the following remedy in their sole discretion from time to time, and any failure to so exercise this remedy at any time shall not be a waiver as to future exercise of the remedy by the Administrative Agent or the Lenders. To the extent that the Administrative Agent or the Majority Lenders are not reasonably satisfied with title to any Mortgaged Property after the 60-day period has elapsed, such unacceptable Mortgaged Property shall not count towards the requirements of Section 8.13(a) and Section 8.13(b), and the Administrative Agent may send a notice to the Borrower and the Lenders that the then outstanding Borrowing Base shall be reduced by an amount as determined by the Required Lenders to cause the Borrower to be in compliance with the requirement to provide acceptable title information pursuant to Section 8.13(a) and Section 8.13(b). Such new Borrowing Base shall become effective immediately after receipt of such notice.

Section 8.14 Additional Collateral: Additional Guarantors.

(a) In connection with each redetermination of the Borrowing Base, each adjustment of the Borrowing Base pursuant to Section 2.07(f) and upon the request of the Administrative Agent or Majority Lenders, the Borrower shall review the Reserve Report and the list of current Mortgaged Properties (as described in Section 8.12(c)(vi)) to ascertain whether the Mortgaged Properties represent at least 95% of the PV-10 value of the Borrowing Base Properties of the Borrower and the Restricted Subsidiaries evaluated in the most recently completed Reserve Report, after giving effect to exploration and production activities, acquisitions, dispositions and production. In the event that the Mortgaged Properties represent less than 95% of the PV-10 value of the Borrowing Base Properties of the Borrower and the Restricted Subsidiaries evaluated in the most recently completed Reserve Report delivered to the Administrative Agent, then the Borrower shall, and shall cause each of its Restricted Subsidiaries to, grant, within sixty (60) days (or such later date as the Administrative Agent may agree to in its sole discretion) of the delivery of the Reserve Report Certificate, to the Administrative Agent or its designee as security for the Secured Obligations a first-priority Lien interest (subject to Liens permitted by Section 9.03 which may attach to Mortgaged Property) on additional Oil and Gas Properties of the Borrower and the Restricted Subsidiaries not already subject to a Lien of the Security Instruments such that after giving effect thereto, the value of the Mortgaged Properties is equal to or greater than 95% of the PV-10 value of the Borrowing Base Properties of the Borrower and the Restricted Subsidiaries evaluated in such Reserve Report. All such Liens will be created and perfected by and in accordance with the provisions of the Guaranty and Collateral Agreement, deeds of trust, mortgages, security agreements and financing statements or other Security Instruments, and accompanied by opinions of counsel as requested by the Administrative Agent, all in form and substance reasonably satisfactory to the Administrative Agent or its designee and in sufficient executed (and acknowledged where necessary or appropriate) counterparts for recording purposes. In order to comply with the foregoing, if any Restricted Subsidiary places a Lien on its Oil and Gas Properties and such Restricted Subsidiary is not a Guarantor, then it shall become a Guarantor and comply with Section 8.14(b).

(b) The Borrower shall promptly cause each Material Subsidiary (other than an Excluded Subsidiary) and each direct or indirect parent entity of the Borrower which is a Subsidiary of Holdings to become a Guarantor and guarantee the Secured Obligations pursuant to the Guaranty and Collateral Agreement. In connection with any such guaranty, the Borrower shall, or shall cause the Restricted Subsidiaries or applicable parent entity to, promptly, but in any event no later than 15 days (or such later date as the Administrative Agent may agree to in its sole discretion) after the formation or acquisition (or other similar event, including an Immaterial Subsidiary becoming a Material Subsidiary or upon the designation of an Unrestricted Subsidiary as a Restricted Subsidiary) of any Material Subsidiary (other than an Excluded Subsidiary) or applicable parent entity to, (i) cause such Material Subsidiary or applicable parent entity to execute and deliver a joinder and supplement to the Guaranty and Collateral Agreement, (ii) (A) pledge all of the Equity Interests issued by such Material Subsidiary or applicable parent entity and (B) cause such Material Subsidiary or applicable parent entity to pledge all of the Equity Interests directly owned by such Material Subsidiary or applicable parent entity in its respective Subsidiaries (including, without limitation, delivery of original stock certificates evidencing such Equity Interests, together with an appropriate undated stock power for each certificate duly executed in blank by the registered owner thereof), and (iii) execute and deliver such other additional closing documents, certificates and legal opinions as shall reasonably be requested by the Administrative Agent or its designee.

Section 8.15 ERISA Event. The Credit Parties will promptly furnish, and will cause any ERISA Affiliate to promptly furnish, to the Administrative Agent (a) upon becoming aware of the occurrence of any ERISA Event that would reasonably be expected to result in a Lien or a Material Adverse Effect, a written notice specifying the nature thereof, what action such Credit Party or ERISA Affiliate is taking or proposes to take with respect thereto, and, if then known, any action taken or proposed by the IRS, the Department of Labor or the PBGC with respect thereto, and (b) upon receipt thereof, copies of any notice of the PBGC's intention to terminate or to have a trustee appointed to administer any Plan.

Section 8.16 Affected Financial Institution. Neither the Borrower nor any of its Restricted Subsidiaries is an Affected Financial Institution.

Section 8.17 Accounts Section 1.02. The Credit Parties shall, and shall cause each Restricted Subsidiary to, (i) in connection with any Deposit Account, Commodity Account or Securities Account established or acquired by a Credit Party (other than Excluded Accounts, but only for so long as it is an Excluded Account) promptly, but in any event within thirty (30) days of the establishment or acquisition of such account (or, in the case of a Deposit Account, Commodity Account or Securities Account that ceases to be an Excluded Account, within thirty (30) days after cessation of its status as an Excluded Account) or by such later date as the Administrative Agent shall reasonably agree, cause such Deposit Account, Commodity Account or Securities Account to become and thereafter be maintained subject to an Account Control Agreement: (ii) subject to clause (i) hereof, deposit or cause to be deposited directly, all Cash Receipts into one or more Deposit Accounts in which the Administrative Agent has been granted a first-priority Lien (subject to Excepted Liens of the type described in clause (e) of the definition thereof) and is subject to an Account Control Agreement (in each case, other than amounts referred to in the definition of "Excluded Accounts", which may be deposited in Excluded Accounts) and (iii) subject to clause (i) hereof, deposit or credit or cause to be deposited or credited directly, all securities and financial assets held or owned by (whether directly or indirectly), credited to the account of, or otherwise reflected as an asset on the balance sheet of, the Borrower and the Consolidated Restricted Subsidiaries (including, without limitation, all marketable securities, treasury bonds and bills, certificates of deposit, investments in money market funds and commercial paper) into one or more Securities Accounts in which the Administrative Agent has been granted a first-priority Lien (subject to Excepted Liens of the type described in clause (e) of the definition thereof) and that is subject to an Account Control Agreement.

Section 8.18 Use of Proceeds Section 1.03. The Borrower and its Restricted Subsidiaries shall use the proceeds of Loans solely (a) in accordance with the Plan of Reorganization, (b) to provide working capital and other general corporate purposes, (c) to fund drilling expenses, (d) to fund general oil and gas business activities, (e) to finance permitted acquisitions of oil and gas properties and other assets related to the exploration, production and development of oil and gas properties, (f) to make Investments and other payments permitted under this Agreement and (g) to fund fees, commissions and expenses in connection with this Agreement.

Section 8.19 Post-Closing Swap Agreements. On or before November 1, 2022 (or such later date as the Administrative Agent may agree in its sole discretion), the Borrower shall have entered into (and shall thereafter maintain) Swap Agreements constituting Acceptable Hedge Transactions covering notional volumes of natural gas representing not less than 60% of projected production from Proved Developed Producing Reserves for each quarter of the calendar year 2023, as such projected production is set forth in the Initial Reserve Report (the "Required Hedges").

ARTICLE IX Negative Covenants

Until the Revolving Credit Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder and all other amounts payable under the Loan Documents have been paid in full (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made as of the time of determination) and all Letters of Credit shall have expired, terminated or have been cash collateralized (or as to which other arrangements satisfactory to the Administrative Agent and each Issuing Bank shall have been made) and all LC Disbursements shall have been reimbursed, each of the Credit Parties covenants and agrees with the Lenders that, and covenants and agrees to cause the Restricted Subsidiaries that:

Section 9.01 Financial Covenants.

(a) Maximum Net Funded Leverage Ratio. The Borrower will not permit, as of the last day of each fiscal quarter, beginning with the fiscal quarter ending June 30, 2021, the Net Funded Leverage Ratio to exceed 3.00 to 1.00.

(b) Maximum Net Senior Secured Leverage Ratio. The Borrower will not permit, as of the last day of each fiscal quarter, beginning with the fiscal quarter ending June 30, 2021, the Net Senior Secured Leverage Ratio to exceed 2.00 to 1.00.

(c) Current Ratio. The Borrower will not permit, as of the last day of any fiscal quarter, beginning with the fiscal quarter ending December 31, 2021, the Current Ratio to be less than 1.00 to 1.00.

Section 9.02 Debt. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, incur, create, assume or suffer to exist any Debt, except:

(a) the Loans, other Secured Obligations and any guaranty of or suretyship arrangement in respect thereof;

(b) unsecured intercompany Debt of (i) the Borrower or Holdings owing to any Restricted Subsidiary, and (ii) any Restricted Subsidiary owing to the Borrower or Holdings or any other Restricted Subsidiary to the extent permitted by Section 9.05(e); provided that such Debt is not held, assigned, transferred, negotiated or pledged to any Person other than the Administrative Agent for the benefit of the Lenders, the Borrower or a Subsidiary Guarantor, and, provided further, that any such Debt for borrowed money (including without limitation intercompany receivables or other obligations) (x) owed by either the Borrower or any Credit Party to any Restricted Subsidiary that is not a Credit Party shall be subject to and evidenced by the Subordinated Intercompany Note;

(c) endorsements of negotiable instruments for collection in the ordinary course of business;

(d) Debt of the Credit Parties or the Restricted Subsidiaries (i) associated with bonds or surety obligations required by Governmental Requirements or required by third parties in the ordinary course of business and consistent with past practices, in each case in connection with the operation of the Oil and Gas Properties and (ii) comprised of guarantees of obligations of Restricted Subsidiaries under marketing agreements entered into in the ordinary course of business and which do not constitute Debt for borrowed money;

(e) Debt of the Credit Parties and the Restricted Subsidiaries under Capital Lease Obligations and Purchase Money Obligations financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset (excluding real property interests) incurred by the Borrower or any Restricted Subsidiary within 30 days after the acquisition, construction, repair, replacement, lease or improvement of the applicable asset in an aggregate principal amount not to exceed \$15,000,000 secured by Liens permitted by Section 9.03(c);

(f) Permitted Senior Notes and any guarantees thereof incurred after the date on which the first financial statements have been delivered pursuant to Section 8.01(b); provided that (i) both before and immediately after giving effect to the incurrence of such Debt, no Default or Event of Default has occurred and is continuing or would result therefrom (after giving effect to any concurrent repayment of Debt with the proceeds thereof, any Borrowing Base adjustment under Section 2.07(e) and any prepayment made pursuant to Section 3.04(c)(iii)); (ii) such Debt and any guarantees thereof (A) are on terms and conditions that are not more restrictive, taken as a whole, than those contained in this Agreement and the other Loan Documents, as reasonably determined by the Borrower in good faith unless, in the case of this clause (A), such more restrictive terms are incorporated into this Agreement, and (B) do not contain financial maintenance covenants; (iii) immediately after the incurrence of such Debt, the Borrowing Base

shall be adjusted in accordance with and to the extent required by Section 2.07(c) and prepayment shall be made to the extent required by Section 3.04(c)(iii); (iv) such Debt does not have any scheduled principal amortization prior to the date that is 181 days after the Maturity Date; (v) such Debt does not mature sooner than the date that is 181 days after the Maturity Date; (vi) the economic terms of such Debt and any guarantees thereof, taken as a whole, are on market terms for issuers of similar size and credit quality given the then prevailing market conditions as reasonably determined by the Borrower in good faith; (vii) immediately after giving effect to the incurrence of such Debt and any guarantees thereof, the Pro Forma Net Leverage Ratio shall not exceed 3.00 to 1.00 and the Pro Forma Senior Secured Net Leverage Ratio shall not exceed 2.00 to 1.00; (viii) such Debt does not have any mandatory prepayment or redemption provisions which would require a mandatory prepayment or redemption thereof in priority to the Secured Obligations (other than (A) customary offers to purchase upon (i) a change of control, to the extent such offer is subject to the previous payment in full of the Secured Obligations and (ii) asset sale or casualty or condemnation event to the extent the terms of such Debt provide that such Debt shall not be required to be repurchased or redeemed until the Maturity Date has occurred or such repurchase or redemption is otherwise permitted by this Agreement and (B) customary acceleration rights after an event of default); (ix) no Subsidiary or other Person shall guarantee such Debt unless such Subsidiary or other Person has guaranteed the Secured Obligations pursuant to the Guaranty and Collateral Agreement; (x) if such Debt is senior subordinated Debt, such Debt is expressly subordinate to the payment in full of all of the Secured Obligations on terms and conditions reasonably satisfactory to the Administrative Agent; and (xi) the Borrower shall have complied with Section 8.01(o);

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(g) the Take-Back Notes; provided that no Person shall be a guarantor of the Take-Back Notes unless such Person is also a Guarantor;

(h) Permitted Refinancing Debt and any guarantees thereof, the proceeds of which shall be used concurrently with the incurrence thereof to refinance any outstanding Permitted Debt permitted under Section 9.02(f) and Section 9.02(g) or to refinance any outstanding Refinanced Debt, as the case may be;

(i) Debt in the form of guaranties by the Credit Parties of Debt of (i) the Borrower or any Subsidiary Guarantor permitted under this Section 9.02 or (ii) other Persons to the extent an Investment would be permitted in such Person under Section 9.05(g);

(j) other Debt in an aggregate principal amount not to exceed \$15,000,000 at any one time outstanding.

(k) Debt representing deferred compensation to employees of a Credit Party or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(l) Debt in an aggregate principal amount not to exceed \$15,000,000 at any one time outstanding consisting of Secured Cash Management Obligations and other Debt in respect of net services, overdraft protections and similar arrangements, in each case (x) in connection with cash management and deposit accounts and (y) incurred in the ordinary course of business;

(m) obligations under Advance Payment Contracts so long as (i) the production covered thereby has not been included in the most recent Reserve Report furnished to the Administrative Agent and (ii) the aggregate amount of all Advance Payments received by any Credit Party under Advance Payment Contracts that have not been satisfied by delivery of production does not exceed \$5,000,000;

(n) oil and gas balancing obligations incurred in the ordinary course of business;

(o) Debt consisting of the financing of insurance premiums incurred in the ordinary course of business; and

(p) Debt under Swap Agreements permitted pursuant to Section 9.16.

Section 9.03 Liens. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, create, incur, assume or permit to exist any Lien on any of their respective Properties (now owned or hereafter acquired), except:

(a) Liens pursuant to any Loan Document;

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(b) Excepted Liens;

(c) Liens securing Debt permitted under Section 9.02(e); provided that (i) such Liens do not at any time encumber any Property other than the Property financed by such Debt and (ii) such Liens shall not extend to or encumber Borrowing Base Properties;

(d) Dedications (i) in existence on the Effective Date in connection with Service Agreement Undertakings permitted under Section 9.15, (ii) in existence at the time of the acquisition of the applicable Oil and Gas Properties burdened by such Dedication (so long as not entered into in contemplation of such acquisition), in connection with Service Agreement Undertakings permitted under Section 9.15, or (iii) with respect to which (x) either (1) no volume or revenue commitment is associated or (2) a volume or revenue commitment is associated in connection with Service Agreement Undertakings permitted under Section 9.15(b)(iii) and (y) a Mortgage has been recorded in the applicable real property records establishing a perfected Lien in favor of the Administrative Agent with respect to the Property subject to such Dedication prior in time to any real property recording (if any) with respect to such Dedication, and in each case which do not provide the beneficiary of such Dedication a right to foreclose on the Property subject to such Dedication.

(e) Liens on Property of the Borrower and the Restricted Subsidiaries (other than proved Oil and Gas Properties) not otherwise permitted by any other clause of this Section 9.03; provided that the aggregate principal or face amount of all Debt secured under this Section 9.03(e) shall not exceed \$15,000,000 at any time outstanding; and

(f) Liens existing on the Effective Date and set forth on Schedule 9.03.

Section 9.04 Dividends, Distributions and Redemptions.

(a) Restricted Payments. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment or incur any obligation (contingent or otherwise) to do so, except:

(i) Holdings may declare and pay Restricted Payments with respect to its Equity Interests payable solely in additional shares (or the right to acquire additional shares) of its Equity Interests (other than Disqualified Capital Stock);

(ii) Restricted Subsidiaries of the Borrower and the Borrower may declare and pay Restricted Payments to the Borrower and any other Credit Party;

(iii) the Borrower and Holdings may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrower and its Subsidiaries;

(iv) beginning on the date on which the first financial statements have been delivered pursuant to Section 8.01(b), other Restricted Payments in an amount not to exceed Available Free Cash Flow, so long as, both before and immediately after giving effect thereto, each of the RP Conditions are satisfied; and

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(v) so long as no Event of Default or Borrowing Base Deficiency exists, Holdings may pay cash in lieu of fractional Equity Interests in connection with a dividend or conversion into common Equity Interests permitted pursuant to the Preferred Equity; provided that any such cash payments in connection with the foregoing shall not exceed \$2,000,000 in the aggregate.

(b) Redemption or Repayment of Permitted Debt or Permitted Refinancing Debt. The Credit Parties will not, and will not permit any Restricted Subsidiary to:

(i) call, make or offer to make any optional or voluntary Redemption of or otherwise optionally or voluntarily Redeem whether in whole or in part (A) the Take-Back Notes, except upon First-Out Payment in Full or (B) any Permitted Debt other than the Take-Back Notes, except with proceeds of Permitted Refinancing Debt; or

(ii) amend, modify, waive or otherwise change, consent or agree to any amendment, modification, waiver or other change to, any of the terms of any notes evidencing, or any indenture, agreement, instrument, certificate or other document relating to, any Permitted Debt if:

(A) the effect of such amendment, modification or waiver is to shorten the final maturity or Weighted Average Life to Maturity, or increase the amount of any payment of principal thereof or increase the rate or shorten any period for payment of interest thereon or modify the method of calculating the interest rate;

(B) such action (x) adds, amends, changes or otherwise modifies covenants, events of default or other agreements to the extent such covenants, events of default or other agreements are more restrictive, taken as a whole, than those contained in this Agreement or the other Loan Documents in each case, as reasonably determined by the Borrower in good faith, unless such covenants, events of default or agreements or more restrictive terms are incorporated into this Agreement, mutatis mutandis, or (y) adds or permits to exist any financial maintenance covenants; or

(C) the effect of such amendment, modification or waiver is to designate any Permitted Debt as subordinate to any other Debt (other than the Secured Obligations) unless such Permitted Debt is expressly subordinate to the payment in full of all of the Secured Obligations on terms and conditions reasonably satisfactory to the Administrative Agent.

Section 9.05 Investments, Loans and Advances. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, make, hold or permit to remain outstanding any Investments in or to any Person, except:

(a) Investments existing on the Effective Date set forth on Schedule 9.05;

(b) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

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(c) Investments by the Credit Parties or any Restricted Subsidiary in cash and Cash Equivalents and Investments in assets that were Cash Equivalents when such Investment was made;

(d) Investments (i) the consideration of which consists of Equity Interests (other than Disqualified Capital Stock) of Holdings, or warrants options or other rights to purchase or acquire Equity Interests (other than Disqualified Capital Stock) of Holdings or (ii) in the form of cash or Cash Equivalents and in an amount not to exceed the net cash proceeds of one or more offerings of Equity Interests (other than Disqualified Capital Stock) of Holdings (the "Qualifying Net Cash Proceeds"), in each case, to the extent not constituting a Change in Control; provided that, in the case of clause (ii) above: (A) both before, and immediately after giving effect to, any such Investment, no Default, Event of Default or Borrowing Base Deficiency has occurred and is continuing or would result therefrom and (B) any such Investment is made within 30 days after the receipt by the Borrower of the Qualifying Net Cash Proceeds (provided that Qualifying Net Cash Proceeds shall be reduced on a dollar-for-dollar basis by any Redemption of the Loans or other Permitted Debt);

(e) Investments (i) made by Holdings in or to the Borrower, (ii) made by the Borrower in or to any other Person that, prior to such Investment, is a Guarantor; (iii) made by Holdings or any Restricted Subsidiary in or to the Borrower or any other Person that, prior to such Investment, is a Guarantor; (iv) made by any Restricted Subsidiary that is not a Guarantor in or to the Borrower, Holdings or any other Restricted Subsidiary; or (v) subject to Section 2.07(f) and provided that on a pro forma basis after giving effect to any such Investment, no Borrowing Base Deficiency shall have occurred and be continuing, made by any Credit Party in any Restricted Subsidiary that is not a Subsidiary Guarantor; provided, that (x) any Investment made by any Restricted Subsidiary that is not a Credit Party pursuant to this Section 9.05(e) shall be subordinated in right of payment to the Loans pursuant to the Subordinated Intercompany Note, and (y) the aggregate amount at any time made or outstanding pursuant to this clause (iv) shall not exceed \$1,000,000;

(f) consideration (other than cash consideration) received by a Credit Party or a Restricted Subsidiary pursuant to a Disposition permitted under Section 9.11, to the extent such consideration is permitted pursuant to Section 9.11;

(g) loans or advances to employees, officers or directors in the ordinary course of business of the Credit Parties or the Restricted Subsidiaries, in each case only as permitted by applicable law, including Section 402 of the Sarbanes Oxley Act of 2002, but in any event not to exceed \$2,500,000 in the aggregate at any time;

(h) Investments in stock, obligations or securities received in settlement of debts arising from Investments permitted under this Section 9.05 owing to the Credit Parties or the Restricted Subsidiaries as a result of a bankruptcy or other insolvency proceeding of the Credit Party in respect of such debts or upon the enforcement of any Lien in favor of the Credit Parties or the Restricted Subsidiaries;

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(i) beginning on the date on which the first financial statements have been delivered pursuant to Section 8.01(b), Investments made in connection with the purchase, lease or other acquisition of tangible assets of any Person, and Investments made in connection with the purchase, lease or other acquisition of all or substantially all of the business of any Person, or all of the Equity Interests of any Person, so long as such Person becomes a Restricted Subsidiary immediately after giving effect to such Investment, or any division, line of business or business unit of any Person (including by the merger or consolidation of such Person into the Borrower or any Guarantor); provided that (i) the Borrower promptly complies with the requirements of Section 8.14 in connection with any newly acquired Restricted Subsidiary to the extent required thereby, (ii) no Default, Event of Default or Borrowing Base Deficiency exists both before and after giving effect to any such Investment, (iii) at least 20% of the Revolving Credit Commitments is available to be borrowed (after taking into account the effect of Section 6.02(d)) and (iv) immediately after giving effect to any such Investment, the Pro Forma Net Leverage Ratio shall not exceed 2.00 to 1.00;

(j) Investments permitted by Section 9.10;

(k) subject to Section 2.07(f) and provided that on a pro forma basis after giving effect to any such Investment, no Borrowing Base Deficiency shall have occurred and be continuing, other Investments not to exceed in the aggregate at any time outstanding an amount equal to \$15,000,000;

(l) subject to Section 2.07(f) and provided that on a pro forma basis after giving effect to any such Investment, no Borrowing Base Deficiency shall have occurred and be continuing, beginning on the date on which the first financial statements have been delivered pursuant to Section 8.01(b), other Investments in an amount not to exceed Available Free Cash Flow, so long as, both before and immediately after giving effect thereto, each of the Investment Conditions are satisfied;

(m) any guarantee permitted under Section 9.02; and

(n) subject to the limits in Section 9.06, Investments in direct ownership interests in additional Oil and Gas Properties and gas gathering, processing and transportation systems related thereto or related to farm-out, farm-in, joint operating, joint venture or area of mutual interest agreements, gathering, processing and transportation systems, pipelines or other similar arrangements which are usual and customary in the oil and gas exploration and production business located within the geographic boundaries of the United States of America, including tribal lands; provided that the foregoing Investments shall not include any Investment in the Equity Interests of a Person.

Notwithstanding the foregoing, no Investments shall be permitted in and to Grizzly Oil Sands other than the Investment therein existing as of the Effective Date.

Section 9.06 Nature of Business. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, allow any material change to be made in the character of its business as an independent oil and gas exploration and production company and activities reasonably incidental or related thereto. Other than those in connection with Grizzly Oil Sands, the Borrower and Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, operate any portion of their respective businesses outside the geographical boundaries of the United States, including tribal lands.

Section 9.07 Proceeds of Loans. The Borrower will not permit the proceeds of the Loans and Letters of Credit to be used for any purpose other than those permitted by Section 7.21. None of the Borrower, its Subsidiaries or any Person acting on behalf of the Borrower or its Subsidiaries has taken or will take any action which would cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board or to violate Section 7 of the Exchange Act. If requested by the Administrative Agent, the Borrower will furnish to the Administrative Agent a statement to the foregoing effect in conformity with the requirements of FR Form U-1 or such other form referred to in Regulation U, Regulation T or Regulation X of the Board, as the case may be. The Borrower will not request any Borrowing or Letter of Credit, and the proceeds of any Borrowing or Letter of Credit shall not, directly or, knowingly, indirectly, be used, or lent, contributed or otherwise made available to any Subsidiary, other Affiliate, joint venture partner or other Person, (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or AML Laws, (B) for the purpose of funding, financing or facilitating any activity, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country (including, but not limited to, transshipment or transit through a Sanctioned Country), or involving any goods originating in or with a Sanctioned Person or Sanctioned Country in violation of Sanctions, or (C) in any manner that would result in the violation of any Sanctions by any Person (including any Person participating in the transactions contemplated hereunder, whether as underwriter, advisor, lender, issuing bank, investor or otherwise).

Section 9.08 ERISA Compliance. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect or result in a Lien, the Credit Parties will not at any time:

(a) terminate, or permit any ERISA Affiliate to terminate, any Plan in a manner, or take any other action with respect to any Plan, which could reasonably be expected to result in any liability of the Credit Parties to the PBGC;

(b) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to, any Multiemployer Plan;

(c) permit to exist, or allow any ERISA Affiliate to permit to exist, any failure to comply with the rules regarding minimum required contributions under Section 302 or 303 of ERISA or Section 412, 430 or 436 of the Code with respect to any Plan;

(d) incur, or permit any ERISA Affiliate to incur, a liability to or on account of a Plan or Multiemployer Plan under Sections 515, 4062, 4063, 4064, 4201 or 4204 of ERISA; and

(e) permit any Plan to (i) fail to satisfy the minimum funding standard applicable to the Plan for any plan year pursuant to Section 412 of the Code or Section 302 of ERISA (determined without regard to Section 412(c) of the Code or Section 302(c) of ERISA), or (ii) fail to satisfy the requirements of Section 436 of the Code or Section 206(g) of ERISA.

Section 9.09 Sale or Discount of Receivables. Except for receivables obtained by Holdings, the Borrower or any Subsidiary out of the ordinary course of business or the settlement of joint interest billing accounts in the ordinary course of business consistent with customary industry practice or discounts granted to the account debtor in respect thereof to settle collection of accounts receivable or the sale of defaulted accounts arising in the ordinary course of business in connection with the compromise or collection thereof consistent with customary industry practice and not in connection with any bulk sale or financing transaction, none of the Credit Parties or any of the Restricted Subsidiaries will discount or sell (with or without recourse) any of its notes receivable or accounts receivable.

Section 9.10 Mergers, Etc. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, merge into or with or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, lease or otherwise dispose of (whether in one transaction or in a series of related transactions) all or substantially all of its Property or business (whether now owned or hereafter acquired) or less than all of the Equity Interests of any Restricted Subsidiary to any other Person (any such transaction, a “consolidation”) or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), terminate or discontinue its business (any such transaction, a “wind-up”) or divide; provided that (a) so long as no Default, Event of Default or Borrowing Base Deficiency has occurred and is continuing or would result therefrom, any Restricted Subsidiary of the Borrower may participate in a consolidation with the Borrower in a transaction in which the Borrower is the surviving entity or transferee and in which the Borrower remains a domestic entity, (b) so long as no Default, Event of Default or Borrowing Base Deficiency has occurred and is continuing or would result therefrom, any Subsidiary Guarantor may participate in a merger or consolidation with any other Subsidiary Guarantor, (c) so long as (i) no Event of Default has occurred and is continuing or would result therefrom and (ii) after giving effect thereto, the Credit Parties are in compliance with Section 8.14, any Restricted Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to a Subsidiary Guarantor, (d) any Restricted Subsidiary may wind-up if the Borrower determines in good faith that such wind-up is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (i) with respect to any Subsidiary Guarantor, provides written notice to the Administrative Agent not less than five (5) days (or less, as the Administrative Agent may agree in its sole discretion) prior to such wind-up, (ii) distributes all Property of the entity subject of the wind-up to the Borrower or another Restricted Subsidiary, and (iii) complies in all respects with all covenants and agreements in the Loan Documents to provide the Administrative Agent with perfected first-priority liens (subject only to Excepted Liens and other Liens permitted by Section 9.03) on all Property so distributed, (e) any Restricted Subsidiary that is not a Guarantor may participate in a merger or consolidation with any other Restricted Subsidiary; provided that if any Guarantor participates in such merger or consolidation, a Guarantor shall be the surviving Person; and (f) Credit Parties and their Restricted Subsidiaries may engage in Dispositions permitted by Section 9.11 and may consummate a merger, amalgamation or consolidation with any other Person (other than an Affiliate) so long as a Credit Party shall be the surviving Person and such merger, amalgamation or consolidation constitutes an Investment permitted by Section 9.05; provided that any transaction described in clauses (a), (b), (c) and (d), shall be consummated in a way that continues the Lien securing the Secured Obligations and does not require the release of any Lien with respect to any Property that was Collateral prior to the consummation of such transaction.

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Section 9.11 Disposition of Properties. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, Dispose of any Property, except the below listed transactions:

(a) the Disposition of inventory, including Hydrocarbons and geological and seismic data, in the ordinary course of business.

(b) unless a Default or an Event of Default has occurred and is continuing or would result therefrom,

(i) subject to Section 2.07(f) and the Borrower’s compliance with Section 3.04(c)(iii), Disposition of Properties to the extent permitted by Section 9.04(a), Section 9.05, and Section 9.10;

(ii) the Disposition of equipment or other Property (other than Oil and Gas Properties) that is either obsolete, worn-out or no longer necessary or useful for the business of the Borrower or any Restricted Subsidiary or is promptly replaced by equipment or Property of at least comparable value; and

(iii) subject to Section 2.07(f) and the Borrower’s compliance with Section 3.04(c)(iii), (x) Dispositions of any Oil and Gas Properties or any interest therein or the Disposition of any Equity Interests of any Restricted Subsidiary directly or indirectly owning Oil and Gas Properties and (y) Liquidations of Swap Agreements or the Disposition of any Equity Interests of any Restricted Subsidiary directly or indirectly owning Swap Agreements; provided that (A) at least seventy-five percent (75%) of the consideration received in respect of such Disposition shall be cash or Cash Equivalents, (B) the consideration received in respect of such Disposition shall be equal to or greater than the fair market value of the Swap Agreement, Oil and Gas Property, interest therein or Restricted Subsidiary subject of such Disposition (as reasonably determined by a Financial Officer of the Borrower, or if the aggregate consideration received in respect of such Disposition exceeds \$50,000,000, the board of directors (or equivalent body) of the Borrower and, if requested by the Administrative Agent, the Borrower shall deliver a certificate of a Responsible Officer of the Borrower certifying to that effect), (C) if any such Disposition is of a Restricted Subsidiary owning Oil and Gas Properties or Swap Agreements, such Disposition shall include all the Equity Interests of such Restricted Subsidiary and (D) the Borrower and the applicable Credit Parties shall be in pro forma compliance with Section 7.15 after giving effect to such Disposition; and

(iv) subject to Section 2.07(f) and provided that on a pro forma basis after giving effect to any such Investment, no Borrowing Base Deficiency shall have occurred and be continuing, Dispositions constituting exchanges of Property to the extent that (i) such Property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are applied to the purchase price of such replacement Property.

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(c) so long as no Default, Event of Default or Borrowing Base Deficiency has occurred and is continuing, farm-outs of undeveloped acreage or acreage to which no proved reserves in which the Borrower or any Restricted Subsidiary has an interest are attributable and assignments in connection with such farm-outs, in each case in the ordinary course of business (for purposes of this clause, farm-out means any contract whereby any Oil and Gas Property, or any interest therein, may be earned by one party, by the drilling or committing to drill one or more wells by that party, whether directly or indirectly).

(d) so long as no Default, Event of Default or Borrowing Base Deficiency has occurred and is continuing, (i) any Credit Party or any Restricted Subsidiary may Dispose of its Properties to the Borrower or to a Subsidiary Guarantor, so long as, after giving effect thereto, the Credit Parties are in compliance with Section 8.14 without giving effect to any grace periods specified in Section 8.14 and any transaction described in this clause (i) shall be consummated in a way that continues and, if requested by the Administrative Agent, reaffirms the Lien securing the Secured Obligations and does not require the release of any Lien with respect to any Property that was Collateral prior to the consummation of such transaction, and (ii) any Restricted Subsidiary that is not a Guarantor may Dispose of its Properties to any other Restricted Subsidiary that is not a Subsidiary Guarantor.

(e) the Disposition of cash and Cash Equivalents in the ordinary course of business.

(f) the write-off of defaulted or past-due receivables and similar obligations in the ordinary course of business or the discount, sale or other disposition of notes receivable or accounts receivable in compliance with Section 9.09.

(g) Casualty Events; provided that with respect to any Casualty Event of a Borrowing Base Property Section 2.07(f) and Section 3.04(c)(iii) shall apply.

(h) the lapse, abandonment, cancellation or non-exclusive license of any immaterial Intellectual Property in the ordinary course of business.

(i) Dispositions of Properties other than Borrowing Base Properties not permitted by Section 9.11(a) through (h) (x) having a fair market value not to exceed \$10,000,000 during any 12-month period, or (y) required pursuant to the Plan of Reorganization and Confirmation Order.

Section 9.12 Environmental Matters. The Credit Parties will not, and will not permit any Restricted Subsidiary to, cause or permit the Release of Hazardous Materials

on any of its Properties in violation of any Environmental Laws, where such Release could reasonably be expected to have a Material Adverse Effect.

Section 9.13 Transactions with Affiliates. The Credit Parties will not, and will not permit any Restricted Subsidiary to, enter into any transaction or series of related transactions, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate (other than the Guarantors and the Borrower) unless such transactions (i) are otherwise permitted under this Agreement and (ii) are upon fair and reasonable terms no less favorable to the applicable Credit Party or Restricted Subsidiary, as the case may be, than it would obtain in a comparable arm's length transaction with a Person not an Affiliate; provided that the foregoing shall not apply to:

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(a) any Restricted Payment permitted by Section 9.04 or Investment permitted by Section 9.05;

(b) the payment of reasonable and customary directors' and officers' fees and compensation and other benefits and indemnification arrangements, in each case approved by the board of directors of Holdings, the Borrower or any Restricted Subsidiary, as applicable;

(c) the performance of employment, equity award, equity option or equity appreciation agreements, plans or other similar compensation or benefit plans or arrangements (including vacation plans, health and insurance plans, deferred compensation plans and retirement or savings plans) entered into by any Credit Party in the ordinary course of its business with its employees, officers and directors;

(d) transactions described in Section 9.05(e) or Section 9.11(d); provided that such transactions are on fair and reasonable financial terms from the perspective of the applicable Credit Party or Restricted Subsidiary, as applicable, as reasonably determined in good faith by a Financial Officer of the Borrower, or if the aggregate value of such transaction (or series of related transactions) exceeds or is expected to exceed \$10,000,000, the board of directors (or equivalent body) of the Borrower;

(e) transactions pursuant to permitted agreements in existence on the Effective Date and set forth on Schedule 9.13 or any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect; and

(f) transactions involving issuances, exchanges, repayments or other repurchases of Debt or preferred stock to any Affiliate in a transaction in which such Affiliate's participation in such transaction is on terms no less favorable to the Borrower than the terms offered to non-Affiliates participating in such transaction.

For purposes of this Section 9.13, any transaction with any Affiliate shall be deemed to have satisfied the standard set forth in clause (ii) of the first sentence of this Section 9.13 if such transaction is approved by a majority of the Disinterested Directors of the board of directors of the Borrower or such Credit Party, as applicable and such approval may be sought by the Borrower in its sole discretion.

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Section 9.14 Negative Pledge Agreements: Dividend Restrictions. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, create, incur, assume or suffer to exist any contract, agreement or other understanding or arrangement that in any way prohibits, restricts or imposes any condition upon (x) the granting, conveying, creation or imposition of any Lien on any of its Property in favor of the Administrative Agent and the Lenders to secure the Secured Obligations or (y) the ability of any Restricted Subsidiary (i) to pay the Secured Obligations, make Restricted Payments, pay dividends or make distributions to the Borrower or any Guarantor, (ii) to make loans or advances to, or other Investments in the Borrower or any other Restricted Subsidiary or (iii) to transfer any of its properties to the Borrower or any Restricted Subsidiary; provided, however, that the preceding restrictions will not apply to any such restrictions arising under or by reason of (a) this Agreement, the Security Instruments or the Take-Back Notes, (b) any leases (other than leases of Oil and Gas Properties) or licenses or similar contracts as they affect any Property or Lien subject to such lease or license, (c) any restriction imposed pursuant to any agreement entered into for the Disposition of any Property otherwise permitted hereunder prior to the closing of such Disposition as they affect the Property subject to such pending Disposition, (d) any restriction imposed on the granting, conveying, creation or imposition of any Lien on any Property of the Credit Parties or the Restricted Subsidiaries imposed by any contract, agreement or understanding related to the Liens permitted under Section 9.03(c) so long as such restriction only applies to the Property permitted to be encumbered by such Liens, (e) restrictions imposed by any Governmental Authority or under any Governmental Requirement, (f) restrictions in the instruments creating an Excepted Lien of the type described in clause (f) of the definition thereof, so long as such restriction only applies to the Property permitted to be encumbered by such Liens, (g) customary supermajority voting provisions and other customary provisions with respect to the disposition or distribution of assets, each contained in corporate charters, bylaws, stockholders' agreements, limited liability company agreements, partnership agreements, joint venture agreements and other similar agreements entered into in the ordinary course of business of the Credit Parties or the Restricted Subsidiaries, (h) solely with respect to restrictions described in clause (y) above, obligations that are binding on a Person at the time such Person first becomes a Restricted Subsidiary of the Borrower, so long as such obligations are not entered into in contemplation of such Person becoming a Restricted Subsidiary and such Restricted Subsidiary is an Immaterial Subsidiary hereunder and (i) restrictions imposed by any agreement relating to Debt incurred pursuant to Section 9.01 or Permitted Refinancing Debt in respect thereof, to the extent that such restrictions are not materially more restrictive, taken as a whole, than the restrictions contained in the Loan Documents as determined by the Borrower in good faith and do not restrict Liens on the Collateral to secure the Secured Obligations to any greater extent than the Take-Back Notes as in effect on the Effective Date.

Section 9.15 Gas Imbalances, Take-or-Pay or Other Prepayments: Service Agreement Undertakings

(a) The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, allow gas imbalances (unless due to events beyond the control of the applicable Credit Party), take-or-pay or other prepayments (other than Service Agreement Undertakings) with respect to the Oil and Gas Properties of the Borrower or the Restricted Subsidiaries that would require the Borrower or such Restricted Subsidiary to deliver, in the aggregate, two percent (2%) or more of the monthly production of Hydrocarbons at some future time without then or thereafter receiving full payment therefore.

(b) The Credit Parties will not, and will not permit any Restricted Subsidiary to enter into or permit to exist any Service Agreement Undertakings other than:

(i) Service Agreement Undertakings in existence on the Effective Date and identified on Schedule 7.18;

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(ii) Service Agreement Undertakings that are associated with Dedications to the extent (a) such Service Agreement Undertakings and Dedications were in existence with respect to Oil and Gas Properties acquired by the Credit Parties from a Person that is not a Credit Party or Subsidiary pursuant to a transaction not prohibited by this Agreement, (b) such Service Agreement Undertakings and Dedications were not granted or created in contemplation of such acquisition, and (c) the ratio of (x) Minimum Volume-Equivalent Commitments under Service Agreement Undertakings associated with Dedications with respect to such acquired Oil and Gas Properties to (y)

the total projected production from any such acquired Oil and Gas Properties associated with such acreage dedications or covenants running with the land shall not exceed 90% on a quarterly basis at the time of such acquisition, as reasonably determined by the Borrower, and if requested by the Administrative Agent or Majority Lenders, certified by the Borrower;

(iii) Service Agreement Undertakings that are associated with Dedications; *provided that* (A) with respect to any specific Oil and Gas Properties subject to a Dedication in connection with such Service Agreement Undertaking, the ratio of (x) the Minimum Volume-Equivalent Commitments under such Service Agreement Undertaking described in this clause (iii)(A) to (y) the total projected production from any such Oil and Gas Properties described in this clause (iii)(A) shall not exceed 100% on a quarterly basis at the time such Service Agreement Undertaking is entered into, as reasonably determined by the Borrower, and if requested by the Administrative Agent or Majority Lenders, certified by the Borrower; and (B) in the aggregate, with respect to such Service Agreement Undertakings described in this clause (iii), the ratio of (x) the Minimum Volume-Equivalent Commitments under such Service Agreement Undertakings to (y) the total projected production from the Credit Parties' Oil and Gas Properties shall not exceed 80% on a quarterly basis at the time such Service Agreement Undertaking is entered into, in each case of clauses (A) and (B), as reasonably determined by the Borrower, and if requested by the Administrative Agent or Majority Lenders, certified by the Borrower;

(iv) other Service Agreement Undertakings that are not associated with Dedications; provided that, in the aggregate, with respect to all Service Agreement Undertakings on a pro forma basis, the ratio of (x) the Minimum Volume-Equivalent Commitments under such Service Agreement Undertakings to (y) the total projected production from the Credit Parties' Oil and Gas Properties shall not exceed 85% on a quarterly basis at the time such Service Agreement Undertaking is entered into, as reasonably determined by the Borrower, and if requested by the Administrative Agent or Majority Lenders, certified by the Borrower,

(c) The Borrower will not, and will not permit any Restricted Subsidiary to amend or modify any Service Agreement Undertakings to increase the Minimum Volume-Equivalent Commitments under any Service Agreement Undertakings to a level greater than those permitted under the applicable paragraphs of Section 9.15(b) determined as if the date of the amendment or modification were the date when such Service Agreement Undertakings were entered into.

(d) For the avoidance of doubt, to the extent the same volume of Hydrocarbons or other production may be subject to multiple Service Agreement Undertakings at different times, the calculations in this Section 9.15 shall be independent and not cumulated for purposes of complying with the foregoing requirements.

Section 9.16 Swap Agreements.

(a) The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, enter into or permit to exist any speculative Swap Agreements or any other Swap Agreements with any Person, except:

(i) Swap Agreements in respect of oil and gas commodities (x) with an Approved Counterparty and (y) the notional volumes for which (when aggregated with the notional volumes under all other commodity Swap Agreements then in effect other than swaps covering basis differential on volumes already hedged pursuant to other Swap Agreements and other than the repurchase (whether effectuated via mutually negotiated close-out or purchase of offsetting options) of sold call transactions (or the expirations thereof) in existence on the Effective Date, and counting the volumes subject to a collar or swap as a single hedged volume for purposes of this calculation) do not exceed, as of the date such Swap Agreement is executed, for each fiscal quarter in the remainder of the then current calendar year and for the period of five calendar years thereafter 80% (or 90% with respect to calendar year 2021) of the reasonably anticipated projected production from the Borrower's Oil and Gas Properties for each such fiscal quarter, for each of crude oil, natural gas and natural gas liquids, calculated separately, and as determined by reference to the Reserve Report most recently delivered pursuant to Section 8.12 (the "Ongoing Hedges");

(ii) In addition to the Ongoing Hedges, in connection with a proposed or pending acquisition of Oil and Gas Properties (a "Proposed Acquisition"), the Credit Parties may, upon consultation with and approval from the Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed) also enter into incremental Swap Agreements (the "Acquisition Hedges") with respect to the Credit Parties' reasonably anticipated projected production from the Borrower's Oil and Gas Properties to be acquired (x) with an Approved Counterparty and (y) the notional volumes for which (when aggregated with the notional volumes under all other commodity Swap Agreements then in effect other than swaps covering (A) basis differential or (B) oil spread timing risks, in each case on volumes already hedged pursuant to other Swap Agreements and other than the repurchase (whether effectuated via mutually negotiated close-out or purchase of offsetting options) of sold call transactions (or the expirations thereof) in existence on the Effective Date and counting the volumes subject to a collar or swap as a single hedged volume for purposes of this calculation) do not exceed, as of the date such Swap Agreement is executed, 80% of the reasonably anticipated projected production from the Borrower's proved Oil and Gas Properties for each such fiscal quarter of the first thirty-six months following the date such Swap Agreement is executed, for each of crude oil, natural gas and natural gas liquids, calculated separately, and as determined by reference to the Reserve Report most recently delivered pursuant to Section 8.12, during the period between (i) the date on which such Credit Party signs a definitive acquisition agreement in connection with a Proposed Acquisition and (ii) the earliest of (A) the date of consummation of such Proposed Acquisition, (B) the date of termination of such Proposed Acquisition and (C) ninety (90) days after the date of execution of such definitive acquisition agreement (or such longer period as the Administrative Agent may agree in its sole discretion). However, all such incremental Swap Agreements entered into with respect to a Proposed Acquisition must be terminated or unwound within forty-five (45) days (or such later date as the Administrative Agent may agree to in its sole discretion) following the date of termination of such Proposed Acquisition (it being understood, for avoidance of doubt, that the Acquisition Hedges may be permitted as Ongoing Hedges to the extent such Acquisition Hedges could be entered into pursuant to this Section 9.16(a) in the absence of a Proposed Acquisition); and

(iii) Swap Agreements in respect of interest rates with an Approved Counterparty, (i) effectively converting interest rates from fixed to floating, the notional amounts of which (when aggregated with all other Swap Agreements of the Credit Parties or any Restricted Subsidiaries then in effect effectively converting interest rates from fixed to floating) do not exceed 75% of the then outstanding principal amount of the Borrower's Debt for borrowed money which bears interest at a fixed rate and (ii) effectively converting interest rates from floating to fixed, the notional amounts of which (when aggregated with all other Swap Agreements of the Credit Parties or their respective Subsidiaries then in effect effectively converting interest rates from floating to fixed) do not exceed at any time 100% of the then outstanding principal amount of the Borrower's Debt for borrowed money which bears interest at a floating rate.

(b) If, at any time, the Borrower determines that the notional amounts of Swap Agreements in respect of interest rates exceed 100% of the then outstanding principal amount of the Borrower's Debt for borrowed money which bears interest at a floating rate, then the Borrower shall, within thirty (30) days of such determination, terminate, create off-setting positions or otherwise unwind existing Swap Agreements in order to comply with this Section 9.16.

(c) If, as of the end of any fiscal quarter, the Borrower determines that the aggregate volume of all commodity Swap Agreements (other than swaps covering (A) basis differential or (B) oil spread timing risks, in each case on volumes already hedged pursuant to other Swap Agreements and other than the repurchase (whether effectuated via mutually negotiated close-out or purchase of offsetting options) of sold call transactions (or the expirations thereof) in existence on the Effective Date) for which settlement payments were calculated in such fiscal quarter exceeded the actual production of Hydrocarbons in such fiscal quarter, then the Borrower shall, within thirty (30) days of such determination, terminate, create off-setting positions or otherwise unwind existing Swap Agreements such that, at such time, future hedging volumes will not exceed, on a quarterly basis, the volume limitations imposed in Section 9.16(a) above for each subsequent fiscal quarter period after such fiscal quarter.

(d) Without prejudice to the Borrower's right to repurchase sold call transactions in existence on the Effective Date, the Credit Parties shall not enter into or maintain any commodity Swap Agreements other than (i) basis differential swaps and basis hedging arrangements, (ii) swap agreements covering identical volumes of crude oil, natural gas or natural gas liquids and identical fiscal quarters, and (iii) with respect to swap agreements entered into for calendar year 2022 and 2023, collars (other than three-way collars) covering identical volumes of crude oil, natural gas or natural gas liquids and identical fiscal quarters.

(e) Notwithstanding anything to the contrary in this Section 9.16, there shall be no prohibition against the Borrower, any other Credit Party or any Restricted Subsidiary entering into any commodity "put" contracts or commodity price floors with an Approved Counterparty so long as (i) such agreements are entered into for non-speculative purposes and in the ordinary course of business for the purpose of hedging against fluctuations of commodity prices, (ii) such agreements are not related to corresponding calls, collars or swaps and (iii) neither the Borrower nor any Restricted Subsidiary has any payment obligation other than premiums and charges the total amount of which are fixed and known at the time such agreement is entered into.

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(f) For purposes of entering into or maintaining Swap Agreement trades or transactions under Section 9.16(a) and Section 9.16(c), forecasts of reasonably anticipated production from the Credit Parties' Oil and Gas Properties as set forth on the most recent Reserve Report delivered pursuant to the terms of this Agreement or as otherwise projected by a Responsible Officer of the Borrower and acceptable to the Administrative Agent shall be revised to account for any increase or decrease therein anticipated based on information obtained by the Credit Parties and delivered to the Administrative Agent subsequent to the publication of such Reserve Report or projection, including the Credit Parties' internal forecasts of production decline rates for existing wells and additions to or deletions from anticipated future production from new wells, completed acquisitions coming on stream or failing to come on stream and Dispositions of Oil and Gas Properties; provided that (A) any such supplemental information shall be in form and detail reasonably satisfactory to the Administrative Agent and (B) if any such supplemental information is delivered, such information shall be presented on a net basis (i.e., it shall take into account both increases and decreases in anticipated production subsequent to publication of the most recent Reserve Report).

(g) In no event shall any Swap Agreement contain any requirement, agreement or covenant for the Borrower or any Credit Party to post collateral, credit support (including in the form of letters of credit) or margin (other than, in each case, pursuant to the Security Instruments) to secure their obligations under such Swap Agreement or to cover market exposures.

(h) For the purposes of this Section 9.16, it is understood that Swap Agreements in respect of commodities which may, from time to time, "hedge" the same volumes, but different elements of commodity risk thereof, shall not be aggregated together when calculating the foregoing limitations on notional volumes.

(i) Neither the Borrower nor any Restricted Subsidiary shall assign, terminate or unwind any Swap Agreements nor sell the Closing Date Hedges or the Required Hedges if such action would have the effect of cancelling, offsetting or otherwise reducing its positions under such Closing Date Hedges and the Required Hedges unless a replacement Swap Agreement with the Borrower or a Credit Party is simultaneously put in place that maintains such positions.

Section 9.17 [Reserved].

Section 9.18 Subsidiaries. Neither any Credit Party nor any Restricted Subsidiary shall have any Restricted Subsidiary (a) that is a Foreign Subsidiary (other than Grizzly Oil Sands) or (b) that is not a Wholly-Owned Subsidiary.

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Section 9.19 Account Control Agreements. The Credit Parties will not, and will not permit any Restricted Subsidiary to deposit, credit or otherwise transfer any Cash Receipts, securities, financial assets or any other Property into, any Deposit Account, Commodity Account or Securities Account other than (a) Deposit Accounts, Commodity Accounts and Securities Accounts in which the Administrative Agent has been granted a first-priority Lien (subject to Excepted Liens of the type described in clause (e) of the definition thereof) and that, in each case, is subject to an Account Control Agreement, (b) Excluded Accounts (solely with respect to amounts referred to in the definition thereof) and (c) Deposit Accounts, Commodity Accounts and Securities Accounts that were acquired pursuant to an acquisition not prohibited by this Agreement; provided, that the Credit Parties and Restricted Subsidiaries shall not transfer Property in excess of \$5,000,000 in the aggregate from any Deposit Accounts, Commodity Accounts and Securities Accounts subject to an Account Control Agreement to any such acquired Deposit Accounts, Commodity Accounts and Securities Accounts.

Section 9.20 Certain Restrictions with respect to Unrestricted Subsidiaries. Notwithstanding any other provision in this Agreement to the contrary, the Credit Parties:

(a) will cause the management, business and affairs of its Unrestricted Subsidiaries to be conducted in such a manner, including, without limitation, by keeping separate books of account, furnishing separate financial statements of Unrestricted Subsidiaries to creditors and potential creditors thereof and shall not permit Properties of Credit Parties and the Restricted Subsidiaries to be commingled with Properties of Unrestricted Subsidiaries; in each case, so that each Unrestricted Subsidiary that is a corporation will be treated as a corporate entity separate and distinct from Credit Parties and the Restricted Subsidiaries;

(b) will not, and will not permit any of their Restricted Subsidiaries to, incur, assume, guarantee or be or become liable for any Debt of any of the Unrestricted Subsidiaries;

(c) will not permit any Unrestricted Subsidiary to hold any Equity Interest in, or any Debt of, any Credit Party or any Restricted Subsidiary; and

(d) will not engage in any transactions with, or permit any the Restricted Subsidiaries to engage in any transaction with an Unrestricted Subsidiary other than transactions that are permitted by Section 9.13.

Section 9.21 Sale and Leaseback Transactions. The Credit Parties will not, and will not permit any Restricted Subsidiaries to, enter into any Sale and Leaseback Transactions.

Section 9.22 Organizational Documents; Fiscal Year End; Accounting Changes. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, amend, modify or supplement in any material respect (or vote to enable, or take any other action to permit, such amendment, modification or supplement of) (i) any Organizational Document (other than the documentation governing the Preferred Equity) of the Credit Parties or such Restricted Subsidiaries in any manner materially adverse to the interests of the Administrative Agent and the Lenders or (ii) the documentation governing the Preferred Equity in any manner adverse to the interests of the Administrative Agent and the Lenders. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to make or permit any material change in its accounting policies or reporting practices, except as may be required or permitted by GAAP.

Section 9.23 Passive Holding Company Status of Holdings. Holdings shall not engage in any material operating or business activities or own any direct Equity Interest in any Person other than the Borrower; *provided* that the following activities shall be permitted to the extent otherwise permitted by this Agreement: (a) Holdings' ownership of Equity Interests of Borrower, (b) the maintenance of Holdings' legal existence (including the ability to incur fees, costs and expenses relating to such maintenance and performance of activities relating to its officers, directors, managers and employees and those of its Subsidiaries), (c) any public offering of Holdings' common stock or any other issuance or sale of its Equity Interests and, in each case, the repurchase or redemption thereof (including, for the avoidance of doubt, performing activities in preparation for and consummating any such offering, issuance or sale, the making of any dividend or distribution on account of, or any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of, any shares of any class of its Equity Interests), (d) financing activities, including the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of the Borrower and its Subsidiaries, and guaranteeing the obligations of the Borrower and its Restricted Subsidiaries, (e) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and its subsidiaries or preparing reports to, and preparing and making notices to and filings with, Governmental Authorities, securities exchanges and to its holders of Equity Interests, (f) holding any cash incidental to any activities permitted under this Section 9.23, (g) hiring, maintaining and compensating executives and other employees and consultants to the extent required or incidental to owning Equity Interests in the Borrower and its Subsidiaries, including providing indemnification to officers, managers and directors, (h) holding directors' and shareholders' meetings and otherwise managing, through its board, directors, officers and managers, the business of Holdings, the Borrower and its Subsidiaries, (i) the entering into, and performance of its obligations with respect to, the Loan Documents and any other Debt, (j) the consummation of the Transactions, holding any cash or Cash Equivalents received by it as a distribution from any of its subsidiaries and making further distributions with such cash or Cash Equivalents, (k) providing indemnification to officers, managers and directors, (l) filing tax reports and paying taxes and other customary obligations related thereto in the ordinary course (and contesting any taxes), (m) entering into and performance of obligations with respect to contracts and other arrangements in connection with the activities contemplated by this Section 9.23, (n) the preparation of reports to Governmental Authorities and to its shareholders, (o) the performance of obligations under and compliance with its Organization Documents, any demands or requests from or requirements of a Governmental Authority or any applicable law, ordinance, regulation, rule, order, judgment, decree or permit, including as a result of or in connection with the activities of its Subsidiaries and (p) any other activities incidental to the foregoing or customary for passive holding companies, including, for the avoidance of doubt, ownership of immaterial properties and assets incidental to the business or activities described in the foregoing clauses and payment of costs and expenses in connection with the business or activities described in the foregoing clauses.

Section 9.24 Marketing Activities Section 1.04. The Credit Parties will not, and will not permit any of the Restricted Subsidiaries to, engage in marketing activities for any Hydrocarbons or enter into any contracts related thereto other than (a) contracts with a tenor not to exceed seven months (unless cancelable on sixty (60) days' notice or less without penalty or detriment for the sale of production) for the sale of Hydrocarbons not to exceed (i) 115% of volumes scheduled or reasonably estimated to be produced from their Oil and Gas Properties during the period of such contract, plus (ii) 115% of volumes scheduled or reasonably estimated to be produced from Oil and Gas Properties of third parties during the period of such contract associated with the Oil and Gas Properties of the Borrower and its Subsidiaries that the Borrower or one of its Subsidiaries has the right to market pursuant to joint operating agreements, unitization agreements or other similar contracts that are usual and customary in the oil and gas business and (b) other contracts for the purchase and/or sale of Hydrocarbons of third parties (i) which have generally offsetting provisions (i.e. corresponding pricing mechanics, delivery dates and points and volumes) such that when considered together (but apart from other contracts of like nature), no net long position or net short position vis-à-vis the relevant Hydrocarbons is established and (ii) in the case of any contract entered into after the Effective Date, for which appropriate credit support has been taken to alleviate the material credit risks of the counterparty thereto, it being understood that the foregoing requirement with respect to credit support shall not apply if (x) the relevant counterparty is publicly traded and has, at the time the contract is entered into with such counterparty, a long-term unsecured debt rating no less than the lowest long-term unsecured debt rating issued to Borrower by S&P or Moody's (or their equivalent) at the time such contract is entered into or (y) if the Borrower does not have such a debt rating at the time the contract is entered into with such counterparty, Holdings' or the Borrower's Credit Committee has approved entering the contract on an unsecured and uncollateralized basis with such counterparty.

ARTICLE X Events of Default; Remedies

Section 10.01 Events of Default. One or more of the following events shall constitute an "Event of Default":

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable (other than LC Disbursements that are repaid through an ABR Borrowing as permitted by Section 2.3(e) hereof), whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise.

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in Section 10.01(a)) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Guarantor in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made.

(d) the Borrower, any Guarantor or any Restricted Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in, Schedule 6.03, Section 8.02(a), Section 8.03 (with respect to the legal existence of the Borrower or any Guarantor), Section 8.09(b), Section 8.14, Section 8.17, Section 8.19 or in Article IX.

(e) the Borrower, any Guarantor or any Restricted Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 10.01(a) to (d) or (f) to (n)) or any other Loan Document, and such failure shall continue unremedied for a period of 30 days after the earlier to occur of (i) notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender) or (ii) a Responsible Officer of the Credit Parties or any Restricted Subsidiary otherwise becoming aware of such failure.

(f) the Borrower or any Guarantor shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Debt, when and as the same shall become due and payable (after the expiration of any applicable period of grace and/or notice and cure period).

(g) any event or condition occurs (after the expiration of any applicable period of grace and/or notice and cure period) that (i) results in any Material Debt

becoming due prior to its scheduled maturity or (ii) that enables or permits the holder or holders of any Material Debt or any trustee or agent on its or their behalf to cause any Material Debt to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require the Credit Parties to make an offer in respect thereof, in each case other than with respect to (1) Debt consisting of any Swap Obligations and (2) secured Debt that becomes due as a result of a Disposition (including as a result of a Casualty Event) of the property or assets securing such Debt permitted under this Agreement.

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Credit Party or its or their respective debts, or of a substantial part of its or their respective assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Credit Party or for a substantial part of its or their respective assets, and, in any such case, such proceeding or petition shall continue undismissed for thirty (30) days or an order or decree approving or ordering any of the foregoing shall be entered.

(i) any Credit Party shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in [Section 10.01\(h\)](#), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Credit Party or for a substantial part of its or their respective assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing; or the holders of any Equity Interests of the Borrower shall make any request or take any action for the purpose of calling a meeting of the shareholders or members of the Borrower to consider a resolution to dissolve and wind-up the Borrower's affairs.

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(j) any Credit Party shall become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(k) (i) one or more judgments for the payment of money in an aggregate amount in excess of \$20,000,000 (to the extent not covered by independent third-party insurance provided by reputable and financially sound insurers as to which the insurer has not issued a notice denying coverage and is not subject to an insolvency proceeding) or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall be rendered by a court of competent jurisdiction against any Credit Party or any Restricted Subsidiary or any combination thereof and the same shall remain undischarged or unsatisfied for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any material assets of any Credit Party or any Restricted Subsidiary to enforce any such judgment.

(l) the Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against any Credit Party party thereto or shall be repudiated by any of them, or any Credit Party shall so state in writing; or the Loan Documents after delivery thereof cease to create a valid and perfected Lien of the priority required thereby on any material portion of Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement, or any Credit Party shall so state in writing.

(m) an ERISA Event shall have occurred that could reasonably be expected to result in a Lien on the assets of any Credit Party, or when taken together with all other ERISA Events that have occurred, could reasonably be expected to have a Material Adverse Effect.

(n) a Change in Control shall occur.

(o) there shall occur under any Swap Agreement an Early Termination Date (as defined in such Swap Agreement) resulting from (1) any event of default under such Swap Agreement to any Credit Party or any Restricted Subsidiary is the Defaulting Party (as defined in such Swap Agreement), or (2) any Termination Event (as defined in such Swap Agreement) under such Swap Agreement as to which any Credit Party or any Restricted Subsidiary is an Affected Party (as defined in such Swap Agreement) and, in either event, the Swap Termination Value owed by such Credit Party or such Restricted Subsidiary as a result thereof exceeds \$20,000,000.

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Section 10.02 Remedies.

(a) In the case of an Event of Default other than one described in [Section 10.01\(h\)](#) or [Section 10.01\(i\)](#) or [Section 10.01\(j\)](#) at any time thereafter during the continuance of such Event of Default, the Administrative Agent may, and at the request of the Majority Lenders, shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Revolving Credit Commitments, and thereupon the Revolving Credit Commitments shall terminate immediately, and (ii) declare the Notes and the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower and the Guarantors accrued hereunder and under the Notes and the other Loan Documents (including, without limitation, the payment of cash collateral to secure the LC Exposure as provided in [Section 2.08\(j\)](#)), shall become due and payable immediately, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor; and in case of an Event of Default described in [Section 10.01\(h\)](#) or [Section 10.01\(i\)](#) or [Section 10.01\(j\)](#), the Revolving Credit Commitments shall automatically terminate and the Notes and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and the other obligations of the Borrower and the Guarantors accrued hereunder and under the Notes and the other Loan Documents (including, without limitation, the payment of cash collateral to secure the LC Exposure as provided in [Section 2.08\(j\)](#)), shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor.

(b) In the case of the occurrence of an Event of Default, the Administrative Agent and the Lenders will have all other rights and remedies available at law and equity.

(c) Except as provided in [Section 4.04](#), all proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the Loans, whether by acceleration or otherwise, shall be applied: *first*, to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the Administrative Agent in its capacity as such; *second*, pro rata to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the Lenders and the Issuing Bank; *third*, pro rata to payment of accrued interest on the Revolving Loans; *fourth*, pro rata to payment of principal outstanding on the Revolving Loans, LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time, Secured Swap Obligations owing to Secured Swap Parties and Secured Cash Management Obligations owing to Secured Cash Management Providers; *fifth*, pro rata to payment of accrued interest on the Term Loans; *sixth*, pro rata to payment of principal outstanding on the Term Loans; *seventh*, pro rata to any other unpaid Secured Obligations and *eighth*, any excess, after all of the Secured Obligations shall have been paid in full in cash, shall be paid to the Borrower or as otherwise required by any Governmental Requirement; *provided* that, for the avoidance of doubt, Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from the Borrower and any other Guarantors to preserve the allocation to Secured Obligations otherwise set forth above in this [Section 10.02\(c\)](#).

(d) Without limiting any other provision of this Article X, after the occurrence of, and during the continuation of, an Event of Default, the Administrative Agent may give instructions directing the disposition of funds, securities or other Property credited or deposited into any Deposit Account, Commodity Account or Securities Account subject to an Account Control Agreement (including without limitation sweeping such proceeds for payment of the Secured Obligations) and/or withhold any withdrawal rights of any Credit Party with respect to any or all funds, securities or other Property credited or deposited into any Deposit Account, Commodity Account or Securities Account subject to an Account Control Agreement.

Section 10.03 Disposition of Proceeds. The Security Instruments contain an assignment by the Borrower and the Credit Parties unto and in favor of the Administrative Agent for the benefit of the Lenders of all of the Borrower's and each Credit Party's interest in and to production and all proceeds attributable thereto which may be produced from or allocated to the Mortgaged Property. The Security Instruments further provide in general for the application of such proceeds to the satisfaction of the Secured Obligations and other obligations described therein and secured thereby. Notwithstanding the assignment contained in such Security Instruments, except after the occurrence and during the continuance of an Event of Default, (a) the Administrative Agent and the Lenders agree that they will neither notify the purchaser or purchasers of such production nor take any other action to cause such proceeds to be remitted to the Administrative Agent or the Lenders, but the Lenders will instead permit such proceeds to be paid to the Borrower or its Subsidiaries, as applicable and (b) the Lenders hereby authorize the Administrative Agent to take such actions as may be necessary to cause such proceeds to be paid to the Borrower or its Subsidiaries, as applicable.

Section 10.04 Credit Bidding. Each of the Borrower, the other Credit Parties, the Restricted Subsidiaries and the Lenders hereby irrevocably authorize (and by entering into a Swap Agreement, each Approved Counterparty shall be deemed to authorize) the Administrative Agent, based upon the instruction of the Majority Lenders, to Credit Bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (and the Borrower, each other Credit Party and the Restricted Subsidiaries shall approve the Administrative Agent as a qualified bidder and such Credit Bid as a qualified bid) at any sale thereof conducted by the Administrative Agent, based upon the instruction of the Majority Lenders, under any provisions of the Uniform Commercial Code, as part of any sale or investor solicitation process conducted by the Borrower, the other Credit Parties or the Restricted Subsidiaries, any interim receiver, manager, receiver and manager, administrative receiver, trustee, agent or other Person pursuant to or under any insolvency laws; provided, however, that (a) the Majority Lenders may not direct the Administrative Agent in any manner that does not treat each of the Lenders equally, without preference or discrimination, in respect of consideration received as a result of the Credit Bid, (b) the acquisition documents shall be commercially reasonable and contain customary protections for minority holders, such as, among other things, anti-dilution and tag-along rights, (c) the exchanged debt or equity securities must be freely transferable, without restriction (subject to applicable securities laws) and (d) reasonable efforts shall be made to structure the acquisition in a manner that causes the governance documents pertaining thereto to not impose any obligations or liabilities upon the Lenders individually (such as indemnification obligations).

ARTICLE XI The Administrative Agent

Section 11.01 Appointment; Powers. Each of the Lenders and each Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article XI are solely for the benefit of the Administrative Agent, the Lenders and each Issuing Bank, and neither the Credit Parties nor any Subsidiary shall have rights as a third party beneficiary of any of such provisions. In performing its functions and duties hereunder, the Administrative Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Credit Party or any Affiliate thereof.

Section 11.02 Duties and Obligations of Administrative Agent. The Administrative Agent shall have no duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing (the use of the term "agent" herein and in the other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law; rather, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties), (b) the Administrative Agent shall have no duty to take any action or exercise any powers, except as provided in Section 11.03, and (c) except as expressly set forth herein, the Administrative Agent shall have no duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Credit Parties or their respective Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, (vi) the existence, value, perfection or priority of any collateral security or the financial or other condition of the Credit Parties or their respective Subsidiaries or any other Credit Party or guarantor, or (vii) any failure by the Borrower or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements or other terms or conditions set forth herein or therein. For purposes of determining compliance with the conditions specified in Article VI, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the proposed closing date specifying its objection thereto.

Section 11.03 Action by Administrative Agent. The Administrative Agent shall have no duty to take any action or exercise any powers, except rights and powers expressly contemplated hereby or by the other Loan Documents or that the Administrative Agent is required to exercise in writing as directed by the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) and in all cases the Administrative Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents and from exercising any power, discretion or authority vested in it hereunder or thereunder unless and until it shall (a) receive written instructions from the Majority Lenders or the Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02), as applicable, specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders against any and all liability and expenses which may be incurred by it by reason of taking or continuing to take any such action (which satisfaction may require such indemnity from such Lenders to be joint and several obligations of such Lenders). The instructions as aforesaid and any action taken or failure to act pursuant thereto by the Administrative Agent shall be

binding on all of the Lenders. If a Default has occurred and is continuing, then the Administrative Agent shall take such action with respect to such Default as shall be directed by the requisite Lenders in the written instructions (with indemnities) described in this [Section 11.03](#), provided that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders. In no event, however, shall the Administrative Agent be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement, the Loan Documents or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Majority Lenders or the Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in [Section 12.02](#)), and otherwise the Administrative Agent shall not be liable for any action taken or not taken by it hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith INCLUDING ITS OWN ORDINARY NEGLIGENCE, except for its own gross negligence or willful misconduct.

[Section 11.04 Reliance by Administrative Agent.](#) The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon and each of the Borrower, the Lenders and each Issuing Bank hereby waives the right to dispute the Administrative Agent's record of such statement, except in the case of gross negligence or willful misconduct by the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or the issuance, extension, renewal or increase of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the holder thereof for all purposes hereof unless and until a written notice of the assignment or transfer thereof permitted hereunder shall have been filed with the Administrative Agent.

[Section 11.05 Subagents.](#) The Administrative Agent may perform any and all its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of the preceding Sections of this [Article XI](#) shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

[Section 11.06 Resignation or Removal of Administrative Agent.](#) Subject to the appointment and acceptance of a successor Administrative Agent as provided in this [Section 11.06](#), the Administrative Agent may resign at any time by notifying the Lenders, each Issuing Bank and the Borrower and the Administrative Agent may be removed at any time with or without cause by the Majority Lenders. Upon any such resignation or removal, the Majority Lenders shall have the right, in consultation with the Borrower and with the consent of the Borrower (unless an Event of Default has occurred and is continuing), to appoint a successor. If no successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation or removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Lenders and each Issuing Bank, appoint a successor Administrative Agent; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to the successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this [Article XI](#) and [Section 12.03](#) shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

[Section 11.07 Administrative Agent and Lenders.](#) The Administrative Agent shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, the agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, the Administrative Agent in its individual capacity to the extent it is a Lender hereunder and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include any Person serving as the Administrative Agent under this Agreement in its capacity as a Lender. The Administrative Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder, and may accept fees and other consideration from any Credit Party or any of their respective Affiliates for services in connection herewith and otherwise without having to account for the same to Lenders.

[Section 11.08 No Reliance.](#)

(a) Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and each other Loan Document to which it is a party. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Credit Parties or their respective Subsidiaries of this Agreement, the Loan Documents or any other document referred to or provided for herein or to inspect the Properties or books of the Borrower or its Subsidiaries. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent hereunder, none of the Administrative Agent and the Arrangers shall have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower (or any of its Affiliates) which may come into the possession of the Administrative Agent, the Arrangers or any of their respective Affiliates. In this regard, each Lender acknowledges that Latham & Watkins LLP is acting in this transaction as special counsel to the Administrative Agent only, except to the extent otherwise expressly stated in any legal opinion or any Loan Document. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

(b) The Lenders acknowledge that the Administrative Agent and the Arrangers are acting solely in administrative capacities with respect to the structuring and syndication of this facility and have no duties, responsibilities or liabilities under this Agreement and the other Loan Documents other than their administrative duties, responsibilities and liabilities specifically as set forth in the Loan Documents and in their capacity as Lenders hereunder. In structuring, arranging or syndicating this facility,

each Lender acknowledges that the Administrative Agent and/or the Arrangers may be agents or lenders under this Agreement, other loans or other securities and waives any existing or future conflicts of interest associated with their role in such other debt instruments.

Section 11.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Credit Parties or their respective Subsidiaries, the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obliged), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Exposure and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Bank and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Bank and the Administrative Agent under Section 3.05 and Section 12.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 12.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

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Section 11.10 The Arrangers. The Arrangers shall have no duties, responsibilities or liabilities under this Agreement and the other Loan Documents other than its duties, responsibilities and liabilities in its individual capacity as a Lender hereunder to the extent it is a party to this Agreement as a Lender.

Section 11.11 Collateral and Guarantee Matters.

(a) Each of the Lenders authorize the Administrative Agent to release (or in the case of clause (iv) below, subordinate) the Liens on any property granted to or held by the Administrative Agent under any Loan Document upon the satisfaction of any of the following conditions:

(i) the First-Out Payment in Full;

(ii) the Disposition of any property to any Person other than a Credit Party or Restricted Subsidiary as part of or in connection with any Disposition permitted under the Loan Documents;

(iii) subject to Section 12.02, if approved, authorized or ratified in writing by the Majority Lenders or such other number or percentage of Lenders required hereby;

(iv) subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 9.03(c); or

(v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations pursuant to Section 11.11(b);

(b) Each of the Lenders irrevocably agree that any Guarantor shall be automatically released from its obligations under the Guaranty and Collateral Agreement upon the satisfaction of any of the following conditions:

(i) upon First-Out Payment in Full;

(ii) if such Guarantor (other than the Borrower) ceases to be a Restricted Subsidiary as a result of a transaction permitted under and in accordance with the Loan Documents;

(iii) all the capital stock or other Equity Interests of such Guarantor are Disposed of in a transaction permitted by the Loan Documents; or

(iv) upon written request by the Borrower to the Administrative Agent, such Guarantor becomes an Unrestricted Subsidiary.

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(c) Each of the Lenders irrevocably agree to the Administrative Agent promptly executing and delivering all releases, termination statements and/or other documents reasonably necessary or desirable to evidence of the release of Liens on Collateral created under the applicable Loan Document and Guarantors contemplated by Section 11.11(a) and (b) (or, in the case of Section 11.11(a)(iv) above subordination), upon the written request delivered to the Administrative Agent and at the sole expenses of the Borrower and the applicable Guarantor; provided that the Borrower shall have delivered to the Administrative Agent, at least 5 Business Days prior to the date of the proposed release (or such shorter period as may be agreed to by the Administrative Agent in its sole discretion), a written request for evidence of the release, termination statements and other documents identifying the Borrower or such Subsidiary Guarantor together with a certification by the Borrower stating (x) that such transaction is in compliance with this Agreement and the other Loan Documents, and (y) no Guarantor or Collateral other than the Guarantor or Collateral required to be released or subordinated is being released or subordinated.

(d) Any release of guarantee obligations or security interests shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Secured Obligations shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made. Upon request by the Administrative Agent at any time, the Majority Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty and Collateral Agreement pursuant to this Section 11.11.

(e) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

(f) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent and each Lender hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty and Collateral Agreement or any other Security Instrument, it being understood and agreed that all powers, rights and remedies under any of the Security Instruments may be exercised solely by the Administrative Agent, for the benefit of the Secured Parties in accordance with the terms thereof and all powers, rights and remedies under the Security Instruments may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other Disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Administrative Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code,) may be the purchaser or licensor of any or all of such Collateral at any such sale or other Disposition and the Administrative Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from the Majority Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or Disposition, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other Disposition.

Section 11.12 Payments in Error.

(a) If the Administrative Agent notifies a Lender, Issuing Bank or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party such Lender or Issuing Bank (any such Lender, Issuing Bank, Secured Party or other recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Bank or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than five (5) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party such Lender or Issuing Bank, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Bank or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 11.12(b).

(c) Each Lender, Issuing Bank or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Bank or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Bank or Secured Party from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Lender or Issuing Bank that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender or Issuing Bank at any time, (i) such Lender or Issuing Bank shall be deemed to have assigned its Loans (but not its Revolving Credit Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Revolving Credit Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to the Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender or Issuing Bank shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuing Bank shall cease to be a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Revolving Credit Commitments which shall survive as to such assigning Lender or assigning Issuing Bank and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans

acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender or Issuing Bank shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender or Issuing Bank (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Revolving Credit Commitments of any Lender or Issuing Bank and such Revolving Credit Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuing Bank or Secured Party under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Credit Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 11.12 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Revolving Credit Commitments and/or the repayment, satisfaction or discharge of all Secured Obligations (or any portion thereof) under any Loan Document.

ARTICLE XII Miscellaneous

Section 12.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to Section 12.01(b)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax or electronic mail, as follows:

(i) if to the Borrower or any Guarantor, to it at:

Gulfport Energy Operating Corporation
3001 Quail Springs Parkway
Oklahoma City, OK 73134
Attention: Mr. Patrick Craine, General Counsel, Executive Vice President and Secretary
Telephone: (405) 252-4809
Facsimile: (405) 848-8816
Electronic Mail: pcraine@gulfportenergy.com

with a copy to (which shall not constitute notice):

Kirkland & Ellis LLP
609 Main Street
Houston, TX 77002
Attention: Will Bos
Electronic Mail: William.Bos@kirkland.com

(ii) if to the Administrative Agent, to it at:

for general notices:

The Bank of Nova Scotia
711 Louisiana, Suite 1400
Houston, Texas 77002
Attention: Mr. Marc Graham
Telephone: (713) 759-3448
Electronic Mail: marc.graham@scotiabank.com

for Borrowings, continuations and Letter of Credit requests:

The Bank of Nova Scotia
c/o GWO Loan Operations
720 King Street West, 2nd Floor
Toronto, Ontario
Canada M5V2T3
Attention: U.S. Agency Loan Operations
Telephone: (212) 225-5705
Facsimile: (212) 225-5708
Electronic Mail: corporatelending.agencyops@scotiabank.com

additional office for Letter of Credit requests:

The Bank of Nova Scotia
Global Wholesale Operations Lending Services NY
250 Vesey Street
New York, NY 10281165 Broadway
Attention U.S. Agency Loan Operations
Telephone: (212) 225-5705

with a copy to (which shall not constitute notice):

Trevor Wommack
Latham & Watkins LLP
811 Main Street, Suite 3700
Houston, TX 77002
Telephone: (713) 546-7419
Facsimile: (713) 546-5401
Electronic Mail: Trevor.Wommack@lw.com

(iii) if to any other Lender, in their capacity as such, or any other Lender in its capacity as an Issuing Bank, to it at its address (or fax number or electronic mail address) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II, Article III, Article IV and Article V unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that for both clauses (i) and (ii) above, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Any party hereto may change its address or fax number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) Platform.

(i) Each Credit Party agrees that the Administrative Agent and/or the Arrangers may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Bank and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "Platform").

(ii) The Platform is provided "as is" and "as available." Neither the Administrative Agent nor any of its Related Parties (collectively, the "Agent Parties") make any warranty in respect of the accuracy, the adequacy or completeness of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Agent Parties have any liability to the Borrower or any other Credit Party, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's, any Credit Party's or any Agent Party's transmission of communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of the Borrower or any other Credit Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Bank by means of electronic communications, including through the Platform.

(iii) Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Communications that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower, any of the other Credit Parties, or their securities for purposes of United States Federal or state securities laws.

Section 12.02 Waivers: Amendments.

(a) No failure on the part of the Administrative Agent, any other agent, any Issuing Bank or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Administrative Agent, any other agent, each Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Credit Party therefrom shall in any event be effective unless the same shall be permitted by Section 12.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any other agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Subject to Section 4.04(b)(ii), elsewhere in this Section 12.02, or the express terms of a Loan Document (including Section 3.03(c)), neither this Agreement nor any provision hereof nor any other Loan Document nor any provision thereof may be waived, amended or modified except pursuant to an agreement or

agreements in writing entered into by the Borrower and the Majority Lenders or by the Borrower and the Administrative Agent with the written consent of the Majority Lenders; provided however that no such amendment, waiver or consent shall:

(i) increase the Revolving Credit Commitment or Maximum Revolving Credit Amount of any Revolving Credit Lender without the written consent of such Revolving Credit Lender or increase the principal amount of any Term Lender's Term Loan without the written consent of such Term Lender; *provided*, that the reduction, waiver, removal or other modification of the Availability Blocker or any provision in which the term "Availability Blocker" is used which has the effect of the foregoing may be amended with the consent of the Borrower, the Administrative Agent and the Majority Lenders.

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(ii) increase the Borrowing Base without the written consent of each Revolving Credit Lender, maintain or decrease the Borrowing Base without the written consent or deemed consent of the Required Revolving Credit Lenders, or modify Section 2.07 in a manner that results in the increase of the Borrowing Base without the written consent of each Revolving Credit Lender; *provided* that (x) a waiver of a Borrowing Base reduction may be approved by the Required Revolving Credit Lenders, (y) any revisions to Section 2.07 that have the effect of eliminating the Borrowing Base may be approved by the Required Revolving Credit Lenders, and (z) Scheduled Redetermination may be postponed by the Required Revolving Credit Lenders; *provided*, further, with respect to any Scheduled Redetermination, such Scheduled Redetermination may be postponed for not more than 90 days with the consent of the Majority Lenders and the Administrative Agent,

(iii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon (other than the waiver of interest at the default rate pursuant to Section 3.02(c)), or reduce any fees payable hereunder, or reduce any other Secured Obligations hereunder or under any other Loan Document, without the written consent of each Lender affected thereby,

(iv) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or any other Secured Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Termination Date or the Maturity Date without the written consent of each Lender affected thereby,

(v) change Section 2.06(b), Section 2.06(c), Section 4.01(b), Section 4.01(c), Section 10.02(c) or clause (a) of the proviso to Section 10.04 in a manner that would alter the pro rata reduction of Revolving Credit Commitments or Elected Commitments or the pro rata sharing of payments or the pro rata provision of consideration required thereby, without the written consent of each Lender adversely affected thereby,

(vi) waive, amend Section 3.04(c)(ii) or Section 6.01, in each case without the written consent of each Lender,

(vii) release all or substantially all of the value of the Guarantors or release all or substantially all of the Collateral or subordinate the Liens on the Collateral securing any of the Secured Obligations or subordinate the right of payment of the Secured Obligations (in each case, except as expressly permitted by the Guaranty and Collateral Agreement or this Agreement), in each case, without written consent of each Lender,

(viii) modify the definitions of "Swap Agreement", "Secured Swap Agreement", "Secured Swap Obligations", "Secured Swap Party", "Secured Parties" or "Secured Obligations", or the terms of Section 10.02(c), Section 12.14, any of the provisions of this Section 12.02(b) or Section 12.20, in each case without the written consent of each Secured Swap Party adversely affected thereby,

(ix) change any of the provisions of this Section 12.02(b) or the definition of "Majority Lenders", "Required Lenders", "Super Majority Revolving Credit Lenders", "Required Revolving Credit Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents or make any determination or grant any consent hereunder or any other Loan Documents, without the written consent of each Lender adversely affected thereby;

(x) reduce the percentage set forth in Section 8.14(a) to less than ninety-five percent (95%) without the written consent of Required Lenders; or

(xi) amend or otherwise modify this Agreement or any Security Instrument in a manner that results in the Secured Swap Obligations no longer being secured on an equal and ratable basis with the principal of the Loans pursuant to this Agreement or such Security Instrument, without the written consent of each Secured Swap Party adversely affected thereby; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or any Issuing Bank hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or such Issuing Bank, as the case may be.

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Notwithstanding the foregoing, (i) any supplement to any Schedule permitted or required to be delivered under this Agreement or any other Loan Document shall be effective simply by delivering to the Administrative Agent a supplemental Schedule clearly marked as such and, upon receipt, the Administrative Agent will promptly deliver a copy thereof to the Lenders; (ii) any Security Instrument may be supplemented to add additional collateral with the consent of the Administrative Agent; (iii) the Borrower and the Administrative Agent may amend this Agreement or any other Loan Document without the consent of the Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document, (iv) the Administrative Agent and the Borrower may, without the consent of any Lender, enter into any amendment, modification or waiver of this Agreement or any other Loan Document or enter into any agreement or instrument to add additional Guarantors as contemplated in Section 8.14(b) or to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or Property to become Collateral to secure the Secured Obligations for the benefit of the Lenders or as required by any Governmental Requirement to give effect to, protect or otherwise enhance the rights or benefits of any Lender under the Loan Documents; *provided*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent and (v) the Administrative Agent (and, if applicable, the Borrower) may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents in order to implement any Benchmark Replacement or any Benchmark Replacement Conforming Changes or otherwise effectuate the terms of Section 3.03(c) in accordance with the terms of Section 3.03(c). The Administrative Agent shall post any amendment, modification or waiver of this Agreement or any other Loan Document to the Lenders reasonably promptly after the effectiveness thereof.

Section 12.03 Expenses, Indemnity; Damage Waiver

(a) The Borrower and each other Credit Party shall jointly and severally pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arrangers and their respective Affiliates, including the reasonable and documented out-of-pocket fees, charges and disbursements of consultants and, in the case of legal counsel limited to, of one primary counsel and the Financial Advisor to the Administrative Agent and all Lenders and one local counsel to the Administrative Agent and all Lenders in each jurisdiction deemed reasonably necessary by the Administrative Agent (and, in the case of an actual or perceived conflict of interest, of another firm of counsel for each such affected Person), and the reasonable travel, photocopy, mailing, courier, telephone and other similar expenses, in each case in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the Administrative Agent as to the rights and duties of the Administrative Agent and the Lenders with respect thereto) of this Agreement and the

other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all documented out-of-pocket costs, expenses, Other Taxes, assessments and other charges incurred by the Administrative Agent or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Instrument or any other document referred to therein, (iii) all reasonable out-of-pocket expenses incurred by each Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit issued by such Issuing Bank or any demand for payment thereunder, (iv) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent (and its Affiliates) and the Lenders (including, in the case of legal counsel, (A) the fees, charges and disbursements of counsel and the Financial Advisor to the Administrative Agent and (B) the fees, charges and disbursements of one primary counsel to the Lenders as a group unless there is an actual or perceived conflict of interest in which case each such Person may retain its own counsel (plus no more than one additional counsel in each jurisdiction that is reasonably necessary to such enforcement or protection of rights)) incurred during any workout or restructuring or in connection with the enforcement of any rights or remedies in respect of such Loans or Letters of Credit.

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(b) THE BORROWER AND EACH OTHER CREDIT PARTY SHALL JOINTLY AND SEVERALLY INDEMNIFY THE ADMINISTRATIVE AGENT, THE ARRANGERS, EACH ISSUING BANK AND EACH LENDER, AND EACH RELATED PARTY OF ANY OF THE FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN "INDEMNITEE") AGAINST, AND DEFEND AND HOLD EACH INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES, INCLUDING THE REASONABLE AND DOCUMENTED OUT-OF-POCKET FEES, CHARGES AND DISBURSEMENTS OF ONE PRIMARY COUNSEL FOR ALL INDEMNITEES AND, IF REASONABLY NECESSARY, A SINGLE OUTSIDE LOCAL COUNSEL IN EACH APPROPRIATE JURISDICTION (WHICH MAY INCLUDE A SINGLE SPECIAL COUNSEL IN MULTIPLE JURISDICTIONS) FOR ALL INDEMNITEES TAKEN AS A WHOLE (AND, IN THE CASE OF AN ACTUAL OR PERCEIVED CONFLICT OF INTEREST, AN ADDITIONAL COUNSEL FOR ALL INDEMNITEES SUBJECT TO SUCH CONFLICT TAKEN AS A WHOLE), INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE BY ANY PERSON OR BY THE BORROWER OR ANY OTHER AFFILIATE THEREOF ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (OTHER THAN EXPENSES IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS DATED OF EVEN DATE HERewith, WHICH EXPENSES SHALL ONLY BE PAID BY THE CREDIT PARTIES TO THE EXTENT PROVIDED IN SECTION 12.03(A)) OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THE PARTIES TO ANY OTHER LOAN DOCUMENT OF THEIR RESPECTIVE SECURED OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR BY ANY OTHER LOAN DOCUMENT, (ii) THE FAILURE OF THE CREDIT PARTIES OR THEIR RESPECTIVE SUBSIDIARIES TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (iii) ANY INACCURACY OF ANY REPRESENTATION OR ANY BREACH OF ANY WARRANTY OR COVENANT OF THE BORROWER OR ANY GUARANTOR SET FORTH IN ANY OF THE LOAN DOCUMENTS OR ANY INSTRUMENTS, DOCUMENTS OR CERTIFICATIONS DELIVERED IN CONNECTION THEREWITH, (iv) ANY LOAN OR LETTER OF CREDIT OR THE USE OF THE PROCEEDS THEREFROM, INCLUDING, WITHOUT LIMITATION, (A) ANY REFUSAL BY ANY ISSUING BANK TO HONOR A DEMAND FOR PAYMENT UNDER A LETTER OF CREDIT ISSUED BY SUCH ISSUING BANK IF THE DOCUMENTS PRESENTED IN CONNECTION WITH SUCH DEMAND DO NOT STRICTLY COMPLY WITH THE TERMS OF SUCH LETTER OF CREDIT, OR (B) THE PAYMENT OF A DRAWING UNDER ANY LETTER OF CREDIT NOTWITHSTANDING THE NON-COMPLIANCE, NON-DELIVERY OR OTHER IMPROPER PRESENTATION OF THE DOCUMENTS PRESENTED IN CONNECTION THEREWITH, (v) ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vi) THE OPERATIONS OF THE BUSINESS OF THE CREDIT PARTIES OR THEIR RESPECTIVE SUBSIDIARIES BY THE CREDIT PARTIES OR THEIR RESPECTIVE SUBSIDIARIES, (vii) ANY ASSERTION THAT THE LENDERS WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (viii) THE CREDIT PARTIES', OR THEIR RESPECTIVE SUBSIDIARIES', BREACH OF, OR NON-COMPLIANCE WITH, ANY ENVIRONMENTAL LAW APPLICABLE TO THE CREDIT PARTIES OR THEIR RESPECTIVE SUBSIDIARIES, (ix) THE USE, RELEASE, STORAGE, TREATMENT, DISPOSAL, GENERATION, THREATENED RELEASE, TRANSPORT, ARRANGEMENT FOR TRANSPORT OR ARRANGEMENT FOR DISPOSAL OF HAZARDOUS MATERIALS IN VIOLATION OF ENVIRONMENTAL LAWS BY THE CREDIT PARTIES OR THEIR RESPECTIVE SUBSIDIARIES, (x) ANY LIABILITY ARISING UNDER ENVIRONMENTAL LAW OF THE CREDIT PARTIES OR THEIR RESPECTIVE SUBSIDIARIES, (xi) THE USE BY UNINTENDED RECIPIENTS OF ANY INFORMATION OR OTHER MATERIALS DISTRIBUTED BY IT THROUGH TELECOMMUNICATIONS, ELECTRONIC OR OTHER INFORMATION TRANSMISSION SYSTEM IN CONNECTION WITH THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR (xii) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BROUGHT BY A THIRD PARTY, THE BORROWER OR ANY GUARANTOR, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION, ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS OF ONE OR MORE OF THE INDEMNITEES OR BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; PROVIDED THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES, PENALTIES OR RELATED EXPENSES ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM (I) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, ANY OF ITS AFFILIATES OR CONTROLLING PERSONS OR ANY OF THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR MEMBERS OF ANY OF THE FOREGOING AND (II) OTHER THAN WITH RESPECT TO THE ADMINISTRATIVE AGENT, EACH RELATED PARTY OF THE ADMINISTRATIVE AGENT AND THEIR AFFILIATES, A MATERIAL BREACH IN BAD FAITH OF THE OBLIGATIONS UNDER THE LOAN DOCUMENTS BY SUCH INDEMNITEE, AND PROVIDED FURTHER THAT THE INDEMNITY SET FORTH HEREIN SHALL NOT APPLY TO DISPUTES SOLELY BETWEEN LENDERS UNLESS SUCH DISPUTE RESULTS FROM ANY CLAIM ARISING OUT OF ANY REQUEST, ACT OR OMISSION ON THE PART OF ANY CREDIT PARTY OR AGAINST THE ARRANGERS, THE ADMINISTRATIVE AGENT OR ANY ISSUING BANK IN ITS CAPACITY AS SUCH, IN EACH CASE, IN CONNECTION WITH THE LOAN DOCUMENTS. WITH RESPECT TO THE OBLIGATION TO REIMBURSE AN INDEMNITEE FOR FEES, CHARGES AND DISBURSEMENTS OF COUNSEL, EACH INDEMNITEE AGREES THAT ALL INDEMNITEES WILL AS A GROUP UTILIZE ONE PRIMARY COUNSEL (PLUS NO MORE THAN ONE ADDITIONAL COUNSEL IN EACH JURISDICTION WHERE A PROCEEDING THAT IS THE SUBJECT MATTER OF THE INDEMNITY IS LOCATED) UNLESS (1) THERE IS AN ACTUAL OR PERCEIVED CONFLICT OF INTEREST AMONG INDEMNITEES, (2) DEFENSES OR CLAIMS EXIST WITH RESPECT TO ONE OR MORE INDEMNITEES THAT ARE NOT AVAILABLE TO ONE OR MORE OTHER INDEMNITEES OR (3) SPECIAL COUNSEL IS REQUIRED TO BE RETAINED AND THE BORROWER CONSENTS TO SUCH RETENTION (SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED). THIS SECTION 12.03(b) SHALL NOT APPLY WITH RESPECT TO TAXES OTHER THAN ANY TAXES THAT REPRESENT LOSSES, CLAIMS, DAMAGES, ETCETERA, ARISING FROM ANY NON-TAX CLAIM.

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(c) To the extent that the Borrower for any reason fails to indefeasibly pay any amount required to be paid by it to the Administrative Agent, Arrangers or any Issuing Bank under Section 12.03(a) or (b), each Lender severally agrees to pay to the Administrative Agent, the Arrangers or such Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Arrangers or such Issuing Bank in its capacity as such.

(d) TO THE EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY HERETO NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS,

EMPLOYEES AND AGENTS SHALL ASSERT, AND EACH HEREBY WAIVES, ANY CLAIM AGAINST ANY OTHER SUCH PERSON, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE TRANSACTIONS, ANY LOAN OR LETTER OF CREDIT OR THE USE OF THE PROCEEDS THEREOF. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL LIMIT OR BE DEEMED TO LIMIT THE CREDIT PARTIES' OBLIGATION TO INDEMNIFY THE INDEMNITEE'S FOR ANY SUCH CLAIMS BROUGHT BY THIRD PARTIES.

(e) All amounts due under this Section 12.03 shall be payable promptly and in any event within three (3) Business Days of written demand therefor attaching the relevant invoices and/or a certificate, in each case setting forth the basis for such demand in reasonable detail.

(f) The provisions of this Section 12.03 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans and the Secured Obligations, the expiration or termination of the Revolving Credit Commitments and the Maximum Revolving Credit Amount of each Revolving Credit Lender, the expiration of any Letter of Credit, the invalidity, unenforceability or termination of any or all Loan Documents or term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, any Lender or the Issuing Bank.

Section 12.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 12.04 or as required under Section 5.04(b), and (iii) no Lender may assign to the Borrower or any other Credit Party or their respective Subsidiaries, or an Affiliate of the Borrower or any other Credit Party or their respective Subsidiaries, or a Defaulting Lender or an Affiliate of a Defaulting Lender all or any portion of such Lender's rights and obligations under the Agreement or all or any portion of its Revolving Credit Commitments or the Loans owing to it hereunder. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 12.04(c)) and, to the extent expressly contemplated hereby, Indemnitees, the Related Parties of each of the Administrative Agent, each Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

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(b) (i) Subject to the conditions set forth in Section 12.04(b)(ii), any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) the Borrower, provided that no consent of the Borrower shall be required if such assignment is to a Lender or an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee, provided further that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and

(B) the Administrative Agent and the Issuing Bank, provided that no consent of the Administrative Agent and the Issuing Bank shall be required for an assignment to an assignee that is a Lender or any Affiliate of a Lender or an Approved Fund, immediately prior to giving effect to such assignment.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Revolving Credit Commitment or Loans, the amount of the Revolving Credit Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, including without limitation all of such Lender's rights and obligations in respect of Revolving Credit Commitments, Revolving Loans, LC Exposure and Term Loans on a proportional basis;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(E) no assignment shall be made to the Borrower, any Affiliate of the Borrower, a natural Person, or to any holding company, investment vehicle or trust for, or owned and operated for the primary benefit of or a natural person.

(iii) Subject to Section 12.04(b)(ii) and the acceptance and recording thereof, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits (and obligations) of Section 5.01, Section 5.02, Section 5.03 and Section 12.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.04(c).

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(iv) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Maximum Revolving Credit Amount and

Elected Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive (absent manifest error), and the Borrower, the Administrative Agent, each Issuing Bank and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice. In connection with any changes to the Register, if necessary, the Administrative Agent will reflect the revisions on Annex I and forward a copy of such revised Annex I to the Borrower, each Issuing Bank and each Lender. This Section 12.04(b)(iv) shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury Regulations (or any other relevant or successor provisions of the Code or of such Treasury Regulations).

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in this Section 12.04(b) and any written consent to such assignment required by this Section 12.04(b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 12.04(b).

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent or any Issuing Bank, sell participations to one or more banks or other entities other than the Borrower, an Affiliate of the Borrower or any other Credit Party (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, each Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that any such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 12.02(b) that affects such Participant. In addition such agreement must provide that the Participant be bound by the provisions of Section 12.11. Subject to Section 12.04(c)(ii), the Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01, Section 5.02 and Section 5.03 (subject to the requirements and limitations therein, including the requirements under Section 5.03(e) (it being understood that the documentation required under Section 5.03(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender, provided such Participant agrees to be subject to Section 4.01(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"). No participation shall be effective unless it has been recorded in the Participant Register as provided in this Section 12.04(c); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the proposed United States Treasury Regulations (and, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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(ii) A Participant shall not be entitled to receive any greater payment under Section 5.01 or Section 5.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section 12.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 12.05 Survival; Revival; Reinstatement.

(a) All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any other agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other Secured Obligation or amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Revolving Credit Commitments have not expired or terminated. The provisions of Section 5.01, Section 5.02, Section 5.03, Section 12.03 and Article XI shall survive and remain in full force and effect regardless of the consummation of the Transactions, the repayment of the Loans or any other Secured Obligation, the expiration or termination of the Letters of Credit and the Revolving Credit Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

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(b) To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Administrative Agent's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and the Borrower shall take such action as may be reasonably requested by the Administrative Agent and the Lenders to effect such reinstatement.

Section 12.06 Counterparts; Integration; Effectiveness.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(b) This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE**

PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(c) Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by fax, facsimile, as an attachment to an email or other similar electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

(d) The words "execution," "signed," "signature," and words of like import in this Agreement, any other Loan Document, any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 12.07 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

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Section 12.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations (of whatsoever kind, including, without limitation, Swap Obligations) at any time owing by such Lender or Affiliate to or for the credit or the account of the Credit Parties or the Restricted Subsidiaries against any of and all the obligations of the Credit Parties or the Restricted Subsidiaries owed to such Lender now or hereafter existing under this Agreement or any other Loan Document, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be unmatured. Each Lender or its Affiliate agrees to promptly notify the Borrower and the Administrative Agent after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and each Lender's Affiliates under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender or its Affiliates may have.

Section 12.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND APPELLATE COURTS FROM ANY THEREOF, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. THIS SUBMISSION TO JURISDICTION IS NON-EXCLUSIVE AND DOES NOT PRECLUDE A PARTY FROM OBTAINING JURISDICTION OVER ANOTHER PARTY IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 12.01 OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 12.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER OF A NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

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(d) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (iii) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE, AGENT OR COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 12.09.

Section 12.10 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 12.11 Confidentiality. Each Lender Party agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Related Parties' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority or self-regulatory body, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 12.11, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Agreement relating to the Borrower, any other Credit Party or any Restricted Subsidiary and their obligations, (g) with the consent of the Borrower, (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 12.11 or (ii) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower, (i) to the

National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (j) on a confidential basis to (i) any rating agency in connection with rating the Credit Parties or this Agreement or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers for this Agreement. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar services providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement and the other Loan Documents. For the purposes of this Section 12.11, "Information" means all information received from the Credit Parties or their respective Subsidiaries relating to the Credit Parties or their respective Subsidiaries and their businesses, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Credit Parties or their respective Subsidiaries; provided that, in the case of information received from the Credit Parties, or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.11 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

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Each Lender acknowledges that information furnished to it pursuant to this Agreement or the other Loan Documents may include material non-public information concerning the Credit Parties and their respective Affiliates and Related Parties or their respective securities, and confirms that it has developed compliance procedures regarding the use of material non-public information and agrees that it will handle such material non-public information in accordance with those procedures and applicable law, including federal and state securities laws.

All information, including requests for waivers and amendments, furnished by the Credit Parties or the Administrative Agent pursuant to, or in the course of administering, this Agreement or the other Loan Documents will be syndicate-level information, which may contain material non-public information about the Credit Parties and their respective Affiliates and Related Parties or their respective securities. Accordingly, each Lender represents to the Borrower and the Administrative Agent that it has identified in its Administrative Questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law, including federal and state securities laws.

Section 12.12 Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the Transactions would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the Loans, it is agreed as follows: (a) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (b) in the event that the maturity of the Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 12.12 and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 12.12.

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Section 12.13 Exculpation Provisions. EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND HAS RECEIVED THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."

Section 12.14 Collateral Matters: Swap Agreements. The benefit of the Security Instruments and of the provisions of this Agreement relating to any collateral securing the Secured Obligations shall also extend to and be available to each Secured Swap Party and each Secured Cash Management Provider on a pro rata basis in respect of any Secured Swap Obligations owed to such Secured Swap Party and any Secured Cash Management Obligations owed to such Secured Cash Management Provider. Except as set forth in Section 12.02(b), no Secured Swap Party or Secured Cash Management Provider shall have any voting or consent rights under any Loan Document as a result of the existence of any Secured Swap Obligations or Secured Cash Management Obligations owed to it.

Section 12.15 No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans and each Issuing Bank to issue, amend, renew or extend Letters of Credit hereunder are solely for the benefit of the Borrower, and no other Person (including, without limitation, any Subsidiary of the Borrower, any Credit Party, contractor, subcontractor, supplier or materialsman) shall have any rights, claims, remedies or privileges hereunder or under any other Loan Document against the Administrative Agent, any other agent, any Issuing Bank or any Lender for any reason whatsoever. There are no third party beneficiaries other than to the extent contemplated by the last sentence of Section 12.04(a).

Section 12.16 USA Patriot Act Notice. Each Lender hereby notifies the Borrower and other Credit Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name, address and tax identification number of the Credit Parties and other information that will allow such Lender to identify the Credit Parties in accordance with the Patriot Act.

Section 12.17 No Fiduciary Duty. The Administrative Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”), may have economic interests that conflict with those of the Borrower and the Guarantors, their respective stockholders and/or their affiliates. The Borrower agrees that nothing in the Loan Documents and nothing in connection with the transactions related thereto will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and the Borrower and any Guarantor, its stockholders or its affiliates, on the other. The Borrower acknowledges and agrees that (a) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Borrower on the other, and (b) in connection therewith and with the process leading thereto, (i) no Lender has assumed an advisory or fiduciary responsibility in favor of the Borrower or any Guarantor, its stockholders or its Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise the Borrower or any Guarantor, its stockholders or its Affiliates on other matters) or any other obligation to the Borrower or any Guarantor except the obligations expressly set forth in the Loan Documents and (ii) each Lender is acting solely as principal and not as the agent or fiduciary of the Borrower or any Guarantor, its management, stockholders, creditors or any other Person. The Borrower acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower or any Guarantor, in connection with such transaction or the process leading thereto.

Section 12.18 Flood Insurance Provisions.

(a) Notwithstanding any provision in this Agreement or any other Loan Document to the contrary, in no event is any Building (as defined in the applicable Flood Insurance Regulation) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulation) included in the definition of “Mortgaged Property” and no Building or Manufactured (Mobile) Home is hereby encumbered by this Agreement or any other Loan Document. As used herein, “Flood Insurance Regulations” means (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001, et seq.), as the same may be amended or recodified from time to time and (iv) the Flood Insurance Reform Act of 2004 and any regulations promulgated thereunder and (v) the Biggert-Waters Flood Reform Act of 2012 and any regulations promulgated thereunder.

(b) The Administrative Agent has adopted internal policies and procedures that address requirements placed on federally regulated Lenders under the Flood Insurance Regulations. The Administrative Agent will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Insurance Regulations. However, the Administrative Agent reminds each Lender and participant in the facility that, pursuant to the Flood Insurance Regulations, each federally regulated Lender (whether acting as a Lender or participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

Section 12.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 12.20 [Reserved](b).

Section 12.21 [Reserved].

Section 12.22 Amendment and Restatement of Existing Credit Agreement. The parties hereto agree that this Agreement is an amendment and restatement of the Prepetition Credit Agreement pursuant to the Plan of Reorganization. It is understood and agreed that, except to the extent released by the Administrative Agent as contemplated herein and the Plan of Reorganization, the Liens securing the Secured Obligations under and as defined in the Prepetition Credit Agreement shall not be extinguished but shall be carried forward and shall secure such Secured Obligations as defined in the Prepetition Credit Agreement as amended, renewed, extended and restated by this Agreement and the Secured Obligations as defined in this Agreement. Upon the effectiveness of this Agreement, (a) each Revolving Credit Lender’s participation in each Letter of Credit shall be automatically adjusted to equal its Applicable Revolving Credit Percentage (after giving effect to this amendment and restatement), and (b) such other adjustments shall be made as the Administrative Agent shall specify so that each Revolving Credit Lender’s Revolving Credit Exposure equals its Applicable Revolving Credit Percentage (after giving effect to this amendment and restatement) of the total Revolving Credit Exposures of all of the Revolving Credit Lenders.

Section 12.23 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or the Revolving Credit Commitments;

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of

Credit, the Revolving Credit Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing among the Administrative Agent, the Borrower and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that none of the Administrative Agent, any Arranger and their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 12.24 Acknowledgment Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and, each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the FDIC under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 12.24, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

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BORROWER:

GULFPORT ENERGY OPERATING CORPORATION

By: /s/ Tim Cutt
Name: Tim Cutt
Title: Interim Chief Executive Officer

HOLDINGS:

GULFPORT ENERGY CORPORATION

By: /s/ Tim Cutt
Name: Tim Cutt
Title: Interim Chief Executive Officer

ADMINISTRATIVE AGENT:

**THE BANK OF NOVA SCOTIA,
HOUSTON BRANCH,**
as Administrative Agent

By: /s/ Marc Graham
Name: Marc Graham
Title: Managing Director

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to Credit Agreement
(Gulfport Energy Operating Corporation)

ISSUING BANK AND LENDER:

**THE BANK OF NOVA SCOTIA,
HOUSTON BRANCH,**
as Issuing Bank and a Lender

By: /s/ Marc Graham
Name: Marc Graham
Title: Managing Director

Signature Page
to Credit Agreement
(Gulfport Energy Operating Corporation)

LENDERS:

KeyBank National Association,
as a Lender

By: /s/ Gerald B. Matasy
Name: Gerald B. Matasy
Title: Vice President

PNC Bank, National Association,
as a Lender

By: /s/ Christopher B. Gribble
Name: Christopher B. Gribble
Title: Senior Vice President

Credit Suisse AG, Cayman Islands Branch,
as a Lender

By: /s/ Nupur Kumar
Name: Nupur Kumar
Title: Authorized Signatory

By: /s/ Brady Bingham
Name: Brady Bingham
Title: Authorized Signatory

Barclays Bank PLC,
as a Lender

By: /s/ Sydney G. Dennis
Name: Sydney G. Dennis
Title: Director

Wells Fargo Bank, N.A.,
as a Lender

By: /s/ Tim Green
Name: Tim Green
Title: Director

BBVA USA,
as a Lender

By: /s/ Julia Barnhill
Name: Julia Barnhill
Title: Vice President

U.S. Bank National Association,
as a Lender

By: /s/ Karen Boyer
Name: Karen Boyer
Title: Senior Vice President

JPMorgan Chase Bank, N.A.,
as a Lender

By: /s/ Jo Linda Papadakis
Name: Jo Linda Papadakis
Title: Authorized Officer

Zions Bancorporation, N.A. DBA Amegy Bank,
as a Lender

By: /s/ Jill McSorley
Name: Jill McSorley
Title: Senior Vice President - Amegy Bank Division

Canadian Imperial Bank of Commerce, New York Branch,
as a Lender

By: /s/ Kevin A. James
Name: Kevin A. James
Title: Authorized Signatory

By: /s/ Trudy Nelson
Name: Trudy Nelson
Title: Authorized Signatory

IberiaBank, a division of First Horizon Bank,
as a Lender

By: /s/ Moni Collins
Name: Moni Collins
Title: Senior Vice President

BOKF, NA DBA Bank of Oklahoma,
as a Lender

By: /s/ Drew Krittenbrink
Name: Drew Krittenbrink
Title: Assistant Vice President

Fifth Third Bank National Association,
as a Lender

By: /s/ Michael Miller
Name: Michael Miller
Title: Vice President

Associated Bank, N.A.,
as a Lender

By: /s/ Farhan Iqbal
Name: Farhan Iqbal
Title: Senior Vice President

SPCP Access Holdings, LLC,
as a Lender

By: /s/ Stacey Hatch
Name: Stacey Hatch
Title: Authorized Signatory

Signature Page
to Credit Agreement
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SPCP Institutional Group, LLC,
as a Lender

By: /s/ Stacey Hatch
Name: Stacey Hatch
Title: Authorized Signatory

SPCP Group, LLC,
as a Lender

By: /s/ Stacey Hatch
Name: Stacey Hatch
Title: Authorized Signatory

Bank of America, N.A.,
as a Lender

By: /s/ Austin Penland
Name: Austin Penland
Title: AVP

Signature Page
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ANNEX I

MAXIMUM CREDIT AMOUNTS

Name of Lender	Applicable Revolving Credit Percentage	Maximum Revolving Credit Amount	Elected Commitment	Applicable Term Loan Percentage	Term Loan
The Bank of Nova Scotia	10.000000000%	\$ 132,000,000.00	\$ 40,000,000	10.000000000%	\$ 18,000,000.00
KeyBank National Association	8.500000000%	\$ 112,200,000.00	\$ 34,000,000	8.500000000%	\$ 15,300,000.00
PNC Bank, National Association	8.500000000%	\$ 112,200,000.00	\$ 34,000,000	8.500000000%	\$ 15,300,000.00
Credit Suisse AG, Cayman Islands Branch	6.500000000%	\$ 85,800,000.00	\$ 26,000,000	6.500000000%	\$ 11,700,000.00
Barclays Bank PLC	6.500000000%	\$ 85,800,000.00	\$ 26,000,000	6.500000000%	\$ 11,700,000.00
Wells Fargo Bank, National Association	6.500000000%	\$ 85,800,000.00	\$ 26,000,000	6.500000000%	\$ 11,700,000.00
BBVA USA	6.500000000%	\$ 85,800,000.00	\$ 26,000,000	6.500000000%	\$ 11,700,000.00
U.S. Bank National Association	6.500000000%	\$ 85,800,000.00	\$ 26,000,000	6.500000000%	\$ 11,700,000.00
JPMorgan Chase Bank, National Association	6.500000000%	\$ 85,800,000.00	\$ 26,000,000	6.500000000%	\$ 11,700,000.00
Zions Bancorporation, N.A. dba Amegy Bank	5.000000000%	\$ 66,000,000.00	\$ 20,000,000	5.000000000%	\$ 9,000,000.00
Canadian Imperial Bank of Commerce	5.000000000%	\$ 66,000,000.00	\$ 20,000,000	5.000000000%	\$ 9,000,000.00
IberiaBank, a division of First Horizon Bank	3.500000000%	\$ 46,200,000.00	\$ 14,000,000	3.500000000%	\$ 6,300,000.00
BOKF, NA DBA Bank of Oklahoma	3.500000000%	\$ 46,200,000.00	\$ 14,000,000	3.500000000%	\$ 6,300,000.00
Fifth Third Bank	3.500000000%	\$ 46,200,000.00	\$ 14,000,000	3.500000000%	\$ 6,300,000.00
Associated Bank, N.A.	3.000000000%	\$ 39,600,000.00	\$ 12,000,000	3.000000000%	\$ 5,400,000.00
SPCP Access Holdings, LLC	0.205922371%	\$ 2,718,175.30	\$ 823,689	0.205922371%	\$ 370,660.00
SPCP Institutional Group, LLC	0.415659280%	\$ 5,486,702.50	\$ 1,662,637	0.415659280%	\$ 748,187.00
SPCP Group, LLC	0.806989777%	\$ 10,652,265.06	\$ 3,227,959	0.806989777%	\$ 1,452,582.00
The Bank of America Corporation	9.071428571%	\$ 119,742,857.14	\$ 36,285,714	9.071428571%	\$ 16,328,571.00
TOTAL	100.000000000%	\$ 1,320,000,000.00	\$ 400,000,000	100.000000000%	\$ 180,000,000

Schedule 6.03

Post-Closing Obligations

- 1) Within ten (10) days after the Effective Date (or such later date as the Administrative Agent may agree in its sole discretion), the Borrower shall satisfy each of the requirements as set forth in Section 6.01(c)(ii) of the Second Amended and Restated Credit Agreement and Section 5.2(c) of the Guaranty and Collateral Agreement in respect of the 100 common shares of Gulfport Energy Operating Corporation registered in the name of Gulfport Energy Corporation.
-

REGISTRATION RIGHTS AGREEMENT

by and among

GULFPORT ENERGY CORPORATION

and

THE OTHER PARTIES HERETO

Dated: May 17, 2021

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REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of May 17, 2021, by and among Gulfport Energy Corporation (the "Company") and each of the Registration Rights Holders that are party hereto from time to time.

WHEREAS:

A. The Company and certain affiliated debtors (collectively, the "Debtors") filed the *Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and Its Debtor Subsidiaries* [Docket No. 1171] on April 14, 2021, which was confirmed by the United States Bankruptcy Court for the Southern District of Texas, Houston Division, on April 28, 2021.

B. The Company proposes to issue the Common Stock (as defined below) pursuant to, and upon the terms set forth in, the Plan (as defined below).

C. The Company and the Initial Holders have agreed to enter into this Agreement pursuant to which the Company shall grant the Initial Holders (and their Permitted Transferees) registration rights under the Securities Act (as defined below) with respect to the Registrable Securities (as defined below) in furtherance of the foregoing. The Initial Holders on Schedule I are deemed to have executed this Agreement pursuant to the Confirmation Order (as defined below).

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Initial Holders hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common Control with, such specified Person. The terms "affiliated" and "unaffiliated" shall have correlative meaning.

"Automatic Shelf Registration Statement" means an "automatic shelf registration statement" as defined in Rule 405 promulgated under the Securities Act.

"Board of Directors" means the Board of Directors of the Company.

"Business Day" means any day except Saturday, Sunday or other day on which banks are generally not open for business in the city of New York, New York.

"Common Stock" means the capital stock of the Company or any other Person into which such stock is reclassified or reconstituted (whether by merger, consolidation or otherwise), and any other class or series of common stock of the Company entitled to vote in the election of Directors, in each case whether now owned or hereinafter acquired.

"Confirmation Order" means the *Order (I) Confirming the Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and Its Debtor Subsidiaries and (II) Granting Related Relief* [Docket No. 1262] the United States Bankruptcy Court for the Southern District of Texas, Houston Division entered on April 28, 2021, which confirmed the Plan pursuant to Section 1129 of the Bankruptcy Code.

"Control" (including the terms "controlling" and "controlled"), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of such subject Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

"Demand Registration" has the meaning set forth in Section 2.1(a) of this Agreement.

"Director" means a member of the Board of Directors.

"FINRA" means the Financial Industry Regulatory Authority or any successor agency.

"Governmental Authority" means the government of any nation, state, city, locality or other political subdivision thereof, any entity or self-regulatory organization exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Law" means any United States federal, state or local or foreign law, rule, regulation, statute, Order or other legally enforceable requirement (including common law) issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

"Listing" means, with respect to a security, the listing of such security for trading on the relevant stock exchange in compliance with the rules and regulations of such stock exchange, which Listing may be subject to official notice of issuance.

"Order" means any judgment, decision, writ, order, injunction, award, decree or other determination of or by any Governmental Authority.

"Permitted Transferee" with respect to any Holder means any transferee of such Holder that agrees in writing to become subject to the terms of this Agreement by executing a joinder hereto and agrees to be bound by the provisions hereunder, and any Permitted Transferee of a Permitted Transferee; *provided* that, for the avoidance of doubt, no transfer of the status of "Principal Stockholder" may be made without Company consent.

“Person” means any individual, firm, corporation, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, limited liability company, Governmental Authority or other entity of any kind, and shall include any successor (by merger or otherwise) of such entity.

“Plan” means the Debtors’ *Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and Its Debtor Subsidiaries* [Docket No. 1171], dated April 14, 2021, filed in the Company’s Chapter 11 cases in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, Case No. 20-35562 (DRJ) (including all exhibits, schedules and supplements thereto and as it may be amended, modified or supplemented from time to time), as confirmed by the Confirmation Order.

“Principal Stockholders” means any Initial Holder which, on the date hereof, held more than 10% of the Common Stock of the Company then outstanding and on an undiluted basis.

“Prospectus” means the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including pre- and post-effective amendments to such Registration Statement, and all other material incorporated by reference in such prospectus.

“Public Offering” means the offer for sale of securities pursuant to an effective Registration Statement filed under the Securities Act.

“Registrable Securities” means Common Stock held by an Initial Holder or its Permitted Transferees, now owned by any of the foregoing or, in the case of a Principal Stockholder or its Permitted Transferees, hereafter acquired; *provided, however*, that any such Registrable Securities shall cease to be Registrable Securities to the extent (a) a Registration Statement with respect to the sale of such Registrable Securities has been declared effective under the Securities Act and such Registrable Securities have been disposed of in accordance with the plan of distribution set forth in such Registration Statement, (b) such Registrable Securities have been disposed of pursuant to Rule 144 or Rule 145 of the Securities Act (or any successor rule) or (c) such securities may be sold pursuant to Rule 144 (or any similar provisions in force) without regard to volume or manner of sale limitations and constitute, with respect to a Registration Rights Holder, less than 5% of the outstanding Common Stock of the Company (assuming the conversion of all issued and outstanding options into Common Stock).

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“Registration” means a registration with the SEC of the offer and sale of the securities of the Company to the public under a Registration Statement. The term “Register” shall have a correlative meaning.

“Registration Expenses” means any and all expenses incident to the Company’s performance of or compliance with Article II (Registration Rights) regardless of whether the applicable Registration Statement is declared effective, including, but not limited to, (i) all registration and filing fees, (ii) fees and expenses of compliance with securities or “blue sky” laws (including disbursements of counsel in connection with “blue sky” qualifications of Registrable Securities), (iii) expenses in connection with preparing, printing, mailing and delivering Registration Statements, prospectuses, any documents in connection therewith and any amendments or supplements to the forgoing, (iv) security engraving and printing expenses, (v) reasonable fees and expenses of any special experts retained by the Company in connection with such registration, (vi) costs of printing and producing any agreements among underwriters, underwriting agreements, any “blue sky” or legal investment memoranda and any selling agreements and other documents in connection with the offering, sale or delivery of the Registrable Securities, (vii) expenses relating to any analyst or investor presentations or any “road shows” undertaken in connection with the registration, marketing or selling of the Registrable Securities, (viii) messenger and delivery expenses, (ix) fees and disbursements of custodians, counsel for the Company, and all independent certified public accountants (including the expenses relating to any comfort letters or costs associated with the delivery by independent certified public accountants of any “comfort” letters or any special audits incidental to or required by any registration or qualification), (x) fees and disbursements of underwriters customarily paid by issuers of securities, including, if necessary, a “qualified independent underwriter” within the meaning of the rules of the FINRA (in each case, excluding underwriting discounts, commissions and transfer taxes), and other Persons retained by the Company, (xi) the Company’s internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties), (xii) all out-of-pocket costs and expenses incurred by the Company or its appropriate officers in connection with their compliance with Article II, (xiii) the expense of any annual audit or quarterly review, (xiv) the expense of any liability insurance, (xv) fees and expenses in connection with any review by FINRA of the underwriting arrangements or other terms of the offering, (xvi) reasonable fees, out-of-pocket costs and out-of-pocket costs expenses of counsel to the Registration Rights Holders holding Registrable Securities covered by each Registration Statement (“Holder’s Counsel”), selected pursuant to Section 2.9, (xvii) transfer agents’ and registrars’ fees and expenses and the fees and expenses of any other agent or trustee appointed in connection with such offering, (xviii) fees and expenses payable in connection with any ratings of the Registrable Securities, including expenses relating to any presentations to rating and (xix) the expenses and fees for listing the securities on any securities exchange or automated interdealer quotation system; *provided*, that Registration Expenses shall not include any underwriting discounts or commissions, or transfer taxes, if any, attributable to the sale of Registrable Securities by a Registration Rights Holder.

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“Registration Participant” means, with respect to any Registration, including a public sale or shelf take-down, any holder of Registrable Securities participating as a selling stockholder in such Registration; *provided*, that a holder of Registrable Securities shall not be considered a Registration Participant in connection with a shelf registration unless and until such holder of Registrable Securities participates in a shelf take-down.

“Registration Rights Holders” means the Initial Holders and their respective Permitted Transferees to which Common Stock are transferred in accordance with the terms of this Agreement, and the term “Registration Rights Holder” means any such Person.

“Registration Statement” means any registration statement of the Company that covers the offer and sale of Registrable Securities pursuant to the provisions of this Agreement filed with, or to be filed with, the SEC under the rules and regulations promulgated under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

“Rule 144” means Rule 144 under the Securities Act, as amended.

“SEC” means the Securities and Exchange Commission or any similar agency having jurisdiction to enforce the Securities Act.

“SEC Guidance” means (i) any publicly available written or oral interpretations, questions and answers, guidance and forms of the SEC, (ii) any oral or written comments, requirements or requests of the SEC or its staff, (iii) the Securities Act and the Securities Exchange Act and (iv) any other rules, bulletins, releases, manuals and regulations of the SEC.

“Securities Act” means the United States Securities Act of 1933 and the rules and regulations promulgated thereunder.

“Securities Exchange Act” means the United States Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.

“Shelf Registered Securities” means any Registrable Securities whose offer and sale is registered pursuant to a Registration Statement filed in connection with

a Shelf Registration (including an Automatic Shelf Registration Statement).

“Shelf Registration Statement” means a Registration Statement filed with the SEC on either Form S-3 or F-3 for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any successor provision) covering the offer and sale of all or any portion of the Registrable Securities, as applicable.

“Subsidiaries” means, with respect to any Person, any Affiliate controlled by such Person, directly or indirectly through one or more intermediaries.

“Underwritten Offering” means a Public Offering in which securities of the Company are sold to an underwriter or underwriters (or other counterparty) for reoffering to the public.

“Well-Known Seasoned Issuer” means a “well-known seasoned issuer” as defined in Rule 405 promulgated under the Securities Act and which (a) (i) is a “well-known seasoned issuer” under paragraph (1)(i)(A) of such definition or (ii) is a “well-known seasoned issuer” under paragraph (1)(i)(B) of such definition and is also eligible to Register a primary offering of its securities relying on General Instruction I.B.1 of Form S-3 under the Securities Act and (b) is not an “ineligible issuer” as defined in Rule 405 promulgated under the Securities Act.

1.2 Other Defined Terms in this Agreement.

Term	Section
Agreement	Preamble
Alternative Transaction	2.2(d)(i)
Company	Preamble
Damages	2.10(a)
Demand	2.1(a)
Demand Registration	2.1(a)
Demand Registration Statement	2.1(a)
Demanding Holders	2.1(a)
Determination Date	2.2(f)
DGCL	3.10(a)
Free Writing Prospectus	2.10(a)
Indemnified Party	2.10(c)
Indemnifying Party	2.10(c)
Inspectors	2.7(g)
Piggyback Registration	2.3(a)
Records	2.7(g)
Registration Actions	2.5
Registration Rights Holder Parties	2.10(a)
Remaining Registrable Securities	2.2(e)
Requested Shelf Registered Securities	2.2(b)
S-3 Shelf Eligible	2.2(a)
Shelf Public Offering	2.2(b)
Shelf Public Offering Notice	2.2(b)
Shelf Public Offering Request	2.2(b)
Shelf Public Offering Requesting Holder	2.2(b)
Shelf Registration	2.2(a)
Shelf Requesting Holder	2.2(a)
Suspension Notice	2.5
Suspension Period	2.5

ARTICLE II

REGISTRATION RIGHTS

2.1 Demand Registration Rights.

(a) Demand Rights. Subject to the terms and conditions of this Agreement, including those in Section 2.1(c) below, from and after the date hereof, if any Principal Stockholder provides notice (a “Demand”) at any time requesting that the Company effect the Registration (a “Demand Registration”) under the Securities Act of any or all of the Registrable Securities held by such Principal Stockholder (the “Demanding Holder”), which Demand shall specify the number of such Registrable Securities to be registered by the Demanding Holder and the intended method or methods of disposition of such Registrable Securities, the Company shall use its commercially reasonable efforts to effect the registration of such Registrable Securities under the Securities Act and applicable state securities laws, and to keep such Registration Statement (the “Demand Registration Statement”) effective for so long as is necessary to permit the disposition of such Registrable Securities, in accordance with the intended method or methods of disposition stated in such Demand. A Demand Registration Statement may be for an offering of securities on a delayed or continuous basis under Rule 415 of the Securities Act if the Company is not at the time of the Demand eligible to file a Form S-3. A Demand Registration Statement shall be on such appropriate form that the Company is eligible to use pursuant to SEC Guidance as shall be selected by the Company and as shall permit the intended method or methods of distribution specified by the Demanding Holder, including a distribution to, and resale by, the partners or Affiliates of the Demanding Holder. At the request of the Demanding Holder, the “Plan of Distribution” section of such Demand Registration Statement shall permit all lawful means of disposition of Registrable Securities, including firm-commitment underwritten public offerings, block trades, agented transactions, sales directly into the market, purchases or sales by brokers, derivative transactions, short sales, stock loan or stock pledge transactions and sales not involving a public offering. Subject to Section 2.1(b), (c) and (d), (i) prior to the time the Company is eligible to use Form S-3 for the Demand Registration in accordance with SEC Guidance, the Principal Stockholders, in the aggregate, shall have the right to make four Demands, with any Principal Stockholders which, on the date hereof, held more than 20% of the Common Stock of the Company then outstanding and on an undiluted basis having in the aggregate three such Demands, and all other Principal Stockholders having in the aggregate one such Demand, and (ii) after the time the Company is eligible to use Form S-3 for the Demand Registration in accordance with SEC Guidance, each of the Principal Stockholders shall have the right to make an unlimited number of Demands. The lead managing underwriter or underwriters selected for any Underwritten Offering registered pursuant to a Demand shall be selected in accordance with Section 2.7(f). Upon receipt of a Demand, the

Company shall promptly give written notice of such Demand to each other holder of Registrable Securities in accordance with Section 2.3, and the Company shall, subject to Section 2.1(d), use its commercially reasonable efforts to effect the registration on a Demand Registration Statement under the Securities Act of the offer and sale of:

(i) the Registrable Securities that the Principal Stockholders, whether in connection with the exercise of Demand rights pursuant to Section 2.1 or piggyback rights pursuant to Section 2.3 below, have requested the Company to register; and

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(ii) all other Registrable Securities which the Company has been requested to register by the other Registration Rights Holders by written request given to the Company within ten (10) Business Days after the giving of such written notice by the Company (which request shall specify the intended method of disposition of such Registrable Securities), subject to Section 2.3;

provided, that the Company may also include in such Demand Registration Statement securities to be sold for its own account, subject to Section 2.1(d). The rights of Registration Rights Holders with respect to a Demand shall be subject to Suspension Periods, as provided in Section 2.5. The terms and conditions of any customary underwriting or purchase arrangements pursuant to which Registrable Securities shall be sold in a Demand shall be approved by the Demanding Holder.

(b) Fulfillment of Registration Obligations. Notwithstanding any other provision of this Agreement, a Demand Registration shall not be deemed to have been effected (A) if the Demand Registration Statement has not become effective; (B) if, after the Demand Registration Statement has become effective, such Demand Registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court for any reason (other than as a result of a misrepresentation or an omission by any Demanding Holder or another reason attributable to the Demanding Holder) and the Registrable Securities requested to be registered cannot legally be distributed pursuant to such Demand Registration Statement; (C) if such Demand Registration Statement does not remain effective for the period required under Section 2.7(a); (D) in the event of an Underwritten Offering, if the conditions to closing specified in the purchase agreement or underwriting agreement entered into in connection with such Demand Registration are not satisfied or waived (other than by reasons primarily attributable to the Demanding Holder); (E) if the Common Stock and Registrable Securities, as the case may be, have not been approved for Listing; and (F) if the Demanding Holder is unable to include in an Underwritten Offering covered by a Demand Registration at least a majority of the Registrable Securities it requested to have included therein.

(c) Other Limitations. The Company shall not be obligated to effect, or take any action to effect, any Demand Registration pursuant to this Section 2.1 if (A) the Demanding Holders, together with the holders of any other securities of the Company to be included in such Demand Registration, propose to sell Registrable Securities and such other securities (if any) in an aggregate amount that is reasonably anticipated to generate proceeds, net of underwriting discounts and commissions of not more than \$30,000,000 (or \$15,000,000, in the case of a Demand Registration on Form S-3), unless such registration shall include all of the Registrable Securities then owned by the Demanding Holder, (B) such Demand Registration would be on Form S-1, and the Company has previously effected two Demand Registrations on Form S-1 within the last 12 months for the Demanding Holder, (C) such Demand would contemplate an Underwritten Offering with a “road show” requested of senior management, and the Company has previously effected two Demands for the Demanding Holder that resulted in Underwritten Offerings with a “road show” conducted by senior management during the prior 12-month period, or (D) the Company has already registered on a then-effective Shelf Registration Statement the resale of the Demanding Holders’ Registrable Securities with respect to which the Demanding Holders have made a Demand.

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(d) Priority. In connection with an Underwritten Offering registered pursuant to a Demand Registration, if the lead managing underwriter advises the Company that, in its view, the number of Registrable Securities requested to be included in the Underwritten Offering registered under such Demand Registration (including any securities that the Company proposes to be included that are not Registrable Securities) exceeds the largest number of securities that can be sold without having a material and adverse effect on such offering, including the price at which such securities can be sold (with respect to any other Underwritten Offering, the “Maximum Offering Size”), the Company shall include in the Underwritten Offering the following securities, in the priority listed below, up to the Maximum Offering Size:

(i) first, Registrable Securities that are requested to be included in such Underwritten Offering pursuant to Section 2.1 by the Demanding Holder;

(ii) second, Registrable Securities of Principal Stockholders that are requested to be included in such Underwritten Offering pursuant to Section 2.3;

(iii) third, Registrable Securities of Registration Rights Holders (other than the Demanding Holder and any Principal Stockholders) that are requested to be included in such Underwritten Offering pursuant to Section 2.3; and

(iv) fourth, all securities that are requested to be included in such Underwritten Offering by the Company (including securities to be included pursuant to other applicable registration rights agreements or provisions).

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2.2 Shelf Registration Statements.

(a) Initial Shelf Registration. The Company shall notify the Registration Rights Holders within three Business Days after the Company becomes eligible to use Form S-3 in connection with a secondary public offering of its equity securities on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, in accordance with SEC Guidance (“S-3 Shelf Eligible”). At any time when (i) the Company is S-3 Shelf Eligible and (ii) a Shelf Registration on a Form S-3 registering Registrable Securities for resale is not then effective (subject to any applicable Suspension Period), upon the written request of any Registration Rights Holder (the “Shelf Requesting Holder”), the Company shall use its commercially reasonable efforts to register, under the Securities Act on Form S-3 for an offering on a delayed or continuous basis pursuant to Rule 415 promulgated under the Securities Act (a “Shelf Registration”), the offer and sale of all or a portion of the Registrable Securities owned by such Shelf Requesting Holder. Upon the receipt of such written request, the Company shall promptly give notice (via facsimile or electronic transmission) of such requested Shelf Registration at least 10 Business Days prior to the anticipated filing date of such Shelf Registration to the other Registration Rights Holders, and such notice shall describe the proposed Shelf Registration, the intended method of disposition of such Registrable Securities and any other information that at the time would be appropriate to include in such notice, and offer such Registration Rights Holders the opportunity to register the number of Registrable Securities as each such Registration Rights Holder may request by written notice to the Company, given within five Business Days after such Registration Rights Holders are given the Company’s notice of the Shelf Registration. The “Plan of

Distribution” section of such Shelf Registration shall permit all lawful means of disposition of Registrable Securities, including firm-commitment underwritten public offerings, block trades, agent transactions, sales directly into the market, purchases or sales by brokers, derivative transactions, short sales, stock loan or stock pledge transactions and sales not involving a public offering. With respect to each Shelf Registration, the Company shall (x) as promptly as practicable after the written request of the Shelf Requesting Holder, file a Registration Statement and (y) use its commercially reasonable efforts to cause such Registration Statement to be declared effective as promptly as practicable, and remain effective until the date set forth in Section 2.7(a)(ii). No Registration Rights Holder shall be entitled to include any of its Registrable Securities in a Shelf Registration unless such Registration Rights Holder has complied with Section 2.8. The obligations set forth in this Section 2.2(a) shall not apply if the Company has a currently effective Automatic Shelf Registration Statement covering all Registrable Securities in accordance with Section 2.7(f) and has otherwise complied with its obligations pursuant to this Article II. The rights of Registration Rights Holders with respect to any Shelf Registration shall be subject to Suspension Periods, as provided in Section 2.5.

(b) Underwritten Take-Downs Upon written request by a Registration Rights Holder holding Shelf Registered Securities (the “Shelf Public Offering Requesting Holder”), which request (the “Shelf Public Offering Request”) shall specify the class or series and amount of such Shelf Public Offering Requesting Holder’s Shelf Registered Securities to be sold (the “Requested Shelf Registered Securities”), the Company shall perform its obligations hereunder with respect to the sale of such Requested Shelf Registered Securities in the form of a firm commitment underwritten public offering (unless otherwise consented to by the Shelf Public Offering Requesting Holder) (a “Shelf Public Offering”) if the aggregate proceeds reasonably anticipated to be generated, net of underwriting discounts and commissions, from the sale of the Requested Shelf Registered Securities equals or exceeds \$15,000,000 (as determined by the Company in good faith, as of the date the Company receives the Shelf Public Offering Request), unless such Shelf Public Offering shall include all of the Registrable Securities then owned by the Shelf Public Offering Requesting Holder(s). Promptly upon receipt of a Shelf Public Offering Request, the Company shall provide notice (the “Shelf Public Offering Notice”) of such proposed Shelf Public Offering (which notice shall state the material terms of such proposed Shelf Public Offering, to the extent known, as well as the identity of the Shelf Public Offering Requesting Holder) to the other Registration Rights Holders holding Shelf Registered Securities. Such other Registration Rights Holders may, by written request to the Company and the Shelf Public Offering Requesting Holders, within one Business Day after receipt of such Shelf Public Offering Notice, offer and sell up to all of their Shelf Registered Securities of the same class or series as the Requested Shelf Registered Securities in such proposed Shelf Public Offering. No Registration Rights Holder shall be entitled to include any of its Registrable Securities in a Shelf Public Offering unless such Registration Rights Holder has complied with Section 2.8. The lead managing underwriter or underwriters selected for such Shelf Public Offering shall be selected in accordance with Section 2.7(f). The terms and conditions of any customary underwriting or purchase arrangements pursuant to which Registrable Securities shall be sold in a Shelf Public Offering shall be approved by the Shelf Public Offering Requesting Holder.

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(c) Priority. In a Shelf Public Offering, if the lead managing underwriter advises the Company and the Shelf Public Offering Requesting Holder that, in its view, the number of Registrable Securities requested to be included in such Shelf Public Offering (including any securities that the Company proposes to be included that are not Registrable Securities) exceeds the Maximum Offering Size, the Company shall include in such Shelf Public Offering the following securities, in the priority listed below, up to the Maximum Offering Size:

- Holder(s);
- (i) first, Registrable Securities that are requested to be included in such Shelf Public Offering by the Shelf Public Offering Requesting Holder(s);
 - (ii) second, Registrable Securities that are requested to be included in such Shelf Public Offering by Principal Stockholders;
 - (iii) third, Registrable Securities held by Registration Rights Holders (other than the Shelf Public Offering Requesting Holder(s) and Principal Stockholders) that are registered on the applicable Shelf Registration Statement and are requested to be included in such Shelf Public Offering by such Registration Rights Holders;; and
 - (iv) fourth, all securities that are registered on the applicable Shelf Registration Statement and are requested to be included in such Shelf Public Offering by the Company (including securities to be included pursuant to other applicable registration rights agreements or provisions).

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(d) Company Cooperation.

(i) The Company shall use its commercially reasonable efforts to cooperate in a timely manner with any request of the Registration Rights Holders holding Shelf Registered Securities in respect of any block trade, hedging transaction or other transaction that is registered pursuant to a Shelf Registration that is not a firm commitment Underwritten Offering (each, an “Alternative Transaction”), including entering into customary agreements with respect to such Alternative Transactions (and providing customary representations, warranties, covenants and indemnities in such agreements) as well as providing other reasonable assistance in respect of such Alternative Transactions of the type applicable to a Public Offering subject to Section 2.7, to the extent customary for such transactions.

(ii) The Company shall bear all Registration Expenses in connection with any Shelf Registration, any Shelf Public Offering or any other transaction (including any Alternative Transaction) registered under a Shelf Registration pursuant to this Section 2.2, whether or not such Shelf Registration becomes effective or such Shelf Public Offering or other transactions is completed; *provided, however*, that if the Shelf Public Offering Requesting Holder revokes its request in whole with respect to a Shelf Public Offering, then the Shelf Public Offering Requesting Holder shall reimburse the Company for and/or pay directly all Registration Expenses incurred relating to such Shelf Public Offering.

(e) Subsequent Shelf Registration. After the Registration Statement with respect to a Shelf Registration is declared effective, upon written request by one or more Registration Rights Holders (which written request shall specify the amount of such Registration Rights Holders’ Registrable Securities to be registered), the Company shall, as permitted by SEC Guidance, (i) if it is a Well-Known Seasoned Issuer and such Registration Statement is an Automatic Shelf Registration Statement, as promptly as practicable after receiving such request, file a prospectus supplement to include such Registration Rights Holders as selling stockholders in such Registration Statement or (ii) otherwise, as promptly as practicable after the date the Registrable Securities requested to be registered pursuant to this Section 2.2(e) that have not already been so registered represent more than 1.5% of the outstanding Registrable Securities, file a post-effective amendment to the Registration Statement to include such Registration Rights Holders in such Shelf Registration and use commercially reasonable efforts to have such post-effective amendment declared effective. To the extent that any Registration Statement with respect to a Shelf Registration is expected to no longer be usable for the resale of Registrable Securities registered thereon (“Remaining Registrable Securities”) pursuant to SEC Guidance, the Company shall, not later than 90 days prior to the date such Registration Statement is expected to no longer be usable, use commercially reasonable efforts to prepare and file a new Registration Statement with respect to such Shelf Registration, as if the holders of such Remaining Registrable Securities had requested a Shelf Registration with respect thereto pursuant to Section 2.2(a) and perform all actions required under this Agreement with respect to such Shelf Registration.

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(f) Automatic Shelf Registration Statements. Upon the Company becoming a Well-Known Seasoned Issuer eligible to use an Automatic Shelf Registration Statement in accordance with SEC Guidance, (i) the Company shall give written notice to all of the Registration Rights Holders as promptly as practicable but in no event later than 10 Business Days thereafter, and such notice shall describe, in reasonable detail, the basis on which the Company has become a Well-Known Seasoned Issuer, and (ii) the Company shall, as promptly as practicable, register, under an Automatic Shelf Registration Statement, the sale of all of the Registrable Securities in accordance with the terms of this Article II. The Company shall use its commercially reasonable efforts to file such Automatic Shelf Registration Statement as promptly as practicable, but in no event later than 15 Business Days after it becomes a Well-Known Seasoned Issuer, and to cause such Automatic Shelf Registration Statement to remain effective thereafter until the date set forth in Section 2.7(a)(ii). The Company shall give written notice of filing such Registration Statement to all of the Registration Rights Holders as promptly as practicable thereafter. The Company shall not be required to include any Registration Rights Holders as a selling stockholder in any Registration Statement or prospectus unless such Registration Rights Holders has complied with Section 2.8. At any time after the filing of an Automatic Shelf Registration Statement by the Company, if it is reasonably likely that it will no longer be a Well-Known Seasoned Issuer as of a future determination date (the "Determination Date"), as promptly as practicable and at least 30 days prior to such Determination Date, the Company shall (A) give written notice thereof to all of the Registration Rights Holders and (B) if the Company is S-3 Shelf Eligible, file a Registration Statement on Form S-3 with respect to a Shelf Registration in accordance with Section 2.2(a) and use all commercially reasonable efforts to have such Registration Statement declared effective prior to the Determination Date.

2.3 Piggyback Registration Rights.

(a) Whenever the Company proposes to file a Registration Statement to register Common Stock under the Securities Act on Form S-1 or S-3, or any similar form then in effect, whether or not for its own account (including pursuant to Section 2.1 or Section 2.2), the Company shall give written notice thereof to each Registration Rights Holder at least 10 Business Days before such filing, offering each Registration Rights Holder the opportunity to register on such Registration Statement such number of Registrable Securities as such Registration Rights Holder may request in writing not later than five Business Days after receiving such notice in writing from the Company (a "Piggyback Registration"). Upon receipt by the Company of any such request, the Company shall use commercially reasonable efforts to, or in the case of an Underwritten Offering, use commercially reasonable efforts to cause the managing underwriter or underwriters to, include such Registrable Securities in such Registration Statement (or in a separate Registration Statement concurrently filed) and to cause such Registration Statement to become effective with respect to such Registrable Securities. If no request for inclusion from a Registration Rights Holder is received by the Company within the deadlines specified above, such Registration Rights Holder shall have no further right to participate in such Piggyback Registration. Notwithstanding the foregoing, if at any time after giving written notice of a registration in accordance with the first sentence of this paragraph (a) and before the effectiveness of the Registration Statement described in such notice, the Company determines for any reason either not to effect such registration or to delay such registration, the Company may, at its election, by delivery of written notice to each Registration Rights Holder exercising its rights to Piggyback Registration, (i) in the case of a determination not to effect registration, relieve itself of its obligation to effect a Piggyback Registration of the Registrable Securities in connection with such registration or (ii) in the case of a determination to delay registration, delay the Piggyback Registration of such Registrable Securities of the Registration Rights Holders for the same period as the delay in the registration of such other Registrable Securities; *provided*, that in the case of any such termination, withdrawal or delay, all expenses incurred in connection with such Piggyback Registration shall be borne entirely by the Company as set forth in Section 2.9. If any Registration Rights Holder requests inclusion in a registration pursuant to this Section 2.3, he, she, or it may, at any time before the effective date of the Registration Statement relating to such registration, revoke such request by delivering written notice of such revocation to the Company (which notice shall be effective only upon receipt by the Company, notwithstanding the provisions of Article II); *provided, however*, that if the Company, in consultation with its financial and legal advisors, determines that such revocation would materially delay the registration or otherwise require a recirculation of the prospectus contained in the Registration Statement, then such Registration Rights Holder shall have no right to so revoke his, her, or its request. The Company shall keep the Registration Rights Holder reasonably informed as to the status or expected timing of the launch of any Piggyback Registration. No registration of Registrable Securities effected under this Section 2.3 shall relieve the Company of its obligations to effect any registration upon demand under Section 2.1. The rights of Registration Rights Holders with respect to a Piggyback Registration shall be subject to Suspension Periods, as provided in Section 2.5. To the extent an Underwritten Offering is made under any such Registration Statement, all Registration Rights Holders exercising their right to Piggyback Registration must sell their Registrable Securities to the underwriters selected as provided in Section 2.7(f) on the same terms and conditions as apply to the other securityholders selling in such Underwritten Offering.

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(b) If a Piggyback Registration involves an Underwritten Offering (other than any Demand Registration, in which case the provisions with respect to priority of inclusion in such offering set forth in Section 2.1(d) shall apply or a Shelf Public Offering, in which case the provisions with respect to priority of inclusion in such offering set forth in Section 2.2(c) shall apply) and the lead managing underwriter advises the Company that, in its view, the number of Registrable Securities that the Registration Rights Holders and the Common Stock that the Company intend to include in such Underwritten Offering exceeds the Maximum Offering Size, the Company shall include in such Underwritten Offering the following securities, in the following priority, up to the Maximum Offering Size:

(i) first, all Common Stock that is requested to be included by the Company in the Underwritten Offering for its own account;

(ii) second, Registrable Securities that are requested to be included in the Underwritten Offering pursuant to this Section 2.3 by Principal Stockholders;

(iii) third, Registrable Securities that are requested to be included in the Underwritten Offering pursuant to this Section 2.3 by Registration Rights Holders; *provided that* (subject to rounding); and

(iv) fourth, all other securities that are requested to be included in the Underwritten Offering by the Company (including securities to be included pursuant to other applicable registration rights agreements or provisions).

2.4 Underwritten Offering. Notwithstanding anything herein to the contrary, no Registration Rights Holder may participate in any Underwritten Offering hereunder unless such Registration Rights Holder accurately completes and executes in a timely manner all questionnaires, powers of attorney, indemnities, custody agreements, underwriting agreements (as approved in accordance with the terms of this Agreement), and other documents reasonably requested under the terms of such underwriting arrangements; *provided*, that all Persons participating in such Underwritten Offering shall be required to complete and execute, on the same terms and conditions, such questionnaires, powers of attorney, indemnities, custody agreements, underwriting agreements, and other documents (if applicable). The right of a Registration Rights Holder to register and sell Registrable Securities in an Underwritten Offering shall also be subject to any restrictions, limitations or prohibitions on the sale of Registrable Securities (subject to the limitations in Section 2.6) as may be required by the underwriters in the interests of the offering (and, without limiting the foregoing, each Registration Rights Holder shall in connection therewith agree to be bound by (and if requested, execute and deliver) a lock-up agreement with the underwriter(s) of any such Underwritten Offering as provided in Section 2.6).

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2.5 Suspension. Notwithstanding anything to the contrary contained in this Article II, but subject to the limitations set forth in this Section 2.5, the Company shall be entitled to suspend its obligation to (a) file or submit (but not to prepare) any Registration Statement in connection with any Demand Registration or Shelf Registration, (b) file or submit any amendment to such a Registration Statement, (c) file, submit or furnish any supplement or amendment to a prospectus included in such a Registration

Statement, (d) make any other filing with the SEC, (e) cause such a Registration Statement or other filing with the SEC to become or remain effective or (f) take any similar actions or actions related thereto (including entering into agreements and actions related to the marketing of securities) (collectively, “Registration Actions”) upon (i) the issuance by the SEC of a stop order suspending the effectiveness of any such Registration Statement or the initiation of proceedings with respect to such a Registration Statement under Section 8(d) or 8(e) of the Securities Act, (ii) the Board of Directors’ determination, in its good faith judgment, that any such Registration Action should not be taken because it would reasonably be expected to materially interfere with or require the public disclosure of any material corporate development or plan, including any material financing, securities offering, acquisition, disposition, corporate reorganization or merger or other transaction involving the Company or any of its Subsidiaries or (iii) the Company possessing material non-public information the disclosure of which the Board of Directors determines, in its good faith judgment, would reasonably be expected to not be in the best interests of the Company. Upon the occurrence of any of the conditions described in clause (i), (ii) or (iii) above in connection with undertaking a Registration Action, the Company shall give prompt notice of such suspension (and whether such action is being taken pursuant to clause (i), (ii) or (iii) above) (a “Suspension Notice”) to the Registration Rights Holders. Upon the termination of such condition, the Company shall give prompt notice thereof to the Registration Rights Holders and shall promptly proceed with all Registration Actions that were suspended pursuant to this paragraph. The Company may only suspend Registration Actions pursuant to clause (ii) or (iii) above on two occasions during any period of 12 consecutive months for a reasonable time specified in the Suspension Notice but not exceeding an aggregate of 60 days (which period may not be extended or renewed) during such 12 consecutive month period (each such occasion, a “Suspension Period”). Each Suspension Period shall be deemed to begin on the date the relevant Suspension Notice is given to the Registration Rights Holders and shall be deemed to end on the earlier to occur of (x) the date on which the Company gives the Registration Rights Holders a notice that the Suspension Period has terminated and (y) the date on which the number of days during which a Suspension Period has been in effect exceeds the 60-day limit during such 12 consecutive month period. If the filing of any Demand Registration or Shelf Registration is suspended pursuant to this Section 2.5, once the Suspension Period ends the Registration Rights Holders requesting such registration may request a new Demand Registration or Shelf Registration (and any such request for a Demand Registration shall not be counted as an additional Demand Registration for purposes of Section 2.1(a)). Notwithstanding anything to the contrary in this Article II, the Company shall not be in breach of, or have failed to comply with, any obligation under this Article II where the Company acts or omits to take any action in order to comply with applicable Law, any SEC Guidance or any Order. Each Registration Rights Holder shall keep confidential the fact that a Suspension Period is in effect unless otherwise notified by the Company, except (a) for disclosure to the Registration Participants or Registration Rights Holders, as applicable, and their employees, agents and professional advisers who reasonably need to know such information for purposes of assisting such Registration Participants or Registration Rights Holders with respect to its investment in the Common Stock and agree to keep it confidential, (b) if and to the extent such matters are publicly disclosed by the Company or any of its Subsidiaries or any other Person that, to the actual knowledge of such Registration Rights Holder, was not subject to an obligation or duty of confidentiality to the Company and its Subsidiaries, (c) as required by applicable Law (*provided*, that the Registration Rights Holder gives prior written notice to the Company of such requirement and the contents of the proposed disclosure to the extent it is permitted to do so under applicable Law), and (d) for disclosure to any other Registration Rights Holder.

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2.6 Lockup Agreements.

(a) Each Registration Rights Holder hereby agrees that, in connection with an Underwritten Offering, except for sales in such Underwritten Offering:

(i) it will not effect any public sale or distribution (including sales pursuant to Rule 144 and pursuant to derivative transactions) of Common Stock (1) during (A) the 14 days prior to and the 60-day period beginning on the effective date of the Registration Statement covering such Registrable Securities in connection with an Underwritten Offering (which period may each case, be extended to the extent required by applicable Law) or (B) such shorter period as the underwriters participating in such Underwritten Offering may require or such longer period as the majority of the Principal Stockholders agree to be subject to, and (2) upon notice from the Company of the commencement of a Shelf Public Offering, during (A) the period from the date of such notice until 60 days after the date of commencement of such Shelf Public Offering or (B) such shorter period as the underwriters participating in such Shelf Public Offering may require or such longer period as the majority of the Principal Stockholders agree to be subject to; *provided*, that the duration of the restrictions described in this clause (i) shall be no longer than the duration of the shortest restriction generally imposed by the underwriters on the chief executive officer and the chief financial officer of the Company (or persons in substantially equivalent positions) in connection with such Underwritten Offering, and any waiver or early termination by the underwriters participating in the Underwritten Offering or by the Company of any lockup restrictions of any third party shall be also granted to the Registration Rights Holders; and

(ii) it will execute a lock-up agreement in favor of the underwriters in form and substance reasonably acceptable to the Company and the underwriters to such effect.

(b) In connection with an Underwritten Offering, except for sales in such Underwritten Offering, the Company agrees that it:

(i) shall not effect any public sale or distribution of Registrable Securities (except pursuant to registrations on Form S-8 or Form S-4 or any similar or successor form under the Securities Act) (1) if the Underwritten Offering is made pursuant to a Demand Registration or any Piggyback Registration on a Demand Registration in which the holders of Registrable Securities are participating, during (A) the 14 days prior to and the 60-day period beginning on the effective date of the Demand Registration Statement (which period may be extended to the extent required by applicable Law) or (B) such shorter period as the underwriters participating in such Underwritten Offering may require or such longer period as the majority of the Principal Stockholders agree to be subject to; and (2) upon notice from any holder(s) of Registrable Securities subject to a Shelf Registration that such holder(s) intend to effect a Shelf Public Offering (upon receipt of which, the Company will promptly notify all other Registration Rights Holder of the date of commencement of such Shelf Public Offering), during (A) the 14 days prior to and the 60-day period beginning on the date of commencement of such Shelf Public Offering (which period may be extended to the extent required by applicable Law) and (B) such shorter period as the underwriters participating in such Shelf Public Offering may require or such longer period as the majority of the Principal Stockholders agree to be subject to; and

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(ii) to the extent requested by the underwriters participating in such Underwritten Offering, it shall agree to include provisions in the relevant underwriting or other similar agreement giving effect to the restrictions described in clause (i) above, in form and substance reasonably acceptable to such underwriters.

2.7 Registration Procedures. Whenever the holders of Registrable Securities have requested that any Registrable Securities be registered pursuant to this Agreement, subject to Section 2.5, the Company shall use its commercially reasonable efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof as soon as reasonably practicable, and, in connection with any such request:

(a) The Company shall, as soon as practicable, prepare and file with the SEC a Registration Statement on the form required by the Section of this Article II under which such Registration Statement is required to be filed, which form shall be available, pursuant to SEC Guidance, for the sale of the Registrable Securities to be registered thereunder in accordance with the intended method of distribution thereof, and use its commercially reasonable efforts to cause such filed Registration Statement to become and remain effective, to the extent permitted by SEC Guidance, for a period of (i) not less than 180 days (or, if sooner, until all Registrable Securities have been sold under such Registration Statement), which duration shall not count any Suspension Period, or (ii) in the case of a Shelf Registration, until the earlier of the date (x) on which all of the securities covered by such Shelf Registration are no longer Registrable Securities and (y) on which the Company cannot extend the effectiveness of such Shelf Registration because it is no longer S-3 Shelf Eligible.

(b) Prior to filing a Registration Statement or related prospectus or any amendment or supplement thereto (including any documents incorporated by reference therein), or before using any Free Writing Prospectus, the Company shall provide to each Registration Rights Holder, the Holders' Counsel and each underwriter, if any, with an adequate and appropriate opportunity to review and comment on such Registration Statement, each Prospectus included therein (and each amendment or supplement thereto) and each Free Writing Prospectus proposed to be filed with the SEC, and thereafter the Company shall furnish to such Registration Rights Holder, the Holders' Counsel and underwriter, if any, such number of copies of such Registration Statement, each amendment and supplement thereto filed with the SEC (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such Registration Statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424, Rule 430A, Rule 430B or Rule 430C under the Securities Act and such other documents as such Registration Rights Holder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Registration Rights Holder; *provided, however*, that in no event shall the Company be required to provide to any Person any materials, information or document required to be filed by the Company pursuant to the Securities Exchange Act prior to its filing other than in connection with a Public Offering (other than as provided in the Agreement of which this Article II forms a part). In addition, the Company shall, as expeditiously as practicable, keep the Registration Rights Holders advised in writing as to the initiation and progress of any registration under Sections 2.1, 2.2 or 2.3 and provide each Registration Rights Holder with copies of all correspondence (including any comment letter) with the SEC or any other Governmental Authority in connection with any such Registration Statement. Each Registration Rights Holder shall have the right to request that the Company modify any information contained in such Registration Statement, amendment and supplement thereto pertaining to such Registration Rights Holder, and the Company shall use its commercially reasonable efforts to comply with such request; *provided, however*, that the Company shall not have any obligation so to modify any information if such modification the Company reasonably expects that so doing would cause the relevant document to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

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(c) After the filing of the Registration Statement, the Company shall (i) cause the related prospectus to be supplemented by any required prospectus supplement, and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act, (ii) comply with the provisions of the Securities Act and other SEC Guidance applicable to the Company with respect to the disposition of all Registrable Securities covered by such Registration Statement during the applicable period in accordance with the intended methods of disposition by the Registration Rights Holder thereof set forth in such Registration Statement or supplement to such prospectus and (iii) promptly notify each Registration Rights Holder holding Registrable Securities covered by such Registration Statement and the Holders' Counsel any stop order issued or threatened by the SEC or any state securities commission with respect thereto and take all commercially reasonable actions required to prevent the entry of such stop order or to remove it if entered.

(d) The Company shall use its commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by such Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as any Registration Rights Holder holding such Registrable Securities reasonably (in light of such Registration Rights Holder's intended plan of distribution) requests, and continue such registration or qualification in effect in such jurisdiction for the shortest of (A) as long as permissible pursuant to the Laws of such jurisdiction, (B) as long as any such Registration Rights Holder requests or (C) until all such Registrable Securities are sold and (ii) cause such Registrable Securities to be registered with or approved by such other Governmental Authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be reasonably necessary or advisable to enable such Registration Rights Holder to consummate the disposition of the Registrable Securities owned by such Registration Rights Holder; *provided*, that the Company shall not be required to (1) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 2.7(d), (2) subject itself to taxation in any such jurisdiction or (3) consent to general service of process in any such jurisdiction.

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(e) The Company shall as promptly as practicable notify each Registration Rights Holder holding such Registrable Securities covered by such Registration Statement (i) at any time when a prospectus relating thereto is required to be delivered under the Securities Act, upon the discovery that, or upon the occurrence of an event as a result of which, the preparation of a supplement or amendment to such prospectus is required so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements in light of the circumstances under which they were made not misleading and the Company shall promptly prepare and make available to each Registration Rights Holder and file with the SEC any such supplement or amendment, (ii) if the Company becomes aware of any request by the SEC or any other Governmental Authority for amendments or supplements to a Registration Statement or related prospectus covering Registrable Securities or for additional information relating thereto, (iii) if the Company becomes aware of the issuance or threatened issuance by the SEC of any stop order suspending or threatening to suspend the effectiveness of a Registration Statement covering the Registrable Securities or (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose.

(f) (i) The Registration Rights Holders holding a majority of the Registrable Securities to be included in a Demand Registration or intended to be sold pursuant to a Shelf Public Offering pursuant to a "take down" under a Shelf Registration shall have the right to select an underwriter or underwriters in connection with any Public Offering resulting from the exercise of a Demand Registration or a Shelf Registration (which underwriter or underwriters may include any Affiliate of any Registration Rights Holder so long as including such Affiliate would not require that the separate engagement of a qualified independent underwriter with respect to such offering), subject to the Company's approval (which shall not be unreasonably withheld, conditioned or delayed) and (ii) the Company shall select an underwriter or underwriters in connection with any other Public Offering. In connection with any Public Offering, the Company shall enter into customary agreements (including an underwriting agreement in customary form) and take all other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities in any such Public Offering, including, if required, the engagement of a "qualified independent underwriter" in connection with the qualification of the underwriting arrangements with FINRA.

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(g) Subject to confidentiality arrangements or agreements in form and substance reasonably satisfactory to the Board of Directors, the Company shall make available for inspection (upon reasonable notice and during normal business hours) by any Registration Rights Holder and any underwriter or counterparty in an Alternative Transaction participating in any disposition pursuant to a Registration Statement being filed by the Company pursuant to this Section 2.7 and any attorney, accountant or other professional retained by any such Registration Rights Holder or underwriter (collectively, the "Inspectors"), all financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records") as shall be reasonably necessary or desirable to enable them to exercise their due diligence responsibility, and cause the officers and the employees of the Company to supply all information reasonably requested by any Inspectors in connection with such Registration Statement. Records that the Company determines, in good faith, to be confidential and that it notifies the Inspectors are confidential shall not be disclosed by the Inspectors unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such Registration Statement, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, (iii) disclosure of such Records is necessary to comply with SEC Guidance, federal or state securities laws or the rules of any securities exchange or trading market on which any Common Stock is listed or traded or is otherwise required by Law or legal process,

(iv) the information in such Records was known to the Inspectors on a non-confidential basis prior to its disclosure by the Company or has been made generally available to the public other than as a result of a violation of this Section 2.7(g) or any other agreement or duty of confidentiality, (v) the information in such Records is or becomes available to the public other than as a result of disclosure by any Inspector in violation the confidentiality agreements or (vi) is or was independently developed by any Inspector without the benefit of the information in such Records. Each Registration Rights Holder agrees that information obtained by it as a result of such inspections shall be deemed confidential and shall not be used by it or its Affiliates for any other purpose, including as the basis for any market transactions in any securities of the Company, unless and until such information is made generally available to the public. Each Registration Rights Holder further agrees that, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, it shall, to the extent permitted by applicable Law, give notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential.

(h) The Company shall furnish to each Registration Rights Holder and to each underwriter in an Underwritten Offering or counterparty in an Alternative Transaction, if any, a signed counterpart, addressed to such underwriter or counterparty, of (i) an opinion or opinions of counsel to the Company and (ii) a comfort letter or comfort letters from the Company's independent public accountants, each in customary form and covering such matters of the kind customarily covered by opinions or comfort letters, as the case may be, any Registration Rights Holder or the lead managing underwriter (or lead counterparty, as the case may be) therefor reasonably requests.

(i) The Company shall otherwise comply with all applicable SEC Guidance and make available to its security holders, as soon as reasonably practicable, an earnings statement or such other document that shall satisfy the provisions of Section 11(a) of the Securities Act and the requirements of Rule 158 thereunder.

(j) The Company may require each Registration Rights Holder promptly to furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be reasonably required in connection with such registration.

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(k) Each Registration Rights Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 2.7(e), such Registration Rights Holder shall forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement (including any Shelf Registration) covering such Registrable Securities until such Registration Rights Holder's receipt of (i) copies of the supplemented or amended prospectus from the Company or (ii) further notice from the Company that distribution can proceed without an amended or supplemented prospectus, and, in the circumstances described in clause (i) above, if so directed by the Company, such Registration Rights Holder shall deliver to the Company (or otherwise destroy and promptly certify in writing to such destruction) all copies, other than any file copies then in such Registration Rights Holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. If the Company shall give such notice, the Company shall extend the period during which such registration statement shall be maintained effective (including the period referred to in Section 2.7(a)) by the number of days during the period from and including the date of the giving of notice pursuant to Section 2.7(e) to the date when the Company shall (x) make available to such Registration Rights Holder a prospectus supplemented or amended to conform with the requirements of Section 2.7(e) or (y) deliver to such Registration Rights Holder the notice described in clause (ii) above.

(l) The Company shall use its commercially reasonable efforts to list all Registrable Securities of any class or series covered by such Registration Statement on any national securities exchange on which any of the Registrable Securities of such class or series are then listed or traded.

(m) The Company shall have appropriate officers (i) upon reasonable request and at reasonable times prepare and make presentations at any "road shows" in connection with Underwritten Offerings and Alternative Transactions and (ii) otherwise use their commercially reasonable efforts to cooperate as requested by the underwriters or counterparties in an Alternative Transaction in the offering, marketing or selling of the Registrable Securities.

(n) The Company shall as soon as possible following its actual knowledge thereof, notify each Registration Rights Holder: (i) when a prospectus, any prospectus supplement, a Registration Statement or a post-effective amendment to a Registration Statement has been filed with the SEC, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective; (ii) of any request by the SEC or any other Governmental Authority for amendments or supplements to a Registration Statement, a related prospectus (including a Free Writing Prospectus) or for any other additional information; or (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceedings for such purpose.

(o) The Company shall reasonably cooperate with each Registration Rights Holder and each underwriter (or counterparty in an Alternative Transaction) participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made by FINRA.

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(p) The Company shall take all other steps reasonably necessary to effect the registration of such Registrable Securities and reasonably cooperate with the holders of such Registrable Securities to facilitate the disposition of such Registrable Securities.

(q) The Company shall, within the deadlines specified by SEC Guidance, make all required filings of all prospectuses (including any Free Writing Prospectus) with the SEC and make all required filing fee payments in respect of any Registration Statement or related prospectus used under this Article II (and any offering covered hereby).

(r) The Company shall, if such registration is pursuant to a Registration Statement on Form S-3 or any similar short-form registration, include in such Registration Statement such additional information for marketing purposes as the managing underwriter or counterparty in an Alternative Transaction reasonably requests (which information may be provided by means of a prospectus supplement if permitted by SEC Guidance).

2.8 Registration Rights Holder Obligations.

(a) If Registrable Securities owned by any Registration Rights Holder are included in a Demand Registration Statement, a Shelf Registration Statement or a Piggyback Registration, such Registration Rights Holder shall furnish promptly to the Company such information regarding itself and the distribution of such Registrable Securities by such Registration Rights Holder as is required under SEC Guidance or as the Company may otherwise from time to time reasonably request in writing.

(b) Each Registration Rights Holder that has requested inclusion of its Registrable Securities in any Registration Statement shall (i) furnish to the Company (as a condition precedent to such Registration Rights Holder's participation in such registration) in writing such information with respect to such Registration Rights Holder, its ownership of Common Stock and the intended method of disposition of its Registrable Securities as the Company may reasonably request or as may be required by SEC Guidance for use in connection with any related Registration Statement or prospectus (or amendment or supplement thereto) and any Free Writing Prospectus related thereto and all information required to be disclosed in order to make the information previously furnished to the Company by such Registration Rights Holder not cause such Registration Statement, prospectus or Free Writing Prospectus (A) to fail to comply with SEC Guidance or (B) contain an untrue statement of a material fact or omit to state a

(c) Each Registration Rights Holder shall, as promptly as practicable, to the extent it is a Registration Participant in a Registration Statement, following its actual knowledge thereof, notify the Company of the occurrence of any event that would reasonably be expected to cause a Registration Statement or prospectus in which its Registrable Securities or any related Free Writing Prospectus are included, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading.

(d) Each Registration Rights Holder shall use commercially reasonable efforts to cooperate with the Company in preparing the applicable Registration Statement to the extent it is a Registration Participant and any related prospectus or Free Writing Prospectus.

(e) Each Registration Rights Holder agrees that no Registration Rights Holder shall be entitled to sell any Registrable Securities pursuant to a Registration Statement or to receive a prospectus relating thereto unless such Registration Rights Holder has complied with its obligations under this Article II.

2.9 Registration Expenses. In connection with the Company performing its obligations under this Article II, the Company shall pay all Registration Expenses. Registration Rights Holders holding Registrable Securities covered by each Registration Statement or Shelf Public Offering shall be represented by one firm of counsel, with such counsel chosen by holders of a majority of the number of Registrable Securities proposed to be included in such Demand Registration or Shelf Public Offering, as applicable; or, in the case of a Piggyback Registration, by the Company, in consultation with the holders of a majority of the number of Registrable Securities proposed to be included in such Piggyback Registration.

Each Registration Rights Holder shall pay those expenses specific to the registration of such Registration Rights Holder's Registrable Securities included in such registration to the extent that those expenses do not constitute Registration Expenses or are not otherwise reimbursable by the Company pursuant to the preceding sentence; *provided*, that such expenses relating equally to all Registration Rights Holders included in such registration shall be borne by such Registration Rights Holders in proportion to the aggregate selling price of the securities to be so registered.

2.10 Indemnification

(a) The Company agrees to indemnify, to the fullest extent permitted by law, each Registration Rights Holder holding Registrable Securities covered by a Registration Statement, its Affiliates, stockholders, employees, agents, officers, partners, members, and directors, and each Person who controls such Registration Rights Holder (within the meaning of Section 15 of the Securities Act and Section 20 of the Securities Exchange Act) (collectively the "Registration Rights Holder Parties"), for whom Registrable Securities are to be registered pursuant to this Article II against all losses, claims, damages, liabilities, and expenses (including reasonable expenses of investigation and reasonable attorneys', accountants' and experts' fees and expenses) ("Damages") caused by or relating to (A) any untrue or alleged untrue statement of material fact contained in any Registration Statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto, or any documents incorporated by reference therein, or any "free writing prospectus," as such term is defined in Rule 405 under the Securities Act (a "Free Writing Prospectus"), utilized in connection therewith; (B) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (C) any untrue statement or alleged untrue statement of a material fact in the information conveyed to any purchaser at the time of the sale to such purchaser, or the omission or alleged omission to state therein a material fact required to be stated therein, and will reimburse each such Registration Rights Holder Party for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Damages or in related actions or proceedings, except, in each case, insofar as the same are caused by or contained in any information regarding such holder furnished in writing to the Company by such holder expressly for use therein. The Company also agrees to indemnify and hold harmless any underwriters of the Registrable Securities (including any Registration Rights Holders who is deemed to be an underwriter within the meaning of Section 2(a)(11) of the Securities Act), their respective officers and directors and each Person who controls any underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act on substantially the same basis as that of the indemnification of the Registration Rights Holders provided in this Section 2.10.

(b) In connection with any Registration Statement in which a Registration Rights Holder for whom Registrable Securities are to be registered pursuant to this Article II is participating, each such Registration Rights Holder shall, to the fullest extent permitted by law, indemnify (i) the Company, (ii) each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Securities Exchange Act, (iii) each other Registration Rights Holder participating in any offering of Registrable Securities and (iv) the respective partners, Affiliates, stockholders, members, officers, directors, employees and agents of each of the Persons specified in clauses (i) through (v), from and against all Damages to the same extent as the foregoing indemnity from the Company resulting from or relating to (A) any untrue or alleged untrue statement of material fact contained in the Registration Statement, prospectus, or preliminary prospectus or any amendment thereof or supplement thereto or any Free Writing Prospectus utilized in connection therewith; (B) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (C) any untrue statement or alleged untrue statement of a material fact in the information conveyed to any purchaser at the time of the sale to such purchaser, or the omission or alleged omission to state therein a material fact required to be stated therein, but only to the extent, in each such case, that such untrue statement or alleged untrue statement or omission or alleged omission is contained in any information or affidavit regarding such holder so furnished in writing by such Registration Rights Holder expressly for use therein; *provided*, that the obligation to indemnify shall be individual, not joint and several, for each Registration Rights Holder and shall be limited to the net amount of proceeds received by such Registration Rights Holder from the sale of Registrable Securities pursuant to such Registration Statement. As a condition to including Registrable Securities in any Registration Statement filed in accordance with this Article II, the Company may require that it shall have received an undertaking reasonably satisfactory to it from any underwriter to indemnify and hold it harmless to the extent customarily provided by underwriters with respect to similar securities and offerings. No Registration Rights Holder shall be liable under this Section 2.10 for any Damages in excess of the net proceeds realized by such Registration Rights Holder in the sale of Registrable Securities of such Registration Rights Holder to which such Damages relate.

(c) If any proceeding (including any investigation by any Governmental Authority) shall be instituted involving any Person in respect of which indemnity may be sought pursuant to Section 2.10(a) or 2.10(b), such Person (an "Indemnified Party") shall promptly notify the Person against whom such indemnity may be sought (the "Indemnifying Party") in writing and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party, and shall assume the payment of all reasonable fees and expenses; *provided*, that the failure of any Indemnified Party so to notify the Indemnifying Party

shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure to notify. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel or (ii) in the reasonable judgment of such Indemnified Party (A) representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them or (B) there would be rights or defenses that would be available to such Indemnified Party that are not available to the Indemnifying Party. It is understood that, in connection with any proceeding or related proceedings in the same jurisdiction, the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for each Principal Stockholder and one separate firm of attorneys (in addition to any local counsel) for all Registrable Security Holders that are not Principal Stockholders at any time for all such Indemnified Parties, and that all such fees and expenses shall be reimbursed promptly after receipt of an invoice setting forth such fees and expenses in reasonable detail. In the case of any such separate firm for the Indemnified Parties, such firm shall be designated in writing by the appropriate Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Party shall indemnify and hold harmless each Indemnified Party from and against any Damages (to the extent obligated herein) by reason of such settlement or judgment. Without the prior written consent of each affected Indemnified Party, no Indemnifying Party shall effect any settlement of any pending or threatened proceeding in respect of which such Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability arising out of such proceeding.

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(d) If the indemnification provided for in Section 2.10(a) or Section 2.10(b) is held by a court of competent jurisdiction to be unavailable to the Indemnified Parties or is insufficient in respect of any Damages, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Damages in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the Indemnified Parties in connection with such actions which resulted in such Damages, as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and the Indemnified Parties shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact has been made by, or relates to information supplied by, such Indemnifying Party or the Indemnified Parties and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The parties agree that it would not be just and equitable if contribution pursuant to this Section 2.10(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to above. The amount paid or payable by a party as a result of the Damages referred to above shall be deemed to include, subject to the limitations set forth in Section 2.10(a) or Section 2.10(b), any legal or other expenses reasonably incurred by a party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 2.10, no Registration Rights Holder shall be required to contribute any amount in excess of the net proceeds (after deducting the underwriters' discounts and commissions) received by such Registration Rights Holder in the offering. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Each Registration Rights Holder's obligation to contribute pursuant to this Section 2.10 is several in the proportion that the proceeds of the offering received by such Registration Rights Holder bears to the total proceeds of the offering received by all such Registration Rights Holders and not joint. The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director, or controlling Person of such indemnified party and shall survive the transfer of securities. The Company also agrees to make such provisions, as are reasonably requested by any indemnified party, for contribution to such party in the event the Company's indemnification is unavailable for any reason.

2.11 Rule 144. After the date hereof, the Company shall use commercially reasonable efforts to file any reports required to be filed by it under the Securities Act and the Securities Exchange Act, and it will use commercially reasonable efforts to take such further action as any holder may reasonably request to make available adequate current public information with respect to the Company meeting the current public information requirements of Rule 144(c) under the Securities Act, to the extent required to enable such holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Notwithstanding the foregoing, nothing in this Section 2.11 shall be deemed to require the Company to register any of its securities pursuant to the Securities Exchange Act.

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2.12 Inconsistent Agreements. The Company and its controlled Affiliates shall not, without the prior written consent of the Principal Stockholders (for so long as the Principal Stockholders own any Registrable Securities), enter into any agreement with respect to the registration and/or sale of its securities that is inconsistent with or senior to the rights granted under this Article II; *provided*, that the grant of rights no more favorable to those in Section 2.2 and Section 2.3 shall be deemed consistent with and not senior to the rights granted in this Article II.

ARTICLE III

MISCELLANEOUS

3.1 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given: (i) when delivered personally by hand (with written confirmation of receipt); (ii) when sent by facsimile or e-mail (with written confirmation of transmission); (iii) when received or rejected by the addressee if sent by registered or certified mail, postage prepaid, return receipt requested; or (iv) one Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

(a) If to the Company, to:

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.

(b) If to any of the Registration Rights Holders, to the address set forth next to their name in Schedule I, or as updated in writing to the Company from time to time.

3.2 Amendment and Waiver.

(a) No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to the parties hereto at law, in equity or otherwise.

(b) Any amendment, supplement or modification of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure by any party from the terms of any provision of this Agreement, shall be effective (i) only if it is made or given in writing and signed by the Registration Rights Holders holding at least a majority of the shares of Common Stock, and (ii) only in the specific instance and for the specific purpose for which made or given.; *provided, however*, that no such amendment, modification, supplement or waiver that adversely affects any of the rights or obligations of any Principal Stockholder in a manner different than the effect on any of the rights or obligations of any other Registration Rights Holder shall be made or given without the prior written consent of such Principal Stockholder that is so adversely affected; *provided*, that in all cases, (x) the addition of new parties to this Agreement shall be deemed in and of itself not to be an amendment, modification or waiver which so adversely affects Principal Stockholders, and (y) in determining whether an amendment and waiver has such an adverse effect, only the Principal Stockholders' interests as parties to this Agreement shall be considered, and any other relationship(s) the Principal Stockholders may have with the Company, its Subsidiaries or any Registration Rights Holders shall not be considered and no characteristic of the Principal Stockholders other than their rights under this Agreement shall be considered.

(c) Notwithstanding the foregoing, this Agreement may be amended by the Company without the consent of the Registration Rights Holders (i) to amend this Agreement to provide that any Registration Rights Holders being issued new Common Stock or other equity securities of the Company be joined to this Agreement as a "Principal Stockholder" with respect to all or a portion of the provisions applicable to Principal Stockholders hereunder, (ii) to satisfy any law or regulatory requirement, (iii) to change the name of the Company, (iv) to implement the provisions set forth in Article II, and (v) to cure any ambiguity or correct or supplement any provision of this Agreement that may be incomplete or inconsistent with any other provision contained in this Agreement.

3.3 Enforcement of Remedies. Notwithstanding anything contained in this Agreement to the contrary, each Registration Rights Holder hereby acknowledges and agrees that no Registration Rights Holder shall have any right to enforce this Agreement against any other Stockholder or compel or seek to compel any Registration Rights Holder to enforce this Agreement against any other Registration Rights Holder, and such right to enforce this Agreement against a Registration Rights Holder shall be solely and exclusively vested in the Company (and its successors and assigns).

3.4 Specific Performance. The parties hereto intend that each of the parties have the right to seek damages or specific performance in the event that any other party hereto fails to perform such party's obligations hereunder. Each party hereto agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement, and hereby waives (i) any defenses in any legal proceeding for an injunction, specific performance or other equitable relief, including the defense that the other parties hereto have an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity and (ii) any requirement under law to post a bond, undertaking or other security as a prerequisite to obtaining equitable relief.

3.5 Third Parties. Except as expressly provided in Section 2.10 hereof, nothing expressed or implied in this Agreement is intended or shall be construed to confer on any Person, other than the Company and the Registration Rights Holders, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

3.6 Severability. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereof.

3.7 Entire Agreement. This Agreement and any other agreement expressly referenced herein, together with the exhibits and schedules hereto or referenced herein, is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein. This Agreement, together with the exhibits hereto, supersede all prior agreements and understandings between the parties with respect to such subject matter.

3.8 Term of Agreement. This Agreement shall become effective upon the date hereof and shall terminate automatically without any action on the part of the Registration Rights Holders, with respect to each Registration Rights Holder, when such Registration Rights Holder no longer owns any Registrable Securities.

3.9 After-Acquired Securities. All of the provisions of this Agreement shall apply to all of the Common Stock now owned or which may be issued or transferred hereafter to a Registration Rights Holder in consequence of any additional issuance, purchase, exchange or reclassification of any of the Common Stock, corporate reorganization, or any other form of recapitalization, consolidation, merger, share split or share dividend, or which are acquired by a Registration Rights Holder in any other manner.

3.10 GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL

(a) THIS AGREEMENT AND ANY CLAIM OR CONTROVERSY HEREUNDER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN

SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF, EXCEPT FOR MATTERS DIRECTLY IN THE PURVIEW OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE (THE “DGCL”), WHICH MATTERS SHALL BE GOVERNED BY THE DGCL.

(b) THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE COUNTY OF NEW YORK, IN THE STATE OF NEW YORK OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE AFFAIRS OF THE COMPANY. TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, THE PARTIES HERETO IRREVOCABLY WAIVE AND AGREE NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, ANY CLAIM THAT THEY ARE NOT SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 3.10 CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 3.10 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

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3.11 Successors and Assigns. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors, assigns, heirs, legatees and legal representatives. This Agreement and any rights hereunder are not assignable except in accordance with the terms of this Agreement.

3.12 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one agreement. Execution and delivery of this Agreement by exchange of electronically transmitted counterparts bearing the signature of a party hereto will be equally as effective as delivery of a manually executed counterpart of such party hereto. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or scanned pages via electronic mail, will be treated in all manner and respect as an original contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such contract will raise the use of a facsimile machine or email to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine or email as a defense to the formation of a contract and each such party forever waives any such defense.

3.13 Certain Representations and Warranties; Covenants. Each party hereby represents and warrants to the other parties as follows: (a)(i) if such party is an entity, such party has all requisite authority to execute and deliver this Agreement and to perform its obligations hereunder and (ii) if such party is an individual, such party has all requisite capacity to execute and deliver this Agreement and to perform his or her obligations hereunder, (b) this Agreement has been duly executed and delivered by such party and constitutes a valid, legal and binding agreement of such party, enforceable against such party in accordance with its terms and (c) neither the execution of this Agreement by such party nor the performance of such party’s obligations hereunder will conflict with or violate, or result in a breach or default under, any applicable law or legal requirement or any agreement to which such party is a party or is otherwise bound.

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3.14 Other Definitional and Interpretive Matters.

(a) Rules of Interpretation. The table of contents and the section and other headings and subheadings contained in this Agreement and the exhibits hereto are solely for the purpose of reference, are not part of the agreement of the parties, and will not in any way affect the meaning or interpretation of this Agreement or any Exhibit hereto. All references to days (excluding Business Days) or months will be deemed references to calendar days or months. All references to “\$” will be deemed references to United States dollars. Unless the context of this Agreement otherwise expressly requires, any reference to a “Section,” “Exhibit,” or “Schedule” will be deemed to refer to a section of this Agreement, an exhibit to this Agreement or a schedule to this Agreement, as applicable. Unless the context of this Agreement otherwise clearly requires (i) the words “hereof,” “herein” and “hereunder” and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) the word “including” or any variation thereof means “including, without limitation” and will not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it; (iii) any reference to any federal, state, local or foreign statute or other Law will be deemed also to refer to all rules and regulations promulgated thereunder; (iv) all terms defined in this Agreement will have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein; (v) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term; (vi) references herein to a Person in a particular capacity or capacities shall exclude such Person in any other capacity; (vii) with respect to the determination of any period of time, the word “from” or “since” means “from and including” or “since and including,” as applicable, and the words “to” and “until” each means “to and including”; (viii) references herein to any contract means such contract as amended, supplemented or modified (including any waiver thereto) in accordance with the terms thereof as of the applicable date of determination; (ix) if the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day; (x) references in this Agreement to a particular law means such law as amended, modified, supplemented or succeeded, from time to time and as of the applicable date of determination; (xi) “to the extent” means the degree to which and not simply “if”; and (xii) “or” is disjunctive but not exclusive.

(b) Joint Drafting. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the undersigned have executed, or have cause to be executed, this Agreement on the date first written above.

COMPANY:

GULFPORT ENERGY CORPORATION

By: /s/ Timothy Cutt

Name: Timothy Cutt

Title: Interim Chief Executive Officer

[Gulfport – Registration Rights Agreement]

Schedule I

HOLDERS

[On file with the company]

COOPERATION AGREEMENT

This Cooperation Agreement (this “Agreement”), dated as of May 17, 2021, is entered into by and between Gulfport Energy Corporation, a Delaware corporation (the “Company”), and Silver Point Capital, L.P., a Delaware limited partnership (“Silver Point”).

In consideration of and reliance upon the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined have the following meanings:

- (a) “Affiliate” shall have the meaning set forth in Rule 12b-2 promulgated under the Exchange Act and shall include Persons who become Affiliates of any Person subsequent to the date of this Agreement;
- (b) “beneficially own”, “beneficially owned” and “beneficial ownership” shall have the meaning set forth in Rules 13d-3 and 13d-5(b)(1) promulgated under the Exchange Act;
- (c) “Board” shall mean the board of directors of the Company;
- (d) “business day” shall mean any day other than a Saturday, Sunday or a day on which the Federal Reserve Bank of New York is closed;
- (e) “Common Stock” shall mean the Common Stock of the Company, par value \$0.0001 per share;
- (f) “Company Policies” shall mean the confidentiality, conflicts of interest, related party transactions, codes of conduct, trading and disclosure, director resignation and other guidelines and policies of the Company;
- (g) “Exchange Act” means the Securities Exchange Act of 1934, as amended.
- (h) “Expiration Date” means the date on which Silver Point and its Affiliates cease to hold 20% or more of the voting power of the Voting Securities of the Company;
- (i) “Person” shall mean any natural person, company, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, trust, estate, proprietorship, joint venture or business organization;
- (j) “Series A Preferred Stock” shall mean the Series A Convertible Preferred Stock of the Company, par value \$0.0001 per share;
- (k) “Voting Securities” shall mean the Common Stock, the Series A Preferred Stock, and any other securities of the Company entitled to vote in the election of directors, or securities convertible into, or exercisable or exchangeable for, such shares or other securities, whether or not subject to the passage of time or other contingencies.

2. Nomination and Election.

- (a) From the date of this Agreement until the Expiration Date, with respect to any stockholder meeting at which directors are to be elected, the Company shall use all reasonable efforts to cause the election as a director of one person designated by Silver Point (the “Silver Point Designee”) at each annual or special meeting of the stockholders of the Company at which directors are to be elected, including, but not limited to: (i) taking all necessary action to cause the Board or the Nominating and Corporate Governance Committee of the Board to nominate for election as a director the Silver Point Designee at each annual or special meeting of stockholders of the Company at which directors are to be elected; (ii) including the Silver Point Designee in the Company’s slate of nominees included in any proxy statement of the Company in respect of any such meeting; (iii) providing the highest level of support for the solicitation of proxies and otherwise in favor of the election of the Silver Point Designee as the Company provides to any other individual standing for election as a director as part of the Company’s slate of nominees; (iv) not nominating for any election a number of directors candidates (inclusive of the Silver Point Designee) that exceeds the number of directorships to be elected at such meeting; and (v) not (x) soliciting proxies or participating in a solicitation or (y) knowingly assisting, cooperating with or encouraging any Person in any effort or attempt, in either case, reasonably likely to interfere with the election of a Silver Point Designee as a director of the Company; provided, that the Silver Point Designee shall be eligible to serve as a director pursuant to the Company Policies, applicable law and the listing standards of the New York Stock Exchange..
- (b) If a vacancy on the Board is caused by the death, retirement, resignation or removal of any director who was a Silver Point Designee and Silver Point is entitled to designate a Silver Point Designee in respect of such vacancy at such time, then Silver Point shall, to the fullest extent permitted by applicable law, have the exclusive right to nominate a replacement to fill such vacancy for the remainder of the deceased, retired, resigned or removed, as applicable, director’s term, and the Company shall take all necessary action to cause such replacement to be appointed to the Board as a director (at which point such replacement director shall be deemed to be the Silver Point Designee for all other purposes of this Agreement).
- (c) Concurrent with the election of the Silver Point Designee to the Board, the Board shall take such action as is necessary such that the Silver Point Designee is appointed to the Compensation Committee of the Board and to any executive committee of the Board exercising substantially all the typical authority or role of the Board that is formed on or after the date hereof; provided, that with respect to any such committee appointments, the Silver Point Designee shall be eligible to serve as a member of such committee pursuant to the Company Policies, applicable law and the listing standards of the New York Stock Exchange..

3. Observer. From the date of this Agreement until the Expiration Date, the Company shall invite one representative of Silver Point, who shall be designated by Silver Point, to attend all meetings of the Board (and any committee thereof) in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors; provided, however, that such representative shall agree to hold in confidence all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof to the extent access to such information or attendance at such meeting would be reasonably likely to adversely affect the attorney-client privilege between the Company and its counsel.

4. Silver Point Designee Information. As a condition to the Silver Point Designee's nomination for election as a director at any stockholder meeting at which directors are to be elected, each Silver Point Designee candidate shall submit, prior to such nomination, a fully completed copy of the Company's standard director and officer questionnaire and shall provide any information the Company reasonably requires, including information required to be disclosed in a proxy statement or other filing under applicable law, stock exchange rules or listing standards, information in connection with assessing eligibility, and other criteria applicable to directors or satisfying compliance and legal obligations of the Company.

5. Voting of Silver Point's Shares. At each stockholder meeting at which directors are to be elected, so long as the Silver Point Designee has been nominated to the Board by the Company at such stockholder meeting in accordance with Section 2 above, Silver Point shall cause to be present for quorum purposes and vote or cause to be voted all Company Voting Securities beneficially owned by it and its Affiliates and which it and its Affiliates have the right to vote on the record date for such stockholder meeting in favor of the election of the Silver Point Designee.

6. Company Policies. Silver Point acknowledges that the Silver Point Designee, upon election to the Board, will serve as a member of the Board and will be governed by the same protections and obligations under the Company Policies as are applicable to other directors of the Company. Notwithstanding the foregoing, the Company acknowledges and agrees that the Silver Point Designee may disclose to Silver Point and its Affiliates any information concerning the Company that the Silver Point Designee obtains in his or her capacity as a director of the Company (including notices, minutes, consents and other materials of the Board) to allow Silver Point and its Affiliates to inform their investment strategy regarding the Company's voting securities. The Company hereby acknowledges that it has been informed that Silver Point maintains internal information barrier procedures, the purpose of which is to (a) limit the sharing of confidential information, including material non-public information, among persons employed by it or its affiliates, and (b) enable trading or other investment activities by persons not in possession of material non-public information.

7. No Restriction on Competition. The Company hereby agrees and acknowledges that Silver Point (together with its Affiliates) is a professional investment organization, and as such reviews the business plans and related proprietary information of many enterprises, some of which may compete directly or indirectly with the Company's business (as currently conducted or as currently propose to be conducted). Nothing in this Agreement shall preclude or in any way restrict Silver Point or its Affiliates from evaluating or purchasing securities, including publicly traded securities, of a particular enterprise, or investing or participating in any particular enterprise, whether or not such enterprise has products or services which compete with those of the Company; and the Company hereby agrees that, to the extent permitted under applicable law, Silver Point (and its Affiliates) shall not be liable to the Company for any claim arising out of, or based upon, (i) the investment by Silver Point (or its Affiliates) in any entity competitive with the Company, or (ii) actions taken by any partner, officer, employee or other representative of Silver Point (or its Affiliates) to assist any such competitive company, whether or not such action was taken as a member of the board of directors of such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company; provided, however, that the foregoing shall not relieve (x) Silver Point and its Affiliates from liability associated with the unauthorized disclosure of the Company's confidential information obtained pursuant to this Agreement, or (y) any director or officer of the Company from any liability associated with his or her fiduciary duties to the Company.

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8. Silver Point's Representations and Warranties. Silver Point hereby represents and warrants to the Company that: (a) this Agreement has been duly authorized, executed and delivered by it and is a valid and binding obligation of Silver Point, enforceable against it in accordance with its terms; and (b) as of the date of this Agreement, (i) Silver Point and its Affiliates beneficially owns approximately 39.1% of voting power of the Company's outstanding shares of Common Stock and 39.7% of the voting power of the Company's outstanding shares of Series A Convertible Preferred Stock, and (ii) except as previously disclosed in writing to the Company prior to the execution of this Agreement, neither Silver Point nor any of its Affiliates is a party to any swap or hedging transactions or other derivative agreements of any nature with respect to the Voting Securities.

9. Company Representations and Warranties. The Company represents and warrants to Silver Point that: (a) this Agreement has been duly authorized, executed and delivered by it and is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms; (b) does not require the approval of the stockholders of the Company; and (c) does not and will not violate any law, any order of any court or other agency of government, the Company's Certificate of Incorporation or Bylaws, each as may be amended from time to time, or any provision of any agreement or other instrument to which the Company or any of its properties or assets is bound, or conflict with, result in a breach of, loss of a material benefit under, give any right of termination, amendment, acceleration or cancellation of, or constitute (with due notice or lapse of time or both) a default under any such agreement or other instrument, or result in the creation or imposition of, or give rise to, any material lien, charge, restriction, claim, encumbrance or adverse penalty of any nature whatsoever pursuant to any such indenture, agreement or other instrument.

10. Specific Performance. The Company and Silver Point acknowledge and agree that money damages would not be a sufficient remedy for any breach (or threatened breach) of this Agreement by it and that, in the event of any breach or threatened breach hereof, (a) the non-breaching party will be entitled to injunctive and other equitable relief, without proof of actual damages; (b) the breaching party will not plead in defense thereto that there would be an adequate remedy at law; and (c) the breaching party agrees to waive any applicable right or requirement that a bond be posted by the non-breaching party. Such remedies will not be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

11. Entire Agreement; Successors and Assigns; Amendment and Waiver. This Agreement (including its exhibits) constitutes the only agreement between Silver Point and the Company with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No party may assign or otherwise transfer either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party. Any purported transfer requiring consent without such consent shall be void. No amendment, modification, supplement or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party affected thereby, and then only in the specific instance and for the specific purpose stated therein. Any waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

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12. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable. The parties further agree to replace such invalid or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the purposes of such invalid or unenforceable provision.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Each of Silver Point and the Company (a) irrevocably and unconditionally consents to the personal jurisdiction and venue of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware); (b) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (c) agrees that it shall not bring any action relating to this Agreement or otherwise in any court other than such courts; and (d) waives any claim of improper venue or any claim that those courts are an inconvenient forum. The parties agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 15 or in such other manner as may be permitted

by applicable law, shall be valid and sufficient service thereof. Each of the parties, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waives any right that such party may have to a trial by jury in any litigation based upon or arising out of this Agreement or any related instrument or agreement, or any of the transactions contemplated thereby, or any course of conduct, dealing, statements (whether oral or written), or actions of any of them. No party shall seek to consolidate, by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

14. Parties in Interest. This Agreement is solely for the benefit of the parties and is not enforceable by any other Person.

15. Notices. All notices, consents, requests, instructions, approvals and other communications provided for herein, and all legal process in regard hereto, will be in writing and will be deemed validly given, made or served when delivered in person, by electronic mail, by overnight courier or two business days after being sent by registered or certified mail (postage prepaid, return receipt requested) as follows:

If to the Company to:

Gulfport Energy Corporation
14313 N. May Avenue, Suite 100
Oklahoma City, Oklahoma 73134
Attn.: Patrick Craine
E-mail address: pcraine@gulfportenergy.com

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with copies (which shall not constitute notice) to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Steven N. Serajeddini, P.C.
E-mail address: steven.serajeddini@kirkland.com

and

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: Christopher S. Koenig
E-mail address: chris.koenig@kirkland.com

If to Silver Point:

Silver Point Capital, L.P.
2 Greenwich Plaza
Greenwich, CT 06880
Attention: David Reganato, Albert Starominsky
E-mail address: dreganato@silverpointcapital.com, astarominsky@silverpointcapital.com, Creditadmin@silverpointcapital.com

with a copy (which shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLPC
1285 Avenue of the Americas
New York, NY 10019
Attention: Alan Kornberg, Kenneth Schneider, Robert Britton, Chaim Theil
E-mail address: akornberg@paulweiss.com, kschneider@paulweiss.com, rbritton@paulweiss.com, ctheil@paulweiss.com

At any time, either party may, by notice given in accordance with this Section 15 to the other party, provide updated information for notices hereunder.

16. Interpretation. Each of the parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement, and that it has executed this Agreement with the advice of such counsel. Each party and its counsel cooperated and participated in the drafting and preparation of this Agreement, and any and all drafts relating thereto exchanged among the parties shall be deemed the work product of all of the parties and may not be construed against any party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted or prepared it is of no application and is hereby expressly waived by each of the parties, and any controversy over interpretations of this Agreement shall be decided without regard to events of drafting or preparation.

17. Counterparts. This Agreement may be executed by the parties in separate counterparts (including by fax, jpeg, .gif, .bmp and .pdf), each of which when so executed shall be an original, but all such counterparts shall together constitute one and the same instrument.

[Signature page follows]

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Accepted and agreed as of the date first written above:

Gulfport Energy Corporation

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

Silver Point Capital, L.P.

By: /s/ Stacey Hatch
Name: Stacey Hatch
Title: Authorized Signatory

[Signature Page to Cooperation Agreement]

May 17, 2021

Dear Tim Cutt:

It is my pleasure to offer you the position of Interim Chief Executive Officer ("Interim CEO") of Gulfport Energy Corporation ("Gulfport" or the "Company," and collectively with its direct and indirect subsidiaries, whether existing on the Emergence Date (defined below) or thereafter acquired or formed, the "Gulfport Companies") pursuant to the terms of this letter agreement (the "Offer Letter").

The terms and conditions of your employment with Gulfport shall be as follows and shall, subject to your satisfaction of the "Conditions to Employment" listed below, become effective as of the Emergence Date. This Offer Letter is null and void if the Emergence (defined below) does not occur.

1. **Start Date:** Your start date in this position shall be the date of the Company's emergence (the "Emergence") from Chapter 11 pursuant to the *Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and its Debtor Subsidiaries* Case No. 20-35562 (such date, the "Emergence Date").
 2. **Position and Duties:**
 - a. As Interim CEO, you shall have such responsibilities, duties, and authorities as are commensurate with the position of CEO, or as are assigned to you by the Board of Directors of the Company (the "Board").
 - b. During the Term (as defined below) you shall serve as the Executive Chairman of the Board without additional compensation.
 - c. In your role as Interim CEO, you shall fulfill your duties and responsibilities in a diligent, trustworthy, and appropriate manner and in compliance with the policies and practices of the Gulfport Companies and applicable law.
 - d. During the Term, your primary business focus shall be on your duties as Interim CEO and you shall exert your reasonable best efforts in such role and shall carry out your duties in good faith so as to promote the purpose and mission of the Gulfport Companies. Notwithstanding the foregoing, your continued involvement in the approved activities listed on Appendix A shall not be a violation of your commitment to primarily provide services to the Company.
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3. **Initial Term:** You shall serve as the Interim CEO from the Emergence Date until December 31, 2021; provided that if Gulfport is engaged in an M&A process on December 31, 2021, you agree that you intend to continue to serve as the Interim CEO until the earlier of the closing of such transaction or the termination of the M&A process (the foregoing, the "Initial Term"). At least 90 days prior to the end of the Initial Term, Gulfport may provide notice of extension of your employment beyond the Initial Term (the Initial Term and any such extended period, the "Term"). You shall continue to serve as Chairman of the Board following the conclusion of the Term (the "Chairman Role"). Absent a notice of extension from Gulfport, you agree to give ninety (90) days' notice of your intent to resign as Interim CEO at the end of the Initial Term. Notwithstanding the foregoing, the Company may terminate your employment at any time for "Cause," which, for purposes of this Offer Letter, shall mean (i) your willful and continued failure to perform substantially your duties with the Gulfport Companies (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to you by the Board which specifically identifies the manner in which the Board believes that you have not substantially performed your duties, or (ii) your willful engaging in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company. No act, or failure to act, by you shall be considered "willful" unless it is done, or omitted to be done, by you in bad faith or without reasonable belief that your action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by you in good faith and in the best interests of the Company.
 4. **Annual Base Salary:** During the Term, you shall be paid an annual base salary at the rate of \$750,000 annually (prorated for your period of service as the Interim CEO) (the "Base Salary"), paid in accordance with Gulfport's normal payroll procedures. Upon a Change of Control (as defined in the Gulfport Energy Corporation 2021 Stock Incentive Plan (the "Equity Plan") that occurs within the first twelve (12) months following the Emergence Date, you shall be entitled to the remainder of \$750,000 over any amounts of Base Salary previously paid to you, subject to your continued employment as of the consummation of such Change of Control. The foregoing payment, if any, shall be paid on the sixtieth (60th) day following such Change of Control, subject to your execution and non-revocation of an effective release of claims in a form provided by the Company within sixty (60) days following such Change of Control. During the Chairman Role, once you are no longer serving as the Interim CEO, you shall be paid an annual cash retainer of \$150,000 (prorated for any partial year of service), paid in accordance with Gulfport's normal procedures for compensation paid to its directors and subject to change as determined by the Board from time to time.
 5. **Annual Bonus:** During the Initial Term, you shall be eligible for an annual bonus with a target of \$750,000 (prorated for your period of service as the Interim CEO), based on achievement of reasonable performance targets established by the Compensation Committee of the Board. Such annual bonuses shall be paid by March 15th in the year following the year to which such bonus relates, subject to your continued employment through the end of the Initial Term. Upon a Change of Control that occurs within the first twelve (12) months following the Emergence Date, you shall be eligible to receive \$750,000, less the prorated target amount you were paid for the Initial Term, subject to your continued employment as of the consummation of such Change of Control. The foregoing payment, if any, shall be paid on the sixtieth (60th) day following such Change of Control, subject to your execution and non-revocation of an effective release of claims in a form provided by the Company within sixty (60) days following such Change of Control.
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6. **Equity Award:**
 - a. Within forty-five (45) days following the Emergence Date, you shall be entitled to receive an equity award with a grant date value of \$3,000,000, with the number of shares of our common stock subject to such award based on the 30-day volume-weighted average price commencing on the first day on which Gulfport is listed on a national exchange, consisting of 50% of time-based restricted stock units with a four-year bi-annual vesting schedule and 50% of performance-based units, subject to vesting based on performance thresholds as determined by the Compensation Committee and are expected to be on terms substantially comparable to the remainder of the Company's senior management.

- b. You will not be entitled to an incremental initial equity award for serving in a board capacity after stepping down from the Interim CEO role; however, all time-based restricted stock units will continue to vest during your continued service as a director.
- c. Unless otherwise mutually agreed between the parties, you agree to forfeit 100% of the performance-based units granted in Section 6(a) if the Term ends (as a result of you no longer being Interim CEO) prior to the 12-month anniversary of the Emergence Date other than due to a Change of Control. You shall continue to vest in the remainder of the RSU award if you continue to serve as a director.
- d. Upon a Change of Control, (i) all time-based units and performance-based units shall vest and (ii) you shall not be subject to the above forfeiture of the equity award, subject to your continued employment as of the consummation of such Change of Control. Such equity awards shall be further subject to the terms and conditions of the applicable award agreement and the Equity Plan.
- e. In the event of your termination of employment with the Company due to (i) your voluntary resignation or termination by the Company for Cause, all unvested time-based units and performance-based units shall be forfeited for no consideration and (ii) termination by the Company without Cause, death or disability, all unvested time-based units and performance-based units shall be fully vested and settled on the sixtieth (60th) day following termination, subject, in the case of your termination without Cause, to your execution and non-revocation of an effective release of claims in a form provided by the Company within sixty (60) days following such termination.

7. **Signing Bonus; Benefits:**

- a. You will receive a signing bonus equal to \$75,000 on your first payroll date during the Initial Term, subject to your continued employment on the payment date.
- b. You are eligible for all other benefits offered by Gulfport for similarly situated executives.

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- 8. **Principal Work Location:** You agree to spend at least 50% of your time (and more, as required during the first 60 days of your employment) in Gulfport's Oklahoma City headquarters during the Initial Term.
- 9. **Representations:** By accepting this offer, you unconditionally agree not to use in connection with your employment with Gulfport any confidential or proprietary information that you have acquired in connection with any former employment or reveal or disclose to Gulfport or any employees, agents, representatives or vendors of any Gulfport Company, any confidential or proprietary information that you have acquired in connection with any former employment. You represent that you are accepting Gulfport's offer in good faith, and that you understand that Gulfport shall rely on your acceptance. The terms of the offer are considered confidential and should not be shared with any other company, including your current employer.
- 10. **Trade Secrets and Confidential Information:** You agree that during the Term, you will have access to various trade secrets, confidential information and inventions of the Company as defined below.
 - a. "Confidential Information" means all information and material which is proprietary to the Company, whether or not marked as "confidential" or "proprietary" and which is disclosed to or obtained from the Company by you, which relates to the Company's past, present or future research, development or business activities. Confidential Information includes all information or materials prepared by or for the Company and includes, without limitation, all of the following: designs, drawings, specifications, techniques, models, data, source code, object code, documentation, diagrams, flow charts, research, development, processes, systems, methods, machinery, procedures, "know-how", new product or new technology information, formulas, patents, patent applications, product prototypes, product copies, cost of production, manufacturing, developing or marketing techniques and materials, cost of production, development or marketing time tables, customer lists, strategies related to customers, suppliers or personnel, contract forms, pricing policies and financial information, volumes of sales, and other information of similar nature, whether or not reduced to writing or other tangible form, and any other Trade Secrets (defined below) or non-public business information. Confidential Information also will include any additional Company information with respect to which the Company took reasonable and apparent steps to preserve confidentiality. Notwithstanding the foregoing, nothing in this Offer Letter, any other agreement between you and the Company, or any Company policy shall be read to prevent you from reporting possible violations of federal law or regulation to any governmental agency or entity including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation, and you will not need the prior authorization of the Company to make any such reports or disclosures and you will not be required to notify the Company that you have made such reports or disclosures.

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- b. "Inventions" means all discoveries, concepts and ideas, whether patentable or not, including but not limited to, processes, methods, formulas, compositions, techniques, articles and machines, as well as improvements thereof or "know-how" related thereto, relating at the time of conception or reduction to practice to the business engaged in by the Company, or any actual or anticipated research or development by the Company.
- c. "Trade Secrets" means any scientific or technical data, information, design, process, procedure, formula or improvement that is commercially available to the Company and is not generally known in the industry.

This Section 10 includes not only information belonging to the Company which existed before the date of this Offer Letter, but also information developed by you for the Company or its employees during the Term and thereafter.

- 11. **Restriction on Use of Confidential Information:** You agree that your use of Trade Secrets and other Confidential Information is subject to the following restrictions during the Term and for an indefinite period thereafter so long as the Trade Secrets and other Confidential Information have not become generally known to the public.

12. **Non-Disclosure:** You agree that you will not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any person, other than in the course of your assigned duties and for the benefit of the Company, either during the period of the Term or at any time thereafter, any Confidential Information or other confidential or proprietary information received from third parties subject to a duty of the Company's and its subsidiaries' and affiliates' part to maintain the confidentiality of such information, and to use such information only for certain limited purposes, in each case, which has been obtained by you during your employment by the Company (or any predecessor). The foregoing will not apply to information that (i) was known to the public prior to its disclosure to you; (ii) becomes generally known to the public subsequent to disclosure to you through no wrongful act by you or any of your representatives; or (iii) you are required to disclose by applicable law, regulation or legal process (provided that you provide the Company with prior notice of the contemplated disclosure and cooperates with the Company at its expense in seeking a protective order or other appropriate protection of such information). You are hereby notified in accordance with the Defend Trade Secrets Act of 2016 that you will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (2) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. You are further notified that if you file a lawsuit for retaliation by the Company for reporting a suspected violation of law, you may disclose the Company's trade secrets to your attorney and use the trade secret information in the court proceeding if you: (A) file any document containing the trade secret under seal; and (B) do not disclose the trade secret, except pursuant to court order. The provisions of this Section 12 will survive the expiration, suspension or termination of this Offer Letter for any reason.

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13. **Prohibition Against Unfair Competition:** For a period of six (6) months after the termination of your employment with the Company for any reason, you will not engage in competition with the Company while making use of the Trade Secrets of the Company.
14. **Patents and Inventions:** You agree that any Inventions made, conceived or completed by you during the Term, solely or jointly with others, which are made with the Company's equipment, supplies, facilities or Confidential Information, or which relate at the time of conception or reduction to purpose of the Invention to the business of the Company or the Company's actual or demonstrably anticipated research and development, or which result from any work performed by you for the Company, will be the sole and exclusive property of the Company, and all Trade Secrets, Confidential Information, copyrightable works, works of authorship, and all patents, registrations or applications related thereto, all other intellectual property or proprietary information and all similar or related information (whether or not patentable and copyrightable and whether or not reduced to tangible form or practice) which relate to the business, research and development, or existing or future products or services of the Company and/or its subsidiaries and which are conceived, developed or made by you during your employment with the Company ("Work Product") will be deemed to be "work made for hire" (as defined in the Copyright Act, 17 U.S.C. §101 et seq., as amended) and owned exclusively by the Company. To the extent that any Work Product is not deemed to be a "work made for hire" under applicable law, and all right, title and interest in and to such Work Product have not automatically vested in the Company, you hereby (a) irrevocably assigns, transfers and conveys, and will assign transfer and convey, to the fullest extent permitted by applicable law, all right, title and interest in and to the Work Product on a worldwide basis to the Company (or such other person or entity as the Company may designate), without further consideration, and (b) waives all moral rights in or to all Work Product, and to the extent such rights may not be waived, agrees not to assert such rights against the Company or its respective licensees, successors, or assigns. In order to permit the Company to claim rights to which it may be entitled, you agree to promptly disclose to the Company in confidence all Work Product which you make arising out of your employment with the Company. You will assist the Company in obtaining patents on all Work Product patentable by the Company in the United States and in all foreign countries, and will execute all documents and do all things necessary to obtain letters patent, to vest the Company with full and extensive title thereto, and to protect the same against infringement by others.
15. **Non-Solicitation of Customers:** You agree that during the Term, and for the twelve- (12) month period immediately following termination of employment for any reason, you shall not knowingly directly solicit goods, services or a combination of goods and services from any "Established Customers" of the Company. For purposes of this Offer Letter, "Established Customer" means a customer, regardless of location, of the Company as of the date your employment terminates who continues to be a customer or who the Company reasonably anticipates will continue to be a customer.
16. **Non-Solicitation of Employees and Independent Contractors:** You covenant that during the Term, and for the twelve- (12) month period immediately following termination of employment for any reason, you shall not knowingly, directly or indirectly, induce or attempt to induce any executive, employee or independent contractor of the Company to terminate his/her employment relationship with the Company to go to work for any other company or third party.
17. **Reasonableness:** The Company and you have attempted to specify a reasonable period of time and reasonable restrictions to which this Offer Letter shall apply. The Company and you agree that if a court or administrative body should subsequently determine that the terms of this Offer Letter are greater than reasonably necessary to protect the Company's interest, the Company agrees to waive those terms which are found by a court or administrative body to be greater than reasonably necessary to protect the Company's interest and to request that the court or administrative body reform this Offer Letter specifying a reasonable period of time and such other reasonable restrictions as the court or administrative body deems necessary.
18. **Equitable Relief:** You acknowledge that the services to be rendered by you are of a special, unique, unusual, extraordinary, and intellectual character, which gives them a peculiar value, and the loss of which cannot reasonably or adequately be compensated in damages in an action at law; and that a breach by you of any of the provisions contained in this Offer Letter will cause the Company irreparable injury and damage. You further acknowledge that you possess unique skills, knowledge and ability and that any material breach of the provisions of this Offer Letter would be extremely detrimental to the Company. By reason thereof, you agree that the Company shall be entitled, in addition to any other remedies it may have under this Offer Letter or otherwise, to injunctive and other equitable relief from any court of competent jurisdiction to prevent or curtail any breach of this Offer Letter by you.

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19. **Continued Litigation Assistance:** You will cooperate with and assist the Company and its representatives and attorneys as requested, during and after the Term, with respect to any litigation, arbitration or other dispute resolutions by being available for interviews, depositions and/or testimony in regard to any matters in which you are or have been involved or with respect to which you have relevant information. The Company will reimburse you for any reasonable business expenses you may have incurred in connection with this obligation.

20. **Governing Law; Forum:** Except as provided in Section 18, any disputes, claims or controversies between the Company and you, including, but not limited to, those arising out of or related to this Offer Letter or out of the parties' employment relationship, shall be settled by arbitration as provided herein. This provision shall survive the termination or rescission of this Offer Letter. All arbitration shall be in accordance with Rules of the American Arbitration Association, including discovery, and shall be undertaken pursuant to the Federal Arbitration Act. Arbitration will be held in Oklahoma City, Oklahoma unless the parties mutually agree to another location.

The decision of the arbitrator will be enforceable in any court of competent jurisdiction. You and the Company agree that either party shall be entitled to obtain injunctive or other equitable relief to enforce the provisions of this Offer Letter in a court of competent jurisdiction. The parties further agree that this arbitration provision is not only applicable to the Company but its affiliates, officers, directors, employees and related parties. You agree that you shall have no right or authority for any dispute to be brought, heard or arbitrated as a class or collective action, or in a representative or a private attorney general capacity on behalf of a class of persons or the general public. No class, collective or representative actions are thus allowed to be arbitrated. You agree that you must pursue any claims that you may have solely on an individual basis through arbitration.

21. **Withholdings:** All payments provided for herein in your capacity as Interim CEO shall be reduced by any amounts required to be withheld from time to time under applicable federal, state or local income or employment tax law or similar statutes or other provisions of law then in effect.
22. **Section 409A:** This Offer Letter shall be interpreted in accordance with Section 409A of the Internal Revenue Code of 1986, as amended, and any Treasury Regulations or other Department of Treasury guidance issued thereunder ("Section 409A"). If required by Section 409A, no payment or benefit constituting nonqualified deferred compensation that would otherwise be payable or commence upon the termination of employment shall be paid or shall commence unless and until you have had a "separation from service" within the meaning of Section 409A as determined in accordance with Section 1.409A-1(h) of the Treasury Regulations. For purposes of Section 409A, each of the payments that may be made hereunder is designated as a separate payment. If you are deemed on the date of termination to be a "specified employee" within the meaning of the term under Section 409A, then with regard to any payment or the provision of any benefit under any agreement that is considered nonqualified deferred compensation under Section 409A payable on account of a "separation from service," such payment or benefit shall be made or provided on the first business day following the earlier of (A) the expiration of the six (6)-month period measured from the date of such "separation from service," and (B) the date of your death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this paragraph (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to you in a lump sum (without interest) on the first business day following the Delay Period, and any remaining payments and benefits due under this Offer Letter shall be paid or provided in accordance with the normal payment dates specified for them herein. To the extent that reimbursements or other in-kind benefits under this Offer Letter constitute "nonqualified deferred compensation" for purposes of Section 409A, (i) all expenses or other reimbursements hereunder will be made on or before the last day of the taxable year following the taxable year in which such expenses were incurred by you, (ii) any right to reimbursement or in-kind benefits will not be subject to liquidation or exchange for another benefit, and (iii) no such reimbursement, expenses eligible for reimbursement, or in-kind benefits provided in any taxable year will in any way affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year. You agree to negotiate with Gulfport in good faith to make amendments to this Offer Letter as you and Gulfport mutually agree, reasonably and in good faith, are necessary or desirable to avoid the possible imposition of taxes or penalties under Section 409A, while preserving any affected benefit or payment to the extent reasonably practicable without materially increasing the cost to Gulfport. Notwithstanding the foregoing, you shall be solely responsible and liable for the satisfaction of all taxes, interest and penalties that may be imposed on you or for your account in connection with any payment or benefit under this Offer Letter (including any taxes, interest and penalties under Section 409A), and Gulfport shall have no obligation to indemnify or otherwise hold you (or any beneficiary successor or assign) harmless from any or all such taxes, interest or penalties.

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23. **Entire Agreement:** This Offer Letter supersedes all prior and contemporaneous oral or written, express or implied understandings or agreements regarding your employment with Gulfport, and contains the entire agreement between you and Gulfport regarding your employment with Gulfport. The terms set forth in this letter may not be modified, except in writing signed by an authorized representative of Gulfport, which expressly states the intention of Gulfport to modify the terms of this Offer Letter.
24. **Assignment; Binding Effect:** You understand that you have been selected for employment by Gulfport on the basis of your personal qualifications, experience, and skills. You agree, therefore, that you cannot assign all or any portion of your performance under this Offer Letter. Gulfport may assign this Offer Letter to the purchaser of substantially all of the assets of Gulfport, or to any subsidiary or parent company of Gulfport. Subject to the preceding two sentences, this Offer Letter shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective heirs, legal representatives, successors, and assigns. You acknowledge and agree that each Gulfport Company is a third-party beneficiary of this Offer Letter.
25. **Conditions to Employment:** This offer is contingent upon: (1) your execution of this Offer Letter; (2) you commencing employment as Interim CEO on the Emergence Date; and (3) you providing to Gulfport documentary evidence of your identity and provide a Form I-9 to evidence your eligibility for employment in the United States within (3) business days from your date of hire.

[Signature Page Follows]

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Tim, we welcome you to Gulfport. If you are in agreement and plan to accept this offer, then please sign below.

Sincerely,

/s/ Patrick Craine

Patrick Craine

Executive Vice President, General Counsel and Corporate Secretary

ACCEPTANCE:

I have read this letter and agree with the terms and conditions of my employment as set forth above.

Dated:

Signature: /s/ Timothy Cutt

Appendix A

EMPLOYMENT AGREEMENT
between
GULFPORT ENERGY CORPORATION
and
William J. Buese
Effective May 17, 2021

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made effective May 17, 2021 (the "Effective Date"), between GULFPORT ENERGY CORPORATION, a Delaware corporation (the "Company") and William J. Buese, an individual (the "Executive").

W I T N E S S E T H:

WHEREAS, the Company desires to retain the services of the Executive and the Executive desires to make the Executive's services available to the Company.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Company and the Executive agree as follows:

1. Employment. The Company hereby employs the Executive and the Executive hereby accepts such employment subject to the terms and conditions contained in this Agreement.
 2. Executive's Duties. The Executive is employed on a full-time basis. Throughout the term of this Agreement, the Executive will use the Executive's best efforts and due diligence to assist the Company in achieving the most profitable operation of the Company and the Company's affiliated entities consistent with developing and maintaining a quality business operation.
 - 2.1 Specific Duties. The Executive will serve as Chief Financial Officer for the Company, and in such other positions as might be mutually agreed upon by the parties. The Executive shall perform all of the duties required to fully and faithfully execute the office and position to which the Executive is appointed, and such other duties as may be reasonably requested by the Executive's supervisor or by the Company. During the term of this Agreement, the Executive may be nominated for election or appointed to serve as a director or officer of any of the Company's affiliated entities as determined in such affiliates' board of directors' sole discretion. The services of the Executive will be requested and directed by the Company's Chief Executive Officer.
 - 2.2 Principal Work Location: You agree to spend at least 50% of your time (and more, as required) in Gulfport's Oklahoma City headquarters.
 - 2.3 Duty of Loyalty. The Executive acknowledges and agrees that the Executive has a fiduciary duty of loyalty to act in the best interests of the Company and to do no act that would materially injure the business, interests or reputation of the Company or any of its affiliates. In keeping with these duties, the Executive shall make full disclosure to the Company of all business opportunities pertaining to the Company's business and shall not appropriate for the Executive's own benefit business opportunities concerning the subject matter of the fiduciary relationship.
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- 2.4 Policies and Procedures. The Company has issued various policies and procedures applicable to all employees of the Company and its related and affiliated entities including policies which set forth the general human resources policies of the Company and addresses frequently asked questions regarding the Company. The Executive agrees to comply with such policies and procedures except to the extent inconsistent with this Agreement. Such policies and procedures may be changed or adopted in the sole discretion of the Company without advance notice.
 3. Other Activities. The Executive shall devote substantially all of the Executive's business time and attention to the performance of the Executive's duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict with the performance of such services either directly or indirectly without the prior written consent of the Board of Directors of the Company (the "Board"). Notwithstanding the foregoing, the Executive will be permitted to (a) with the prior written consent of the Board, act or serve as a director, trustee, committee member, or principal of any type of business, civic, or charitable organization, and (b) purchase or own less than five percent (5%) of the publicly traded securities of any corporation; provided that, such ownership represents a passive investment and that the Executive is not a controlling person of, or a member of a group that controls, such corporation; provided further that, the activities described in clauses (a) and (b) do not interfere with the performance of the Executive's duties and responsibilities to the Company as provided hereunder, including, but not limited to, the obligations set forth in Section 2.
 4. Executive's Compensation. The Company agrees to compensate the Executive as follows:
 - 4.1 Base Salary. A base salary (the "Base Salary"), at the initial annual rate of not less than \$450,000 will be paid to the Executive in regular installments in accordance with the Company's designated payroll schedule.
 - 4.2 Bonus. In addition to the Base Salary described in Section 4.1 of this Agreement, the Executive shall be eligible for an annual bonus for each fiscal year during the Term on the same basis as other executive officers under the Company's then current annual incentive plan with a target of 90% of Base Salary which shall be payable in accordance with the terms of such plan and the performance metrics established by the Compensation Committee of the Board (the "Committee").

- 4.3 **Equity Compensation.** Within forty-five (45) days following the Effective Date, you shall be entitled to receive an equity award with a grant date value of \$1,650,000, with the number of shares of the Company's common stock subject to such award based on the 30-day volume-weighted average price commencing on the first day on which the Company is listed on a national exchange, consisting of 50% of time-based restricted stock units and 50% of performance-based units, subject to vesting based on performance thresholds as determined by the Committee, which awards are expected to be on terms substantially comparable to the remainder of the Company's senior management and will be subject to the terms and conditions of the applicable award agreement and the Gulfport Energy Corporation 2021 Stock Incentive Plan (the "Incentive Plan"). During the term of the Executive's employment, the Executive will be eligible for annual grants of restricted stock, restricted stock units, performance-based awards, stock options or other awards as determined in the sole discretion of the Committee in its discretion pursuant to the Incentive Plan and any other Company equity compensation plans in effect from time to time (generally referred to as "Equity Compensation Plans"), subject to the terms and conditions of the Equity Compensation Plans and the terms and conditions of each award as determined by the Committee in its discretion. The target aggregate fair value of such awards shall be as determined by the Committee in its discretion, it being understood that the Committee may elect to not provide the Executive an award with respect to a particular year.
- 4.4 **Signing Bonus.** The Executive will receive a signing bonus equal to \$75,000 on your first payroll date during the Term, subject to the Executive's continued employment on the payment date.
- 4.5 **Benefits.** The Company will provide the Executive with benefits that are customarily provided to similarly situated executives of the Company and as are set forth in and governed by the Company's employment policies and applicable plan documents. Additionally, the Company will provide paid time off ("PTO") to the Executive, the amount of which will be determined in accordance with the Company's PTO policy. No additional compensation will be paid for failure to take PTO, except upon certain terminations of employment as set forth in Section 6. The Company will also provide the Executive the opportunity to apply for coverage under the Company's medical, life and disability plans, if any. If the Executive is accepted for coverage under such plans, the Company will make such coverage available to the Executive on the same terms as is customarily provided by the Company to the plan participants as modified from time to time in the Company's sole discretion. The Executive will be entitled to receive reimbursement for all reasonable business expenses incurred by the Executive in accordance with the Company's expense reimbursement policy. All payments for reimbursement under this Section 4.5 shall be paid promptly but in no event later than the last day of the Executive's taxable year following the taxable year in which the Executive incurred such expenses.
5. **Term.** The term of the Executive's employment under the provisions of this Agreement shall be for a period commencing on the Effective Date and shall continue until December 31, 2024 (the "Initial Expiration Date"), unless terminated earlier pursuant to Section 6; provided that, upon the Initial Expiration Date and each annual anniversary thereafter (such date and each annual anniversary thereof, a "Renewal Date"), the Agreement shall be deemed to be automatically extended, upon the same terms and conditions, for successive periods of one year, unless either party provides written notice of its intention not to extend the term of the Agreement at least ninety (90) days prior to the applicable Renewal Date (the period of the Executive's employment under this Agreement being the "Term"); provided, however, if during the Term of this Agreement a Change of Control (as defined in Exhibit A attached hereto) occurs, the Term of this Agreement shall be extended to the later of the original expiration date of the Term or the expiration of the Change of Control Period. For purposes of this Agreement, "Change of Control Period" means the twenty-four (24) month period commencing on the effective date of a Change of Control.

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6. **Termination.** This Agreement will continue in effect until the expiration of the term stated in Section 5 of this Agreement unless earlier terminated pursuant to this Section 6. For purposes of this Agreement, "Termination Date" shall mean (a) if the Executive's employment is terminated by death, the date of death; (b) if the Executive's employment is terminated pursuant to Section 6.4 due to a disability, thirty (30) days after notice of termination is provided to the Executive in accordance with Section 6.4; (c) if the Executive's employment is terminated by Company without Cause or by the Executive for Good Reason pursuant to Section 6.1.1 or 6.1.2, on the effective date of termination specified in the notice required by Section 6.1.1 or 6.1.2, respectively; (d) if the Executive's employment is terminated by Company for Cause pursuant to Section 6.1.3, the date on which the notice of termination required by Section 6.1.3 is given; or (e) if the Executive's employment is terminated by the Executive pursuant to Section 6.2, on the effective date of termination specified by the Executive in the notice of termination required by Section 6.2 unless the Company rejects such date as allowed by Section 6.2, in which case it would be the date specified by the Company.

- 6.1 **Termination by Company.** The Executive's employment under this Agreement may be terminated prior to the expiration of the Term under the following circumstances:

6.1.1 **Termination without Cause or for Good Reason Outside of a Change of Control Period.**

- a) **Termination by the Company without Cause.** The Company may terminate the Executive's employment without Cause at any time by the service of written notice of termination to the Executive specifying an effective date of such termination not sooner than the date of such notice.
- b) **Termination by the Executive for Good Reason.** The Executive may terminate employment with the Company for "Good Reason" and such termination will not be a breach of this Agreement by the Executive. For purposes of this Section 6.1.1(b), Good Reason shall mean the occurrence of one of the events set forth below:
- (i) elimination of the Executive's job position or material reduction in duties and/or reassignment of the Executive to a new position of materially less authority;
 - (ii) a material reduction in the Executive's Base Salary;

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- (iii) a requirement that the Executive relocate to a location outside of a fifty (50) mile radius of the location of his or her office or principal base of operation immediately prior to the effective date of a Change of Control; or
- (iv) a requirement that you spend more than 50% of your time in Gulfport's Oklahoma City headquarters on an ongoing basis.

Notwithstanding the foregoing, the Executive will not be deemed to have terminated for Good Reason unless (A) the Executive provides written notice to the Company of the existence of one of the conditions described above within ninety (90) days after the Executive has knowledge of the initial existence of the condition, (B) the Company fails to remedy the condition so identified within thirty (30) days after receipt of such notice (if capable of correction), (C) the Executive provides a notice of termination to the Company within thirty (30) days of the expiration of the Company's period to remedy the condition specifying an effective date for the Executive's termination, and (D) the effective date of the Executive's termination of employment is within ninety (90) days after the Executive provides written notice to the Company of the existence of the condition referred to in clause (A).

- c) Obligations of the Company. In the event the Executive is Terminated without Cause or terminates employment for Good Reason outside of a Change of Control Period, the Executive will receive as termination compensation on the date sixty (60) days following the Termination Date: (a) a payment of one (1) times the sum of Base Salary and Annual Bonus in a lump sum payment; (b) a payment of the pro-rata portion of the Annual Bonus for the fiscal year in which the Termination Date occurs determined based on the number of days that have lapsed during the calendar year prior to the Termination Date divided by 365; (c) unless otherwise expressly provided in the applicable award agreement, pro rata vesting through the last day of the month in which the Termination Date occurs of all unvested awards granted to the Executive under the Equity Compensation Plans (provided performance-based restricted stock units shall only be payable subject to the attainment of the performance measures through the Termination Date (or the most recent practicable date) as provided under the terms of the applicable award agreement); (d) a lump sum payment of any PTO pay accrued but unused through the Termination Date and (e) a lump sum payment equal to the Executive's monthly COBRA premium for a twelve (12) month period. For purposes of this Agreement "Annual Bonus" shall be defined as the Executive's target bonus for the year in which the Termination Date occurs. The right to the foregoing termination compensation described under clauses (a), (b) and (c) above is subject to the Executive's timely execution, without revocation, of the Company's waiver and release agreement substantially in the form attached hereto as "Exhibit B" which will operate as a release of all legally waivable claims against the Company and the Executive's compliance with all of the provisions of this Agreement, including all post-employment obligations.

6.1.2 Termination without Cause or for Good Reason During a Change of Control Period.

- a) Termination by the Company without Cause. The Company may terminate the Executive's employment without Cause during a Change of Control Period at any time by the service of written notice of termination to the Executive specifying an effective date of such termination not sooner than the date of such notice.
- b) Termination by the Executive for Good Reason. The Executive may terminate employment with the Company for "Good Reason" and such termination will not be a breach of this Agreement by the Executive. For purposes of this Section 6.1.2(b), Good Reason during a Change of Control Period shall mean the occurrence of one of the events set forth below:
- (i) elimination of the Executive's job position or material reduction in duties and/or reassignment of the Executive to a new position of materially less authority;
 - (ii) a material reduction in the Executive's Base Salary; or
 - (iii) a requirement that the Executive relocate to a location outside of a fifty (50) mile radius of the location of his or her office or principal base of operation immediately prior to the effective date of a Change of Control.
 - (iv) a requirement that you spend more than 50% of your time in Gulfport's Oklahoma City headquarters on an ongoing basis.

Notwithstanding the foregoing, the Executive will not be deemed to have terminated for Good Reason unless (A) the Executive provides written notice to the Company of the existence of one of the conditions described above within ninety (90) days after the Executive has knowledge of the initial existence of the condition, (B) the Company fails to remedy the condition so identified within thirty (30) days after receipt of such notice (if capable of correction), (C) the Executive provides a notice of termination to the Company within thirty (30) days of the expiration of the Company's period to remedy the condition specifying an effective date for the Executive's termination, and (D) the effective date of the Executive's termination of employment is within ninety (90) days after the Executive provides written notice to the Company of the existence of the condition referred to in clause (A).

- c) Obligations of the Company. In the event the Executive is Terminated without Cause or terminates employment for Good Reason during a Change of Control Period, the Executive will receive as termination compensation on the date sixty (60) days following the Termination Date: (a) a payment of two (2) times the sum of Base Salary and Annual Bonus in a lump sum payment; (b) a payment of the pro-rata portion of the Annual Bonus for the fiscal year in which the Termination Date occurs determined based on the number of days that have lapsed during the calendar year prior to the Termination Date divided by 365; (c) all unvested awards granted under the Equity Compensation Plans shall be immediately vested (provided performance-based restricted stock units shall only be payable subject to the attainment of the performance measures through the Termination Date (or the most recent practicable date) as provided under the terms of the applicable award agreement); (d) a lump sum payment of any PTO pay accrued but unused through the Termination Date and (e) a lump sum payment equal to the Executive's monthly COBRA premium for an eighteen (18) month period. The right to the foregoing termination compensation described under clauses (a), (b) and (c) above is subject to the Executive's timely execution, without revocation, of the Company's waiver and release agreement substantially in the form attached hereto as "Exhibit B" which will operate as a release of all legally waivable claims against the Company and the Executive's compliance with all of the provisions of this Agreement, including all post-employment obligations.

6.1.3 Termination for Cause. The Company may terminate the employment of the Executive hereunder at any time for Cause (as hereinafter defined) (such a termination being referred to in this Agreement as a "Termination For Cause") by giving the Executive written notice of such termination. As used in this Agreement, "Cause" means:

- (i) the willful and continued failure of the Executive to perform substantially the Executive's duties with the Company or one of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Executive has not substantially performed the Executive's duties, or

- (ii) the willful engaging by the Executive in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company. For purposes of this provision, no act, or failure to act, on the part of the Executive shall be considered “willful” unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive’s action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company.

In the event this Agreement is terminated for Cause, the Company will not have any obligation to provide any further payments or benefits to the Executive after the Termination Date other than a lump sum payment within thirty (30) days of the Termination Date of any PTO pay accrued but unused through the Termination Date.

- 6.2 Termination by Executive. The Executive may voluntarily terminate employment under this Agreement for any reason by the service of written notice of such termination to the Company specifying an effective date of termination no sooner than thirty (30) days and no later than sixty (60) days after the date of such notice; provided, however, if less than thirty (30) days remain in the Term, the minimum notice required from the Executive under this Section 6.2 shall be reduced from thirty (30) to seven (7) days. The Company reserves the right to end the employment relationship at any time after the date such notice is given to the Company and to pay the Executive through the Termination Date, which will not change the nature of the termination for purposes of this Agreement.
- 6.3 Disability. If the Executive becomes “Disabled” (as defined below), the Company may give the Executive written notice of its intention to terminate on the 30th day after receipt of the notice by the Executive. In the event the Executive is terminated after the Executive becomes Disabled (a) all unvested awards granted to the Executive under the Equity Compensation Plans shall be immediately vested (provided performance-based restricted stock units shall only be payable subject to the attainment of the performance measures through the Termination Date (or the most recent practicable date) as provided under the terms of the applicable award agreement); and (b) any Company Non-Qualified Contributions shall be immediately vested. The Executive shall also receive a lump sum payment within thirty (30) days of the Termination Date of any PTO pay accrued but unused through the Termination Date. The right to the foregoing compensation due under clauses (a) and (b) above is subject to the timely execution, without revocation, by the Executive or the Executive’s legal representative of the Company’s waiver and release agreement substantially in the form attached hereto as “Exhibit B” which will operate as a release of all legally waivable claims against the Company. For purposes of this Section 6.3, the Executive is “Disabled” if he or she is unable to perform the essential functions of the position (with or without reasonable accommodation) under this Agreement, which disability lasts for an uninterrupted period of at least 90 days or a total of at least 180 days out of any consecutive 360-day period, as a result of the Executive’s incapacity due to physical or mental illness (as determined by the opinion of an independent physician selected by the Company). In applying this Section 6.3, the Company will comply with any applicable legal requirements, including the Americans with Disabilities Act.
- 6.4 Death of Executive. If the Executive dies during the term of this Agreement, the Company may thereafter terminate this Agreement without compensation. In the event of the Executive’s death the Company will immediately vest all unvested awards granted to the Executive under the Equity Compensation Plans (provided performance-based restricted stock units shall only be payable subject to the attainment of the performance measures through the Termination Date (or the most recent practicable date) as provided under the terms of the applicable award agreement). The Executive’s beneficiaries/estate shall also receive a lump sum payment within thirty (30) days of death of any PTO pay accrued but unused through the Termination Date. Amounts payable under this Section 6.4 shall be paid to the beneficiary designated on the Company’s universal beneficiary designation form in effect on the date of the Executive’s death. If the Executive fails to designate a beneficiary or if such designation is ineffective, in whole or in part, any payment that would otherwise have been paid under this Section 6.4 shall be paid to the Executive’s estate. The right to the foregoing compensation due under clauses (a) and (b) above is subject to the timely execution, without revocation, by the beneficiary, or as applicable, the administrator of the Executive’s estate of the Company’s waiver and release agreement substantially in the form attached hereto as “Exhibit B” which will operate as a release of all legally waivable claims against the Company.

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- 6.5 Effect of Termination. The termination of this Agreement, when accompanied by the termination of the Executive’s employment with the Company, will terminate all obligations of the Executive to render services on behalf of the Company from and after the Termination Date, provided that upon termination of this Agreement and termination of employment for any reason (other than by reason of the Executive’s death), the Executive shall comply with all post-employment requirements including this Section 6.5 and Sections 7, 8, 9, 10, 11, 12 and 13, as well as the Company’s arbitration program. Except as otherwise provided in Section 6 of this Agreement and payment of any PTO pay accrued but unused through the Termination Date, no accrued bonus, severance pay or other form of compensation will be payable by the Company to the Executive by reason of the termination of this Agreement. All keys, entry cards, credit cards, files, records, financial information, Confidential Information (as defined below), research, results, test data, instructions, drawings, sketches, specifications, product data sheets, products, books, DVDs, disks, memory devices, business plans, marketing plans, documents, correspondence, furniture, furnishings, equipment, supplies and other items relating to the Company in the Executive’s possession will remain the property of the Company. Upon termination of employment, the Executive will have the right to retain and remove all personal property and effects which are owned by the Executive and located in the offices of the Company at a time determined by the Company. All such personal items will be removed from such offices no later than two (2) days after the Termination Date, and the Company is hereby authorized to discard any items remaining and to reassign the Executive’s office space after such date. Prior to the Termination Date, the Executive will render such services to the Company as might be reasonably required to provide for the orderly termination of the Executive’s employment. Notwithstanding the foregoing and without discharging any obligations to pay compensation to the Executive under this Agreement, after notice of the termination, the Company may request that the Executive not provide any other services to the Company and not enter the Company’s premises before or after the Termination Date. In the event that the Executive separates employment with the Company, the Executive hereby grants consent to notification by the Company to the Executive’s new employer about the Executive’s rights and obligations under this Agreement. Upon such termination of employment, the Executive further agrees to acknowledge compliance with this Agreement in a form reasonably provided by the Company.

If this Agreement is not terminated pursuant to any of the preceding provisions of Section 6 or extended by mutual written agreement of the parties prior to the expiration of the Term, this Agreement and the Executive’s employment under this Agreement will end and Company will have no further obligation to provide any further payments or benefits to the Executive under this Agreement after the expiration of the Term other than any PTO pay accrued but unused through the expiration of the Term. Upon expiration of this Agreement, the Executive will continue to be employed with Company on an at will basis until such employment is terminated by either party, with or without any reason.

Unless otherwise agreed to in writing by the Company and Executive prior to the termination of the Executive’s employment, any termination of the Executive’s employment shall constitute (a) an automatic resignation of Executive as an officer of the Company and each affiliate of the Company, (b) an automatic resignation of the Executive from the Board (if applicable) and from the board of directors of any affiliate of the Company, and from the board of directors or similar governing body of any corporation, limited liability entity or other entity in which the Company or any affiliate holds an equity interest and with respect to which board or similar governing body the Executive serves as the Company’s or such affiliate’s designee or other representative and (c) an automatic revocation of any power of attorney granted to the Executive for the benefit of the Company or any of its affiliates.

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7. Trade Secrets, Confidential Information and Inventions of the Company.

- 7.1 Trade Secrets and Confidential Information. The Executive agrees that during the Executive's employment hereunder, the Executive will have access to various trade secrets, confidential information and inventions of the Company as defined below.
- 7.1.1 "Confidential Information" means all information and material which is proprietary to the Company, whether or not marked as "confidential" or "proprietary" and which is disclosed to or obtained from the Company by the Executive, which relates to the Company's past, present or future research, development or business activities. Confidential Information includes all information or materials prepared by or for the Company and includes, without limitation, all of the following: designs, drawings, specifications, techniques, models, data, source code, object code, documentation, diagrams, flow charts, research, development, processes, systems, methods, machinery, procedures, "know-how", new product or new technology information, formulas, patents, patent applications, product prototypes, product copies, cost of production, manufacturing, developing or marketing techniques and materials, cost of production, development or marketing time tables, customer lists, strategies related to customers, suppliers or personnel, contract forms, pricing policies and financial information, volumes of sales, and other information of similar nature, whether or not reduced to writing or other tangible form, and any other Trade Secrets, as defined by Section 7.1.3, or non-public business information. Confidential Information also will include any additional Company information with respect to which the Company took reasonable and apparent steps to preserve confidentiality. For purposes of this Agreement, the terms of this Agreement will be treated by the Executive as Confidential Information. Notwithstanding the foregoing, nothing in this Agreement, any other agreement between the Executive and the Company, or any Company policy shall be read to prevent the Executive from (a) sharing this Agreement or other information with the Executive's attorney; (b) reporting possible violations of federal law or regulation to any governmental agency or entity including, but not limited to, the Department of Justice, the Securities and Exchange Commission, the Congress, and any Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. The Executive will not need the prior authorization of the Company to make any such reports or disclosures and the Executive will not be required to notify the Company that he or she has made such reports or disclosures; (c) sharing information about this Agreement with the Executive's spouse, accountant, attorney or financial advisor so long as the Executive ensures that such parties maintain the strict confidentiality of this Agreement; or (d) apprising any future or potential employer or other person or entity to which the Executive provides services of the Executive's continuing obligations to the Company under this Agreement.
- 7.1.2 "Inventions" means all discoveries, concepts and ideas, whether patentable or not, including, but not limited to, processes, methods, formulas, compositions, techniques, articles and machines, as well as improvements thereof or "know-how" related thereto, relating at the time of conception or reduction to practice to the business engaged in by the Company, or any actual or anticipated research or development by the Company.

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- 7.1.3 "Trade Secrets" means any scientific or technical data, information, design, process, procedure, formula or improvement that is commercially available to the Company and is not generally known in the industry.

This Section 7.1 includes not only information belonging to the Company which existed before the date of this Agreement, but also information developed by the Executive for the Company or its employees during the Executive's employment and thereafter.

- 7.2 Restriction on Use of Confidential Information. The Executive agrees that the Executive's use of Trade Secrets and other Confidential Information is subject to the following restrictions during the term of the Agreement and for an indefinite period thereafter so long as the Trade Secrets and other Confidential Information have not become generally known to the public.
- 7.3 Non-Disclosure. The Executive agrees that the Executive will not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any person, other than in the course of the Executive's assigned duties and for the benefit of the Company, either during the period of the Executive's employment or at any time thereafter, any Confidential Information or other confidential or proprietary information received from third parties subject to a duty of the Company's and its subsidiaries' and affiliates' part to maintain the confidentiality of such information, and to use such information only for certain limited purposes, in each case, which has been obtained by the Executive during the Executive's employment by the Company (or any predecessor). The foregoing will not apply to information that (i) was known to the public prior to its disclosure to the Executive; (ii) becomes generally known to the public subsequent to disclosure to the Executive through no wrongful act of the Executive or any representative of the Executive; or (iii) the Executive is required to disclose by applicable law, regulation or legal process (provided that the Executive provides the Company with prior notice of the contemplated disclosure and cooperates with the Company at its expense in seeking a protective order or other appropriate protection of such information). Unless this Agreement is otherwise required to be disclosed under applicable law, rule or regulation, the terms and conditions of this Agreement will remain strictly confidential, and the Executive hereby agrees not to disclose the terms and conditions hereof to any person or entity, other than immediate family members, legal advisors or personal tax or financial advisors, or prospective future employers solely for the purpose of disclosing the limitations on the Executive's conduct imposed by the provisions of this Agreement who, in each case, agree to keep such information confidential. The Executive is hereby notified in accordance with the Defend Trade Secrets Act of 2016 that the Executive will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. The Executive is further notified that if he or she files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company's trade secrets to the Executive's attorney and use the trade secret information in the court proceeding if he: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order. The provisions of this Section 7.3 will survive the expiration, suspension or termination of this Agreement for any reason.

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- 7.4 Prohibition Against Unfair Competition. At any time after the termination of his or her employment with the Company for any reason, the Executive will not engage in competition with the Company while making use of the Trade Secrets of the Company.

7.5 Patents and Inventions. The Executive agrees that any Inventions made, conceived or completed by the Executive during the term of the Executive's service, solely or jointly with others, which are made with the Company's equipment, supplies, facilities or Confidential Information, or which relate at the time of conception or reduction to purpose of the Invention to the business of the Company or the Company's actual or demonstrably anticipated research and development, or which result from any work performed by the Executive for the Company, will be the sole and exclusive property of the Company, and all Trade Secrets, Confidential Information, copyrightable works, works of authorship, and all patents, registrations or applications related thereto, all other intellectual property or proprietary information and all similar or related information (whether or not patentable and copyrightable and whether or not reduced to tangible form or practice) which relate to the business, research and development, or existing or future products or services of the Company and/or its subsidiaries and which are conceived, developed or made by the Executive during the Executive's employment with the Company ("Work Product") will be deemed to be "work made for hire" (as defined in the Copyright Act, 17 U.S.C. §101 et seq., as amended) and owned exclusively by the Company. To the extent that any Work Product is not deemed to be a "work made for hire" under applicable law, and all right, title and interest in and to such Work Product have not automatically vested in the Company, the Executive hereby (a) irrevocably assigns, transfers and conveys, and will assign transfer and convey, to the fullest extent permitted by applicable law, all right, title and interest in and to the Work Product on a worldwide basis to the Company (or such other person or entity as the Company may designate), without further consideration, and (b) waives all moral rights in or to all Work Product, and to the extent such rights may not be waived, agrees not to assert such rights against the Company or its respective licensees, successors, or assigns. In order to permit the Company to claim rights to which it may be entitled, the Executive agrees to promptly disclose to the Company in confidence all Work Product which the Executive makes arising out of the Executive's employment with the Company. The Executive will assist the Company in obtaining patents on all Work Product patentable by the Company in the United States and in all foreign countries, and will execute all documents and do all things necessary to obtain letters patent, to vest the Company with full and extensive title thereto, and to protect the same against infringement by others.

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8. Non-Solicitation. The Executive agrees that during his or her employment hereunder, and for the one (1) year period immediately following termination of employment for any reason, the Executive shall not knowingly directly solicit goods, services or a combination of goods and services from any "Established Customers" of the Company. For purposes of this agreement, "Established Customer" means a customer, regardless of location, of the Company as of the date the Executive's employment terminates who continues to be a customer or who the Company reasonably anticipates will continue to be a customer.
9. Non-Solicitation of Employees and Independent Contractors. The Executive covenants that during the term of employment and for the one (1) year period immediately following the termination of employment for any reason, the Executive will not knowingly, directly or indirectly, induce or attempt to induce any executive, employee or independent contractor of the Company to terminate his/her employment relationship with the Company to go to work for any other company or third party.
10. Reasonableness. The Company and the Executive have attempted to specify a reasonable period of time and reasonable restrictions to which this Agreement shall apply. The Company and the Executive agree that if a court or administrative body should subsequently determine that the terms of this Agreement are greater than reasonably necessary to protect the Company's interest, the Company agrees to waive those terms which are found by a court or administrative body to be greater than reasonably necessary to protect the Company's interest and to request that the court or administrative body reform this Agreement specifying a reasonable period of time and such other reasonable restrictions as the court or administrative body deems necessary.
11. Equitable Relief. The Executive acknowledges that the services to be rendered by the Executive are of a special, unique, unusual, extraordinary, and intellectual character, which gives them a peculiar value, and the loss of which cannot reasonably or adequately be compensated in damages in an action at law; and that a breach by the Executive of any of the provisions contained in this Agreement will cause the Company irreparable injury and damage. The Executive further acknowledges that the Executive possesses unique skills, knowledge and ability and that any material breach of the provisions of this Agreement would be extremely detrimental to the Company. By reason thereof, the Executive agrees that the Company shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to injunctive and other equitable relief from any court of competent jurisdiction to prevent or curtail any breach of this Agreement by him/her.
12. Continued Litigation Assistance. The Executive will cooperate with and assist the Company and its representatives and attorneys as requested, during and after the Term, with respect to any litigation, arbitration or other dispute resolutions by being available for interviews, depositions and/or testimony in regard to any matters in which the Executive is or has been involved or with respect to which the Executive has relevant information. The Company will reimburse the Executive for any reasonable business expenses the Executive may have incurred in connection with this obligation.

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13. Arbitration. Except as provided in Section 11, any disputes, claims or controversies between the Company and the Executive, including, but not limited to, those arising out of or related to this Agreement or out of the parties' employment relationship, shall be settled by arbitration as provided herein. This agreement shall survive the termination or rescission of this Agreement. All arbitration shall be in accordance with Rules of the American Arbitration Association, including discovery, and shall be undertaken pursuant to the Federal Arbitration Act. Arbitration will be held in Oklahoma City, Oklahoma unless the parties mutually agree to another location.

The decision of the arbitrator will be enforceable in any court of competent jurisdiction. The Executive and the Company agree that either party shall be entitled to obtain injunctive or other equitable relief to enforce the provisions of this Agreement in a court of competent jurisdiction. The parties further agree that this arbitration provision is not only applicable to the Company but its affiliates, officers, directors, employees and related parties. The Executive agrees that the Executive shall have no right or authority for any dispute to be brought, heard or arbitrated as a class or collective action, or in a representative or a private attorney general capacity on behalf of a class of persons or the general public. No class, collective or representative actions are thus allowed to be arbitrated. The Executive agrees that he or she must pursue any claims that he or she may have solely on an individual basis through arbitration.

14. Miscellaneous. The parties further agree as follows:

14.1 Time. Time is of the essence of each provision of this Agreement.

14.2 Notices. Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement will be in writing and will be deemed to have been given when delivered personally or by express mail to the party designated to receive such notice, or on the date following the day sent by overnight courier, or on the third business day after the same is sent by certified mail, postage and charges prepaid, directed to the following address or to such other or additional addresses as any party might designate by written notice to the other party:

To the Company: Gulfport Energy Corporation
3001 Quail Springs Parkway
Oklahoma City, Oklahoma 73134
Attention: Board of Directors

To the Executive: The most recent home address reflected in the records of the Company.

- 14.3 Assignment. Neither this Agreement nor any of the parties' rights or obligations hereunder can be transferred or assigned without the prior written consent of the other parties to this Agreement; provided, however, the Company may assign this Agreement to any wholly owned affiliate or subsidiary of the Company without the Executive's consent as well as to any purchaser of the Company.

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- 14.4 Construction. If any provision of this Agreement or the application thereof to any person or circumstances is determined, to any extent, to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which the same is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. This Agreement is intended to be interpreted, construed and enforced in accordance with the laws of the State of Oklahoma.
- 14.5 Entire Agreement. This Agreement, any documents executed in connection with this Agreement, any documents specifically referred to in this Agreement constitute the entire agreement between the parties hereto with respect to the subject matter herein contained, and no modification hereof will be effective unless made by a supplemental written agreement executed by all of the parties hereto.
- 14.6 Binding Effect. This Agreement will be binding on the parties and their respective successors, legal representatives and permitted assigns. In the event of a merger, consolidation, combination, dissolution or liquidation of the Company, the performance of this Agreement will be assumed by any entity which succeeds to or is transferred the business of the Company as a result thereof, and the Executive waives the consent requirement of Section 14.3 to effect such assumption.
- 14.7 Supersession. On execution of this Agreement by the Company and the Executive, the relationship between the Company and the Executive will be bound by the terms of this Agreement, any documents executed in connection with this Agreement, any documents specifically referred to in this Agreement as well as any other agreements executed in connection with the Executive's employment with the Company. In the event of a conflict between any employment policy of the Company and this Agreement, this Agreement will control in all respects.
- 14.8 Third-Party Beneficiary. The Company's affiliated entities and partnerships are beneficiaries of all terms and provisions of this Agreement and entitled to all rights hereunder.
- 14.9 Section 409A. This Agreement is intended to be exempt from Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and related U.S. Treasury regulations or official pronouncements ("Section 409A") and any ambiguous provision will be construed in a manner that is compliant with such exemption; provided, however, if and to the extent that any compensation payable pursuant to this Agreement is determined to be subject to Section 409A, this Agreement will be construed in a manner that will comply with Section 409A. Notwithstanding any provision to the contrary in this Agreement, if the Executive is deemed on his or her Termination Date to be a "specified employee" within the meaning of that term under Section 409A, then any payments and benefits under this Agreement that are subject to Section 409A and paid by reason of a termination of employment shall be made or provided on the later of (a) the payment date set forth in this Agreement or (b) the date that is the earliest of (i) the expiration of the six-month period measured from the date of the Executive's termination of employment or (ii) the date of the Executive's death (the "Delay Period"). Payments and benefits subject to the Delay Period shall be paid or provided to the Executive without interest for such delay. Termination of employment as used throughout this Agreement shall refer to a separation from service within the meaning of Section 409A. To the extent required to comply with Section 409A, references to a "resignation," "termination," "termination of employment" or like terms throughout this Agreement shall be interpreted consistent with the meaning of "separation from service" as defined in Section 409A. To the extent that reimbursements or other in-kind benefits under this Agreement constitute "nonqualified deferred compensation" for purposes of Section 409A, (A) all expenses or other reimbursements hereunder will be made on or before the last day of the taxable year following the taxable year in which such expenses were incurred by you, (B) any right to reimbursement or in-kind benefits will not be subject to liquidation or exchange for another benefit, and (C) no such reimbursement, expenses eligible for reimbursement, or in-kind benefits provided in any taxable year will in any way affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year.

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- 14.10 Clawback. Notwithstanding anything in this Agreement or any other agreement between the Company and/or its related entities and the Executive to the contrary, the Executive acknowledges that the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act") may have the effect of requiring certain executives of the Company and/or its related entities to repay the Company, and for the Company to recoup from such executives, certain amounts of incentive-based compensation. If, and only to the extent, the Act, any rules and regulations promulgated by thereunder by the Securities and Exchange Commission or any similar federal or state law requires the Company to recoup incentive-based compensation that the Company has paid or granted to the Executive, the Executive hereby agrees, even if the Executive has terminated his or her employment with the Company, to promptly repay such incentive compensation to the Company upon its written request. In addition, the Executive agrees to be subject to any other compensation clawback arrangement adopted by the Board (whether before or after the Effective Date) which is applicable to all executive officers of the Company. This Section 14.10 shall survive the termination of this Agreement.
- 14.11 Withholdings. All payments provided for herein shall be reduced by any amounts required to be withheld from time to time under applicable federal, state or local income or employment tax law or similar statutes or other provisions of law then in effect.
- 14.12 Maximum Payments by the Company.
- (a) It is the objective of this Agreement to maximize the Executive's net after-tax benefit if payments or benefits provided under this Agreement are subject to excise tax under Section 4999 of the Code. Notwithstanding any other provisions of this Agreement, in the event that any payment or benefit by the Company or otherwise to or for the benefit of the Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, including, by example and not by way of limitation, acceleration by the Company or otherwise of the date of vesting or payment or rate of payment under any plan, program, arrangement or agreement of the Company (all such payments and benefits, including the payments and benefits under Section 6 hereof, being hereinafter referred to as the "Total Payments"), would be subject (in whole or in part) to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the cash severance payments shall first be reduced, and the non-cash severance payments shall thereafter be reduced, to the extent necessary so that no portion of the Total Payments shall be subject to the Excise Tax, but only if (i) the net amount of such Total Payments, as so reduced (and after subtracting the net amount of federal, state and local income taxes on such reduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such reduced Total Payments), is greater than or equal to (ii) the net amount of such Total Payments without such reduction (but after subtracting the net amount of federal, state and local income taxes on such Total Payments and the amount of Excise Tax to which the Executive would be subject in respect of such unreduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such unreduced Total Payments).

- (b) The Total Payments shall be reduced by the Company in the following order: (i) reduction of any cash severance payments otherwise payable to the Executive that are exempt from Section 409A of the Code, (ii) reduction of any other cash payments or benefits otherwise payable to the Executive that are exempt from Section 409A of the Code, but excluding any payments attributable to the acceleration of vesting or payments with respect to any equity award with respect to the Company's common stock that is exempt from Section 409A of the Code, (iii) reduction of any other payments or benefits otherwise payable to the Executive on a pro-rata basis or such other manner that complies with Section 409A of the Code, but excluding any payments attributable to the acceleration of vesting and payments with respect to any equity award with respect to the Company's common stock that are exempt from Section 409A of the Code, and (iv) reduction of any payments attributable to the acceleration of vesting or payments with respect to any other equity award with respect to the Company's common stock that are exempt from Section 409A of the Code.

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- (c) For purposes of determining whether and the extent to which the Total Payments will be subject to the Excise Tax, (i) no portion of the Total Payments the receipt or enjoyment of which the Executive shall have waived at such time and in such manner as not to constitute a "payment" within the meaning of Section 280G(b) of the Code shall be taken into account, (ii) no portion of the Total Payments shall be taken into account which, in the written opinion of independent auditors of nationally recognized standing ("Independent Advisors") selected by the Company, does not constitute a "parachute payment" within the meaning of Section 280G(b)(2) of the Code (including by reason of Section 280G(b)(4)(A) of the Code) and, in calculating the Excise Tax, no portion of such Total Payments shall be taken into account which, in the opinion of Independent Advisors, constitutes reasonable compensation for services actually rendered, within the meaning of Section 280G(b)(4)(B) of the Code, in excess of the "base amount" (as defined in Section 280G(b)(3) of the Code) allocable to such reasonable compensation, and (iii) the value of any non-cash benefit or any deferred payment or benefit included in the Total Payments shall be determined by the Independent Advisors in accordance with the principles of Sections 280G(d)(3) and (4) of the Code. The costs of obtaining such determination shall be borne by the Company.

[Signature Page Follows]

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IN WITNESS WHEREOF, the undersigned have executed this Agreement effective the date first above written.

GULFPORT ENERGY CORPORATION, a Delaware corporation

By: /s/ Patrick Craine

Name: Patrick Craine

Title: Executive Vice President, General Counsel and Corporate Secretary

By: /s/ William J. Buese

William J. Buese, Individually
(the "Executive")

Exhibit A

For purposes of this Agreement, "Change of Control" means:

(a) The direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company to any Person (as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"));

(b) The individuals who constitute the Board (the "Incumbent Directors") as of the beginning of the period cease for any reason to constitute at least a majority of the Board. Any individual becoming a director whose election or nomination for election to the Board was approved by a vote of at least two-thirds of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the Company in which that person is named as a nominee for Director without objection to the nomination) will be an Incumbent Director. No individual initially elected or nominated as a Director of the Company as a result of an actual or threatened election contest with respect to Directors or as a result of any other actual or threatened solicitation of proxies by or on behalf of any person other than the Board will be an Incumbent Director;

(c) The adoption of a plan relating to the liquidation or dissolution of the Company; or

(d) The consummation of any transaction (including, without limitation, any merger, consolidation or exchange) resulting in any Person or Group (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) becoming the Beneficial Owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 30% of the combined voting power (which voting power shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote, but not assuming the exercise of any warrant or right to subscribe to or purchase those shares) of the continuing or surviving entity's securities outstanding immediately after such transaction, or the consummation of any transaction in which more than 50% of the combined voting power of the surviving entity immediately after such transaction is owned, directly or indirectly, by persons who were not stockholders of the Company immediately prior to such merger, consolidation, reorganization or sale of stock; provided, however, that in making the determination of ownership by the stockholders of the Company, immediately after the reorganization, equity securities which persons own immediately before the reorganization as stockholders of another party to the transaction shall be disregarded.

The foregoing notwithstanding, a transaction will not constitute a Change of Control if (x) its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the Persons who held the Company's securities immediately before the transaction; (y) it constitutes an initial public offering or a secondary public offering that results in any security of the Company being listed (or approved for listing) on any securities exchange or designated (or approved for designation) as a security on an interdealer quotation system; or (z) solely because 50% or more of the total voting power of the Company's then outstanding securities is acquired by (1) a trustee or other fiduciary holding securities under one or more employee benefit plans of the Company or any parent corporation or subsidiary corporation of the Company (as defined in Code Sections 424(e) and (f)), or (2) any company that, immediately before the acquisition, is owned directly or indirectly by the stockholders of the Company in substantially the same proportion as their ownership of stock in the Company immediately before the acquisition.

Exhibit B
Form of Waiver and Release
(attached)

FORM OF WAIVER AND RELEASE

[The language in this Waiver and Release may change based on legal developments and evolving best practices; this form is provided as an example of what will be included in the final Waiver and Release document.]

In consideration of, and as a condition precedent to, receiving the termination compensation described in that certain Employment Agreement (the "Agreement") effective as of May 17, 2021, by and between Gulfport Energy Corporation, a Delaware corporation (the "Company"), and [____], an individual residing in the State of [____] ("Employee"), which was offered to Employee in exchange for a general waiver and release of claims (this "Waiver and Release"). Employee having acknowledged the above-stated consideration as full compensation for and on account of any and all injuries and damages which Employee has sustained or claimed, or may be entitled to claim, Employee, for himself, and his heirs, executors, administrators, successors and assigns, does hereby release, forever discharge and promise not to sue the Company, its parents, subsidiaries, affiliates, successors and assigns, and their past and present officers, directors, partners, employees, members, managers, shareholders, agents, attorneys, accountants, insurers, heirs, administrators, executors, as well as all employee benefit plans maintained by any of the foregoing entities or individuals, and all fiduciaries and administrators of such plans, in their personal and representative capacities (collectively the "Released Parties") from any and all claims, liabilities, costs, expenses, judgments, attorney fees, actions, known and unknown, of every kind and nature whatsoever in law or equity, which Employee had, now has, or may have against the Released Parties, including, but not limited to, any claims relating in any way to Employee's employment with the Company or termination thereof prior to and including the date of execution of this Waiver and Release, and including, but not limited to, all claims for contract damages, tort damages, special, general, direct, punitive and consequential damages, compensatory damages, loss of profits, attorney fees and any and all other damages of any kind or nature; all contracts, oral or written, between Employee and any of the Released Parties; any business enterprise or proposed enterprise contemplated by any of the Released Parties, as well as anything done or not done prior to and including the date of execution of this Waiver and Release.

Employee understands and agrees that this Waiver and Release and covenant not to sue shall apply to any and all claims or liabilities arising out of or relating to Employee's employment with the Company and the termination of such employment, including, but not limited to: claims of discrimination based on age, race, color, sex (including sexual harassment), religion, national origin, marital status, parental status, veteran status, union activities, disability or any other grounds under applicable federal, state or local law prior to and including the date of execution of this Waiver and Release, including, but not limited to, claims arising under the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Family and Medical Leave Act, Title VII of the Civil Rights Act, the Civil Rights Act of 1991, 42 U.S.C. § 1981, the Genetic Information Non-Discrimination Act of 2008, the Employee Retirement Income Security Act of 1974, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Rehabilitation Act of 1973, the Equal Pay Act of 1963 (EPA), all as amended, as well as any claims prior to and including the date of execution of this Waiver and Release, regarding wages; benefits; vacation; sick leave; business expense reimbursements; wrongful termination; breach of the covenant of good faith and fair dealing; intentional or negligent infliction of emotional distress; retaliation; outrage; defamation; invasion of privacy; breach of contract; fraud or negligent misrepresentation; harassment; breach of duty; negligence; discrimination; claims under any employment, contract or tort laws; claims arising under any other federal law, state law, municipal law, local law, or common law; any claims arising out of any employment contract, policy or procedure; and any other claims related to or arising out of his employment or the separation of his employment with the Company prior to and including the date of execution of this Waiver and Release.

In addition, Employee agrees not to cause or encourage any legal proceeding to be maintained or instituted against any of the Released Parties, save and except proceedings to enforce the terms of the Agreement or claims of Employee not released by and in this Waiver and Release.

This Waiver and Release does not apply to (i) claims for indemnification pursuant to the Company's governing documents or any indemnification agreement, (ii) vested benefits under any retirement plan of the Company, (iii) any claims for unemployment compensation or (iv) any other claims or rights which, by law, cannot be waived, including the right to file an administrative charge or participate in an administrative investigation or proceeding; provided, however that Employee disclaims and waives any right to share or participate in any monetary award from the Company resulting from the prosecution of such charge or investigation or proceeding. Notwithstanding the foregoing or any other provision in this Waiver and Release or the Agreement to the contrary, the Company and Employee further agree that nothing in this Waiver and Release or the Agreement (i) limits Employee's ability to file a charge or complaint with the EEOC, the NLRB, OSHA, the SEC or any other federal, state or local governmental agency or commission (each a "Government Agency" and collectively "Government Agencies"); (ii) limits Employee's ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information and reporting possible violations of law or regulation or other disclosures protected under the whistleblower provisions of applicable law or regulation, without notice to the Company; or (iii) limits Employee's right to receive an award for information provided to any Government Agencies.

Employee expressly acknowledges that he is voluntarily, irrevocably and unconditionally releasing and forever discharging the Company and the other Released Parties from all rights or claims he has or may have against the Released Parties including, but not limited to, without limitation, all charges, claims of money, demands, rights, and causes of action arising under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), up to and including the date Employee signs this Waiver and Release including, but not limited to, all claims of age discrimination in employment and all claims of retaliation in violation of ADEA. Employee further acknowledges that the consideration given for this waiver of claims under the ADEA is in addition to anything of value to which he was already entitled in the absence of this waiver. Employee further acknowledges: (a) that he has been informed by this writing that he should consult with an attorney prior to executing this Waiver and Release; (b) that he has carefully read and fully understands all of the provisions of this Waiver and Release; (c) he is, through this Waiver and Release, releasing the Company and the other Released Parties from any and all claims he may have against any of them; (d) he understands and agrees that this Waiver and Release does not apply to any claims that may arise under the ADEA after the date he executes this Waiver and Release; (e) he has at least twenty-one (21) days within which to consider this Waiver and Release; and (f) he has seven (7) days following his execution of this Waiver and Release to revoke the Waiver and Release; and (g) this Waiver and Release shall not be effective until the revocation period has expired and Employee has signed and has not revoked the Waiver and Release.

Employee acknowledges and agrees that: (a) he has had reasonable and sufficient time to read and review this Waiver and Release and that he has, in fact, read and reviewed this Waiver and Release; (b) he has the right to consult with legal counsel regarding this Waiver and Release and is encouraged to consult with legal counsel with regard to this Waiver and Release; (c) he has had (or has had the opportunity to take) twenty-one (21) calendar days to discuss the Waiver and Release with a lawyer of his choice before signing it and, if he signs before the end of that period, he does so of his own free will and with the full knowledge that he could have taken the full period; (d) he is entering into this Waiver and Release freely and voluntarily and not as a result of any coercion, duress or undue influence; (e) he is not relying upon any oral representations made to him regarding the subject matter of this Waiver and Release; (f) by this Waiver and Release he is receiving consideration in addition to that which he was already entitled; and (g) he has received all information he requires from the Company in order to make a knowing and voluntary release and waiver of all claims against the Company and the other Released Parties.

Employee acknowledges and agrees that he has seven (7) days after the date he signs this Waiver and Release in which to rescind or revoke this Waiver and Release by providing notice in writing to the Company. Employee further understands that the Waiver and Release will have no force and effect until the end of that seventh (7th) day. If Employee revokes the Waiver and Release, the Company will not be obligated to pay or provide Employee with the benefits described in this Waiver and Release, and this Waiver and Release shall be deemed null and void.

AGREED TO AND ACCEPTED this _____ day of _____, 20__.

/s/ William J. Buese
William J. Buese

GULFPORT ENERGY CORPORATION
2021 STOCK INCENTIVE PLAN

GULFPORT ENERGY CORPORATION
2021 STOCK INCENTIVE PLAN

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GULFPORT ENERGY CORPORATION

2021 STOCK INCENTIVE PLAN

**ARTICLE 1
PURPOSE, ELIGIBILITY**

1.1 General Purpose. The name of the Plan is the Gulfport Energy Corporation 2021 Stock Incentive Plan. The purpose of the Plan is to enable the Company and any Related Company to obtain and retain the services of the types of Employees, Consultants, and Directors who will contribute to the Company’s long range success and to provide incentives that are linked directly to increases in share value which will inure to the benefit of all stockholders of the Company.

1.2 Eligible Award Recipients. The persons eligible to receive Awards are the Employees, Consultants and Directors of the Company and its Related Companies.

1.3 Available Awards . The Plan provides a means by which eligible recipients of Awards may be given an opportunity to benefit from increases in value of the Common Stock through the granting of one or more of the following Awards: Incentive Stock Options, Nonstatutory Stock Options, Restricted Awards (Restricted Stock and Restricted Stock Units), Performance Awards and Stock Appreciation Rights.

**ARTICLE 2
DEFINITIONS**

2.1 “Administrator” means the Board or the Committee appointed by the Board in accordance with Section 3.5.

2.2 “Award” means any right granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Award (Restricted Stock and Restricted Stock Units), a Performance Award and a Stock Appreciation Right.

2.3 “Award Agreement” means a written agreement between the Company and a holder of an Award evidencing the terms and conditions of an individual Award grant. Each Award Agreement will be subject to the terms and conditions of the Plan and need not be identical.

2.4 “Beneficial Owner” has the meaning assigned to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular Person, that Person will be deemed to have beneficial ownership of all securities that that Person has the right to acquire by conversion or exercise of other securities, whether the right is currently exercisable or is exercisable only after the passage of time, the satisfaction of performance goals or both.

2.5 “Board” means the Board of Directors of the Company.

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2.6 “Cause” means, (a) with respect to any Participant who is a party to an employment or service agreement or employment policy manual with the Company or its Related Companies and which agreement or policy manual provides for a definition of Cause, as defined therein; and (b) with respect to all other Participants, (i) the commission of, or plea of guilty or no contest to, a felony or a crime involving moral turpitude or the commission of any other act involving willful malfeasance or material fiduciary breach with respect to the Company or a Related Company; (ii) conduct tending to bring the Company into substantial public disgrace or disrepute; (iii) gross negligence or willful misconduct with respect to the Company or a Related Company; or (iv) material violation of state or federal securities laws. The Administrator, in its absolute discretion, shall determine the effect of all matters and questions relating to whether a Participant has been discharged for Cause.

2.7 “Change in Control” means:

(a) The direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company to any Person;

(b) [Intentionally omitted]

(c) The adoption of a plan relating to the liquidation or dissolution of the Company; or

(d) The consummation of any transaction (including, without limitation, any merger, consolidation, sale of stock or exchange) resulting in any Person becoming the Beneficial Owner directly or indirectly, of more than 50% of the combined voting power (which voting power shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote, but not assuming the exercise of any warrant or right to subscribe to or purchase those shares) of the continuing or Surviving Entity’s securities outstanding immediately after such transaction, or the consummation of any transaction in which more than 50% of the combined voting power of the Surviving Entity immediately after such transaction is owned, directly or indirectly, by persons who were not stockholders of the Company immediately prior to such transaction; provided, however, that in making the determination of ownership by the stockholders of the Company, immediately after the reorganization, equity securities which persons own immediately before the reorganization as stockholders of another party to the transaction shall be disregarded.

The foregoing notwithstanding, a transaction will not constitute a Change in Control if (x) its sole purpose is to change the state of the Company’s incorporation or to create a holding company that will be owned in substantially the same proportions by the Persons who held the Company’s securities immediately before the transaction; (y) it constitutes an initial public offering or a secondary public offering that results in any security of the Company being listed (or approved for listing) on any securities exchange or designated (or approved for designation) as a security on an interdealer quotation system; or (z) solely because 50% or more of the total voting power of the Company’s then outstanding securities is acquired by (1) a trustee or other fiduciary holding securities under one or more employee benefit Plans of the Company or any Related Company, or (2) any company that, immediately before the acquisition, is owned directly or indirectly by the stockholders of the Company in substantially the same proportion as their ownership of stock in the Company immediately before the acquisition.

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2.8 “Code” means the Internal Revenue Code of 1986, as amended.

2.9 “Committee” means a committee of one or more members of the Board appointed by the Board to administer the Plan in accordance with Section 3.5.

2.10 “Common Stock” means the common stock of the Company.

2.11 “Company” means Gulfport Energy Corporation, a Delaware corporation.

2.12 “Consultant” means any natural person who provides bona fide consulting or advisory services to the Company or a Related Company pursuant to a written agreement, so long as those services are not in connection with the offer or sale of securities in a capital raising transaction, and do not directly or indirectly promote or maintain a market for the Company’s securities.

2.13 “Continuous Service” means that the Participant’s service with the Company or a Related Company, whether as an Employee, Director or Consultant, is not interrupted or terminated. The Participant’s Continuous Service will not be deemed to have terminated merely because of a change in the capacity in which the Participant renders service to the Company or a Related Company as an Employee, Director or Consultant or a change in the entity for which the Participant renders service, so long as there is no interruption or termination of the Participant’s Continuous Service. For example, a change in status from an Employee of the Company to a Consultant of a Related Company or a Director will not constitute an interruption of Continuous Service. The Administrator or its delegate, in its sole discretion, may determine whether Continuous Service will be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal or family leave of absence.

2.14 “Date of Grant” means, if the key terms and conditions of the Award are communicated to the Participant within a reasonable period following the Administrator’s action, the date on which the Administrator adopts a resolution or takes other appropriate action, expressly granting an Award to a Participant that specifies the key terms and conditions of the Award and from which the Participant begins to benefit from or be adversely affected by subsequent changes in the Fair Market Value of the Common Stock or, if a subsequent date is set forth in the resolution or determined by the Administrator as the Date of Grant, then the date set forth in the resolution. In any situation where the terms of the Award are subject to negotiation with the Participant, the Date of Grant will not be earlier than the date the key terms and conditions of the Award are communicated to the Participant.

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2.15 “Detrimental Activity” means: (a) violation of the terms of any agreement with the Company concerning non-disclosure, confidentiality, intellectual property, privacy or exclusivity; (b) disclosure of the Company’s confidential information to anyone outside the Company, without prior written authorization from the Company or in conflict with the interests of the Company, whether the confidential information was acquired or disclosed by the Participant during or after employment by the Company; (c) failure or refusal to disclose promptly or assign to the Company all right, title, and interest in any invention, work product or idea, patentable or not, made or conceived by the Participant during employment by the Company, relating in any manner to the interests of the Company or, the failure or refusal to do anything reasonably necessary to enable the Company to secure a patent where appropriate in the United States and in other countries; (d) activity that is discovered to be grounds for or results in termination of the Participant’s employment for Cause; (e) any breach of a restrictive covenant contained in any employment or service agreement, Award Agreement or other agreement between the Participant and the Company, during any period for which a restrictive covenant prohibiting Detrimental Activity or other similar conduct or act, is applicable to the Participant during or after employment by the Company; (f) any attempt directly or indirectly to induce any Employee of the Company to be employed or perform services or acts in conflict with the interests of the Company; (g) any attempt, in conflict with the interests of the Company, directly or indirectly, to solicit the trade or business of any current or prospective customer, client, supplier or partner of the Company; (h) the conviction of, or guilty plea entered by, the Participant for any felony or a crime involving moral turpitude whether or not connected with the Company; or (i) the commission of any other act involving willful malfeasance or material fiduciary breach with respect to the Company.

2.16 “Director” means a member of the Board.

2.17 “Disability” means the Participant’s inability to substantially perform his or her duties to the Company or any Related Company by reason of a medically determinable physical or mental impairment that is expected to last for a period of six months or longer or to result in death; except that for purposes of determining the term of an Incentive Stock Option pursuant to Section 6.9 hereof, the term Disability has the meaning ascribed to it under Code Section 22(e)(3). The Administrator will determine whether an individual has a Disability under procedures established by the Administrator. Except in situations where the Administrator is determining Disability within the meaning of Code Section 22(e)(3) for purposes of the term of an Incentive Stock Option pursuant to Section 6.9 hereof, the Administrator may rely on any determination that a Participant is disabled for purposes of benefits under any long-term disability plan maintained by the Company or any Related Company in which a Participant participates.

2.18 “Effective Date” means May 17, 2021, the date the Board adopted the Plan.

2.19 “Employee” means any person employed by the Company or a Related Company. Mere service as a Director or payment of a director’s fee by the Company or a Related Company is not sufficient to constitute “employment” by the Company or a Related Company.

2.20 “Established Securities Market” means a national securities exchange that is registered under Article 6 of the Exchange Act; a foreign national securities exchange that is officially recognized, sanctioned or supervised by governmental authority; and any over-the-counter market that is reflected by the existence of an interdealer quotation system.

2.21 “Exchange Act” means the Securities Exchange Act of 1934, as amended.

2.22 “Exercise Price” has the meaning set forth in Section 6.2 of the Plan.

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2.23 “Fair Market Value” means, as of any date, the value of the Common Stock determined using a method consistent with the definition of fair market value found in Treasury Regulation section 1.409A-1(b)(5)(iv) and any regulatory interpretations issued thereunder, and will be determined using a method that is a presumptively reasonable valuation method thereunder as determined below.

(a) On any date on which shares of Common Stock are readily tradable on an Established Securities Market, if the Common Stock is admitted to trading on an exchange or market for which closing prices are reported on any date, Fair Market Value may be determined based on the last sale before or the first sale after the Date of Grant of an Award; the closing price on the trading day before the Date of Grant of an Award or on the Date of Grant; or may be based on an average selling price during a specified period that is within 30 days before or 30 days after the Date of Grant of an Award, provided that the commitment to grant an Award based on that valuation method must be irrevocable before the beginning of the specified period, and the valuation method must be used consistently for grants of Awards under the same and substantially similar programs.

(b) If the Common Stock is readily tradable on an Established Securities Market but closing prices are not reported, Fair Market Value may be determined based upon the average of the highest bid and lowest asked prices of the Common Stock reported on the trading day before the Date of Grant of an Award or on the Date of Grant; or may be based upon an average of the highest bid and lowest asked prices during a specified period that is within 30 days before or 30 days after the Date of Grant of an Award, provided that the commitment to grant an Award based on that valuation method must be irrevocable before the beginning of the specified period, and the valuation method must be used consistently for grants of Awards under the same and substantially similar programs.

(c) If the Common Stock is not readily tradable on an Established Securities Market, the Administrator shall determine the Fair Market Value through the reasonable application of a reasonable valuation method based on the facts and circumstances as of the valuation date, including, at the election of the Administrator, by an independent appraisal that meets the requirements of Code Section 401(a)(28)(C) and the regulations issued thereunder as of a date that is no more than 12 months before the relevant transaction to which the valuation is applied (for example, an Option’s Date of Grant), and that determination will be conclusive and binding on all Persons.

2.24 “Free Standing SAR” has the meaning set forth in Section 7.3(a).

2.25 “Incentive Stock Option” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations issued thereunder.

2.26 “Insider” means an individual subject to Section 16 of the Exchange Act and includes an Officer, a Director or any other person who is directly or indirectly the Beneficial Owner of more than 10% of any class of any equity security of the Company (other than an exempted security) that is registered pursuant to Section 12 of the Exchange Act.

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2.27 “Market Standoff” has the meaning set forth in Article 14.

2.28 “Non-Employee Director” means a Director who is a “non-employee director” within the meaning of Rule 16b-3.

2.29 “Nonstatutory Stock Option” means an Option not intended to qualify as an Incentive Stock Option.

2.30 “Officer” means (a) before the first date on which any security of the Company is registered under Section 12 of the Exchange Act, any person designated by the Company as an officer; and (b) on and after the first date on which any security of the Company is registered under Section 12 of the Exchange Act, a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations issued thereunder.

2.31 “Option” means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to the Plan.

2.32 “Option Agreement” means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an individual Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan and need not be identical.

2.33 “Optionholder” means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

2.34 “Participant” means a person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award.

2.35 “Performance Award” means an Award granted pursuant to Section 7.2.

2.36 “Permitted Transferee” means (a) any spouse, parents, siblings (by blood, marriage or adoption) or lineal descendants (by blood, marriage or adoption) of a Participant; (b) any trust or other similar entity for the benefit of a Participant or the Participant’s spouse, parents, siblings or lineal descendants; except and on condition that any transfer made by a Participant to a Permitted Transferee may only be made if the Permitted Transferee, prior to the time of transfer of stock, agrees in writing to be bound by the terms of the Plan and provides written notice to the Company of the transfer.

2.37 “Person” means an individual, partnership, limited liability company, corporation, association, joint stock company, trust, joint venture, labor organization, unincorporated organization, governmental entity or political subdivision thereof or any other entity, and includes a syndicate or group as those terms are used in Section 13(d)(3) or 14(d)(2) of the Exchange Act.

2.38 “Plan” means this Gulfport Energy Corporation 2021 Stock Incentive Plan.

2.39 “Prohibited Personal Loan” means any direct or indirect extension of credit or arrangement of an extension of credit to a Director or executive officer (or equivalent thereof) by the Company or a Related Company that is prohibited by Section 402(a) of the Sarbanes-Oxley Act (codified as Section 13(k) of the Exchange Act).

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2.40 “Related Company” means any parent corporation or subsidiary corporation of the Company, whether now or hereafter existing, as those terms are defined in Code Sections 424(e) and (f), respectively.

2.41 “Restricted Award” means any Award granted pursuant to Section 7.1, including Restricted Stock and Restricted Stock Units.

2.42 “Restricted Period” has the meaning set forth in Section 7.1.

2.43 “Restricted Stock” has the meaning set forth in Section 7.1.

2.44 “Restricted Stock Units” has the meaning set forth in Section 7.1.

2.45 “Rule 16b-3” means Rule 16b-3 issued under the Exchange Act or any successor to Rule 16b-3.

2.46 “Securities Act” means the Securities Act of 1933, as amended.

2.47 “Stock Appreciation Right” or “**SAR**” means the right pursuant to an Award granted under Section 7.3 to receive an amount equal to the excess, if any, of (a) the Fair Market Value, as of the date the Stock Appreciation Right or portion thereof is surrendered, of the shares of Common Stock covered by the right or portion thereof, over (b) the aggregate Strike Price of the right or portion thereof.

2.48 “Stock for Stock Exchange” has the meaning set forth in Section 6.3.

2.49 “Strike Price” means the threshold value per share of Common Stock, the excess over which will be payable upon exercise of a Stock Appreciation Right, as determined by the Administrator pursuant to Section 7.3(d) and set forth in the Award Agreement for a Stock Appreciation Right.

2.50 “Surviving Entity” means the Company if immediately following any merger, consolidation or similar transaction, the holders of outstanding voting securities of the Company immediately prior to the merger or consolidation own equity securities possessing more than 50% of the voting power of the entity existing following the merger, consolidation or similar transaction. In all other cases, the other entity to the transaction and not the Company will be the Surviving Entity. In making the determination of ownership by the stockholders of an entity immediately after a merger, consolidation or similar transaction, equity securities that the stockholders owned immediately before the merger, consolidation or similar transaction as stockholders of another party to the transaction will be disregarded. Further, outstanding voting securities of an entity will be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time whether or not contingent on the satisfaction of performance goals) into shares entitled to vote.

2.51 “Tandem SAR” has the meaning set forth in Section 7.3(a).

2.52 “Ten Percent Stockholder” means a person who owns (or is deemed to own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any of its Related Companies.

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ARTICLE 3 ADMINISTRATION

3.1 Administration by Board. The Board shall administer the Plan unless and until the Board delegates administration to a Committee, as provided in Section 3.5.

3.2 Authority of Administrator. The Administrator will have the power and authority to select Participants and grant Awards pursuant to the terms of the Plan.

3.3 Specific Authority. In particular, the Administrator will have the authority to:

- (a) construe and interpret the Plan and apply its provisions;
- (b) promulgate, amend, and rescind rules and regulations relating to the administration of the Plan;
- (c) authorize any person to execute, on behalf of the Company, any instrument required to carry out the purposes of the Plan;
- (d) delegate its authority to one or more Officers of the Company with respect to Awards that do not involve Insiders, which delegation shall be pursuant to a resolution that specifies the total number of shares of Common Stock that may be subject to Awards by the Officer and the Officer may not make an Award to himself or herself;
- (e) determine when Awards are to be granted under the Plan;
- (f) select, subject to the limitations set forth in the Plan, those Participants to whom Awards will be granted;
- (g) determine the number of shares of Common Stock to be made subject to each Award;
- (h) determine whether each Option is to be an Incentive Stock Option or a Nonstatutory Stock Option;
- (i) prescribe the terms and conditions of each Award, including, without limitation, the Strike Price or Exercise Price and medium of payment, vesting provisions, and to specify the provisions of the Award Agreement relating to the grant or sale;
- (j) subject to the restrictions applicable under Section 12.4, amend any outstanding Awards, including for the purpose of modifying the time or manner of vesting, the purchase price, Exercise Price or Strike Price or the term of any outstanding Award; except that if any such amendment impairs a Participant's rights or increases a Participant's obligations under his or her Award, the amendment will also be subject to the Participant's consent (for the avoidance of doubt, a cancellation of an Award where the Participant receives a payment equal in value to the Fair Market Value of the vested Award or, in the case of vested Options, the difference between the Fair Market Value of the Common Stock subject to an Option and the Exercise Price, if any, will not constitute an impairment of the Participant's rights that requires consent);

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(k) determine the duration and purpose of leaves of absences that may be granted to a Participant without constituting termination of their Continuous Service for purposes of the Plan, which periods will be no shorter than the periods generally applicable to Employees under the Company's employment policies or as required under applicable law;

(l) make decisions with respect to outstanding Awards that may become necessary upon a Change in Control or an event that triggers capital adjustments; and

(m) exercise discretion to make any and all other determinations that it may determine to be necessary or advisable for administration of the Plan.

3.4 Decisions Final. All decisions made by the Administrator pursuant to the provisions of the Plan will be final and binding on the Company and the Participants, unless such decisions are determined by a court having jurisdiction to be arbitrary and capricious.

3.5 The Committee.

(a) General. The Board may delegate administration of the Plan to a Committee or Committees of one or more members of the Board, and the term "Committee" will apply to any person or persons to whom that authority has been delegated. If administration is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in the Plan to the Board or the Administrator will thereafter be to the Committee or subcommittee), subject, however, to such resolutions, consistent with the provisions of the Plan, as the Board may adopt. The Board may abolish the Committee at any time and revert in the Board the administration of the Plan. The members of the Committee will be appointed by and serve at the pleasure of the Board. The Board may increase or decrease the size of the Committee, add additional members to, remove members (with or without cause) from, appoint new members in substitution therefor, and fill vacancies, however caused, in the Committee. The Committee shall act pursuant to a vote of the majority of its members or, in the case of a Committee comprised of only two members, the unanimous consent of its members, whether present or not, or by the written consent of the majority of its members and shall keep minutes of all of its meetings. Subject to the limitations prescribed by the Plan and the Board, the Committee shall establish and follow such rules and regulations for the conduct of its business as it may determine to be advisable.

(b) Committee Composition when Common Stock is Registered. Whenever the Common Stock is required to be registered under Section 12 of the Exchange Act, in the discretion of the Board, a Committee may consist solely of two or more Non-Employee Directors. The Board will have discretion to determine whether or not it intends to comply with the exemption requirements of Rule 16b-3; provided, that if the Board intends to satisfy those exemption requirements, with respect to Awards to any Officer or Director, the Committee must at all times consist solely of two or more Non-Employee Directors or the full Board must approve such Awards. Within the scope of that authority, the Board or the Committee may delegate to a committee of one or more members of the Board who are not Non-Employee Directors the authority to grant Awards to eligible persons who are not then Insiders. Nothing in this Plan is intended to create an inference that an Award is not validly granted under the Plan in the event Awards are granted under the Plan by a committee of the Board that does not at all times consist solely of two or more Non-Employee Directors.

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3.6 Indemnification. In addition to such other rights of indemnification as they may have as Directors or members of the Committee, and to the extent allowed by applicable law, the Company shall indemnify the Administrator against the reasonable expenses, including attorney's fees, actually incurred in connection with any action, suit or proceeding or in connection with any appeal therein, to which the Administrator may be party by reason of any action taken or failure to act under or in connection with the Plan or any Award granted under the Plan, and against all amounts paid by the Administrator in settlement thereof (subject, however, to the Company's approval of the settlement, which approval the Company shall not unreasonably withhold) or paid by the Administrator in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it is adjudged in the action, suit or proceeding that the Administrator did not act in good faith and in a manner that the person reasonably believed to be in the best interests of the Company, and in the case of a criminal proceeding, had no reason to believe that the conduct complained of was lawful. Notwithstanding the foregoing, it is a condition precedent to the Company's obligations in this Section 3.6 that within 60 days after institution of any such action, suit or proceeding, the Administrator or Committee member shall, in writing, offer the Company the opportunity at its own expense to handle and defend the action, suit or proceeding.

SHARES SUBJECT TO THE PLAN

4.1 Share Reserve. Subject to adjustment pursuant to Section 11.1, the maximum aggregate number of shares of Common Stock that may be issued upon exercise of all Awards under the Plan is 2,828,123 shares, all of which may be used for Incentive Stock Options or any other Awards.

4.2 Reversion of Shares to the Share Reserve. If any Award for any reason is forfeited, cancelled, expires or otherwise terminates without exercise or settlement, in whole or in part, the shares of Common Stock not acquired under the Award will revert to and again become available for issuance under the Plan. If the Company reacquires shares of Common Stock issued under the Plan pursuant to the terms of any forfeiture provision, those shares will again be available for purposes of the Plan. Each share of Common Stock subject to any Award granted hereunder will be counted against the share reserve set forth in Section 4.1 on the basis of one share for every share subject thereto. Notwithstanding anything in the Plan to the contrary, shares of Common Stock used to pay the required Exercise Price or shares not issued in connection with settlement of an Option or SAR, will not be available again for other Awards under the Plan. Awards, or portions thereof, that are settled in cash and not in shares of Common Stock or withheld to satisfy tax obligations of the Participant will not be counted against the foregoing maximum share limitations.

4.3 Source of Shares. The shares that may be issued pursuant to Awards will consist of shares of the Company's authorized but unissued Common Stock and any shares of the Common Stock held by the Company as treasury shares.

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ARTICLE 5 ELIGIBILITY

5.1 Eligibility for Specific Awards. Incentive Stock Options may be granted only to Employees. Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants.

5.2 Ten Percent Stockholders. An Incentive Stock Option granted to a Ten Percent Stockholder must have an Exercise Price no less than 110% of the Fair Market Value of the Common Stock at the Date of Grant and must not be exercisable after the expiration of five years from the Date of Grant.

5.3 Directors.

(a) Each Director of the Company who is not an Employee will be eligible to receive discretionary grants of Awards under the Plan. If the Board or the compensation committee of the Board separately has adopted or in the future adopts a compensation policy covering some or all Directors that provides for a predetermined formula grant that specifies the type of Award, the timing of the Date of Grant and the number of shares to be awarded under the terms of the Plan, that formula grant will be incorporated by reference and will be administered as if those terms were provided under the terms of the Plan without any requirement that the Administrator separately take action to determine the terms of those Awards.

(b) Notwithstanding the foregoing, the aggregate dollar value of Awards (calculated as the Date of Grant fair value of such Awards for financial reporting purposes) granted under this Plan and cash compensation granted under this Plan or otherwise paid by the Company during any calendar year to any one Director who is not an Employee at any time during the calendar year in his or her capacity as a Director shall not exceed \$750,000, rounded up to the nearest full Share; provided, that for any calendar year in which a Director who is not an Employee at any time during the calendar year (i) first commences service on the Board, (ii) serves on a special committee of the Board, or (iii) serves as lead director or chair of the Board, such limit shall be \$1,000,000. The foregoing limit shall not count any Tandem SARs (as defined in Section 7.3(a)).

ARTICLE 6 OPTION PROVISIONS

Each Option will be in such form and will contain such terms and conditions as the Administrator deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. Notwithstanding the foregoing, the Company will have no liability to any Participant or any other person if an Option designated as an Incentive Stock Option fails to qualify as an Incentive Stock Option at any time. The provisions of separate Options need not be identical, but each Option will include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

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6.1 Term. Subject to the provisions of Section 5.2 regarding Ten Percent Stockholders, no Option will be exercisable after the expiration of 10 years from the Date of Grant.

6.2 Exercise Price. The exercise price per share of Common Stock for each Option (the "Exercise Price") will not be less than 100% of the Fair Market Value per share on the Date of Grant; except that in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, the Exercise Price will be no less than 110% of the Fair Market Value per share of Common Stock on the Date of Grant. Notwithstanding the foregoing, an Option granted pursuant to an assumption or substitution for another stock option in a manner satisfying the provisions of Section 424(a) of the Code, as if the Option was a statutory stock option, may be granted with an Exercise Price lower than the Fair Market Value per share on the Date of Grant.

6.3 Consideration. The Optionholder shall pay the Exercise Price of Common Stock acquired pursuant to an Option, to the extent permitted by applicable statutes and regulations, either (a) in cash or by certified or bank check at the time the Option is exercised, or (b) in the Administrator's discretion and upon such terms as the Administrator approves: (i) by delivery to the Company of other Common Stock, duly endorsed for transfer to the Company, with a Fair Market Value on the date of delivery equal to the Exercise Price (or portion thereof) due for the number of shares being acquired or by means of attestation whereby the Participant identifies for delivery specific shares of Common Stock held by the Participant that have a Fair Market Value on the date of attestation equal to the Exercise Price (or portion thereof) and receives a number of shares of Common Stock equal to the difference between the number of shares thereby purchased and the number of identified attestation shares of Common Stock (a "Stock for Stock Exchange"); (ii) during any period for which the Common Stock is readily tradable on an Established Securities Market, by a copy of instructions to a broker directing the broker to sell the Common Stock for which the Option is exercised and to remit to the Company the aggregate Exercise Price of the Option (a "Cashless Exercise"); (iii) subject to the Administrator's discretion and on such terms as the Administrator may approve, by notice of exercise including a statement directing the Company to retain the number of shares of Common Stock from any transfer to the Optionholder that otherwise would have been delivered by the Company on exercise of the Option having a Fair Market Value equal to all or part of the exercise price of the Option exercise, in which case the Option will be deemed surrendered and cancelled with respect to the number of shares retained by the Company; or (iv) in any other form of legal consideration that may be acceptable to the Administrator, including without limitation with a full-recourse promissory note; except that, if applicable law requires, the Optionholder shall pay the par value (if any) of Common Stock, if newly issued, in cash or cash equivalents. The interest rate payable under the terms of the promissory note may not be less than the minimum rate (if any) required to avoid the imputation of additional interest under the Code. Subject to the foregoing, the Administrator (in its sole discretion) shall specify the term, interest rate, amortization requirements (if any) and other provisions of the note.

Unless the Administrator determines otherwise, the holder shall pledge to the Company shares of Common Stock having a Fair Market Value at least equal to the principal amount of the loan as security for payment of the unpaid balance of the loan, which pledge must be evidenced by a pledge agreement, the terms of which the Administrator shall determine, in its discretion; except that each loan must comply with all applicable laws, regulations and rules of the Board of Governors of the Federal Reserve System and any other governmental agency having jurisdiction. Unless the Administrator determines otherwise, the purchase price of Common Stock acquired pursuant to an Option that is paid by delivery (or attestation) to the Company of other shares of Common Stock acquired, directly or indirectly from the Company, will be paid only by shares of Common Stock that satisfy any requirements necessary to avoid liability award accounting treatment. Notwithstanding the foregoing, during any period for which the Company has any class of its securities listed on a national securities exchange in the United States, has securities registered under Section 12 of the Exchange Act, is required to file reports under Section 13(a) or 15(d) of the Exchange Act or has a registration statement pending under the Securities Act, an exercise with a promissory note or other transaction by an Optionholder that involves or may involve a Prohibited Personal Loan is prohibited with respect to any Option under the Plan. Unless otherwise provided in the terms of an Option Agreement, payment of the Exercise Price by a Participant who is an Insider in the form of a Stock for Stock Exchange is subject to pre-approval by the Administrator, in its sole discretion. The Administrator shall document any such pre-approval in the case of a Participant who is an Officer or Director in a manner that complies with the specificity requirements of Rule 16b-3, including the name of the Participant involved in the transaction, the nature of the transaction, the number of shares to be acquired or disposed of by the Participant and the material terms of the Options involved in the transaction.

6.4 Transferability of an Incentive Stock Option. An Incentive Stock Option will not be transferable except by will or by the laws of descent and distribution and will be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, upon the death of the Optionholder, will thereafter be entitled to exercise the Option.

6.5 Transferability of a Nonstatutory Stock Option. A Nonstatutory Stock Option may, in the sole discretion of the Administrator, be transferable to a Permitted Transferee upon written approval by the Administrator to the extent provided in the Option Agreement. If the Nonstatutory Stock Option does not provide for transferability, then the Nonstatutory Stock Option will not be transferable except by will or by the laws of descent and distribution and will be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, upon the death of the Optionholder, will thereafter be entitled to exercise the Option.

6.6 Vesting Generally. The Option may, but need not, vest and therefore become exercisable in periodic installments that may, but need not, be equal. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Administrator may deem appropriate. The vesting provisions of individual Options may vary. The Administrator may, but will not be required to, provide that no Option may be exercised for a fraction of a share of Common Stock. The Administrator may, but will not be required to, provide for an acceleration of vesting and exercisability in the terms of any Option Agreement upon the occurrence of a specified event.

6.7 Termination of Continuous Service. Unless otherwise provided in an Option Agreement or in an employment or service agreement the terms of which have been approved by the Administrator, if an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability or termination by the Company for Cause), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise the Option as of the date of termination) but only within the period ending on the earlier of (a) the date three months following the termination of the Optionholder's Continuous Service, or (b) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within such time period or the time period specified in the Option Agreement, the Option will terminate. Unless otherwise provided in an Option Agreement or in an employment or service agreement the terms of which have been approved by the Administrator, or as otherwise provided in Sections 6.8, 6.9 and 6.10, outstanding Options that are not exercisable at the time an Optionholder's Continuous Service terminates for any reason other than for Cause (including an Optionholder's death or Disability) will be forfeited and expire at the close of business on the date of termination. If the Optionholder's Continuous Service terminates for Cause, all outstanding Options (whether or not vested) will be forfeited and expire as of the beginning of business on the date of termination for Cause.

6.8 Extension of Termination Date. An Option Agreement may also provide that if the exercise of the Option following the termination of the Optionholder's Continuous Service for any reason (other than upon the Optionholder's death or Disability or termination by the Company for Cause) would violate any applicable federal, state or local law, the Option will terminate on the earlier of (a) the expiration of the term of the Option in accordance with Section 6.1, or (b) the date that is 30 days after the exercise of the Option would no longer violate any applicable federal, state or local law.

6.9 Disability of Optionholder. Unless otherwise provided in an Option Agreement or in an employment or service agreement the terms of which have been approved by the Administrator, if an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise the Option as of the date of termination), but only within the period ending on the earlier of (a) the date 12 months following termination, or (b) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified in this Section 6.9, the Option will terminate.

6.10 Death of Optionholder. Unless otherwise provided in an Option Agreement or in an employment or service agreement the terms of which have been approved by the Administrator, if an Optionholder's Continuous Service terminates as a result of the Optionholder's death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise the Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Optionholder's death, but only within the period ending on the earlier of (a) the date 12 months following the date of death, or (b) the expiration of the term of the Option as set forth in the Option Agreement. If, after death, the Option is not exercised within the time specified this Section 6.10, the Option will terminate.

6.11 Incentive Stock Option \$100,000 Limitation. To the extent that the aggregate Fair Market Value of Common Stock on the Date of Grant with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and its Related Companies) exceeds \$100,000, the Options or portions thereof which exceed that limit (according to the order in which they were granted) will be treated as Nonstatutory Stock Options.

6.12 Early Exercise. The Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. In that case, the shares of Common Stock acquired on exercise will be subject to the vesting schedule that otherwise would apply to determine the exercisability of the Option. Any unvested shares of Common Stock so purchased may be subject to any other restriction the Administrator determines to be appropriate.

6.13 Transfer, Approved Leave of Absence . For purposes of Incentive Stock Options, no termination of employment by an Employee will be deemed to result from either (a) a transfer to the employment of the Company from a Related Company, from the Company to a Related Company or from one Related Company to another; or (b) an approved leave of absence for military service or sickness or for any other purpose approved by the Company, if the period of leave does not exceed three months or, if longer, the Employee's right to re-employment is guaranteed either by a statute or by contract.

6.14 Disqualifying Dispositions. Any Participant who makes a "disposition" (as defined in Section 424 of the Code) of all or any portion of shares of Common Stock acquired upon exercise of an Incentive Stock Option within two years from the Date of Grant of the Incentive Stock Option or within one year after the issuance of the shares of Common Stock acquired upon exercise of the Incentive Stock Option will be required to immediately advise the Company in writing as to the occurrence of the sale and the price realized upon the sale of those shares of Common Stock.

ARTICLE 7 PROVISIONS OF AWARDS OTHER THAN OPTIONS

7.1 Restricted Awards. A Restricted Award is an Award of actual shares of Common Stock ("**Restricted Stock**") or hypothetical Common Stock units ("**Restricted Stock Units**") having a value equal to the Fair Market Value of an identical number of shares of Common Stock, which may, but need not, provide that the Restricted Award may not be sold, assigned, transferred or otherwise disposed of, pledged or hypothecated as collateral for a loan or as security for the performance of any obligation or for any other purpose for the period (the "**Restricted Period**") determined by the Administrator. Each Restricted Award will be in such form and will contain terms, conditions, and Restricted Periods as the Administrator deems appropriate, including the treatment of dividends or dividend equivalents, as the case may be. The Administrator in its discretion may provide for the acceleration of the end of the Restricted Period in the terms of any Restricted Award, at any time, including in the event of a Change in Control. The terms and conditions of the Restricted Award may change from time to time, and the terms and conditions of separate Restricted Awards need not be identical, but each Restricted Award must include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(a) **Purchase Price.** The purchase price of Restricted Awards, if any, will be determined by the Administrator, and may be stated as cash, property or prior or future services. Shares of Common Stock acquired in connection with any Restricted Award may be issued for such consideration, having a value not less than the par value thereof, as determined by the Administrator.

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(b) **Consideration.** The Participant shall pay the consideration for Common Stock acquired pursuant to the Restricted Award either: (i) in cash at the time of purchase; or (ii) in any other form of legal consideration that may be acceptable to the Administrator in its discretion including, without limitation, a recourse promissory note, property, a Stock for Stock Exchange or prior or future services that the Administrator determines have a value at least equal to the Fair Market Value of the Common Stock. Notwithstanding the foregoing, during any period for which the Company has any class of its securities listed on a national securities exchange in the United States, has securities registered under Section 12 of the Exchange Act, is required to file reports under Section 13(a) or 15(d) of the Exchange Act or has a registration statement pending under the Securities Act, payment with a promissory note or other transaction by a Participant that involves or may involve a Prohibited Personal Loan is prohibited with respect to any Restricted Award under the Plan.

(c) **Vesting.** The Restricted Award, and any shares of Common Stock acquired under the Restricted Award, may, but need not, be subject to forfeiture where the consideration was in the form of services, in accordance with a vesting schedule to be determined by the Administrator. The Administrator in its discretion may provide for an acceleration of vesting in the terms of any Restricted Award, at any time, including upon a Change in Control. The Administrator in its discretion may grant a Restricted Award that is, in whole or in part, vested upon grant and not subject to a Restricted Period.

(d) **Termination of Participant's Continuous Service.** Unless otherwise provided in a Restricted Award or in an employment or service agreement the terms of which have been approved by the Administrator, if a Participant's Continuous Service terminates for any reason, the Participant shall forfeit the unvested portion of a Restricted Award acquired in consideration of services, and any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination under the terms of the Restricted Award will be forfeited and the Participant will have no rights with respect to the Award.

(e) **Transferability.** Rights to acquire shares of Common Stock under the Restricted Award will be transferable by the Participant only upon the terms and conditions set forth in the Award Agreement, as the Administrator shall determine in its discretion, so long as Common Stock awarded under the Restricted Award remains subject to the terms of the Award Agreement.

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(f) **Concurrent Tax Payment.** The Administrator, in its sole discretion, may (but will not be required to) provide for payment of a concurrent cash award in an amount equal, in whole or in part, to the estimated after-tax amount required to satisfy applicable federal, state or local tax withholding obligations arising from the receipt and deemed vesting of Restricted Stock for which an election under Code Section 83(b) may be required.

(g) **Lapse of Restrictions.** Upon the expiration or termination of the Restricted Period and the satisfaction of any other conditions prescribed by the Administrator (including, without limitation, the Participant's satisfaction of applicable tax withholding obligations attributable to the Award), the restrictions applicable to the Restricted Award will lapse and a stock certificate for the number of shares of Common Stock with respect to which the restrictions have lapsed will be delivered, free of any restrictions except those that may be imposed by law, the terms of the Plan or the terms of a Restricted Award, to the Participant or the Participant's beneficiary or estate, as the case may be, unless the Restricted Award is subject to a deferral condition that complies with Section 409A of the Code and the regulations thereunder as may be allowed or required by the Administrator in its sole discretion. The Company will not be required to deliver any fractional share of Common Stock but shall pay, in lieu thereof, the Fair Market Value of the fractional share in cash to the Participant or the Participant's beneficiary or estate, as the case may be. With respect only to Restricted Stock Units, unless otherwise subject to a deferral condition that complies with Section 409A of the Code, the Common Stock certificate will be issued and delivered and the Participant will be entitled to the beneficial ownership rights of the Common Stock not later than (i) the date that is 2 1/2 months after the end of the Participant's taxable year (or the end of the Company's taxable year, if later) for which the Restricted Period ends and the Restricted Stock Unit is no longer subject to a substantial risk of forfeiture, or (ii) such earlier date as may be necessary to avoid application of Section 409A of the Code to the Award.

(h) **Rights as a Stockholder.** Prior to the expiration or termination of the Restricted Period, a Participant who receives an Award of Restricted Stock will have beneficial ownership rights as a stockholder (voting and dividend rights) only to the extent specified in the Award Agreement. The Award Agreement may specify the extent, if any, of Participant's voting and dividend rights under the Restricted Stock prior to the expiration or termination of the Restricted Period, including whether dividends attributable to unvested shares of Restricted Stock will be paid currently or withheld until the shares vest. A Participant receiving a Restricted Award that is denominated in hypothetical Restricted Stock Units will have the rights of a stockholder only as to shares of Common Stock actually received by the Participant.

7.2 Performance Awards.

(a) **Nature of Performance Awards.** A Performance Award is an Award entitling the recipient to vest in or acquire shares of Common Stock or hypothetical Common Stock units having a value equal to the Fair Market Value of an identical number of shares of Common Stock that will be settled in the form of shares of Common Stock upon the attainment of specified performance goals. The Administrator may make Performance Awards independent of or in connection with the granting of any other Award under the Plan. Performance Awards may be granted under the Plan to any Participant, including those who qualify for awards under other performance plans of the Company. The Administrator in its sole discretion will determine whether and to whom Performance Awards will be made, the performance goals applicable under each Award, the period or periods during which performance is to be measured, and all other limitations and conditions applicable to Performance Awards. The Administrator, in its discretion, may rely on the performance goals and other standards applicable to other performance plans of the Company in setting the standards for Performance Awards under the Plan.

(b) **Performance Goals.**

(i) Performance goals will be established by the Administrator and may be measured over a performance period on a periodic, annual, cumulative or average basis, may be based on growth rate or compound annual growth rate, and may be established on a corporate-wide basis or with respect to one or more operating units, divisions, subsidiaries, acquired businesses, minority investments, partnerships or joint ventures. More than one performance goal may be incorporated in a performance objective, in which case achievement with respect to each performance goal may be assessed individually or in combination with each other. The Administrator may, in connection with the establishment of performance goals for a performance period, establish a matrix setting forth the relationship between performance on two or more performance goals and the amount of the Performance Award payable for that performance period. The level or levels of performance specified with respect to a performance goal may be established in absolute terms, as objectives relative to performance in prior periods, as an objective compared to the performance of one or more comparable companies or an index covering multiple companies or otherwise as the Administrator may determine. The Administrator also may establish certain objective specified adjustments at the time the performance goals are established.

(ii) Performance goals may be objective or subjective, and may differ for Performance Awards granted to any one Participant or to different Participants. These performance goals are not required to be based on increases in a specific business criterion, but may be based on maintaining the status quo or limiting economic losses. The Administrator may establish additional objective or subjective performance goals.

(c) **Restrictions on Transfer.** Performance Awards and all rights with respect to the Performance Awards may not be sold, assigned, transferred, pledged or otherwise encumbered.

(d) **Satisfaction of Performance Goals.** A Participant will be entitled to receive a stock certificate evidencing the acquisition of shares of Common Stock under a Performance Award only upon satisfaction of all conditions specified in the written instrument evidencing the Performance Award (or in a performance plan adopted by the Administrator), including, without limitation, the Participant's satisfaction of applicable tax withholding obligations attributable to the Award. With respect only to a Performance Award that is denominated in hypothetical Common Stock units, the Common Stock certificate will be issued and delivered and the Participant will be entitled to the beneficial ownership rights of the Common Stock not later than (i) the date that is 2 1/2 months after the end of the Participant's taxable year (or the end of the Company's taxable year, if later) for which the Administrator certifies that the Performance Award conditions have been satisfied and the Performance Award is no longer subject to a substantial risk of forfeiture, and (ii) such earlier date as may be necessary to avoid application of Section 409A of the Code to the Award.

(e) **Termination.** Except as may otherwise be provided by the Administrator at any time, a Participant's rights in all Performance Awards will automatically terminate upon the Participant's termination of employment (or business relationship) with the Company and its Related Companies for any reason.

(f) **Acceleration, Waiver, Etc.** At any time before the Participant's termination of Continuous Service by the Company and its Related Companies, the Administrator may in its sole discretion accelerate, waive or, subject to Article 12 hereof, amend any or all of the goals, restrictions or conditions imposed under any Performance Award. The Administrator in its discretion may provide for an acceleration of vesting in the terms of any Performance Award at any time, including upon a Change in Control.

(g) **Certification.** Following the completion of each performance period, the Administrator shall certify in writing whether the performance objectives and other material terms of a Performance Award have been achieved or met. Unless the Administrator determines otherwise, Performance Awards will not be settled until the Administrator has made the certification specified under this Section 7.2(g).

7.3 Stock Appreciation Rights.

(a) **General.** Stock Appreciation Rights may be granted either alone ("**Free Standing SARs**") or, if the requirements of Section 7.3(b) are satisfied, in tandem with all or part of any Option granted under the Plan ("**Tandem SARs**"). In the case of a Nonstatutory Stock Option, Tandem SARs may be granted either at or after the time of the grant of the Option. In the case of an Incentive Stock Option, Tandem SARs may be granted only at the time of the grant of the Incentive Stock Option.

(b) **Grant Requirements.** A Stock Appreciation Right may only be granted if it does not provide for the deferral of compensation within the meaning of Section 409A of the Code. A Stock Appreciation Right does not provide for a deferral of compensation if: (i) the Strike Price may never be less than the Fair Market Value per share of Common Stock on the Date of Grant, (ii) the compensation payable under the Stock Appreciation Right can never be greater than the difference between the Strike Price and the Fair Market Value per share of Common Stock on the date the Stock Appreciation Right is exercised, (iii) the number of shares of Common Stock subject to the Stock Appreciation Right is fixed on the Date of Grant of the Stock Appreciation Right, and (iv) the Stock Appreciation Right does not include any feature for the deferral of compensation other than the deferral of recognition of income until the exercise of the right.

(c) **Exercise and Payment.** Upon delivery to the Administrator of a written request to exercise a Stock Appreciation Right, the holder of the Stock Appreciation Right will be entitled to receive from the Company, an amount equal to the product of (i) the excess of the Fair Market Value, on the date of exercise, of one share of Common Stock over the Strike Price per share specified in the Stock Appreciation Right or its related Option; multiplied by (ii) the number of shares for which the Stock Appreciation Right is exercised. Payment with respect to the exercise of a Stock Appreciation Right will be paid on the date of exercise and made in shares of Common Stock valued at Fair Market Value on the date of exercise. Payment may be made in the form of shares of Common Stock (with or without restrictions as to substantial risk of forfeiture and transferability, as determined by the Administrator in its sole discretion), cash or a combination thereof, as determined by the Administrator in its sole discretion.

(d) **Strike Price.** The Administrator shall determine the Strike Price of a Free Standing SAR, which may not be less than 100% of the Fair Market Value per share of Common Stock on the Date of Grant of the Stock Appreciation Right. The Strike Price of a Tandem SAR granted simultaneously with or subsequent to the grant of an Option and in conjunction therewith or in the alternative thereto will be the Exercise Price of the related Option. A Tandem SAR will be transferable only upon the same terms and conditions as the related Option, and will be exercisable only to the same extent as the related Option; except that a Tandem SAR, by its terms, will be exercisable only when the Fair Market Value per share of Common Stock subject to the Tandem SAR and related Option exceeds the Strike Price per share thereof.

(e) **Reduction in the Underlying Option Shares.** Upon any exercise of a Stock Appreciation Right, the number of shares of Common Stock for which any related Option will be exercisable will be reduced by the number of shares for which the Stock Appreciation Right has been exercised. The number of shares of Common Stock for which a Tandem SAR is exercisable will be reduced upon any exercise of any related Option by the number of shares of Common Stock for which the Option has been exercised.

(f) **Written Request.** Unless otherwise determined by the Administrator in its sole discretion, Stock Appreciation Rights will be settled in the form of Common Stock. If permitted in the Award Agreement, a Participant may request that any exercise of a Stock Appreciation Right be settled for cash, but a Participant will not have any right to demand a cash settlement. A request for a cash settlement may be made only by a written request filed with the Corporate Secretary of the Company during the period beginning on the third business day following the date of release for publication by the Company of quarterly or annual summary statements of earnings and ending on the twelfth business day following that date. Within 30 days of the receipt by the Company of a written request to receive cash in full or partial settlement of a Stock Appreciation Right or to exercise the Stock Appreciation Right for cash, the Administrator shall, in its sole discretion, either consent to or disapprove, in whole or in part, the written request. A written request to receive cash in full or partial settlement of a Stock Appreciation Right or to exercise a Stock Appreciation Right for cash may provide that, if the Administrator disapproves the written request, the written request will be deemed an exercise of the Stock Appreciation Right for shares of Common Stock.

(g) **Disapproval by Administrator.** If the Administrator disapproves in whole or in part any request by a Participant to receive cash in full or partial settlement of a Stock Appreciation Right or to exercise the Stock Appreciation Right for cash, the disapproval will not affect the Participant's right to exercise the Stock Appreciation Right at a later date, to the extent that the Stock Appreciation Right will be otherwise exercisable, or to request a cash form of payment at a later date, in each case subject to the approval of the Administrator. Additionally, the disapproval will not affect the Participant's right to exercise any related Option.

(h) **Restrictions on Transfer.** Stock Appreciation Rights and all rights with respect to Stock Appreciation Rights may not be sold, assigned, transferred, pledged or otherwise encumbered.

ARTICLE 8 COVENANTS OF THE COMPANY

8.1 Availability of Shares. During the terms of the Awards, the Company shall keep available at all times the number of shares of Common Stock required to satisfy the Awards.

8.2 Securities Law Compliance. Each Award Agreement will provide that no shares of Common Stock may be purchased or sold thereunder unless and until any then applicable requirements of state, federal or applicable foreign laws and regulatory agencies have been fully complied with to the satisfaction of the Company and its counsel. The Company shall use reasonable efforts to seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Awards and to issue and sell shares of Common Stock upon exercise of Awards; however, this undertaking will not require the Company to register under the Securities Act the Plan, any Award or any Common Stock issued or issuable pursuant to any Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise of any Awards unless and until that authority is obtained.

ARTICLE 9 USE OF PROCEEDS FROM STOCK

Proceeds from the sale of Common Stock pursuant to Awards will constitute general funds of the Company.

ARTICLE 10 MISCELLANEOUS

10.1 Acceleration of Exercisability and Vesting. The Administrator will have the power to accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Award stating the time at which it may first be exercised or the time during which it will vest.

10.2 Stockholder Rights. Except as provided in Section 11.1 hereof or as otherwise provided in an Award Agreement, no Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to an Award unless and until the Participant has satisfied all requirements for exercise, payment or delivery of the Award, as applicable, pursuant to its terms, and no adjustment will be made for dividends (ordinary or extraordinary, whether in cash, securities or other property) or distributions of other rights for which the record date is prior to the date of issue of a Common Stock certificate.

10.3 No Employment or Other Service Rights Nothing in the Plan or any instrument executed or Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or a Related Company in the capacity in effect at the time the Award was granted or will affect the right of the Company or a Related Company to terminate (a) the employment of an Employee with or without notice and with or without Cause; (b) the service of a Consultant pursuant to the terms of the Consultant's agreement with the Company or a Related Company; or (c) the service of a Director pursuant to the Bylaws of the Company or a Related Company, and any applicable provisions of the corporate law of the state in which the Company or the Related Company is incorporated, as the case may be.

10.4 Transfer, Approved Leave of Absence. For purposes of the Plan, no termination of employment by an Employee will be deemed to result from either (a) a transfer to the employment of the Company from a Related Company, from the Company to a Related Company or from one Related Company to another; or (b) an approved leave of absence for military service or sickness or for any other purpose approved by the Company, if the period of leave does not exceed three months or, if longer, the Employee's right to re-employment is guaranteed either by a statute or by contract.

10.5 Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Award, (a) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative

reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Award; and (b) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to those requirements, will be inoperative if (x) the issuance of the shares of Common Stock upon the exercise or acquisition of Common Stock under the Award has been registered under a then currently effective registration statement under the Securities Act; or (y) as to any particular requirement, a determination is made by counsel for the Company that that requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as that counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

10.6 Withholding Obligations. To the extent provided by the terms of an Award Agreement and subject to the discretion of the Administrator, the Participant may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of Common Stock under an Award by any one or combination of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company): (a) tendering a cash payment; (b) authorizing the Company to withhold a number of shares of Common Stock from the shares otherwise issuable to the Participant as a result of the exercise or acquisition of Common Stock under the Award, the Fair Market Value of which does not exceed the maximum statutory tax rates in the applicable jurisdictions (subject to the Participant's written request to withhold more than the required regular tax withholding in the applicable jurisdictions) and in which case the Award will be surrendered and cancelled with respect to the number of shares of Common Stock retained by the Company; (c) delivering to the Company previously owned and unencumbered shares of Common Stock; or (d) by execution of a recourse promissory note by a Participant. Notwithstanding the foregoing, during any period for which the Company has any class of its securities listed on a national securities exchange in the United States, has securities registered under Section 12 of the Exchange Act, is required to file reports under Section 13(a) or 15(d) of the Exchange Act or has a registration statement pending under the Securities Act, payment of the tax withholding with a promissory note or other transaction by a Participant that involves or may involve a Prohibited Personal Loan is prohibited with respect to any Award. Unless otherwise provided in the terms of an Award Agreement, payment of the tax withholding by a Participant who is an Insider by delivering previously owned and unencumbered shares of Common Stock or in the form of share withholding is subject to pre-approval by the Administrator, in its sole discretion. The Administrator shall document any pre-approval in the case of a Participant who is an Officer or Director in a manner that complies with the specificity requirements of Rule 16b-3, including the name of the Participant involved in the transaction, the nature of the transaction, the number of shares to be acquired or disposed of by the Participant and the material terms of the Award involved in the transaction.

ARTICLE 11 ADJUSTMENTS UPON CHANGES IN STOCK

11.1 Capitalization Adjustments. If any change is made in the Common Stock subject to the Plan or subject to any Award, without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company), then (a) the aggregate number of shares of Common Stock or class of shares that may be purchased pursuant to Awards granted hereunder; (b) the aggregate number of shares of Common Stock or class of shares that may be purchased pursuant to Incentive Stock Options granted hereunder; (c) the number and/or class of shares of Common Stock covered by outstanding Awards; (d) the maximum number of shares of Common Stock with respect to which Awards may be granted to any single Person during any calendar year; and (e) the Exercise Price of any Option and the Strike Price of any Stock Appreciation Right in effect prior to the change shall be proportionately adjusted by the Administrator to reflect any increase or decrease in the number of issued shares of Common Stock or change in the Fair Market Value of the Common Stock resulting from the transaction; provided, however, that any fractional shares resulting from the adjustment shall be eliminated by rounding down. The Administrator shall make these adjustments in a manner that will provide an appropriate adjustment that neither increases nor decreases the value of the Award as in effect immediately prior to the corporate change, and its determination will be final, binding and conclusive. The conversion of any securities of the Company that are by their terms convertible will not be treated as a transaction "without receipt of consideration" by the Company.

11.2 Dissolution or Liquidation. In the event of a dissolution or liquidation of the Company, then, subject to Section 11.3, all outstanding Awards will terminate immediately prior to that dissolution or liquidation.

11.3 Change in Control – Asset Sale, Merger, Consolidation or Reverse Merger. In the event of a Change in Control, a dissolution or liquidation of the Company, an exchange of shares or any corporate separation or division, including, but not limited to, a split-up, a split-off or a spin-off or a sale, in one or a series of related transactions, of all or substantially all of the assets of the Company; a merger or consolidation in which the Company is not the Surviving Entity; or a reverse merger in which the Company is the Surviving Entity, but the shares of Common Stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, then the Company, to the extent permitted by applicable law, but otherwise in the sole discretion of the Administrator may provide for: (a) the continuation of outstanding Awards by the Company (if the Company is the Surviving Entity); (b) the assumption of the Plan and the outstanding Awards by the Surviving Entity or its parent; (c) the substitution by the Surviving Entity or its parent of awards with substantially the same terms (including an award to acquire the same consideration paid to the stockholders in the transaction described in this Section 11.3) for the outstanding Awards and, if appropriate, subject to the equitable adjustment provisions of Section 11.1 hereof; (d) the cancellation of the outstanding Awards in consideration for a payment (in the form of stock or cash) equal in value to the Fair Market Value of vested Awards, or in the case of an Option, the difference between the Fair Market Value and the Exercise Price for all shares of Common Stock subject to exercise (i.e., to the extent vested) under any outstanding Option; or (e) the cancellation of the outstanding Awards without payment of any consideration, including any Awards having an Exercise Price equal to, or in excess of the Fair Market Value (as of the date specified by the Committee). If the Awards would be cancelled without consideration for vested Awards, the Participant will have the right, exercisable during the later of the 10-day period ending on the fifth day prior to the merger or consolidation or 10 days after the Administrator provides the Award holder a notice of cancellation, to exercise the Awards in whole or in part without regard to any installment exercise provisions in the Option Agreement.

ARTICLE 12 AMENDMENT OF THE PLAN AND AWARDS

12.1 Amendment of Plan. The Board at any time may amend or terminate the Plan. However, except as provided in Section 11.1 relating to adjustments upon changes in Common Stock, no amendment will be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy any applicable law or any securities exchange listing requirements. At the time of any amendment, the Board shall determine, upon advice from counsel, whether the amendment will be contingent on stockholder approval.

12.2 Stockholder Approval. The Board may, in its sole discretion, submit any other amendment to the Plan for stockholder approval.

12.3 Contemplated Amendments. It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide eligible Employees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations issued thereunder relating to Incentive Stock Options or to the nonqualified deferred compensation provisions of Section 409A of the Code and to bring the Plan and Awards granted hereunder into compliance therewith. Notwithstanding the foregoing, neither the Board nor the Company nor any Related Company will have any liability to any Participant or any other Person as to (a) any tax

consequences expected, but not realized, by a Participant or any other person due to the receipt, exercise or settlement of any Award granted hereunder; or (b) the failure of any Award to comply with Section 409A of the Code.

12.4 Amendment of Awards. The Administrator at any time may amend the terms of any one or more Awards. However, subject to Section 12.5, no amendment may impair the rights under any Award granted before the amendment. Except as otherwise permitted under Article 11, unless stockholder approval is obtained: (a) no amendment or modification may reduce the Exercise Price of any Option or the Strike Price of any SAR; (b) the Committee may not cancel any outstanding Option or SAR and replace it with a new Option or SAR, another Award or cash, if doing so would be considered a “repricing” for purposes of the stockholder approval rules of the applicable securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted; and (c) the Committee may not take any other action that is considered a repricing for purposes of the stockholder approval rules of the applicable securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted.

12.5 No Impairment of Rights. No amendment of the Plan or an Award may impair rights under any Award granted before the amendment unless (a) the Company requests the consent of the Participant and (b) the Participant consents in writing. For the avoidance of doubt, a cancellation of an Award where the Participant receives a payment equal in value to the Fair Market Value of the vested Award or, in the case of vested Options or SAR, the difference between the Fair Market Value and the Exercise Price or Strike Price, which may be \$0, is not an impairment of the Participant’s rights that requires consent of the Participant.

ARTICLE 13 GENERAL PROVISIONS

13.1 Other Compensation Arrangements. Nothing contained in the Plan will prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if stockholder approval is required; and those arrangements may be either generally applicable or applicable only in specific cases.

13.2 Delivery. Upon exercise of a right granted pursuant to an Award under the Plan, the Company shall issue Common Stock or pay any amounts due within a reasonable period thereafter. Subject to any statutory or regulatory obligations the Company may otherwise have, for purposes of the Plan, 30 days will be considered a reasonable period.

13.3 Other Provisions. The Award Agreements authorized under the Plan may contain such other provisions not inconsistent with the Plan, including, without limitation, restrictions upon the exercise of the Awards, as the Administrator may deem advisable.

13.4 Cancellation and Rescission of Awards for Detrimental Activity.

(a) Upon exercise, payment or delivery pursuant to an Award, the Administrator may require a Participant to certify in a manner acceptable to the Company that the Participant has not engaged in any Detrimental Activity.

(b) Unless the Award Agreement specifies otherwise, the Administrator may cancel, rescind, suspend, withhold or otherwise limit or restrict any unexpired, unpaid or deferred Awards at any time if the Participant engages in any Detrimental Activity.

(c) If a Participant engages in Detrimental Activity after any exercise, payment or delivery pursuant to an Award, during any period for which any restrictive covenant prohibiting such activity is applicable to the Participant, that exercise, payment or delivery may be rescinded within one year thereafter. In the event of any such rescission, the Participant shall pay to the Company the amount of any gain realized or payment received as a result of the exercise, payment or delivery, in such manner and on such terms and conditions as may be required by the Company. The Company will be entitled to set-off against the amount of that gain any amount owed to the Participant by the Company.

13.5 Clawback or Forfeiture. Notwithstanding any provision in this Plan or any Award Agreement to the contrary, the Company may cancel any Award, require reimbursement of any Award by a Participant, and effect any other right of recoupment of equity or other compensation provided under the Plan in accordance with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Sarbanes–Oxley Act of 2002, other applicable law or securities exchange listing requirements or any Company policies that may be adopted or modified from time to time (the “**Clawback Policy**”). In addition, a Participant may be required to repay to the Company previously paid compensation, whether provided pursuant to the Plan or an Award Agreement, in accordance with the Clawback Policy. By accepting an Award, the Participant is agreeing to be bound by the Clawback Policy, as in effect or as may be adopted or modified from time to time by the Company in its discretion (including, without limitation, to comply with applicable law or securities exchange listing requirements), regardless of whether or not such condition is expressly stated in the Award Agreement.

ARTICLE 14 MARKET STANDOFF

Each Option Agreement and Award Agreement will provide that, in connection with any underwritten public offering by the Company of its equity securities, the Participant shall agree not to sell, make any short sale of, loan, hypothecate, pledge, grant any option for the repurchase of, transfer the economic consequences of ownership or otherwise dispose or transfer for value or otherwise agree to engage in any of the foregoing transactions with respect to any Common Stock without the prior written consent of the Company or its underwriters, for the period from and after the effective date of such registration statement as may be requested by the Company or the underwriters (the “**Market Standoff**”). In order to enforce the Market Standoff, the Company may impose stop-transfer instructions with respect to the shares of Common Stock acquired under the Plan until the end of the applicable standoff period. If there is any change in the number of outstanding shares of Common Stock by reason of a stock split, reverse stock split, stock dividend, recapitalization, combination, reclassification, dissolution or liquidation of the Company, any corporate separation or division (including, but not limited to, a split-up, a split-off or a spin-off), a merger or consolidation; a reverse merger or similar transaction, then any new, substituted or additional securities that are by reason of the transaction distributed with respect to any shares of Common Stock subject to the Market Standoff or into which the shares of Common Stock thereby become convertible, will immediately be subject to the Market Standoff.

ARTICLE 15 EFFECTIVE DATE OF PLAN

The Plan becomes effective on the Effective Date.

**ARTICLE 16
TERMINATION OR SUSPENSION OF THE PLAN**

The Plan will terminate automatically on the day before the 10th anniversary of the Effective Date. No Award may be granted pursuant to the Plan after that date, but Awards theretofore granted may extend beyond that date. The Board may suspend or terminate the Plan at any earlier date pursuant to Section 12.1 hereof. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

**ARTICLE 17
CHOICE OF LAW**

The law of the State of Delaware will govern all questions concerning the construction, validity and interpretation of the Plan, without regard to that state's conflict of law rules.

**ARTICLE 18
LIMITATION ON LIABILITY**

The Company and any Related Company that is in existence or that hereafter comes into existence will have no liability to any Participant or any other person as to (1) the non-issuance or sale of shares of Common Stock as to which the Company has been unable to obtain from any regulatory body having jurisdiction the authority deemed by counsel to the Company necessary to the lawful issuance and sale of any shares hereunder; (2) any tax consequences expected, but not realized, by a Participant or any other person due to the receipt, exercise or settlement of any Award granted hereunder; or (3) the failure of any Award that is determined to constitute "nonqualified deferred compensation" to comply with Section 409A of the Code and the regulations thereunder.

**ARTICLE 19
EXECUTION**

To record the adoption of the Plan by the Board, the Company has caused its authorized officer to execute the Plan as of the date specified below.

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IN WITNESS WHEREOF, upon authorization of the Board, the undersigned has executed the Gulfport Energy Corporation 2021 Stock Incentive Plan, effective as of the Effective Date, on the date opposite his or her signature.

GULFPORT ENERGY CORPORATION

Dated: May 17, 2021

By: /s/ Timothy Cutt
Timothy Cutt, Interim Chief Executive Officer

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