

SECURITIES AND EXCHANGE COMMISSION

FORM T-3/A

Initial application for qualification of trust indentures [amend]

Filing Date: **2021-05-18**
SEC Accession No. [0001213900-21-027447](#)

([HTML Version](#) on [secdatabase.com](#))

FILER

GULFPORT ENERGY CORP

CIK:[874499](#) | IRS No.: **731521290** | State of Incorp.:**DE** | Fiscal Year End: **1231**
Type: **T-3/A** | Act: **39** | File No.: **022-29093** | Film No.: **21934113**
SIC: **1311** Crude petroleum & natural gas

Mailing Address

*14313 NORTH MAY AVENUE
SUITE 100
OKLAHOMA CITY OK 73134*

Business Address

*14313 NORTH MAY AVENUE
SUITE 100
OKLAHOMA CITY OK 73134
4058488807*

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

**AMENDMENT NO. 1
to
FORM T-3**

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

**Gulfport Energy Operating Corporation
(f/k/a Gulfport Energy Corporation)
(Issuer)**

**Gulfport Energy Corporation (f/k/a Reorganized Gulfport Holdco, Inc.)
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.
Westhawk Minerals LLC
(Guarantors)**

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

Securities to be Issued under the Indenture to be Qualified

Title of Class	Amount
8.0% Senior 1145 Notes due 2026	\$550,000,000 aggregate principal amount

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

**Name and registered address of agent for service:
Patrick K. Craine
General Counsel and Corporate Secretary
Gulfport Energy Corporation
3001 Quail Springs Parkway
Oklahoma City, Oklahoma 73134
(405) 252-4600**

**With a copy to:
Sean T. Wheeler
Michael W. Rigdon
Kirkland & Ellis LLP
609 Main Street
Houston, Texas 77002
Tel: (713) 836-3600**

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

EXPLANATORY NOTE

This Amendment No. 1 to the Application for Qualification of Indenture on Form T-3, which amends the Application for Qualification of Indenture on Form T-3 (File No. 022-29093) originally filed with the Securities and Exchange Commission (the “SEC”) on May 10, 2021 (the “Initial Application”), is being filed to (i) add the guarantors listed herein as Applicants (as defined below) to the Initial Application, (ii) amend and restate the aggregate principal amount of 8.0% Senior 1145 Notes under the indenture to be so qualified, (iii) amend and restate “Item 3 - Affiliates” and (iv) amend and restate “Item 4 - Directors and Executive Officers.”

GENERAL

1. General Information.

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

Guarantor	Form	Jurisdiction
Gator Marine Ivanhoe, Inc.	Corporation	Delaware
Gator Marine, Inc.	Corporation	Delaware
Gulfport Appalachia, LLC	Limited liability company	Delaware
Gulfport Midstream Holdings, LLC	Limited liability company	Delaware
Grizzly Holdings, Inc.	Corporation	Delaware
Gulfport Midcon, LLC	Limited liability company	Delaware
Jaguar Resources LLC	Limited liability company	Delaware
Mule Sky LLC	Limited liability company	Delaware
Puma Resources, Inc.	Corporation	Delaware
Gulfport Energy Corporation (f/k/a Reorganized Gulfport Holdco, Inc.)	Corporation	Delaware
Westhawk Minerals LLC	Limited liability company	Delaware

The Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and its Debtor Subsidiaries, dated as of April 14, 2021 (the “Plan”) contemplates, among other things, the issuance of \$550,000,000 aggregate principal amount of the Issuer’s 8.0% Senior 1145 Notes due 2026 (the “New Notes”), on a pro rata basis, to holders of the 6.625% senior notes due 2023, 6.000% senior notes due 2024, 6.375% senior notes due 2025 and 6.375% senior notes due 2026, in each case, issued by Debtor Gulfport Energy Corporation, a Delaware corporation (collectively, the “Old Notes”). The Old Notes were cancelled upon effectiveness of the Plan.

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

2. Securities Act Exemption Applicable.

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

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

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

The Plan became effective on the date on which all conditions to the effectiveness of the Plan were satisfied or waived (the “Effective Date”).

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

AFFILIATIONS

3. Affiliates.

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

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

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

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

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

MANAGEMENT AND CONTROL

4. Directors and Executive Officers.

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

Name	Office
Timothy Cutt	Chairman and Interim Chief Executive Officer
David Wolf	Lead Independent Director
Guillermo Martinez	Director
Jason Martinez	Director
David Reganato	Director
William Buese	Chief Financial Officer
Donnie Moore	Chief Operating Officer
Patrick K. Craine	General Counsel
Lester Zitkus	Senior Vice President, Land
Michael Sluiter	Senior Vice President, Reservoir Engineering
RJ Moses	Senior Vice President, Operations and Drilling

5. Principal Owners of Voting Securities.

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

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

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

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

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

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

Name and Complete Mailing Address	Title of Class Owned	Amount Owned	Percentage of Voting Securities Owned
Silver Point Capital, L.P. on behalf of accounts managed or advised by it or its wholly owned subsidiaries	Common Stock	5,939,389	25.5%
	Preferred Stock	15,698	

UNDERWRITERS

6. Underwriters.

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

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

CAPITAL SECURITIES

7. Capitalization.

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

Title of Class	Amount Authorized	Amount Outstanding
Common Stock, \$.01 par value per share	1,000	100
8.0% 1145 Senior Notes due 2026	\$550,000,000	\$525,023,460

It is expected that, upon consummation of the Plan, the Issuer's capital structure shall be comprised of the Common Stock and New Notes set forth in the table above. The New Notes will be guaranteed by each of the Guarantors.

In accordance with the Plan, all agreements, instruments and other documents evidencing, relating to or otherwise connected with any of the equity interests of the Issuer prior to the Effective Date were cancelled, released and extinguished without any distribution, and any and all outstanding obligations under the Old Notes were cancelled.

INDENTURE SECURITIES

8. Analysis of Indenture Provisions.

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

(a) Events of Default; Withholding of Notice

An “Event of Default” occurs if:

- (1) the Company defaults in any payment of interest on any Security when the same becomes due and payable, and such default continues for a period of 30 days;
- (2) the Company defaults in the payment of the principal of any Security when the same becomes due and payable at its Stated Maturity, upon optional redemption, upon required purchase, upon declaration of acceleration or otherwise;
- (3) the Company fails to comply with its obligations in Section 5.01;

an “Event of Default,” as defined under the Private Placement Securities Indenture, shall have occurred under Section 6.01(4) of the

- (4) Private Placement Securities Indenture, and shall not have been waived or rescinded pursuant to the terms of the Private Placement Securities Indenture;

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

an “Event of Default,” as defined under the Private Placement Securities Indenture, shall have occurred under Section 6.01(6) of the

- (6) 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;

an “Event of Default,” as defined under the Private Placement Securities Indenture, shall have occurred under Section 6.01(9) of the (9) Private Placement Securities Indenture, and shall not have been waived or rescinded pursuant to the terms of the Private Placement Securities Indenture;

(10) (i) any Parent Guarantee or (ii) any Subsidiary Guarantee with respect to any Subsidiary Guarantor whose assets have a net book value of more than \$15.0 million, in either of case (i) or (ii), ceases to be in full force and effect (other than in accordance with the terms of such Applicable Guarantee or the Indenture) or any Applicable Guarantor denies or disaffirms its obligations under its Applicable Guarantee; or

(11) the occurrence of an Event of Default under the Private Placement Indenture.

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

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

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

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

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

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

On the Issue Date, the Trustee shall authenticate and deliver \$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 4.03. On 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 the Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

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

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

(12) None.

The New Notes will be unsecured.

(d) Satisfaction and discharge of the Indenture

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

(1) either:

all New Notes that have been authenticated, except lost, destroyed or wrongfully taken New Notes that have been replaced and (A) New Notes for whose payment money has been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

all New Notes that have not been delivered to the Trustee for cancellation have become due and payable, whether at maturity or as a result of the sending of a notice of redemption or or will become due and payable within one year or are to be called (B) for redemption within one year and the Company has irrevocably deposited or caused to be deposited with the Trustee or the Paying Agent, as applicable, as trust funds in trust solely for the benefit of the Holders, cash sufficient to pay at maturity or upon redemption all outstanding New Notes, including interest thereon to maturity or such redemption date;

(2) the Company has paid or caused to be paid all sums payable by it under the Indenture; and

(3) the Company has delivered an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge of the Indenture have been satisfied.

(e) Evidence required to be furnished by the obligor upon the indenture securities to the trustee as to compliance with the conditions and covenants provided for in such indenture

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

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

9. Other Obligors.

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

CONTENTS OF APPLICATION FOR QUALIFICATION

This Application for Qualification comprises:

(a) Pages numbered 1 to 10, consecutively.

(b) The Statement of Eligibility and Qualification on Form T-1 of the trustee under the Indenture to be qualified.

(c) The following exhibits in addition to those filed as part of the Statement of Eligibility and Qualification of the trustee:

Exhibit T3A.1 [Amended and Restated Certificate of Incorporation of Gulfport Energy Operating Corporation](#)

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

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

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

Exhibit T3A.3 [Certificate of Incorporation of Gator Marine, Inc.*](#)

Exhibit T3B.3 [By-Laws of Gator Marine, Inc.*](#)

Exhibit T3A.4.1 [Certificate of Formation of Gulfport Appalachia, LLC*](#)

Exhibit T3A.4.2 [Certificate of Amendment to the Certificate of Formation of Gulfport Appalachia, LLC*](#)

Exhibit T3A.4.3 [Certificate of Amendment to the Certificate of Formation of Gulfport Appalachia, LLC*](#)

Exhibit T3B.4 [Amended and Restated Limited Liability Company Agreement of Gulfport Appalachia, LLC*](#)

Exhibit T3A.5 [Certificate of Formation of Gulfport Midstream Holdings, LLC*](#)

Exhibit T3B.5 [Limited Liability Company Agreement of Gulfport Midstream Holdings, LLC*](#)

Exhibit T3A.6 [Certificate of Incorporation of Grizzly Holdings, Inc.*](#)

Exhibit T3B.6 [By-Laws of Grizzly Holdings, Inc.*](#)

Exhibit T3A.7.1 [Certificate of Formation of Gulfport Midcon, LLC*](#)

Exhibit T3A.7.2 [Certificate of Amendment to the Certificate of Formation of Gulfport Midcon, LLC*](#)

Exhibit T3B.7 [Limited Liability Company Agreement of Gulfport Midcon, LLC*](#)

Exhibit T3A.8 [Certificate of Formation of Jaguar Resources LLC*](#)

Exhibit T3B.8 [Limited Liability Company Agreement of Jaguar Resources LLC*](#)

Exhibit T3A.9 [Certificate of Formation of Mule Sky LLC*](#)

Exhibit T3B.9 [Limited Liability Company Agreement of Mule Sky LLC*](#)

Exhibit T3A.10 [Certificate of Incorporation of Puma Resources, Inc.*](#)

Exhibit T3B.10 [By-Laws of Puma Resources, Inc.*](#)

Exhibit T3A.11 [Amended and Restated Certificate of Incorporation of Gulfport Energy Corporation](#)

Exhibit T3B.11 [Amended and Restated Bylaws of Gulfport Energy Corporation](#)

Exhibit T3A.12 [Certificate of Formation of Westhawk Minerals LLC*](#)

Exhibit T3B.12 [Limited Liability Company Agreement of Westhawk Minerals LLC*](#)

Exhibit T3C.1 [Form of Indenture of Gulfport Energy Corporation, the subsidiary guarantors executing the signature pages thereto, the initial parent guarantor and UMB Bank, Nation Association, as trustee, for the 8.0% Senior 1145 Notes due 2026.*](#)

Exhibit T3D.1 Not Applicable.

Exhibit T3E.1 [Disclosure Statement for Amended Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and its Debtor Subsidiaries.*](#)

Exhibit T3F.1 [Cross-reference sheet showing the location in the Indenture of the provisions inserted therein pursuant to Section 310 through 318\(a\), inclusive, of the Trust Indenture Act of 1939 \(included in Exhibit T3C.1 hereto\).*](#)

Exhibit 25.1 [Statement of Eligibility and Qualification on Form T-1 of the trustee under the Indenture to be qualified.*](#)

* Previously filed.

SIGNATURES

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Energy Corporation, a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Gulfport Energy Operating Corporation

By: /s/ Patrick K. Craine

Name: Patrick K. Craine

Title: Executive Vice President, General Counsel
and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gator Marine Ivanhoe, Inc., a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Gator Marine Ivanhoe, Inc.

By: /s/ Patrick K. Craine

Name: Patrick K. Craine

Title: Executive Vice President, General Counsel
and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gator Marine, Inc., a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Gator Marine, Inc.

By: /s/ Patrick K. Craine

Name: Patrick K. Craine

Title: Executive Vice President, General Counsel
and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Appalachia, LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Gulfport Appalachia, LLC

By: /s/ Patrick K. Craine

Name: Patrick K. Craine

Title: Executive Vice President, General Counsel
and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Energy Operating Corporation, a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Gulfport Energy Operating Corporation

By: /s/ Patrick K. Craine

Name: Patrick K. Craine

Title: Executive Vice President, General Counsel
and Corporate Secretary

11

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Midstream Holdings, LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Gulfport Midstream Holdings, LLC

By: /s/ Patrick K. Craine

Name: Patrick K. Craine

Title: Executive Vice President, General Counsel
and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Grizzly Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Grizzly Holdings, Inc.

By: /s/ Patrick K. Craine

Name: Patrick K. Craine

Title: Executive Vice President, General Counsel
and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Midcon, LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Gulfport Midcon, LLC

By: /s/ Patrick K. Craine

Name: Patrick K. Craine

Title: Executive Vice President, General Counsel
and Corporate Secretary

Pursuant to the requirements of the Trust Indenture Act of 1939, Jaguar Resources LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Jaguar Resources LLC

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

Pursuant to the requirements of the Trust Indenture Act of 1939, Mule Sky LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Mule Sky LLC

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

12

Pursuant to the requirements of the Trust Indenture Act of 1939, Puma Resources, Inc., a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Puma Resources, Inc.

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

Pursuant to the requirements of the Trust Indenture Act of 1939, Gulfport Energy Corporation., a corporation organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Gulfport Energy Corporation

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

Pursuant to the requirements of the Trust Indenture Act of 1939, Westhawk Minerals LLC, a limited liability company organized and existing under the laws of the State of Delaware, has duly caused this Application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Houston and State of Texas, on May 18, 2021.

(SEAL)

Westhawk Minerals LLC

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

13

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
GULFPORT ENERGY OPERATING CORPORATION**

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

1. The name of the Corporation is “Gulfport Energy Operating Corporation.” The name under which the Corporation was originally incorporated is “WRT 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 June 20, 1997. A Restated Certificate of Incorporation (the “*Restated Certificate*”) was filed with the Secretary of State of the State of Delaware on April 25, 2006.

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. This Certificate restates and integrates and further amends the provisions of the Restated Certificate to provide in its entirety as follows:

ARTICLE ONE

The name of the corporation is Gulfport Energy Operating Corporation (hereinafter called the “Corporation”).

ARTICLE TWO

The address of the Corporation’s registered office in the State of Delaware is 251 Little Falls Drive, Wilmington Delaware 19808, in the County of New Castle, and the name of the Corporation’s registered agent at such address is Corporation Service Company.

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

ARTICLE THREE

The total number of shares which the Corporation shall have the authority to issue is One Thousand (1,000) shares, all of which shall be shares of Common Stock, with a par value of \$0.01 (One Cent) per share.

ARTICLE FOUR

The directors shall have the power to adopt, amend or repeal bylaws, except as may otherwise be provided in the bylaws.

ARTICLE FIVE

The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

ARTICLE SIX

To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach

of fiduciary duty as a director. Any repeal or modification of this ARTICLE SIX shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE SEVEN

The Corporation reserves the right to amend or repeal any provisions contained in this Certificate of Incorporation from time to time and at any time in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred upon stockholders and directors are granted subject to such reservation.

* * * *

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 14th day of May, 2021.

GULFPORT ENERGY OPERATING
CORPORATION

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

[Signature Page to Amended and Restated Certificate of Incorporation]

**THIRD AMENDED AND RESTATED BYLAWS
OF
GULFPORT ENERGY OPERATING CORPORATION**

A Delaware Corporation

1. OFFICES

(a) Registered Office. The registered office of the corporation in the State of Delaware shall be located at 251 Little Falls Drive, Wilmington Delaware 19808, in the County of New Castle. The name of the corporation's registered agent at such address shall be Corporation Service Company. The registered office and/or registered agent of the corporation may be changed from time to time by action of the board of directors.

(b) Other Offices. The corporation may also have offices at such other places, both within and without the State of Delaware, as the board of directors may from time to time determine or the business of the corporation may require.

2. MEETINGS OF STOCKHOLDERS

(a) Place and Time of Meetings. An annual meeting of the stockholders shall be held each year for the purpose of electing directors and conducting such other proper business as may come before the meeting. The date, time and place of the annual meeting may be determined by resolution of the board of directors or as set by the chief executive officer of the corporation.

(b) Special Meetings. Special meetings of stockholders may be called for any purpose (including, without limitation, the filling of board vacancies and newly created directorships), and may be held at such time and place, within or without the State of Delaware, as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Such meetings may be called at any time by two or more members of the board of directors or the chief executive officer and shall be called by the chief executive officer upon the written request of holders of shares entitled to cast not less than fifty percent (50%) of the outstanding shares of any series or class of the corporation's capital stock.

(c) Place of Meetings. The board of directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting called by the board of directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the corporation.

(d) Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either personally or by mail, by or at the direction of the board of directors, the chief executive officer or the secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

(e) Stockholders List. The officer having charge of the stock ledger of the corporation shall make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

(f) Quorum. Except as otherwise provided by applicable law or by the Certificate of Incorporation, a majority of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. If less than a majority of the outstanding shares are represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time in accordance with Section 7 of this Article, until a quorum shall be present or represented.

(g) Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(h) Vote Required. When a quorum is present, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the question is one upon which by express provisions of an applicable law or of the Certificate of Incorporation a different vote is required, in which case such express provision shall govern and control the decision of such question. Where a separate vote by class is required, the affirmative vote of the majority of shares of such class present in person or represented by proxy at the meeting shall be the act of such class.

(i) Voting Rights. Except as otherwise provided by the General Corporation Law of the State of Delaware or by the Certificate of Incorporation of the corporation or any amendments thereto and subject to Section 3 of Article VI hereof, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

(j) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him, her or it by proxy. Every proxy must be signed by the stockholder granting the proxy or by his, her or its attorney-in-fact. No proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

(k) Action by Written Consent. Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock having not less than a majority of the shares entitled to vote, or, if greater, not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the state of Delaware, or the corporation's principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested provided, however, that no consent or consents delivered by certified or registered mail shall be deemed delivered until such consent or consents are actually received at the registered office. All consents properly delivered in accordance with this section shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered to the corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

3. DIRECTORS

(a) General Powers. The business and affairs of the corporation shall be managed by or under the direction of the board of directors.

(b) Number, Election and Term of Office. The number of directors which shall constitute the board as of the effective date of these by-laws shall be two (2). Thereafter, the number of directors shall be established from time to time by resolution of the board. The

directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors. The directors shall be elected in this manner at the annual meeting of the stockholders, except as provided in Section 4 of this Article III. Each director elected shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

(c) Removal and Resignation. Any director or the entire board of directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the corporation's Certificate of Incorporation, the provisions of this section shall apply, in respect to the removal without cause or a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole. Any director may resign at any time upon written notice to the corporation.

3

(d) Vacancies. Except as otherwise provided by the Certificate of Incorporation of the corporation or any amendments thereto, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority vote of the holders of the corporation's outstanding stock entitled to vote thereon or by a majority of the members of the board of directors. Each director so chosen shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as herein provided.

(e) Annual Meetings. The annual meeting of each newly elected board of directors shall be held without other notice than this by-law immediately after, and at the same place as, the annual meeting of stockholders.

(f) Other Meetings and Notice. Regular meetings, other than the annual meeting, of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by resolution of the board. Special meetings of the board of directors may be called by or at the request of the chief executive officer or president on at least 24 hours' notice to each director, either personally, by telephone, by mail, or by telegraph; in like manner and on like notice the chief executive officer must call a special meeting on the written request of at least a majority of the directors.

(g) Quorum, Required Vote and Adjournment. A majority of the total number of directors then in office (without regard to any then vacancies on the board) shall constitute a quorum for the transaction of business. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the board of directors. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(h) Committees. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation, which to the extent provided in such resolution or these by-laws shall have and may exercise the powers of the board of directors in the management and affairs of the corporation except as otherwise limited by law. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors.

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

4

(i) Committee Rules. Each committee of the board of directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the board of directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the board of directors as

provided in Section 8 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in place of any such absent or disqualified member.

(j) Communications Equipment. Members of the board of directors or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute presence in person at the meeting.

(k) Waiver of Notice and Presumption of Assent. Any member of the board of directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

(l) Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all the then members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

4. OFFICERS

(a) Number. The officers of the corporation shall be elected by the board of directors and may consist of a chairman, a chief executive officer, a president, one or more vice presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary or desirable by the board of directors. Any number of offices may be held by the same person. In its discretion, the board of directors may choose not to fill any office for any period as it may deem advisable.

(b) Election and Term of Office. The officers of the corporation shall be elected annually by the board of directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the board of directors. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

(c) Removal. Any officer or agent elected by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

(d) Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term by the board of directors then in office.

(e) Compensation. Compensation of all officers shall be fixed by the board of directors, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation.

(f) The Chairman of the Board. The Chairman of the Board, if one shall have been elected, shall be a member of the board, may be an officer of the corporation, and, if present, shall preside at each meeting of the board of directors or stockholders. He shall advise the chief executive officer, and in the chief executive officer's absence, other officers of the corporation, and shall perform such other duties as may from time to time be assigned to him by the board of directors.

(g) The Chief Executive Officer. In the absence of the Chairman of the Board or if a Chairman of the Board shall have not been elected, the chief executive officer shall preside at all meetings of the stockholders and board of directors at which he or she is present; subject to the powers of the board of directors, shall have general charge of the business, affairs and property of the corporation, and control over its officers, agents and employees; and shall see that all orders and resolutions of the board of directors are carried into effect.

The chief executive officer shall have such other powers and perform such other duties as may be prescribed by the board of directors or as may be provided in these by-laws.

(h) President; Vice Presidents. The president shall, in the absence or disability of the chief executive officer, act with all of the powers and be subject to all of the restrictions of the chief executive officer. The president shall also perform such other duties and have such other powers as the board of directors, the chief executive officer or these by-laws may, from time to time, prescribe. The vice-president, if any, or if there shall be more than one, the vice-presidents in the order determined by the board of directors shall, in the absence or disability of the president, act with all of the powers and be subject to all the restrictions of the president. The vice-presidents shall also perform such other duties and have such other powers as the board of directors, the president or these by-laws may, from time to time, prescribe.

(i) The Secretary and Assistant Secretaries. The secretary shall attend all meetings of the board of directors, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose. Under the chief executive officer's supervision, the secretary shall give, or cause to be given, all notices required to be given by these by-laws or by law; shall have such powers and perform such duties as the board of directors, the chief executive officer or these by-laws may, from time to time, prescribe; and shall have custody of the corporate seal of the corporation. The secretary, or an assistant secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his or her signature. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors, the chief executive officer, or secretary may, from time to time, prescribe.

(j) The Treasurer and Assistant Treasurer. The treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; shall deposit all monies and other valuable effects in the name and to the credit of the corporation as may be ordered by the board of directors; shall cause the funds of the corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the chief executive officer and the board of directors, at its regular meeting or when the board of directors so requires, an account of the corporation; shall have such powers and perform such duties as the board of directors, the chief executive officer or these by-laws may, from time to time, prescribe. If required by the board of directors, the treasurer shall give the corporation a bond (which shall be rendered every six years) in such sums and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of the office of treasurer and for the restoration to the corporation, in case of death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in the possession or under the control of the treasurer belonging to the corporation. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors, shall in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. The assistant treasurers shall perform such other duties and have such other powers as the board of directors, the chief executive officer, the president or treasurer may, from time to time, prescribe.

(k) Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, which officers may include officers of any division of the corporation, other than those whose duties are provided for in these by-laws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the board of directors.

(l) Absence or Disability of Officers. In the case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the board of directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

5. INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

(a) Nature of Indemnity. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “proceeding”), by reason of the fact that he or a person of whom he is the legal representative, is or was a director or officer, of the corporation or is or was serving at the request of the corporation as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent, shall be indemnified and held harmless by the corporation to the fullest extent which it is empowered to do so by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment) against all expense, liability and loss (including attorneys’ fees actually and reasonably incurred by such person in connection with such proceeding and such indemnification shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Section 2 hereof, the corporation shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the corporation. The right to indemnification conferred in this Article V shall be a contract right and, subject to Sections 2 and 5 hereof, shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition. The corporation may, by action of its board of directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(b) Procedure for Indemnification of Directors and Officers. Any indemnification of a director or officer of the corporation under Section 1 of this Article V or advance of expenses under Section 5 of this Article V shall be made promptly, and in any event within 30 days, upon the written request of the director or officer. If a determination by the corporation that the director or officer is entitled to indemnification pursuant to this Article V is required, and the corporation fails to respond within sixty days to a written request for indemnity, the corporation shall be deemed to have approved the request. If the corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or if payment in full pursuant to such request is not made within 30 days, the right to indemnification or advances as granted by this Article V shall be enforceable by the director or officer in any court of competent jurisdiction. Such person’s costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the corporation. Neither the failure of the corporation (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the corporation (including its board of directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(c) Nonexclusivity of Article V. The rights to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article V shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

(d) Insurance. The corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the corporation or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the corporation would have the power to indemnify such person against such liability under this Article V.

(e) Expenses. Expenses incurred by any person described in Section 1 of this Article V in defending a proceeding shall be paid by the corporation in advance of such proceeding’s final disposition unless otherwise determined by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined

that he or she is not entitled to be indemnified by the corporation. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(f) Employees and Agents. Persons who are not covered by the foregoing provisions of this Article V and who are or were employees or agents of the corporation, or who are or were serving at the request of the corporation as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the board of directors.

(g) Contract Rights. The provisions of this Article V shall be deemed to be a contract right between the corporation and each director or officer who serves in any such capacity at any time while this Article V and the relevant provisions of the General Corporation Law of the State of Delaware or other applicable law are in effect, and any repeal or modification of this Article V or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

(h) Merger or Consolidation. For purposes of this Article V, references to “the corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article V with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

6. CERTIFICATES OF STOCK

(a) Form. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by the chairman of the board, the chief executive officer, the chief financial officer, the president, a vice-president, the secretary or an assistant secretary of the corporation, certifying the number of shares owned by such holder in the corporation. If such a certificate is countersigned (1) by a transfer agent or an assistant transfer agent other than the corporation or its employee or (2) by a registrar, other than the corporation or its employee, the signature of any such chairman of the board, chief executive officer, president, vice-president, secretary, or assistant secretary may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder’s attorney duly authorized in writing, upon surrender to the corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization, and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates, and record the transaction on its books. The board of directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar, or both in connection with the transfer of any class or series of securities of the corporation.

(b) Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his or her legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

(c) Fixing a Record Date for Stockholder Meetings. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record

date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

(d) Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

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

(f) Subscriptions for Stock. Unless otherwise provided for in the subscription agreement, subscriptions for shares shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation.

7. GENERAL PROVISIONS

(a) Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the board of directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

(b) Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation, and in such manner, as shall be determined by resolution of the board of directors or a duly authorized committee thereof.

(c) Contracts. The board of directors may authorize any officer or officers, or any agent or agents, of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

(d) Loans. The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

(e) Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors and shall initially be from January 1 to December 31 of each calendar year.

(f) Corporate Seal. The board of directors may provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

(g) Voting Securities Owned By Corporation. Voting securities in any other corporation held by the corporation shall be voted by the chief executive officer, unless the board of directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

(h) Inspection of Books and Records. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in the State of Delaware or at its principal place of business.

(i) Section Headings. Section headings in these by-laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

(j) Inconsistent Provisions. In the event that any provision of these by-laws is or becomes inconsistent with any provision of the Certificate of Incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

8. AMENDMENTS

These by-laws may be amended, altered, or repealed and new by-laws adopted at any meeting of the board of directors by a majority vote. The fact that the power to adopt, amend, alter, or repeal the by-laws has been conferred upon the board of directors shall not divest the stockholders of the same powers.

**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;

2

- (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;

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,

- (g) 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.

4

**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.

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.

- (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.

- 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
- (c) 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.

- 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.
- (d)
- (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]

13

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.

A-1

(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.

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.

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.

A-4

(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.

(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

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.

A-7

(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”).

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.

A-9

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.

A-10

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.

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.

A-12

“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.

A-13

“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.

A-14

“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.

[Remainder of this page left blank]

A-15

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.

(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.

(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.

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.

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.

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.

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.

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.

10

(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.

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;

(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.

(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.

14

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.

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.

Section 9.3 Means of Giving Notice.

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

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

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

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

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

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

Section 9.4 Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these Bylaws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.5 Meeting Attendance via Remote Communication Equipment.

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

(i) participate in a meeting of stockholders; and

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

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation, or these Bylaws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other.

Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

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

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

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.

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.