IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
GULFPORT ENERGY CORPORATION, *et al.*,[1]	)	Case No. 20-35562 (DRJ)
Debtors.	)	(Jointly Administered)

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING (A) THE ASSUMPTION OF THE BACKSTOP COMMITMENT AGREEMENT AND (B) THE PAYMENT OF FEES AND EXPENSES RELATED THERETO, AND (II) GRANTING RELATED RELIEF

This Motion seeks an order that may adversely affect you. If you oppose the Motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the Motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the Motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the Court may consider evidence at the hearing and may decide the Motion at the hearing.

Represented parties should act through their attorney.

A hearing will be conducted on this matter on January 4, 2021 at 1:00 p.m. in Courtroom 400, 4th floor, 515 Rusk, Houston, Texas 77002. You may participate in the hearing either in person or by audio/video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. You will be responsible for your own long-distance charges. Once connected, you will be asked to enter the conference room number. Judge Jones's conference room number is 205691.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gulfport Energy Corporation (1290); Gator Marine, Inc. (1710); Gator Marine Ivanhoe, Inc. (4897); Grizzly Holdings, Inc. (9108); Gulfport Appalachia, LLC (N/A); Gulfport MidCon, LLC (N/A); Gulfport Midstream Holdings, LLC (N/A); Jaguar Resources LLC (N/A); Mule Sky LLC (6808); Puma Resources, Inc. (6507); and Westhawk Minerals LLC (N/A). The location of the Debtors' service address is: 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134.

You may view video via GoToMeeting. To use GoToMeeting, the Court recommends that you download the free GoToMeeting application. To connect, you should enter the meeting code "JudgeJones" in the GoToMeeting app or click the link on Judge Jones's home page on the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of the hearing. To make your electronic appearance, go to the Southern District of Texas website and select "Bankruptcy Court" from the top menu. Select "Judges' Procedures," then "View Home Page" for Judge Jones. Under "Electronic Appearance" select "Click here to submit Electronic Appearance." Select the case name, complete the required fields and click "Submit" to complete your appearance.

If you object to the relief requested, you must either appear at the hearing or file a written response prior to the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

The above-captioned debtors and debtors in possession (collectively, the "Debtors")[2] respectfully state the following in support of this motion (this "Motion"):

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto (the "Order"), (i) approving (a) the assumption of the Backstop Commitment Agreement and (b) the payment of fees and expenses related thereto, and (ii) granting related relief. In support of this motion, the Debtors submit the *Declaration of Douglas McGovern in Support of the Debtors' Motion for Entry of an Order (I) Approving (A) the Assumption of the Backstop Commitment Agreement and (B) the Payment of Fees and Expenses Related Thereto, and (II) Granting Related Relief*, attached hereto as **Exhibit A** (the "McGovern Declaration").

[2] A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of Quentin R. Hicks, Vice President and Chief Financial Officer of Gulfport Energy Corporation, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 40] (the "First Day Declaration"), filed on November 15, 2020 following the filing of the Debtors' voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), on November 13, 2020 (the "Petition Date").

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 363(b), and 365 of the Bankruptcy Code, Bankruptcy Rule 2002, and rule 2002-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

The Backstop Commitment Agreement

5. As discussed in greater detail in the First Day Declaration,[3] in July 2020, the Debtors, with the assistance of their advisors, commenced comprehensive restructuring negotiations with their major creditor constituencies, including the Ad Hoc Group of the Debtors' Unsecured Notes and the RBL Lenders. After months of good-faith, arm's length negotiations, on November 13, 2020, the parties reached a global agreement, and the Debtors entered into a restructuring support agreement with lenders holding over 95 percent of the loans under the RBL Credit Facility and holders of over 70 percent of the Unsecured Notes (the "Restructuring Support Agreement").

6. Pursuant to the Restructuring Support Agreement, the Debtors commenced these chapter 11 cases with commitments for a $262.5 million debtor-in-possession facility, including $105 million in new money, a $50 million backstopped new-money equity rights offering (the "Rights Offering"), and $580 million in exit financing. The restructuring transactions

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration and the Backstop Commitment Agreement, as applicable.

contemplated by the Restructuring Support Agreement will be implemented through the Debtors' prearranged chapter 11 plan (the "Plan"), which will deleverage the Debtors' balance sheet by approximately $1.24 billion, reduce the Debtors' high fixed costs, provide access to $580 million in exit financing, and provide the Debtors with an additional $50 million of new capital at emergence through the Rights Offering.

7. To ensure the success of the Rights Offering, the Ad Hoc Group (the "Backstop Parties") agreed to backstop the Rights Offering on the terms set forth in the backstop commitment agreement attached hereto as **Exhibit B** (the "Backstop Commitment Agreement"). Pursuant to the Backstop Commitment Agreement, the Backstop Parties agreed to, among other things, provide the Backstop Commitments (as defined below) in consideration for, among other things, the Debtors' agreement to pay a backstop fee of 10 percent of the Backstop Commitments (the "Backstop Commitment Premium") and the Expense Reimbursement (as defined below), subject to the terms and conditions contained in the Backstop Commitment Agreement.

8. The Backstop Commitment Premium is a nonrefundable fee of $5 million (10 percent of the backstopped Rights Offering amount). If the Rights Offering is consummated, the Backstop Commitment Premium will be payable in the form of New Convertible Preferred Stock issued at the Per Share Price equal to 10 percent of the aggregate amount of the applicable Backstop Party's Backstop Commitment and Subscription Price.

9. In the event that a material breach of the Backstop Commitment Agreement by any of the Debtors has prevented the satisfaction of any condition to the effectiveness of the Plan, or the Debtors' or any Backstop Party's performance of any of its obligations under the Backstop Commitment Agreement or under the RSA, the Backstop Parties may terminate the Backstop Commitment Agreement and still receive the Backstop Commitment Premium (subject to the

terms and conditions contained in the Backstop Commitment Agreement) if such violation or breach has not been waived by the Required Backstop Parties or been cured in all material respects by the applicable Debtor within ten Business Days after written notice thereof from the Backstop Parties, as set forth in section 8.10.4 of the Backstop Commitment Agreement. In the event that the Backstop Commitment Agreement is terminated by the Required Backstop Parties pursuant to section 8.10.4 of the Backstop Commitment Agreement, the Backstop Commitment Premium will be 10 percent of the aggregate amount of each Backstop Party's Backstop Commitment and Subscription Price, payable in full in cash.[4]

10. As additional consideration for the Backstop Commitment Parties' entry into the Backstop Commitment Agreement, the Backstop Commitment Agreement provides for an expense reimbursement (the "Expense Reimbursement"), which requires the Debtors to pay, to the extent not otherwise already paid, all accrued and unpaid fees, costs, and expenses of the Backstop Parties and the Backstop Parties' Professionals incurred in connection with the Backstop Commitment Agreement, the Restructuring Support Agreement, and these chapter 11 cases.

11. The following table summarizes the Backstop Commitment Premium, the Expense Reimbursement, and certain other material terms of the Backstop Commitment Agreement:[5]

Summary of Principal Terms of the Backstop Commitment Agreement	
Certain Definitions *See* The Rights Offering and the Backstop Commitment § 1	The following terms have the meaning set forth below: i. "Aggregate Commitment Amount" means $50,000,000; ii. "Backstop Commitment" means, with respect to each Backstop Party, the maximum amount of consideration in exchange for Remaining Shares that such Backstop Party may be required to pay under the Backstop Commitment

[4] If the Backstop Parties are entitled to payment of the Backstop Commitment Premium in cash, the Backstop Commitment Premium shall constitute an allowed administrative expense of the Debtors' estates under section 503(b) and 507 of the Bankruptcy Code.

[5] This summary is provided only for convenience and is subject in all respects to the terms of the Backstop Commitment Agreement. In the event of any inconsistency or conflict between the terms of this summary and the Backstop Commitment Agreement, the terms of the Backstop Commitment Agreement shall control.

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	Agreement. Such amounts are set forth opposite each Backstop Party's name in Schedule 2 of the Backstop Commitment Agreement; iii. "Backstop Commitment Premium" means (a) in the event of the purchase of New Convertible Preferred Stock by any Backstop Party, 10 percent of the aggregate amount of such Backstop Party's Backstop Commitment and Subscription Price, payable in the form of New Convertible Preferred Stock issued at the Per Share Price, and (b) in the event the Backstop Commitment Agreement is terminated by the Required Backstop Parties under Section 8.10.4 of the Backstop Commitment Agreement, 10 percent of the aggregate amount of such Backstop Party's Backstop Commitment and Subscription Price, payable in full in cash; iv. "New Common Stock" means shares of common stock, par value $0.0001 per share, of the Reorganized Company; and v. "New Equity" means collectively, the New Common Stock and the New Convertible Preferred Stock.
Backstop Commitment *See* The Rights Offering and the Backstop Commitment § 2.1.2	On and subject to the terms and conditions of the Backstop Commitment Agreement and the Rights Offering Procedures, including entry of the Confirmation Order, each Backstop Party agrees, severally and not jointly, to (i) fully exercise all Subscription Rights that are properly issued to it and its Affiliates pursuant to the Rights Offering, (ii) duly purchase all New Convertible Preferred Stock issuable to it and its Affiliates pursuant to such exercise (such shares, the "Subscription Amount") at the applicable Per Share Price for the applicable aggregate subscription price (the "Subscription Price") set forth next to such Backstop Party's name on Schedule 2 of the Backstop Commitment Agreement, and (iii) complete, duly execute and submit a subscription exercise form and any other documentation required pursuant to the Rights Offering Procedures and the Plan. On and subject to the terms and conditions of the Backstop Commitment Agreement, including entry of the Confirmation Order, each Backstop Party agrees, severally and not jointly, to (i) purchase an aggregate number of Remaining Shares equal to its Backstop Obligation (the "Backstop Purchase") for an amount equal to the Purchase Price and (ii) complete, duly execute and submit a subscription exercise form and any other documentation required pursuant to the Rights Offering Procedures and the Plan.
Premium *See* Backstop Commitment Agreement §§ 2.2.3	Subject to Section 2.4 of the Backstop Commitment Agreement, the Company agrees to pay each Backstop Party its Backstop Commitment Premium, which premium shall be deemed earned upon the effective date of the Backstop Commitment Agreement and payable upon the earlier of (a) the Effective Date and (b) termination of the Backstop Commitment Agreement by the Required Backstop Parties, pursuant to Section 8.10.4 of the Backstop Commitment Agreement.
Expense Reimbursement *See* Backstop Commitment Agreement §§ 2.3.1	Subject to the entry of the Approval Order, the Company agrees to pay or reimburse when due, to the extent not otherwise paid pursuant to the Restructuring Support Agreement or in connection with the Chapter 11 Cases or another order of the Bankruptcy Court, all accrued and unpaid fees, costs and expenses of the Backstop Parties and Backstop Parties' Professionals, incurred in connection with the Backstop Commitment Agreement, the Restructuring Support Agreement, and the Chapter 11 Cases, whether prior to, on, or after the date of the Backstop Commitment Agreement through the Effective Date for which invoices or receipts are forwarded to the Company by the Backstop Parties at least three Business Days prior to the Effective Date; provided, however, that the failure to timely forward invoices or

Summary of Principal Terms of the Backstop Commitment Agreement	
	receipts will not release the Company from its obligation to pay the Expense Reimbursement in respect therefor.
Representations and Warranties of the Company *See* Backstop Commitment Agreement §§ 3.1–3.28	Subject to the conditions and explanations contained in the Backstop Commitment Agreement, and except (a) as set forth in the corresponding section of the Company Disclosure Schedule or (b) as disclosed in the Company Information and publicly available on the SEC's website prior to the date of the Backstop Commitment Agreement, the Company, on behalf of itself and each of the Company Parties, makes customary representations and warranties, including (i) organization, (ii) corporate power and authority, (iii) execution and delivery; enforceability, (iv) authorized and issued equity interests, (v) consents, (vi) no conflicts, (vii) company information, (viii) absence of certain changes, (ix) no violation; compliance with laws, (x) legal proceedings, (xi) no unlawful payments, (xii) compliance with money laundering laws, (xiii) compliance with sanctions laws, (xiv) no broker's fees, (xv) investment company act, (xvi) takeover statutes, (xvii) arm's-length, (xviii) title to real property, (xix) no undisclosed relationships, (xx) licenses and permits, (xxi) environmental, (xxii) tax matters, (xxiii) employee benefit plans, (xxiv) internal control over financial reporting, (xxv) disclosure controls and procedures, (xxvi) disclosure controls and procedures, (xxvii) material contracts, (xxviii) insurance, and (xxix) intellectual property.
Representations and Warranties of Each Backstop Party *See* Backstop Commitment Agreement §§ 4.1–4.14	Subject to the conditions and explanations contained in the Backstop Commitment Agreement, each Backstop Party, severally and not jointly, makes customary representations and warranties, on its own behalf and in its capacity as investment manager for its managed funds and accounts party to the Backstop Commitment Agreement, if any, including: (i) organization, (ii) due authorization, (iii) due execution; enforceability, (iv) no registration under the Securities Act; selling restrictions, (v) acquisition for investment, (vi) no conflicts, (vii) consents and approvals, (viii) investor representation, (ix) investment experience, (x) sufficiency of funds, (xi) ownership, (xii) legal proceedings, (xiii) no broker's fee, and (xiv) independent investigation.
Covenants *See* Backstop Commitment Agreement §§ 5.1–5.12.	The Backstop Commitment Agreement contains certain additional covenants, including (i) conduct of business, (ii) non-disclosure of holdings information, (iii) use of proceeds, (iv) blue sky compliance, (v) rights offering, (vi) the New Convertible Preferred Stock, (vii) Backstop Notice, (viii) facilitation, (ix) access to information; confidentiality, and (x) regulatory approvals.
Conditions to the Obligations of the Backstop Parties *See* Backstop Commitment Agreement § 6.1.	The obligation of the Backstop Parties to consummate the Backstop Purchase shall be subject to the satisfaction of each of the following conditions on the Effective Date: i. Each of the Exit Facility Documents, the Rights Offering Documents and the Definitive Documents is in form and substance substantially in accordance with the Restructuring Support Agreement or as otherwise set forth in the Plan, and otherwise reasonably acceptable to the Required Backstop Parties; ii. The Restructuring Support Agreement and the Backstop Commitment Agreement shall not have been terminated; iii. All terminations or expirations of waiting periods imposed by any Governmental Authority required under any Antitrust Laws, if applicable, shall have occurred and other notifications, consents, authorizations and approvals required to be made or obtained from any Governmental Authority any Antitrust Law, if applicable, shall have been made or obtained for the transactions contemplated by the Backstop Commitment Agreement;

Summary of Principal Terms of the Backstop Commitment Agreement	
	iv. The Bankruptcy Court shall have entered the Approval Order in form and substance acceptable to the Required Backstop Parties, and such order shall not be reversed, stayed, dismissed, vacated, reconsidered, modified or amended in any material respect (other than in accordance with the terms of the Backstop Commitment Agreement or the Restructuring Support Agreement); v. The Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to the Required Backstop Parties and such order shall not be reversed, stayed, dismissed, vacated, reconsidered, modified or amended in any material respect (other than in accordance with the terms of the Backstop Commitment Agreement or the Restructuring Support Agreement); vi. The Company and all of the other Company Parties shall have complied in all material respects with the terms of the Plan, once filed, that are to be performed by the Company and the other Company Parties on or prior to the Effective Date, and the conditions to the occurrence of the Effective Date (other than the consummation of the Backstop Purchase) set forth in the Plan shall have been satisfied or waived in accordance with the terms of the Plan; vii. The Company shall have paid the Expense Reimbursement in full in cash, or such amount shall be paid concurrently with the Effective Date, in each case, to the extent invoiced in accordance with the terms of the Backstop Commitment Agreement; viii. The Rights Offering shall have been conducted in accordance with the Backstop Commitment Agreement and the Rights Offering Documents and the New Convertible Preferred Stock and New Common Stock shall have been issued free and clear of all Liens; ix. The Backstop Parties shall have received the Backstop Notice in accordance with the terms of the Backstop Commitment Agreement; x. Since the date of the Backstop Commitment Agreement, there shall not have occurred a Material Adverse Effect; xi. True and correct representations and warranties (subject to the qualifications and exceptions contained in the Backstop Commitment Agreement) and performance and compliance with all covenants in all material respects; xii. The Company, on behalf of itself and the other Company Parties, shall have performed and complied, in all material respects, with all of its respective covenants and agreements contained in the Backstop Commitment Agreement that contemplate, by their terms, performance or compliance prior to the Effective Date; xiii. The Backstop Parties shall have received on and as of the Effective Date a certificate of the chief executive officer or chief financial officer of the Company confirming that the conditions set forth in Sections 6.1.10, 6.1.11, and 6.1.12 of the Backstop Commitment Agreement have been satisfied; and xiv. No Law, Order or Legal Proceeding shall have been enacted, adopted or issued by or before any Governmental Authority that prohibits or materially restrains the consummation of the Restructuring or the transactions contemplated by the Backstop Commitment Agreement.
Conditions to the Company's Closing Obligations	The obligations of the Company to consummate the Closing shall be subject to the satisfaction of each of the following conditions on the Effective Date, among others: i. The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Required Backstop Parties and such

Summary of Principal Terms of the Backstop Commitment Agreement	
See Backstop Commitment Agreement § 6.2.	order shall not be reversed, stayed, dismissed, vacated, reconsidered, modified or amended in any material respect (other than in accordance with the terms of the Backstop Commitment Agreement or the Restructuring Support Agreement); ii. The conditions to the occurrence of the Effective Date (other than the consummation of the Rights Offering and the Backstop Purchase) set forth in the Plan shall have been satisfied or waived in accordance with the terms of the Plan; iii. Each of the representations and warranties of each of the Backstop Parties, set forth in Section 4 of the Backstop Commitment Agreement, shall be true and correct in all respects (disregarding all materiality qualifiers) as of the Effective Date (except with respect to representations and warranties that expressly speak of an earlier date, which shall be true and correct in all material respects (disregarding all materiality qualifiers) as of such date), except where the failure to be so true and correct would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Backstop Parties to consummate the transactions contemplated hereby or under the Plan or the Restructuring Support Agreement; iv. Each of the Backstop Parties, on its own behalf and in its capacity as investment manager for its managed funds and accounts party hereto, if applicable, shall have performed and complied, in all material respects, with all of its respective covenants and agreements contained in the Backstop Commitment Agreement that contemplate, by their terms, performance or compliance prior to the Effective Date; v. No Law, Order or Legal Proceeding shall have been enacted, adopted or issued by or before any Governmental Authority that prohibits or materially restrains the consummation of the Restructuring or the transactions contemplated by the Backstop Commitment Agreement; vi. All terminations or expirations of waiting periods imposed by any Governmental Authority required under any Antitrust Laws, if applicable, shall have occurred and other notifications, consents, authorizations and approvals required to be made or obtained from any Governmental Authority under any Antitrust Law, if applicable, shall have been made or obtained for the transactions contemplated by the Backstop Commitment Agreement; and vii. The Company shall have received each of the Backstop Party's respective Funding Amounts in accordance with the terms of the Backstop Commitment Agreement.
Indemnification and Contribution *See* Backstop Commitment Agreement § 7.1.	The Company and the other Company Parties (the "Indemnifying Parties" and each, an "Indemnifying Party") shall, jointly and severally, indemnify and hold harmless each Backstop Party and its Affiliates, equity holders, members, partners, general partners, managers, directors, officers and its and their respective representatives, attorneys, and controlling Persons (each, an "Indemnified Person") from and against any and all losses, claims, damages, liabilities and costs and expenses (collectively, "Indemnified Losses") that any such Indemnified Person may incur or to which any such Indemnified Person may become subject arising out of or in connection with the Backstop Commitment Agreement or the transactions contemplated hereby, or any Legal Proceeding relating to any of the foregoing, regardless of whether any Indemnified Person is a party thereto, whether or not such proceedings are brought by the Company, the other Company Parties, their respective equity holders, Affiliates, creditors or any other Person, and reimburse each Indemnified Person

Summary of Principal Terms of the Backstop Commitment Agreement	
	upon demand for reasonable and documented out of-pocket legal or other third-party expenses of counsel (which, so long as there are no actual conflicts of interests among such Indemnified Persons, shall be limited to one law firm serving as counsel for the Indemnified Persons) incurred in connection with investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as a witness with respect to, any Legal Proceeding relating to any of the foregoing (including in connection with the enforcement of the indemnification obligations set forth herein), irrespective of whether or not the transactions contemplated by the Backstop Commitment Agreement or the Plan are consummated or whether or not the Backstop Commitment Agreement is terminated; provided, that the foregoing indemnity will not, as to any Indemnified Person, apply to Indemnified Losses (a) as to a Defaulting Backstop Party, its Affiliates or any Indemnified Person related thereto, principally caused by a default by such Defaulting Backstop Party (or Indemnified Persons related thereto) or any breach by any Backstop Party (or Indemnified Persons related thereto) under the Backstop Commitment Agreement, or (b) to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the willful misconduct or fraud of such Indemnified Person. Notwithstanding anything to the contrary in the Backstop Commitment Agreement, the Indemnifying Parties will not be liable for, and no Indemnified Person shall claim or seek to recover, any punitive, special, indirect or consequential damages.
Assignment *See* Backstop Commitment Agreement §§ 8.2	Except as described in Section 8.2 of the Backstop Commitment Agreement, the Backstop Commitment Agreement will be binding upon and inure to the benefit of each and all of the Parties, and neither the Backstop Commitment Agreement nor any of the rights, interests or obligations hereunder will be assigned by any of the Parties without the prior written consent of the Company. Notwithstanding the foregoing, any Backstop Party may assign or reallocate its rights and obligations hereunder (including its Backstop Commitment, Backstop Obligation, Subscription Rights and right to receive its Backstop Commitment Premium) prior to the Effective Date, in whole or in part, to (a) any other Consenting Noteholder in a manner consistent with the terms of the Restructuring Support Agreement that agrees as part of such assignment to assume such Backstop Party's Backstop Commitment, Backstop Obligation, Subscription Rights and/or right to receive its Backstop Commitment Premium, as applicable, or (b) any Backstop Party or to any of its or their Affiliates (and/or any Affiliate thereof); provided, that, in each case, any such assignment shall not release such Backstop Party from any of its obligations under the Backstop Commitment Agreement in the event that such assignee does not fulfill its obligations hereunder; provided, further, that (i) such assignee and the assigning Backstop Party shall have duly executed and delivered to the Company and Kirkland a written notice of such assignment in substantially the form attached as Exhibit A hereto (a "Notice of Assignment"); and (ii) with respect to any assignee that is not a party to the Backstop Commitment Agreement, such assignee shall be required, by delivery of an executed agreement in substantially the form attached as Exhibit B hereto (a "Joinder Agreement"), to be bound by the obligations of such assignee's assigning Backstop Party hereunder. Upon the effectiveness of any assignment pursuant to Section 8.2 of the Backstop Commitment Agreement, the Company shall promptly update Schedule 2 of the Backstop Commitment Agreement to reflect such assignment.
Termination *See* Backstop Commitment Agreement §§ 8.10	The Backstop Commitment Agreement shall terminate: i. automatically if the Restructuring Support Agreement is terminated pursuant to the terms thereof;

Summary of Principal Terms of the Backstop Commitment Agreement	
	ii. if the Company and the Required Backstop Parties mutually agree in writing to terminate the Backstop Commitment Agreement; iii. at the Company's election, by written notice to the Backstop Parties, in the event of a material breach of the Backstop Commitment Agreement by any Backstop Party or any Replacing Backstop Party that has prevented the satisfaction of any condition, or the Company's or any Backstop Party's performance of any of its obligations hereunder or under the Restructuring Support Agreement, if such violation or breach has not been waived by the Company or cured in all material respects by the applicable Backstop Party or Replacing Backstop Party within ten Business Days after written notice thereof from the Company (provided, however, that the Company may not seek to terminate the Backstop Commitment Agreement based upon a material breach arising out of its own actions or omissions in breach of the Backstop Commitment Agreement or if any of the Company Parties is then in material breach of the Backstop Commitment Agreement or the Restructuring Support Agreement); or iv. at the Required Backstop Parties' election, by written notice to the Company, in the event that a material breach of the Backstop Commitment Agreement by any of the Company Parties has prevented the satisfaction of any condition to the effectiveness of the Plan, or the Company's or any Backstop Party's performance of any of its obligations hereunder or under the Restructuring Support Agreement, if such violation or breach has not been waived by the Required Backstop Parties or been cured in all material respects by the applicable Company Party within ten Business Days after written notice thereof from the Backstop Parties (provided, however, that the Backstop Parties may not seek to terminate the Backstop Commitment Agreement based upon a material breach arising out of the actions or omissions of any Backstop Party in breach of the Backstop Commitment Agreement or if any Backstop Party is then in material breach of the Backstop Commitment Agreement or the Restructuring Support Agreement).
Specific Performance *See* Backstop Commitment Agreement § 8.15	The Parties agree that irreparable damage would occur if any provision of the Backstop Commitment Agreement were not performed in accordance with the terms of the Backstop Commitment Agreement and that the Parties shall be entitled to an injunction or injunctions without the necessity of posting a bond to prevent breaches of the Backstop Commitment Agreement or to enforce specifically the performance of the terms and provisions of the Backstop Commitment Agreement, in addition to any other remedy to which they are entitled at law or in equity. Unless otherwise expressly stated in the Backstop Commitment Agreement no right or remedy described or provided in the Backstop Commitment Agreement is intended to be exclusive or to preclude a Party from pursuing other rights and remedies to the extent available under the Backstop Commitment Agreement, at law or in equity.

12. The Debtors' ability to obtain the Backstop Commitments at the outset of these chapter 11 cases provides significant value to the Debtors' estates, and if the relief requested herein is not granted, there are no guarantees that the Debtors will be able to secure similarly sized equity commitments at a later point in these cases. The risk of the Debtors not being able to secure equity

commitments in several months due to continued market volatility significantly outweighs the cost of the Backstop Commitment Premium and the Expense Reimbursement.

13. The Backstop Commitments are integral to the contemplated restructuring set forth in the Restructuring Support Agreement, which will deleverage the Debtors' capital structure by over $1.24 billion and provide for $580 million in committed exit financing. The Backstop Commitments will work in tandem with, and are necessary for and a condition to securing the exit facilities contemplated by the Restructuring Support Agreement. The proceeds of the Rights Offering and the exit facilities will fund distributions under the Plan and support the future working capital needs of the reorganized business. In addition, the new money helps satisfy the conditions precedent in the exit facility, including leverage and liquidity covenants. Thus, the assumption of the Backstop Commitment Agreement and incurrence of the Backstop Commitment Premium and the Expense Reimbursement is in the best interests of the Debtors and all stakeholders, as evidenced by the support of an overwhelming majority of the Debtors' funded debtholders.

14. Given the benefits to the Debtors and their estates from securing the Backstop Commitments and the risk of losing such commitments if the requested relief is not granted, assumption of the Backstop Commitment Agreement is in the best interests of the Debtors' estates, the Backstop Commitment Premium and the Expense Reimbursement are reasonable and appropriate, and the assumption of the Backstop Commitment Agreement and incurrence of the Backstop Commitment Premium and the Expense Reimbursement should be approved.

Basis for Relief

I. Assumption of the Backstop Commitment Agreement Is an Exercise of the Debtors' Sound Business Judgment and Is in the Best Interests of Their Estates and All Parties in Interest.[6]

15. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume . . . any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). A debtor's assumption of an executory contract or unexpired lease is ordinarily governed by the "business judgment" standard. *See Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1658 (2019) ("The bankruptcy court will generally approve that choice [to assume or reject], under the deferential 'business judgment' rule."). The business judgment standard requires a court to approve a debtor's business decision unless that decision is the product of "bad faith, whim, or caprice." *See In re Idearc Inc.*, 423 B. R. 138, 162 (Bankr. N.D. Tex. 2009) ("The issue . . . is whether [the debtor's decision] is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.") (quoting *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985)) (internal quotation marks omitted).

16. Assumption of an executory contract or an unexpired lease is appropriate where such assumption would benefit the estate. *See In re Pisces Energy, LLC*, No. 09-36591-H5-11, 2009 WL 7227880, at *6 (Bankr. S.D. Tex. Dec. 21, 2009) ("Courts apply the 'business judgment test,' which requires a showing that the proposed course of action will be advantageous to the estate and the decision be based on sound business judgment."). Upon finding that a debtor exercised its sound business judgment in determining that assumption of certain contracts or leases

[6] Although the Backstop Commitment Agreement and the Restructuring Support Agreement represent the best alternatives for the Debtors at this time, the Debtors nevertheless maintain a "fiduciary out" under the Restructuring Support Agreement to terminate the Restructuring Support Agreement and enter into superior restructuring alternatives.

is in the best interests of its creditors and all parties in interest, a court should approve the assumption under section 365(a) of the Bankruptcy Code. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) ("As long as assumption of a lease appears to enhance a debtor's estate, court approval of a debtor-in-possession's decision to assume the lease should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code . . . .") (quoting *Allied Technology, Inc. v. R.B. Brunemann & Sons*, 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982)).

17. The Debtors believe that assumption of the Backstop Commitment Agreement is within their business judgment and is in the best interest of their estates. The Backstop Commitment Agreement will increase the likelihood the Debtors will emerge from chapter 11 by ensuring that the $50 million Rights Offering will be fully funded. Additionally, filing this Motion is required by the Restructuring Support Agreement and the Backstop Parties could terminate the Restructuring Support Agreement if this milestone were not met, thereby jeopardizing the substantial support the Debtors received from their funded debtholders for the restructuring. The Backstop Commitment Premium and the Expense Reimbursement will not obligate the Debtors to make any substantial payments at this time, and the benefits provided by the Backstop Commitments substantially outweigh this consideration. *See* McGovern Decl. ¶ 15. Without the Backstop Commitments by the Ad Hoc Group, it is uncertain whether the Debtors will be able to secure sufficient equity capital required to exit from chapter 11 and fund the go-forward business at a later point in time. *See* McGovern Decl. ¶ 16.

II. The Backstop Commitment Premium and the Expense Reimbursement Should Be Approved Because They Are Reasonable, Market-Based, and Essential Components of the Backstop Commitment Agreement.

18. Section 363(b)(1) of the Bankruptcy Code provides that a debtor in possession, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business,

property of the estate." 11 U.S.C. § 363(b)(1). The Fifth Circuit has held that debtors must articulate a "business justification" for using, selling, or leasing property outside of the ordinary course of business. *See, e.g.*, *In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) ("'[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors, and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.'") (quoting *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986)). "The business judgment standard in section 363 is flexible and encourages discretion." *In re ASARCO, L.L.C.*, 650 F.3d at 601.

19. Section 105(a) of the Bankruptcy Code gives the Court vast equitable powers. *See In re Davis*, 170 F.3d 475, 492 (5th Cir. 1999) ("The basic purpose of § 105 is to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction.") (internal quotations omitted). Further, determining the appropriate method for carrying out the provisions of the Bankruptcy Code is left to the discretion of the court. *See In re Rojas*, No. 07-70058, 2009 WL 2496807, at *7 (Bankr. S.D. Tex. Aug. 12, 2009) ("Section 105 does not require a court to use the least restrictive means to carry out the requirements of the Code. Section 105(a) does not say that the Court's authority is limited to orders or judgments *necessary* to carry out the Code. Rather, Congress explicitly added to the statute deferential, discretionary language with 'or appropriate.'") (quoting 11 U.S.C. § 105(a)) (emphasis in original). The Court is given these vast equitable powers to ensure that the Debtors are "not unduly denied benefits" provided to them under the Bankruptcy Code. *In re Exquisito Servs., Inc.*, 823 F.2d 151, 155 (5th Cir. 1987).

20. Here, the Backstop Commitment Premium and the Expense Reimbursement are a reasonable use of estate resources given the substantial benefits the Backstop Commitments

provide to the Debtors' estates. *See* McGovern Decl. ¶ 17. Specifically, the Backstop Commitments are a key component of a restructuring transaction that will provide the Debtors with at least $50 million of fresh capital on the effective date of the Debtors' plan of reorganization and deleverage the Debtors' balance sheet by over $1.24 billion. *See id.* Further, the Backstop Commitment Premium and the Expense Reimbursement should be accorded administrative expense priority because they are actual and necessary costs of preserving and maximizing the value of the Debtors' estates and enhancing creditor recoveries.

21. The terms of the Backstop Commitment Premium and the Expense Reimbursement are consistent with fees and expenses associated with other, similar rights offerings. *See* McGovern Decl. ¶ 18. A review of 32 backstop commitments associated with rights offerings equal to or in excess of $50 million, with petition dates dating back to 2015, demonstrates that the key economic terms of the Backstop Commitments are reasonable and within the range of the market, particularly taking into account the above factors. *See id.* Further, the vast majority of these cases (approximately 90 percent) included expense reimbursement provisions similar to the Expense Reimbursement provided in the Backstop Commitment Agreement. *See id.*

22. Finally, the Backstop Commitment Premium and the Expense Reimbursement are essential to the Backstop Commitment Agreement, which is critical and necessary for the success of these chapter 11 cases. The Backstop Parties would not have been willing to provide the Backstop Commitments without the Backstop Commitment Premium and the Expense Reimbursement, which fairly and reasonably compensate the Backstop Parties for undertaking financial risk to aid the Debtors in their restructuring efforts. *See* McGovern Decl. ¶ 17.

23. For these reasons, the Debtors determined, in their business judgment and in consultation with their advisors, that providing the Backstop Commitment Premium and the Expense Reimbursement was an essential and fair means to secure the Backstop Commitments.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

24. To implement the foregoing successfully, the Debtors request that the Court enter an Order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a), and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h).

Notice

25. Notice of the hearing on the relief requested in this Motion will be provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the foregoing, due notice will be afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties-in-interest, including: (a) the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Ad Hoc Group; (d) counsel to the DIP Agent; (e) the United States Attorney's Office for the Southern District of Texas; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (i) the state attorneys general for states in which the Debtors conduct business; (j) the indenture trustee under the Unsecured Notes; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Houston, Texas
November 24, 2020

Respectfully Submitted,

/s/ Matthew D. Cavenaugh

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Proposed Co-Counsel for the Debtors and Debtors in Possession

Certificate of Service

I certify that on November 24, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavenaugh
Matthew D. Cavenaugh

Exhibit A

McGovern Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
GULFPORT ENERGY CORPORATION, *et al.*,[1]	)	Case No. 20- 35562 (DRJ)
Debtors.	)	(Jointly Administered)

DECLARATION OF DOUGLAS MCGOVERN IN SUPPORT OF THE DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING (A) THE ASSUMPTION OF THE BACKSTOP COMMITMENT AGREEMENT AND (B) APPROVING THE PAYMENT OF FEES AND EXPENSES RELATED THERETO, AND (II) GRANTING RELATED RELIEF

I, Douglas McGovern, hereby declare under penalty of perjury:

1. I am a Partner at Perella Weinberg Partners, L.P. (together with its corporate advisory affiliates, "Perella"), a global financial advisory services and investment banking firm, which has its principal office in North America at 767 5th Avenue, New York, New York 10153. Perella is serving as investment banker to the Debtors and has been engaged in such capacity since March of 2020.

2. I submit this declaration (this "Declaration") in support of the relief requested in the *Debtors' Motion for Entry of an Order (I) Approving (A) the Assumption of the Backstop*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gulfport Energy Corporation (1290); Gator Marine, Inc. (1710); Gator Marine Ivanhoe, Inc. (4897); Grizzly Holdings, Inc. (9108); Gulfport Appalachia, LLC (N/A); Gulfport MidCon, LLC (N/A); Gulfport Midstream Holdings, LLC (N/A); Jaguar Resources LLC (N/A); Mule Sky LLC (6808); Puma Resources, Inc. (6507); and Westhawk Minerals LLC (N/A). The location of the Debtors' service address is: 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134.

Commitment Agreement and (B) the Payment of Fees and Expenses Related Thereto, and (II) Granting Related Relief (the "Motion").[2]

Qualifications

3. Perella is an investment banking firm that provides strategic and financial advisory services, as well as capital markets knowledge and financing and restructuring capabilities that are employed in large-scale corporate restructuring transactions. Perella's professionals have extensive experience providing investment banking services to financially distressed companies and to creditors, equity holders, and other constituencies in reorganization proceedings and complex financial restructurings, both in- and out-of-court.

4. For instance, Perella is providing or has provided investment banking and other services in connection with the restructuring of the following companies: Algeco Scotsman Global SARL; American Tire Distributors Corporation; Approach Resources Inc.; Atlas Resource Partners, L.P.; Bonanza Creek Energy, Inc.; Breitburn Energy Partners LP; Bristow Group, Inc.; California Resources Corporation; Chaparral Energy, Inc.; Concordia International Corp.; EcoBat Holdings, Inc.; EV Energy Partners L.P.; Fieldwood Energy LLC; Gastar Exploration Inc.; Global Brokerage, Inc.; Hexion Inc.; iHeartMedia, Inc.; International Automotive Components Group S.A.; Jack Cooper Holdings Corp; Memorial Production Partners LP; Millar Western Forest Products Ltd.; Oasis Petroleum Inc.; Ocean Rig UDW Inc.; Pacific Drilling S.A.; Pacific Sunwear of California, Inc.; Peabody Energy Corporation; Pernix Therapeutics Holding Inc.; Proserv Group Inc.; Sanchez Energy Corporation; Savers Inc.; Seadrill Limited; Sears Holdings Corporation; Sprint Industrial Holdings LLC; Stone Energy Corporation; Vanguard Natural Resources, Inc.; VER Technologies HoldCo LLC; and Windstream Holdings, Inc.

[2] Capitalized terms used but not defined herein shall have the meaning given to such terms in the Motion.

5. I have more than fifteen years of investment banking and capital structure advisory experience assisting companies on a wide range of strategic matters. I have advised senior management and boards of directors of companies, as well as investors and creditors, across a broad range of industries in connection with restructurings, mergers and acquisitions, and financing transactions. In particular, I have been involved in numerous restructurings, including, without limitation, Atlas Production Partners, Bonanza Creek, California Resources, EV Energy Partners, Gastar Exploration, Halcón Resources, Memorial Production Partners, Oasis Petroleum, Salt Creek Midstream, and Sanchez Energy Corporation.

6. Prior to joining Perella in 2010, I held various positions, including at BPW Acquisition Corp, a special purpose acquisition company ("SPAC") co-sponsored by Perella, where I helped lead the SPAC's merger with Talbots, Inc. I was previously an associate of Brooklyn NY Holdings LLC, where I worked in the firm's principal investing business. Prior to that, I worked for Windward Capital Partners from 2002 to 2005. I began my career as an Analyst at Credit Suisse First Boston. I hold a Masters of Business Administration degree from The Wharton School at the University of Pennsylvania and a Bachelor of Arts degree from Duke University.

7. I am generally familiar with the Debtors' day-to-day operations, business affairs, financial performance, and restructuring efforts. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases, are set forth in the *Declaration of Quentin R. Hicks, Chief Financial Officer and Executive Vice President of Gulfport Energy Corporation, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 40] (the "First Day Declaration").

8. Unless otherwise indicated, all facts set forth in this Declaration are based on (a) my participation in the Debtors' negotiations, (b) information learned from my review of relevant financial and operational data regarding the Debtors, (c) information received from members of the Debtors' management or other advisors, and (d) my past experience advising both distressed and non-distressed businesses and companies and their stakeholders. I am authorized by the Debtors to submit this Declaration, and, if I were called upon to testify, I could and would testify competently to the facts set forth herein.

The Backstop Commitment Agreement and Backstop Commitment Premium

9. As discussed in greater detail in the First Day Declaration,[3] in July 2020, the Debtors, with the assistance of their advisors, commenced comprehensive restructuring negotiations with their major creditor constituencies, including the Ad Hoc Group of the Debtors' Unsecured Notes and the RBL Lenders. After months of good-faith, arm's length negotiations, on November 13, 2020, the parties reached a global agreement, and the Debtors entered into a restructuring support agreement with lenders holding over 95 percent of the loans under the RBL Credit Facility and holders of over 70 percent of the Unsecured Notes (the "Restructuring Support Agreement").

10. Pursuant to the Restructuring Support Agreement, the Debtors commenced these chapter 11 cases with commitments for a $262.5 million debtor-in-possession facility, including $105 million in new money, a $50 million backstopped new-money equity rights offering (the "Rights Offering"), and $580 million in exit financing. The restructuring transactions contemplated by the Restructuring Support Agreement will be implemented through the Debtors'

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration and the Backstop Commitment Agreement, as applicable.

prearranged chapter 11 plan (the "Plan"), which will deleverage the Debtors' balance sheet by approximately $1.24 billion, reduce the Debtors' high fixed costs, provide access to $580 million in exit financing, and provide the Debtors with an additional $50 million of new capital at emergence through the Rights Offering.

11. To ensure the success of the Rights Offering, the Ad Hoc Group (the "Backstop Parties") agreed to backstop the Rights Offering on the terms set forth in the Backstop Commitment Agreement. Pursuant to the Backstop Commitment Agreement, the Backstop Parties agreed to, among other things, provide the Backstop Commitments (as defined below) in consideration for, among other things, the Debtors' agreement to pay the Expense Reimbursement (as defined below) and a backstop fee of 10 percent of the Backstop Commitments (the "Backstop Commitment Premium"), subject to the terms and conditions contained in the Backstop Commitment Agreement.

12. The Backstop Commitment Premium is a nonrefundable fee of $5 million (10 percent of the backstopped Rights Offering amount). If the Rights Offering is consummated, the Backstop Commitment Premium will be payable in the form of New Convertible Preferred Stock issued at the Per Share Price equal to 10 percent of the aggregate amount of the applicable Backstop Party's Backstop Commitment and Subscription Price.

13. As additional consideration for the Backstop Commitment Parties' entry into the Backstop Commitment Agreement, the Backstop Commitment Agreement provides for an expense reimbursement (the "Expense Reimbursement"), which requires the Debtors to pay, to the extent not otherwise already paid, all accrued and unpaid fees, costs, and expenses of the Backstop Parties and the Backstop Parties' Professionals incurred in connection with the Backstop Commitment Agreement, the Restructuring Support Agreement, and these chapter 11 cases.

Approving the Backstop Commitment Premium and the Expense Reimbursement Is in the Best Interests of the Debtors' Estates

14. Approving the Backstop Commitment Premium and the Expense Reimbursement and thereby securing the Backstop Commitments will benefit all parties in interest by providing increased certainty that the Debtors will have sufficient liquidity to fund distributions under their plan of reorganization, emerge from chapter 11, and operate the reorganized Debtors' go-forward business. Additionally, despite the significant headwinds that the Debtors faced during the prepetition negotiation process and continue to face, including extreme volatility and historically low natural gas prices resulting from the COVID-19 pandemic, the terms of the Backstop Commitments are reasonable and within the range of similar transactions negotiated without the presence of such headwinds. Specifically, equity investments, the riskiest investments a party can make, are particularly scarce at this moment in time in the upstream oil and gas sector.

15. Further, approval of the Backstop Commitment Premium and Expense Reimbursement does not obligate the Debtors to make any substantial payments at this time. In the event the restructuring transaction contemplated by the Restructuring Support Agreement is consummated, the Backstop Compensation Premium will be paid in the form of New Convertible Preferred Stock upon the effective date of the Debtors' Plan. Only if the Backstop Commitment Agreement is terminated before the effective date of the Debtors' plan of reorganization pursuant to section 8.10.4 of the Backstop Commitment Agreement will the Debtors be obligated to pay the Backstop Commitment Premium in cash.

16. In contrast, failure to approve the Backstop Commitment Premium and Expense Reimbursement at this time would be highly detrimental to the Debtors' estates and all parties in interest. Filing the Motion is required by the Restructuring Support Agreement and the Backstop Parties could terminate the Restructuring Support Agreement if this milestone were not met.

The Debtors' ability to obtain the Backstop Commitments at the outset of these chapter 11 cases provides significant value to the Debtors' estates, and if the relief requested in the Motion is not granted, there are no guarantees that the Debtors will be able to secure similarly sized equity commitments at a later point in these cases. The risk of the Debtors not being able to secure equity commitments in several months due to continued market volatility significantly outweighs the cost of the Backstop Commitment Premium and the Expense Reimbursement. In light of the foregoing, approving the Backstop Commitment Premium and the Expense Reimbursement is in the best interest of the Debtors and all parties in interest.

The Backstop Commitment Premium and Expense Reimbursement Are Reasonable and Appropriate

17. Approval of the Backstop Commitment Premium and Expense Reimbursement in the early stages of these chapter 11 cases is reasonable and appropriate. As discussed, the Backstop Commitments are a key component of a restructuring transaction that will provide the Debtors with at least $50 million of fresh capital and help deleverage the Debtors' balance sheet by over $1.24 billion. The Backstop Parties were not willing to provide the Backstop Commitments absent the Backstop Commitment Premium and Expense Reimbursement, which fairly and reasonably compensate the Backstop Parties for undertaking financial risk and aid the Debtors in their restructuring efforts.

18. Based on my experience, the Backstop Commitment Premium and Expense Reimbursement are within the range of fees and expenses associated with other rights offerings in a chapter 11 context and are reasonable, particularly when taking into account the historically volatile and challenged market in which the Backstop Commitments have been obtained. A review of 32 backstop commitments associated with rights offerings equal to or in excess of $50 million, with petition dates dating back to 2015, demonstrates that the key economic terms of the Backstop

Commitments are reasonable and within the range of the market, particularly taking into account the abovementioned factors. Further, the vast majority of these cases (approximately 90 percent) included expense reimbursement provisions similar to the Expense Reimbursement provided in the Backstop Commitment Agreement.

19. For these reasons, approval of the Backstop Commitment Premium and Expense Reimbursement at this time is necessary to ensure the Debtors preserve the Backstop Commitments, comply with the heavily negotiated deadlines and milestones negotiated with the vast majority of their funded debtholders, and continue toward a swift and successful emergence from chapter 11.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: November 24, 2020

Respectfully submitted,

/s/ Douglas McGovern

Douglas McGovern
Partner
Perella Weinberg Partners LP

Exhibit B

Backstop Commitment Agreement

Execution Version

GULFPORT ENERGY CORPORATION

BACKSTOP COMMITMENT AGREEMENT

November 13, 2020

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GULFPORT ENERGY CORPORATION
BACKSTOP COMMITMENT AGREEMENT
November 13, 2020

BACKSTOP COMMITMENT AGREEMENT, dated as of November 13, 2020 (this "***Agreement***"), among Gulfport Energy Corporation (the "***Company***"), a Delaware corporation (collectively, with each of its debtor Subsidiaries listed on **Schedule 1** hereto, the "***Company Parties***" or the "***Debtors***") and the parties set forth on **Schedule 2** hereto (each a "***Backstop Party***" and collectively, the "***Backstop Parties***"). The Company and each Backstop Party is referred to herein, individually, as a "***Party***" and, collectively, as the "***Parties***."

RECITALS

WHEREAS, the Company has issued (i) 6.625% senior notes, due 2023 (the "***2023 Notes***") under that certain Indenture dated as of April 21, 2015, by and among the Company, Wells Fargo Bank, N.A. ("***Wells Fargo***"), as trustee, and the subsidiary guarantors party thereto (as may be amended, restated, or otherwise supplemented from time to time, the "***2023 Notes Indenture***"), (ii) 6.000% senior notes, due 2024 (the "***2024 Notes***") under that certain Indenture, dated as of April 21, 2016, by and among the Company, Wells Fargo and the subsidiary guarantors party thereto (as may be amended, restated, or otherwise supplemented from time to time, the "***2024 Notes Indenture***"), (iii) 6.375% senior notes, due 2025 (the "***2025 Notes***") under that certain Indenture, dated as of December 21, 2016, by and among the Company, Wells Fargo and the subsidiary guarantors party thereto (as may be amended, restated, or otherwise supplemented from time to time, the "***2025 Notes Indenture***"), and (iv) 6.375% senior notes, due 2026 (the "***2026 Notes***," and together with the 2023 Notes, the 2024 Notes and the 2025 Notes, the "***Unsecured Notes***") under that certain Indenture, dated as of October 11, 2017, by and among the Company, Wells Fargo and the subsidiary guarantors party thereto (as may be amended, restated, or otherwise supplemented from time to time, the "***2026 Notes Indenture,***" and together with the 2023 Notes Indenture, the 2024 Notes Indenture and the 2025 Notes Indenture, the "***Indentures***").

WHEREAS, the Parties have engaged in arms' length, good faith discussions regarding a restructuring of certain of the Debtors' indebtedness and other obligations, including the Company's indebtedness and obligations under the Indentures.

WHEREAS, the Parties, and certain other holders of Unsecured Notes, together with their respective successors and permitted assigns and any subsequent holder of Unsecured Notes that becomes party to the RSA (as defined below) in accordance with the terms thereof (collectively, the "***Consenting Noteholders***"), and certain lenders under the RBL Credit Agreement (as defined in the RSA), together with their respective successors and permitted assigns and any subsequent lender under the RBL Credit Agreement that becomes a party to the RSA in accordance with the terms thereof entered into that certain Restructuring Support Agreement, dated as November 13, 2020 (the "***RSA***"), pursuant to which the Parties agreed to, among other things, support a restructuring of the Company's capital structure (the "***Restructuring***").

WHEREAS, consistent with the RSA, the Restructuring is anticipated to be implemented through a plan of reorganization (as may be supplemented, amended, or modified from time to time, the "***Plan***") to be filed in voluntary cases (the "***Chapter 11 Cases***") under

chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "***Bankruptcy Court***").

WHEREAS, in connection with the Restructuring and pursuant to the Plan, among other things, (a) the Company will conduct a rights offering (the "***Rights Offering***"), by distributing to each holder of Notes rights to purchase such holder's *pro rata* share of the New Convertible Preferred Stock (as defined below) available to be purchased in connection with the Rights Offering, and in an amount consistent with the RSA, for an aggregate purchase price of $50,000,000.00, and (b) subject to the terms and conditions contained in this Agreement, each Backstop Party has agreed to purchase (on a several and not joint basis) an aggregate amount of New Convertible Preferred Stock equal to its Backstop Obligation (as defined below).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. CERTAIN DEFINITIONS

The following terms have the meanings set forth below:

"***Ad Hoc Noteholder Group***" has the meaning set forth in the Plan.

"***Affiliate***" of any Person means any Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person, and includes the managed accounts and affiliate funds of such Person. As used in this definition, "control" (including with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"***Aggregate Commitment Amount***" means $50,000,000.

"***Agreement***" has the meaning assigned to it in the Preamble hereto.

"***Antitrust Authorities***" means the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice, the attorneys general of the several states of the United States and any other governmental entity, whether domestic or foreign, having jurisdiction pursuant to the Antitrust Laws.

"***Antitrust Laws***" means the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act, and any other Law, whether domestic or foreign, governing agreements in restraint of trade, monopolization, pre-merger notification, the lessening of competition through merger or acquisition or anti-competitive conduct, and any foreign investment Laws.

"***Approval Order***" means an order entered by the Bankruptcy Court in the Chapter 11 Cases authorizing the Company (on behalf of the Debtors) to assume this Agreement, including all exhibits and other attachments hereto.

"***Backstop Commitment***" means, with respect to each Backstop Party, the maximum amount of consideration in exchange for Remaining Shares that such Backstop Party may be required to pay under this Agreement. Such amounts are set forth opposite each Backstop Party's name in **Schedule 2** hereto.

"***Backstop Commitment Premium***" means (a) in the event of the purchase of New Convertible Preferred Stock by any Backstop Party, 10% of the aggregate amount of such Backstop Party's Backstop Commitment and Subscription Price, payable in the form of New Convertible Preferred Stock issued at the Per Share Price, and (b) in the event this Agreement is terminated by the Required Backstop Parties under Section 8.10.4, 10% of the aggregate amount of such Backstop Party's Backstop Commitment and Subscription Price, payable in full in cash.

"***Backstop Notice***" has the meaning assigned to it in Section 2.1.3 hereto.

"***Backstop Obligation***" means, with respect to each Backstop Party, the number of Remaining Shares required to be purchased by it on the Effective Date, in an amount equal to the product of: (a) the Remaining Shares; and (b) such Backstop Party's Backstop Percentage.

"***Backstop Party"*** and ***"Backstop Parties***" have the meanings assigned to them in the Preamble hereto.

"***Backstop Party Professionals***" means (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to the Ad Hoc Noteholder Group, (b) one local counsel to the Ad Hoc Noteholder Group, (c) Houlihan Lokey, Inc., as financial advisor to the Ad Hoc Noteholder Group, and (d) other professional advisors for specialized areas of expertise as circumstances warrant, which are retained by Consenting Noteholders.

"***Backstop Percentage***" means, with respect to each Backstop Party, the percentages set forth opposite each Backstop Party's name in **Schedule 2** attached hereto.

"***Backstop Purchase***" has the meaning assigned to it in Section 2.1.2(b) hereto.

"***Bankruptcy Code***" means Chapter 11 of Title 11 of the United States Code.

"***Bankruptcy Court***" has the meaning assigned to it in the Recitals hereto.

"***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.

"***Chapter 11 Cases***" has the meaning assigned to it in the Recitals hereto.

"***Closing***" has the meaning assigned to it in Section 2.2.2(a) hereto.

"***Company***" has the meaning assigned to it in the Preamble hereto.

"***Company Disclosure Schedule***" means the disclosure schedule delivered by the Company to the Backstop Parties on the date of this Agreement.

"***Company Information***" means all of the reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) posted or filed by the Company with the SEC pursuant to the reporting requirements set forth in the Exchange Act.

"***Company Parties***" has the meaning assigned to it in the Preamble hereto.

"***Company Plan***" and "***Company Plans***" have the meanings assigned to them in Section 3.22.1 hereto.

"***Confirmation Order***" has the meaning set forth in the RSA.

"***Consenting Noteholders***" has the meaning assigned to in the Recitals hereto.

"***Contract***" means any contract, agreement, indenture, note, bond, loan, lease, sublease, conditional sales contract, mortgage, license, sublicense, obligation, promise, undertaking, commitment or other binding arrangement (in each case, whether written or oral).

"***Debtors***" has the meaning assigned to it in the Preamble hereto.

"***Defaulting Backstop Party***" means each Backstop Party that causes a Funding Default.

"***Definitive Documents***" has the meaning set forth in the RSA.

"***Disclosure Statement***" has the meaning assigned to in the RSA.

"***Effective Date***" means the occurrence of the effective date of the Plan according to its terms.

"***Entity***" has the meaning set forth in section 101(15) of the Bankruptcy Code.

"***Environmental Laws***" means all applicable Laws (including common law), rules, regulations, codes, ordinances, orders in council, orders, decrees, treaties, directives, judgments or legally binding Contracts promulgated or entered into by or with any Governmental Authority, relating to the protection of the environment, preservation or reclamation of natural resources, the generation, management, use, transportation, treatment, storage, disposal, release or threatened release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the management of or exposure to Hazardous Materials).

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Affiliate***" means any trade or business (whether or not incorporated) that, together with the Company is, or at any relevant time during the past six years was, treated as a single employer under section 414(b), (c), (m) or (o) of the Internal Revenue Code.

"***Event***" means any event, change, effect, circumstance, occurrence, development, condition, result, state of facts or change of facts.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

"***Exit Facility***" has the meaning set forth in the RSA.

"Exit Facility Documents" has the meaning set forth in the RSA.

"***Expense Reimbursement***" has the meaning assigned to it in Section 2.3.1 hereto.

"***Filing Party***" has the meaning assigned to it in Section 5.10.2 hereto.

"***Funding Amount***" has the meaning assigned to it in Section 2.1.3 hereto.

"***Funding Default***" means the failure by any Backstop Party to timely exercise all Subscription Rights held by it in the Rights Offering pursuant to Section 2.2 or pay the full amount of the Purchase Price with respect to its Backstop Obligation by the Subscription Funding Date or the Effective Date, as applicable, in accordance with Section 2.2.

"***GAAP***" means U.S. generally accepted accounting principles.

"Governmental Authority" means: (i) any federal, state, local, municipal, foreign or international government or governmental authority, quasi-governmental entity of any kind, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court, tribunal, arbitrator or arbitral body (public or private) or any body exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or Taxing authority or power of any nature, (ii) any self-regulatory organization or (iii) any political subdivision of any of the foregoing.

"***Hazardous Materials***" means all pollutants, contaminants, hazardous wastes, chemicals, hazardous materials, and hazardous substances, including any sulphuric or other acid, explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, lead in any form (including soluble and particulate), arsenic, polychlorinated biphenyls, urea-formaldehyde or radon gas that are subject to regulation or which can give rise to liability under any Environmental Law because of their hazardous or deleterious properties or characteristics.

"***HSR Act***" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended from time to time.

"***Indemnified Claim***" has the meaning assigned to it in Section 7.2 hereto.

"***Indemnified Losses***" has the meaning assigned to it in Section 7.1 hereto.

"***Indemnified Person***" has the meaning assigned to it in Section 7.1 hereto.

"***Indemnifying Party***" and "***Indemnifying Parties***" have the meanings assigned to them in Section 7.1 hereto.

"Indentures" has the meaning assigned to it in the Recitals.

"***Intellectual Property***" means any and all of the following in any jurisdiction throughout the world, and all corresponding rights: (a) material inventions, patents and industrial designs (including utility model rights, design rights and industrial property rights), patent and industrial design applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, divisionals, extensions, and reexaminations; (b) material trademarks, service marks, designs, trade dress, logos, slogans, trade names, business names, corporate names, Internet domain names, and all other indicia of origin, all applications and registrations in connection therewith, and all goodwill associated with any of the foregoing (this clause (b), "***Marks***"); (c) material works of authorship, copyrights, software, data, database rights and moral rights, and all applications and registrations in connection therewith; (d) trade secrets and other confidential information, including know how, methods, processes, techniques, formulae, and product specifications; (e) material rights of privacy and publicity, including rights to the use of names of real persons; and (f) material other intellectual property rights.

"***Internal Revenue Code***" means the Internal Revenue Code of 1986.

"***Investment Company Act***" means the Investment Company Act of 1940, as amended.

"***IT Systems***" means the hardware, firmware, networks, platforms, servers, interfaces, applications, web sites and related systems used in the operation of the business of the Company Parties.

"***Joinder Agreement***" has the meaning assigned to it in Section 8.2 hereto.

"***Joint Filing Party***" has the meaning assigned to it in Section 5.10.3.

"***Kirkland***" has the meaning assigned to it in Section 5.9 hereto.

"***Knowledge of the Company***" means the actual knowledge (after reasonable inquiry) of the individuals holding the offices of Chairman, President and Chief Executive Officer, Chief Accounting Officer, Vice President of Finance or Corporate Secretary and General Counsel of the Company as of the date hereof.

"***Law***" means any law (including common law), statute, ordinance, treaty, rule, regulation, policy or requirement of any governmental authority and authoritative interpretations thereon, in each case, applicable to or binding on such Person or any of its properties or to which such Person or any of its properties is subject.

"***Leased Real Property***" has the meaning assigned to it in Section 3.17.2.

"***Legal Proceedings***" means any legal, governmental, administrative, judicial or regulatory investigations, audits, actions, suits, claims, arbitrations, demands, demand letters, claims, notices of noncompliance or violations, or proceedings.

"***Lien***" means any lien, adverse claim, charge, option, license, right of first refusal, servitude, security interest, mortgage, pledge, deed of trust, easement, encumbrance, restriction on transfer, conditional sale or other title retention agreement, defect in title, lien or judicial lien as defined in Sections 101(36) and (37) of the Bankruptcy Code or other restrictions of a similar kind.

"***Management Incentive Plan***" has the meaning assigned in the RSA.

"***Marks***" has the meaning assigned to it in the definition of Intellectual Property.

"***Material Adverse Effect***" means any Event occurring after the date hereof that, individually or together with all other Events, has had or would reasonably be expected to have a material and adverse effect on (i) the business, results of operations or condition (financial or otherwise) of the Company Parties, or the properties, assets, finances or liabilities of the Company Parties, taken as a whole, or (ii) the ability of the Company Parties to timely consummate the transactions contemplated hereby and by the RSA and the Plan; provided that for purposes of the foregoing clause (i), "Material Adverse Effect" shall not include any Event occurring after the date hereof and arising out of or resulting from: (a) general changes or developments in the industries and business in which the Company Parties operate; (b) general changes or developments in economic conditions in regions and markets in which the Company Parties operate; (c) general changes or developments in regional, national or international political or social conditions, including acts of war, terrorism or natural disasters, escalation or material worsening of hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States or its territories, possessions, diplomatic or consular offices or upon any military installation, equipment or personnel of the United States; (d) any general changes or developments in financial, banking, securities, credit, or commodities markets, prevailing interest rates or general capital markets conditions; (e) changes in United States generally accepted accounting principles occurring after the date hereof; (f) changes in Laws, Orders, or other binding directives issued by any Governmental Authority occurring after the date hereof; (g) the taking of any action or inaction expressly required by this Agreement, the RSA or the Plan; (h) any epidemic, pandemic or disease outbreak (including the COVID-19 pandemic), or any Law, regulation, statute, directive, pronouncement or guideline issued by a governmental unit (as defined in section 101(27) of the Bankruptcy Code), the Centers for Disease Control and Prevention, the World Health Organization or industry group providing for business closures, "sheltering-in-place" or other restrictions that relate to, or arise out of, an epidemic, pandemic or disease outbreak (including the COVID-19 pandemic) or any change in such Law, regulation, statute, directive, pronouncement or guideline or interpretation thereof following the date of this Agreement; (i) any action or inaction consented to in writing or requested in writing by the Consenting Noteholders; or (j) compliance with the express terms of this Agreement or the RSA (other than Section 7.01(p) of the RSA), including seeking approval of the Disclosure Statement and seeking to confirm or consummate the Plan, in each case pursuant to and in accordance with the RSA; provided, that exceptions set forth in clauses (a), (b), (c), (d), (e), (f) and (h) of this definition shall not apply to the extent that such Event is disproportionately adverse to the Company Parties, taken as a whole, as compared to other companies comparable in size and scale to the Company Parties operating in the industries and same geographical area in which the Company Parties operate.

"***Material Contracts***" means (a) all "plans of acquisition, reorganization, arrangement, liquidation or succession" and "material contracts" (as such terms are defined in Items 601(b)(2) and 601(b)(10) of Regulation S-K under the Exchange Act) to which any Company Party is a party, (b) any Contracts to which any Company Party is a party that are likely to reasonably involve consideration of more than $5,000,000, in the aggregate, over a twelve-month period, and (c) all Contracts: (i) any Company Party is granted a right or license with respect to any Intellectual

Property of any other Person thereunder, which right or license is material to the Company Parties' business; (ii) any Company Party grants to any other Person thereunder any right or license with respect to any material Owned IP; or (iii) any Company Party's ability to use, own, license, transfer, enforce, or disclose any material Owned IP is adversely affected, including settlement agreements, but in the case of (i) and (iii), excluding Off-the-Shelf Licenses.

"***Money Laundering Laws***" has the meaning assigned to it in Section 3.11 hereto.

"***New Common Stock***" means shares of common stock, par value $0.0001 per share, of the Reorganized Company.

"New Convertible Preferred Stock" means shares of convertible preferred stock, par value $0.0001 per share, of the Reorganized Company having the rights and preferences set forth in New Preferred Stock Term Sheet attached as Exhibit H to the RSA.

"New Equity" means collectively, the New Common Stock and the New Convertible Preferred Stock.

"***Notice of Assignment***" has the meaning assigned to it in Section 8.2 hereto.

"***Off-the-Shelf License***" means any license for unmodified, commercially available "off-the-shelf" software that is used in the Company's internal "back-office" operations for which the Company pays an aggregate fee, royalty, or other consideration for any such software or group of related software licenses of no more than $100,000.

"***Offering Deadline***" means the date on which the subscription period for the Rights Offering shall expire (as such date may be extended pursuant to the Plan and the Rights Offering Procedures).

"***Orders***" means any orders, decisions, judgments, writs, injunctions, decrees, awards or other determination of any Governmental Authority.

"***Owned IP***" means all Intellectual Property owned or purported to be owned by any Group Company, including the Registered IP.

"***Party***" and "***Parties***" have the meanings assigned to them in the Preamble hereto.

"***Perella***" has the meaning assigned to it in Section 5.9 hereto.

"Permitted Liens" means Permitted Liens as defined under, granted under or permitted under the RBL Credit Agreement and the schedules thereto as of the date hereof, each of which shall be released on the Effective Date.

"***Per Share Price***" means an amount equal to the price at which one share of the New Convertible Preferred Stock is sold to holders of Notes in the Rights Offering pursuant to the Rights Offering Documents.

"***Person***" includes any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited partnership, trust, estate, unincorporated organization, governmental unit (as defined in section 101(27) of the Bankruptcy Code), or other Entity.

"***Petition Date***" has the meaning assigned to it in the Plan.

"***Plan***" has the meaning assigned to it in the Recitals hereto.

"***Purchase Price***" means, with respect to any Backstop Party, the applicable purchase price in respect of its Backstop Purchase calculated as the product (expressed in U.S. dollars) of (a) such Backstop Party's Backstop Obligation, multiplied by (b) the Per Share Price.

"***Registered IP***" has the meaning assigned to it in Section 3.27.1 hereto.

"***Related Party Agreement***" has the meaning assigned to it in Section 3.18 hereto.

"***Remaining Shares***" means the aggregate number of New Convertible Preferred Stock that have not been subscribed for and purchased, if any, in the Rights Offering as of the Offering Deadline.

"***Reorganized Company***" means the Company, as reorganized pursuant to and under the Plan, on and after the Effective Date, or any successor or assign thereof.

"***Replacement Period***" has the meaning assigned to it in Section 2.4.1 hereto.

"***Replacement Purchase***" has the meaning assigned to it in Section 2.4.1 hereto.

"***Replacement Purchase Payment Amount***" has the meaning set forth in Section 2.4.1 hereto.

"***Replacing Backstop Parties***" has the meaning assigned to it in Section 2.4.1 hereto.

"***Required Backstop Parties***" has the meaning assigned to it in Section 8.5 hereto.

"***Reserve Report***" has the meaning assigned to it in Section 3.17.1 hereto.

"***Restructuring***" has the meaning assigned to it in the Recitals hereto.

"***Rights Offering***" has the meaning assigned to it in the Recitals hereto.

"***Rights Offering Documents***" means this Agreement and the Rights Offering Procedures.

"***Rights Offering Procedures***" means the procedures governing the Rights Offering, in form and substance reasonably acceptable to the Required Backstop Parties.

"***RSA***" has the meaning assigned to it in the Recitals hereto.

"***SEC***" means the U.S. Securities and Exchange Commission.

"***Securities Act***" means the Securities Act of 1933, as amended.

"***Subscription Agent***" means Epiq Bankruptcy Solutions LLC, together with its affiliates and subcontractors.

"***Subscription Account***" has the meaning assigned to it in Section 2.1.3 hereto.

"***Subscription Amount***" has the meaning assigned to it in Section 2.1.2(a) hereto.

"***Subscription Funding Date***" has the meaning assigned to it in Section 2.2.1 hereto.

"Subscription Price" has the meaning assigned to it in Section 2.1.3 hereto.

"***Subscription Rights***" means those certain rights to purchase New Convertible Preferred Stock pursuant to the Rights Offering at the "Per Share Price" per share, which the reorganized Company will issue to participating holders of Notes pursuant to the Plan.

"***Subsidiary***" means, with respect to any Person, any corporation, limited liability company, partnership, joint venture or other legal entity as to which such Person (either alone or through or together with any other Subsidiary or Affiliate), (a) owns, directly or indirectly, more than fifty percent (50%) of the stock or other equity interests, (b) has the power to elect a majority of the board of directors or similar governing body thereof or (c) has the power to direct, or otherwise control, the business and policies thereof by Contract, equity ownership or otherwise.

"***Takeover Statute***" means any restrictions contained in any "fair price," "moratorium," "control share acquisition", "business combination" or other similar anti-takeover statute or regulation.

"***Tax***" or "***Taxes***" means any and all federal, state, local or non-U.S. taxes, levies, fees, imposts, duties, and similar governmental charges (including any interest, fines, assessments, penalties or additions to tax imposed in connection therewith or with respect thereto), whether disputed or not, however denominated, including (i) taxes imposed on, or measured by, income, franchise, profits or gross receipts and (ii) ad valorem, alternative or add-on minimum, value added, capital gains, sales, goods and services, use, real or personal property, capital stock, license, branch, payroll, estimated, withholding, employment, social security (or similar), unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes, escheat, unclaimed property, environmental, and customs duties.

"***Unsecured Notes***" has the meaning assigned to it in the Recitals hereto.

2. THE BACKSTOP COMMITMENT

2.1 Backstop Commitment.

2.1.1 New Convertible Preferred Stock. The Rights Offering will be made, and the New Convertible Preferred Stock thereunder will be issued and sold in reliance upon, the exemption from registration under the Securities Act provided in section 1145 of the Bankruptcy Code to the fullest extent available, and if not available, an

exemption from registration provided by section 4(a)(2) and Regulation D of the Securities Act or another available exemption from registration under the Securities Act; provided, that, all New Convertible Preferred Stock issued to the Backstop Parties on account of the Backstop Obligations and the Backstop Commitment Premium will be made in reliance on the exemption from registration provided by section 4(a)(2) and Regulation D of the Securities Act or another available exemption from registration under the Securities Act, and, in each case, the Disclosure Statement, Confirmation Order and Plan shall include a statement to such effect.

2.1.2 The Rights Offering and the Backstop Commitment.

(a) On and subject to the terms and conditions hereof and the Rights Offering Procedures, including entry of the Confirmation Order, each Backstop Party agrees, severally and not jointly, to (i) fully exercise all Subscription Rights that are properly issued to it and its Affiliates pursuant to the Rights Offering, (ii) duly purchase all New Convertible Preferred Stock issuable to it and its Affiliates pursuant to such exercise (such shares, the "***Subscription Amount***") at the applicable Per Share Price for the applicable aggregate subscription price (the "***Subscription Price***") set forth next to such Backstop Party's name on **Schedule 2**, and (iii) complete, duly execute and submit a subscription exercise form and any other documentation required pursuant to the Rights Offering Procedures and the Plan.

(b) On and subject to the terms and conditions hereof, including entry of the Confirmation Order, each Backstop Party agrees, severally and not jointly, to (i) purchase an aggregate number of Remaining Shares equal to its Backstop Obligation (the "***Backstop Purchase***") for an amount equal to the Purchase Price and (ii) complete, duly execute and submit a subscription exercise form and any other documentation required pursuant to the Rights Offering Procedures and the Plan.

2.1.3 Backstop Notice. On or before the fifth (5^{th}) Business Day after the Offering Deadline, the Subscription Agent on behalf of the Company shall notify each Backstop Party in writing (the "***Backstop Notice***") as to: (a) the Remaining Shares; (b) its consequent Backstop Obligation; (c) the aggregate amount payable on the Subscription Funding Date with respect to such Backstop Party's Subscription Amount and Backstop Obligation (collectively, the "***Funding Amount***"); and (d) the account information (including wiring instructions) for the account to which such Backstop Party shall deliver and pay the Funding Amount (which account shall be a segregated account of the Subscription Agent who will hold the Funding Amounts for the benefit of the Backstop Parties until paid to the Company as contemplated by Section 2.2.2(b) (such account, the "***Subscription Account***").

2.2 Payment; Closing.

2.2.1 **Payment**. No later than three (3) Business Days prior to the Effective Date (such date, the "***Subscription Funding Date***"), each Backstop Party shall deliver and pay its Funding Amount by wire transfer of immediately available funds in U.S. dollars into the Subscription Account in satisfaction in full of such Backstop Party's Backstop Commitment and obligations under the Rights Offering Documents.

2.2.2 **Closing**.

(a) Subject to Article VI, the closing of the transactions contemplated hereby (the "***Closing***") shall take places at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022, on the Effective Date contemporaneously with the substantial consummation of the Plan.

(b) At the Closing, the funds held in the Subscription Account shall be released to the Company.

(c) At the Closing, issuance of the applicable Subscription Amount and the applicable Remaining Shares and any New Convertible Preferred Stock issued as part of a Replacement Purchase, if any, pursuant to Section 2.4 will be made by the Reorganized Company to each Backstop Party against payment of the applicable portion of such Backstop Party's Funding Amount (and its applicable Replacement Purchase Payment Amount) in satisfaction of such Backstop Party's Backstop Commitment and its obligations hereunder and its obligations under the Rights Offering Documents.

2.2.3 **Premium**. Subject to Section 2.4, the Company hereby agrees to pay each Backstop Party its Backstop Commitment Premium, which premium shall be deemed earned upon the effective date of this Agreement and payable upon the earlier of (a) the Effective Date and (b) termination of this Agreement by the Required Backstop Parties, pursuant to Section 8.10.4.

2.2.4 **Certain Tax Matters.** All parties hereto agree to treat the transactions contemplated by this Agreement as follows for U.S. federal, and applicable state and local, income Tax purposes: (a) the Backstop Obligation shall be treated as an option of the Company to put the Remaining Shares to the Backstop Parties; (b) the Backstop Commitment Premium shall be treated as a premium for such put option; and (c) each party shall prepare their respective U.S. federal, and applicable state and local income Tax returns in a manner consistent with the foregoing treatment, and no party shall take any position or action inconsistent with such treatment and/or characterization, except, in each case, to the extent otherwise required by a "determination" within the meaning of Section 1313(a) of the Internal Revenue Code.

2.2.5 **Withholding**. Except as otherwise required by applicable Law, the Company shall not withhold any Taxes with respect to the Backstop Commitment Premium. To

the extent the Company or any other applicable withholding agent is required by applicable to Law to deduct or withhold any Taxes or other amounts with respect to the Backstop Commitment Premium or otherwise pursuant to this Agreement, (a) the Company will be authorized to take any actions that may be necessary or appropriate to comply with such withholding requirements and (b) any such deducted or withheld amounts shall be treated as paid to the Person to whom such amounts would otherwise have been paid for purposes of this Agreement. The Company shall be entitled to solicit IRS Form W-9s or W-8s, or any other appropriate forms or information, from the Backstop Parties in order to determine the amount of such withholding and shall cooperate with the Backstop Parties to mitigate or reduce any such withholding to the extent permitted by applicable Law.

2.3 Expense Reimbursement.

2.3.1 Subject to the entry of the Approval Order, the Company agrees to pay or reimburse when due, to the extent not otherwise paid pursuant to the RSA or in connection with the Chapter 11 Cases or another order of the Bankruptcy Court, all accrued and unpaid fees, costs and expenses of the Backstop Parties and Backstop Parties' Professionals, incurred in connection with this Agreement, the RSA, and the Chapter 11 Cases, whether prior to, on, or after the date hereof through the Effective Date for which invoices or receipts are forwarded to the Company by the Backstop Parties at least three (3) Business Days prior to the Effective Date (the "***Expense Reimbursement***"); provided, however, that the failure to timely forward invoices or receipts will not release the Company from its obligation to pay the Expense Reimbursement in respect therefor.

2.4 Funding Default.

2.4.1 Upon the occurrence of a Funding Default, the Backstop Parties (other than any Defaulting Backstop Party) shall have the right, but not the obligation, within three (3) Business Days after receipt of written notice from the Company to all Backstop Parties of such Funding Default, which notice shall be given promptly following the occurrence of such Funding Default and to all Backstop Parties substantially concurrently (such three (3) Business Day period, the "***Replacement Period***"), to elect, by written notice to the Company, to purchase all or any portion of the New Convertible Preferred Stock attributable to such Defaulting Backstop Party's Backstop Obligation or Subscription Rights (such purchase, a "***Replacement Purchase***") on the terms and subject to the conditions set forth in this Agreement and in such amounts as may be agreed upon by all of the non-defaulting Backstop Parties that elect to purchase all or any portion of the New Convertible Preferred Stock attributable to such Defaulting Backstop Party (such Backstop Parties, the "***Replacing Backstop Parties***"), or, if no such agreement is reached by the date upon which the Replacement Period expires, the *pro rata* amount, based upon each Replacing Backstop Party's Backstop Percentage to the aggregate Backstop Percentages of all the Replacing Backstop Parties, of the aggregate number of New Convertible Preferred Stock that have not been purchased as a result of such Funding Default. The purchase price paid by any Replacing Backstop Party for

shares of New Convertible Preferred Stock in connection with a Replacement Purchase (the "***Replacement Purchase Payment Amount***") shall be equal to the applicable portion of the Subscription Price and/or the Backstop Commitment of the Defaulting Backstop Party. Within one (1) Business Day from delivery of written notice of a Funding Default, any electing Backstop Parties will fund the Subscription Account with the Replacement Purchase Payment Amount.

2.4.2 If a Backstop Party is a Defaulting Backstop Party, it shall not be entitled to any of the Backstop Commitment Premium hereunder; provided, that the Backstop Commitment Premium that would have been payable to such Defaulting Backstop Party had such Defaulting Backstop Party not defaulted shall instead be reallocated and paid to the Replacing Backstop Parties, *pro rata*, based on the allocation of the Replacement Purchase.

2.4.3 Except as otherwise agreed in writing by such Backstop Party, nothing in this Agreement shall require any Backstop Party to purchase more than its applicable Backstop Obligation and its applicable Subscription Amount.

2.4.4 Notwithstanding anything to the contrary set forth in Section 8.12 but subject to Section 8.14, no provision of this Agreement shall relieve any Defaulting Backstop Party from liability hereunder, or limit the availability of the remedies set forth in Section 8.15 or otherwise available to the non-defaulting parties hereto, in connection with any such Backstop Party's Funding Default.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY Except (a) as set forth in the corresponding section of the Company Disclosure Schedule or (b) as disclosed in the Company Information and publicly available on the SEC's website prior to the date hereof, the Company, on behalf of itself and each of the Company Parties, as applicable, hereby represents and warrants to each of the Backstop Parties, in their capacities as Backstop Parties, as of the date hereof, as follows:

3.1 Organization. Each Company Party:

3.1.1 is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, except where any such failure to be duly organized, validly existing and in good standing, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect;

3.1.2 has all corporate power and authority to own and operate its properties, to lease the property it operates under lease and to conduct its business, except where any such failure to own and/or operate, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

3.2 Due Authorization, Execution and Delivery; Enforceability. The Company has the requisite corporate power and authority to enter into, execute and deliver this Agreement and, subject to the entry of the Approval Order and the Confirmation Order, to perform its obligations hereunder, and has taken all necessary corporate action required for the due authorization, execution, delivery and performance by it of this Agreement. Assuming due

and valid execution and delivery by the other Parties, this Agreement constitutes the legally valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

3.3 Authorized and Issued Equity Interests.

3.3.1 On the Effective Date, (i) the outstanding equity interests in the Company will consist solely of the New Common Stock issued under the Plan, any New Common Stock issued under the Management Incentive Plan, and the New Convertible Preferred Stock issued under the Rights Offering and hereunder, (ii) no New Equity will be held by the Company in its treasury, (iii) except as may otherwise be provided under the Management Incentive Plan, no New Common Stock will be reserved for issuance upon exercise of options and other rights to purchase or acquire New Common Stock, and (iv) except as may be contemplated under the Rights Offering or hereunder, no New Convertible Preferred Stock will be reserved for issuance upon exercise of options or other rights to purchase or acquire the New Convertible Preferred Stock.

3.3.2 As of the Effective Date, the New Common Stock and the New Convertible Preferred Stock, when issued, will be duly and validly issued and outstanding and will be fully paid and non-assessable. As of the Effective Date, the Company shall have the ability to issue sufficient New Convertible Preferred Stock and New Common Stock to consummate the transaction contemplated under this Agreement, the RSA and the Plan.

3.3.3 Except as set forth in this Section 3.3, as of the Effective Date, no capital stock or other equity interests or voting interests in the Company will have been issued, reserved for issuance or be outstanding.

3.4 Consents. Subject to the entry of the Confirmation Order and the filing of the New Organizational Documents with the Delaware Secretary of State prior to or on the Effective Date, none of the execution, delivery or performance of this Agreement by the Company, including the issuance of the New Convertible Preferred Stock and the New Common Stock by the Company, will require any consent of, authorization by, exemption from, filing with, or notice to any Governmental Authority having jurisdiction over the Company Parties, other than the failure of which to make or obtain, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

3.5 No Conflicts. Except for entry of the Confirmation Order, and subject to the occurrence of the Effective Date, the execution, delivery and performance of this Agreement by the Company, including the issuance of the New Convertible Preferred Stock and the consummation of the transactions contemplated hereunder, will not (a) conflict with or result in any breach of any provision of any Company Party's certificate of incorporation, by-laws or equivalent governing documents as in effect on the Effective Date, (b) conflict with or result in the breach of the terms, conditions or provisions of or constitute a default

(or an event which with notice or lapse of time or both would become a default) under, or give rise to any right of termination or, except to the extent specified in the Plan, acceleration or cancellation under any Material Contract, lease, mortgage, license, indenture, instrument or any other material agreement or contract to which any Company Party is a party or by which any Company Party's properties or assets are bound as in effect on the Effective Date after giving effect to the Plan, or (c) result in a violation of any Law or Order (including federal and state securities Laws) applicable to any Company Party or by which any Company Party's properties or assets will be bound or affected, except in the case of clauses (b) and (c), as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

3.6 **Company Information**. Since December 31, 2019, the Company has timely filed all required Company Information with the SEC. The Disclosure Statement as filed with the Bankruptcy Court will contain "adequate information," as such term in defined in section 1125 of the Bankruptcy Code, and will otherwise comply in all material respects with section 1125 of the Bankruptcy Code.

3.7 **Absence of Certain Changes**. Since December 31, 2019, no event has occurred or exists that constitutes, individually or in the aggregate, a Material Adverse Effect.

3.8 **No Violation; Compliance with Laws**. (a) The Company is not in violation of its charter or by-laws in any material respect, and (b) no other Company Party is in violation of its respective charter or by-laws, certificate of formation or limited liability company operating agreement or similar organizational document in any material respect. None of the Company Parties is or has been at any time since December 31, 2017, deemed to be in violation of any Law or Order, except for any such violations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.9 **Legal Proceedings**. Other than the Chapter 11 Cases and any adversary proceedings or contested motions commenced in connection therewith, as of the date hereof, there are no Legal Proceedings pending or, to the Knowledge of the Company, threatened to which any of the Company Parties is a party or to which any property of the Company Parties is the subject, in each case that (a) in any manner draws into question the validity or enforceability of this Agreement, the Definitive Documents or the Restructuring or (b) would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.10 **No Unlawful Payments**. Since December 31, 2017, none of the Company Parties nor, to the Knowledge of the Company, any of their respective directors, officers or employees acting on behalf of the Company with the express authority to do such act, has in any material respect: (a) used any funds of any of the Company Parties for any unlawful contribution, gift, entertainment or other unlawful expense, in each case relating to political activity; (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (c) violated or is in violation of any applicable provision of the U.S. Foreign Corrupt Practices Act of 1977 or any other applicable Law or Order prohibiting bribery and corruption in any relevant jurisdiction; or

(d) made any unlawful bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment.

3.11 **Compliance with Money Laundering Laws**. The operations of the Company Parties are and, since December 31, 2017 have been at all times, conducted in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the U.S. Currency and Foreign Transactions Reporting Act of 1970, the money laundering Laws of all jurisdictions in which the Company Parties operate and any related or similar Laws (collectively, the "***Money Laundering Laws***") and, as of the date hereof, no material Legal Proceeding by or before any Governmental Authority or any arbitrator involving any of the Company Parties with respect to Money Laundering Laws is pending or, to the Knowledge of the Company, threatened.

3.12 **Compliance with Sanctions Laws**. Since December 31, 2017, (i) each of the Company Parties has been in compliance with applicable sanctions Laws in all material respects and (ii) no Company Party has conducted any internal investigation, made any voluntary or involuntary disclosure to any Governmental Authority, received any inquiry from any Governmental Authority, or received any written whistleblower or other complaint involving alleged violations of sanctions Law. No Company Party appears on any sanctioned party list issued by the United States, the UN Security Council, the European Union, the United Kingdom, or Canada, nor is any Company Party owned or controlled by any such Person.

3.13 **No Broker's Fees**. None of the Company Parties is a party to any Contract with any Person (other than this Agreement) that would give rise to a valid claim against the Backstop Parties for a brokerage commission, finder's fee or like payment in connection with the Rights Offering or the transactions contemplated hereby.

3.14 **Investment Company Act**. The Company Parties are not and, after giving effect to the Rights Offering and the application of the proceeds thereof as described in the Definitive Documents, will not be subject to registration and regulation as an "investment company" as such term is defined in the Investment Company Act.

3.15 **Takeover Statutes**. No Takeover Statute is applicable to this Agreement, the Rights Offering, the Backstop Commitment and the other transactions contemplated by this Agreement.

3.16 **Arm's-Length**. The Company acknowledges and agrees that (a) each of the Backstop Parties is acting solely in the capacity of an arm's-length contractual counterparty to the Company with respect to the transactions contemplated hereby (including in connection with determining the terms of the Rights Offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other Company Party or any of their Affiliates and (b) no Backstop Party is advising the Company or any other Company Party or any of their Affiliates as to any legal, Tax, investment, accounting or regulatory matters in any jurisdiction.

3.17 **Title to Real Property**.

3.17.1 Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) the Company Parties have good and defensible title to the oil and gas properties evaluated in the most recently delivered Reserve Report and good title to all its other personal properties, in each case, free and clear of all Liens except Permitted Liens, and (b) subject to the Permitted Liens, the Company (or applicable Subsidiary) owns the net interests in production attributable to the hydrocarbon interests as reflected in the most recently delivered Reserve Report, and the ownership of such properties shall not in any material respect obligate the Company or such Subsidiary to bear the costs and expenses relating to the maintenance, development and operations of each such property in an amount in excess of the working interest of each property set forth in the most recently delivered Reserve Report that is not offset by a corresponding proportionate increase in the Company's or such Subsidiary's net revenue interest in such property. "***Reserve Report***" means that certain report issued by Netherland, Sewell & Associates, Inc., as of December 31, 2019 with respect to the oil and gas reserves of the Company attributable to the properties of the Company and certain of its Subsidiaries.

3.17.2 Each Company Party is in compliance with all obligations under all material real property leases other than oil and gas leases to which it is a party ("***Leased Real Property***"), except where the failure to comply would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and all such material real property leases are in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Company Parties enjoys peaceful and undisturbed possession under all such material leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The applicable Company Party has a good and valid leasehold interest in the Leased Real Property free and clear of all Liens, except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No Company Party owns a fee interest in any real property other than any fee title to oil and gas properties described in Section 3.17.1 above.

3.18 No Undisclosed Relationships. There are no Contracts or other direct or indirect relationships (a "***Related Party Agreement***") existing as of the date hereof between or among any Company Party, on the one hand, and any director, officer or greater than five percent (5%) stockholder of any Company Party, on the other hand, that is required by the Exchange Act to be described in the Company Information and that is not so described, except for the transactions contemplated by this Agreement. Any Related Party Agreement existing as of the date hereof is described in the Company Information. None of the Company Parties or their Affiliates has made or is liable for payments to any current or former director, officer or employee of the Company Parties or to any Affiliate of any of the foregoing, other than salaries or fees for services rendered and reimbursable business expenses, in each case incurred in the ordinary course of business consistent with past

practice, benefits under the Company Plans, or except as expressly disclosed in the Company's Form 10-Q for the quarterly period ended September 30, 2020.

3.19 **Licenses and Permits**. Each Company Party possesses or has access to all licenses, certificates, permits and other authorizations issued by, and has made all declarations and filings with, the appropriate Governmental Authority that are necessary for the ownership or lease of its respective properties and the conduct of its business, except where the failure to possess, make or give the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No Company Party (a) has received notice of any revocation or modification of any such license, certificate, permit or authorization or (b) has reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course, except to the extent that any of the foregoing would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.20 **Environmental**. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, since December 31, 2017 or as is otherwise unresolved: (a) no written notice, claim, demand, request for information, order, complaint or penalty has been received by any Company Party and there are no Legal Proceedings pending or, to the Knowledge of the Company, threatened, in each case which allege a violation of or liability under any Environmental Laws, relate to any Company Party and have not been settled or resolved, (b) each Company Party has all environmental permits, licenses and other approvals, and has maintained all financial assurances, necessary for its operations to comply with all applicable Environmental Laws and is, and during the term of all applicable statutes of limitation, has been, in compliance with the terms of such permits, licenses and other approvals and with all other applicable Environmental Laws, (c) to the Knowledge of the Company, no Hazardous Material has been released at, on or under any property currently owned, operated or leased by any Company Party in a manner or circumstance or condition that would reasonably be expected to give rise to any cost, liability or obligation of any Company Party under any Environmental Laws, (d) to the Knowledge of the Company, no Hazardous Material has been generated, owned, treated, stored, handled or controlled by any Company Party or transported by any Company Party to or released by any Company Party at any location in a manner that would reasonably be expected to give rise to any cost, liability or obligation of any Company Party under any Environmental Laws, (e) except for leases of the Leased Real Property, there are no written agreements in which any Company Party has expressly assumed or undertaken responsibility for any known or contingent liability or obligation of any other Person arising under or relating to Environmental Laws, which in any such case has not been filed or posted by the Company as Company Information or made available to the Backstop Parties prior to the date hereof, and (f) no Company Party has entered into any consent decree, settlement or other agreement with any Governmental Authority or is subject to any order issued by any Governmental Authority relating to any Environmental Laws or Hazardous Materials.

3.21 Tax Matters.

3.21.1 Each of the Company Parties has filed or caused to be filed all material U.S. federal, state, provincial, local and non-U.S. Tax returns required to have been filed by it and (b) each such Tax return is true and correct in all material respects.

3.21.2 Each of the Company Parties has timely paid or caused to be timely paid all material Taxes required to be paid by it (whether or not shown on any Tax returns) or made adequate provision (to the extent required in accordance with GAAP) for the payment thereof other than those Taxes the payment of which are discharged by order of the Bankruptcy Court as part of the Chapter 11 Cases.

3.21.3 With respect to the Company Parties, other than in connection with the Chapter 11 Cases and other than Taxes or assessments that are being contested in good faith or are not expected to result in material negative adjustments to the Company Parties taken as a whole, (a) there are no claims being asserted by any Governmental Authority in writing with respect to any Taxes, (b) no presently effective waivers or extensions of statutes of limitations with respect to Taxes have been given or requested (other than pursuant to extensions of time to file Tax returns obtained in the ordinary course of business) and (c) no Tax returns are being examined by, and no written notification of intention to examine a Tax return has been received from, the Internal Revenue Service or any other Governmental Authority charged with the administration and collection of Taxes.

3.22 Employee Benefit Plans.

3.22.1 Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) all employee benefit plans of the Company Parties (the "***Company Plans***", each of them a "***Company Plan***") comply in form and in operation in all material respects with their terms and with all applicable Laws; and (b) no Company Party, nor any ERISA Affiliate of a Company Party, in the six (6) years preceding the date hereof has contributed to, or incurred any liability or obligation with respect to, any employee benefit plan subject to Title IV of ERISA or any "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA.

3.22.2 Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, there are no pending, or to the Knowledge of the Company, threatened Legal Proceedings asserted or instituted against any Company Plan or any Person as fiduciary or sponsor of any Company Plan, in each case other than claims for benefits in the normal course.

3.22.3 Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) all other compensation and benefit arrangements of the Company Parties comply and have complied in both form and operation with their terms and all applicable Laws and legal requirements, and (b) no Company Party could reasonably be expected to have any obligation to

provide any individual with a "gross up" or similar payment in respect of any Taxes that may become payable under section 409A or 4999 of the Internal Revenue Code.

3.22.4 Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, there are (a) no labor disputes against the Company Parties, or, to the Knowledge of the Company, threatened against any Company Party, and (b) no claims of unfair labor practices, charges or grievances pending against any Company Party, or to the Knowledge of the Company, threatened against any of them by any Person. No employees of the Company Parties are unionized and there has not been in the past three (3) years any organized efforts or demand for recognition or certification or attempt to organize employees of the Company Parties by any labor organization.

3.22.5 Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) since December 31, 2017, each Company Party has complied and is currently in compliance with all Laws and legal requirements in respect of personnel, employment and employment practices, (b) all service providers of the Company Parties are correctly classified as employees, independent contractors, or otherwise for all purposes (including any applicable Tax and employment policies or Law), and (c) since December 31, 2017, the Company Parties have not and are not engaged in any unfair labor practice.

3.22.6 Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Company Parties have not incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act and the regulations promulgated thereunder, or any similar state or local Law that remains unsatisfied.

3.23 Internal Control Over Financial Reporting. Except as disclosed in the Company's public filings pursuant to the Exchange Act or as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Company has established and maintains a system of internal control over financial reporting that has been designed to provide reasonable assurances regarding the reliability of financial reporting (within the meaning of Rules 13(a)-15(f) and 15(d) – 15(f) under the Exchange Act) and the preparation of financial statements for external purposes in accordance with GAAP. Except as disclosed in the Company's public filings pursuant to the Exchange Act, to the Knowledge of the Company, there are no material weaknesses in the Company's internal control over financial reporting as of the date hereof.

3.24 Disclosure Controls and Procedures. Except disclosed in the Company's public filings pursuant to the Exchange Act or as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Company maintains disclosure controls and procedures designed to ensure that information required to be disclosed by the Company under the Exchange Act in its Company Information is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms,

including information that is accumulated and communicated to management of the Company as appropriate to allow timely decisions regarding required disclosure.

3.25 Material Contracts. Other than as a result of the Chapter 11 Cases, all Material Contracts are valid, binding and enforceable by and against the Company Parties that are party thereto and, to the Knowledge of the Company, each other party thereto (except where the failure to be valid, binding or enforceable does not constitute a Material Adverse Effect), and since December 31, 2018, no written notice to terminate, in whole or part, any Material Contract has been delivered to any Company Party (except where such termination would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect). Except as listed on Schedule 3 hereto, no Company Party nor, to the Knowledge of the Company, any other party to any Material Contract, is in material default or breach under the terms thereof, in each case, except for such instances of material default or breach that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.26 Insurance. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) the Company Parties have insured their properties and assets against such risks and in such amounts as are customary for companies engaged in similar businesses; (b) all premiums due and payable in respect of material insurance policies maintained by the Company Parties have been paid; (c) the Company reasonably believes that the insurance maintained by or on behalf of the Company Parties is adequate in all material respects; and (d) as of the date hereof, to the Knowledge of the Company, no Company Party has received notice from any insurer or agent of such insurer with respect to any material insurance policies of any Company Party of cancellation or termination of such policies, other than such notices which are received in the ordinary course of business or for policies that have expired in accordance with their terms.

3.27 Intellectual Property.

3.27.1 All of the registrations, issuances and applications with respect to all Owned IP that is registered issued or the subject of a pending application (the "***Registered IP***") are valid, in full force and effect and have not expired or been cancelled, abandoned or otherwise terminated, and payment of all renewal and maintenance fees and expenses in respect thereof, and all filings related thereto, have been duly made.

3.27.2 Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Company Party exclusively owns and possesses the entire right, title and interest in and to all Registered IP, free and clear of all Liens; (b) the material Registered IP is subsisting and, to the Knowledge of the Company, valid and enforceable; and (c) the Company Parties have taken reasonable steps under the circumstances to preserve, maintain and protect all material Owned IP.

3.27.3 Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, no Person possesses any Intellectual Property that materially restricts the use or registration anywhere in the world by the

Company Parties of any material Mark used in the Company Parties' respective businesses (other than Marks licensed from a third Person to the Company Parties pursuant to a Material Contract, but including any Marks constituting Registered IP). No Person possesses any Intellectual Property sufficient to successfully cancel or otherwise invalidate any such Mark on grounds of prior use, registration, fraud, lack of distinctiveness, or other defects or circumstances.

3.27.4 Since December 31, 2017, there are no and there have not been any material Legal Proceedings pending or threatened in writing against or affecting any Company Party asserting or relating to (a) any material invalidity, misuse, misappropriation or unenforceability of or challenging the ownership or scope of any of the Owned IP, or (b) any material infringement, dilution, or misappropriation by, or conflict with, any Person with respect to any Intellectual Property (including any material demand or request that a Company Party license any rights from any Person). To the Knowledge of the Company, none of the Company Parties or the conduct of any of their respective businesses (including any manufacture, marketing, distribution, importation, offer for sale, sale, or use of any of their respective products) has materially infringed, misappropriated, diluted, or conflicted with, or does materially infringe, misappropriate, dilute, or conflict with, any Intellectual Property of any other Person. To the Knowledge of the Company, no material Owned IP has been infringed, misappropriated, diluted, or conflicted by any other Person.

3.27.5 The Company Parties uses commercially reasonable efforts to protect the confidentiality, integrity and security of the IT Systems and all information stored or contained therein or transmitted thereby from any unauthorized use, access, interruption or modification by third parties. The Company Parties have taken reasonable precautions to ensure that all material It Systems (a) are fully functional and operate and run in a reasonable and efficient business manner and (b) conform in all material respects to the specifications and purposes thereof. The Company Parties have an adequate disaster recovery and business continuity plan in place with respect to the material IT Systems and have adequately tested such plan for effectiveness. Since December 31, 2017 there have not been any malfunctions, breakdowns, unplanned downtime, service interruptions, or continued substandard performance with respect to material IT Systems that have disrupted the business of any Company Party that have not been remedied or replaced in all material respects. To the Knowledge of the Company, there have been no actual or alleged security breaches or unauthorized use, access or intrusions, of any IT System or any personal information, payment card information, data, or any other such information (including data of any customer of any Company Party) used, collected, maintained, or stored by or on behalf of any Company Party (or any loss, destruction, compromise, or unauthorized disclosure thereof). The IT Systems are adequate for the operation of the businesses of the Company Parties as currently conducted in all material respects.

3.28 No Other Representations and Warranties. Except for the representations and warranties contained in this Article III (including the related portions of the Company

Disclosure Schedule, the RSA, the Plan, the Rights Offering Documents and the Definitive Documents), none of the Company Parties has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Company Parties, including any representation or warranty as to the accuracy or completeness of any information regarding the Company Parties furnished or made available to the Backstop Parties and their Affiliates or as to the future revenue, profitability or success of the Company Parties, or any representation or warranty arising from statute or otherwise in Law.

4. REPRESENTATIONS AND WARRANTIES OF EACH BACKSTOP PARTY

Each Backstop Party hereby severally and not jointly represents and warrants, on its own behalf and in its capacity as investment manager for its managed funds and accounts party hereto, if any, to the Company as of the date of this Agreement:

4.1 **Organization**. The Backstop Party is duly organized, validly existing and in good standing (or equivalent thereof) under the Laws of the jurisdiction of its organization.

4.2 **Due Authorization**. The Backstop Party has the requisite power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary action required for the due authorization, execution, delivery and performance by it of this Agreement.

4.3 **Due Execution; Enforceability**. This Agreement has been duly and validly executed and delivered by the Backstop Party and constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms.

4.4 **No Registration Under the Securities Act; Selling Restrictions**. Each Backstop Party acknowledges that the New Convertible Preferred Stock to be purchased by it, or to be issued to it in respect of the Backstop Commitment Premium, in each case, pursuant to the terms of this Agreement have not been registered under the Securities Act by reason of specific exemptions and the Company is relying on the truth and accuracy of, and such Backstop Party's compliance with, the representations, warranties, agreements, acknowledgements and understandings of such Backstop Party set forth herein, and that the Company shall not be required to effect any registration under the Securities Act, or any state securities Law, of the New Convertible Preferred Stock. Each Backstop Party understands and agrees that it will not offer, resell, pledge or otherwise transfer the New Convertible Preferred Stock unless the New Convertible Preferred Stock are offered, resold, pledged or otherwise transferred in accordance with any applicable securities Laws of the United States or any state thereof.

4.5 **Acquisition for Investment**. The New Convertible Preferred Stock is being acquired under this Agreement by the Backstop Party in good faith solely for its own account, for investment and not with a view toward, or for resale in connection with, distribution within the meaning of the Securities Act.

4.6 **No Conflicts**. The execution, delivery, and, subject to the terms and conditions of this Agreement, performance by such Backstop Party of this Agreement and the consummation

of the transactions contemplated hereunder, do not and will not (a) violate any provision of the organizational documents of such Backstop Party or (b) conflict with or violate any Law or order applicable to such Backstop Party or any of its respective assets or properties, except for any such conflict, violation, breach or default that would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on the ability of the Backstop Parties to timely consummate the transactions contemplated by this Agreement.

4.7 **Consents and Approvals**. No consent, approval, order, authorization, filing, notice, registration or qualification of or with any Governmental Authority having jurisdiction over such Backstop Party is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

4.8 **Investor Representation**. It is (i) a qualified institutional buyer as defined in Rule 144A of the Securities Act and (ii) an institutional accredited investor as defined in Rule 501(a)(1), (2), (3), (7), or (8) under the Securities Act.

4.9 **Investment Experience**. It has substantial experience in evaluating and investing in securities and acknowledges that it is capable of evaluating the merits and risks of, and can bear the economic risk of entering into, the transactions contemplated by this Agreement, and that each Backstop Party's financial condition and investments are such that it is in a financial position to bear the economic risk of and withstand a complete loss of such investment.

4.10 **Sufficiency of Funds**. As of the Effective Date, each Backstop Party shall have available funds sufficient to pay its applicable Funding Amount, including the Backstop Obligation of such Backstop Party as of the date thereof.

4.11 **Ownership**.

4.11.1 As of the date hereof, each Backstop Party and its Affiliates are, collectively, the beneficial owner of, or the investment advisor or manager for the beneficial owner of, the aggregate principal amount of Notes set forth opposite such Backstop Party's name under the column "Face Amount of Notes Beneficially Owned or Managed on Account of" on **Schedule 2** attached hereto.

4.11.2 As of the date hereof, such Backstop Party or its applicable Affiliates has the full power to vote, dispose of and compromise at least the aggregate principal amount of the Notes set forth opposite such Backstop Party's name under the column "Face Amount of Notes Held" on **Schedule 2** attached hereto.

4.11.3 Such Backstop Party has not entered into any Contract to transfer, in whole or in part, any portion of its right, title or interest in such Notes where such transfer would prohibit such Backstop Party from complying with the terms of this Agreement.

4.12 **Legal Proceedings**. There are no Legal Proceedings pending or, to the knowledge of such Backstop Party, threatened to which the Backstop Party is a party or to which any property of the Backstop Party is the subject, in each case that will (or would be reasonably likely

to) materially prohibit, delay or adversely impact such Backstop Party's timely performance of its obligations under this Agreement.

4.13 No Broker's Fee. None of the Backstop Parties or their Affiliates is a party to any Contract with any Person (other than this Agreement) that would give rise to a valid claim against the Company for a brokerage commission, finder's fee or like payment in connection with the Rights Offering or the sale of the Remaining Shares.

4.14 Independent Investigation.

4.14.1 Each of the Backstop Parties has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company Parties, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Company Parties for such purpose.

4.14.2 Each of the Backstop Parties acknowledges and agrees that: (i) none of the Company Parties, nor any other Person on behalf of the Company Parties has made any representation or warranty, expressed or implied, as to the Company Parties, or the accuracy or completeness of any information regarding the Company Parties furnished or made available to the Backstop Parties and its representatives, or any other matter related to the transactions contemplated herein, except as expressly set forth in this Agreement, the RSA, the Plan, the Rights Offering Documents and the Definitive Documents; (ii) such Backstop Party has not relied on any representation or warranty from the Company Parties or any other Person on behalf of the Company Parties in determining to enter into this Agreement, except as expressly set forth in this Agreement; and (iii) none of the Company Parties or any other Person acting on behalf of the Company Parties shall have any liability to such Backstop Party or any other Person with respect to the future revenue, profitability or success of the Company Parties, except as set forth in this Agreement, the RSA, the Plan, the Rights Offering Documents and the Definitive Documents.

4.14.3 The Company acknowledges and agrees that: (i) none of the Backstop Parties, nor any other Person on behalf of the Backstop Parties has made any representation or warranty, expressed or implied, as to the Backstop Parties, or the accuracy or completeness of any information regarding the Backstop Parties furnished or made available to the Company and its representatives, or any other matter related to the transactions contemplated herein, except as expressly set forth in this Agreement; and (ii) the Company has not relied on any representation or warranty from the Backstop Parties or any other Person on behalf of the Backstop Parties in determining to enter into this Agreement, except as expressly set forth in this Agreement.

5. COVENANTS

5.1 Conduct of Business. Except as expressly set forth in this Agreement, the Definitive Documents or with the prior written consent of the Required Backstop Parties (not to be unreasonably withheld or delayed and taking into account the pendency of the Chapter 11 Cases), during the period from the date of this Agreement to the earlier of the Effective Date and the date on which this Agreement is terminated in accordance with its terms: (a) the Company shall, and shall cause each of the other Company Parties to, carry on its business in the ordinary course and use its commercially reasonable efforts to: (i) preserve intact its current business and business organizations in all material respects; (ii) with the exception of those certain transportation contracts listed on Schedule 4 hereto, preserve its material relationships with customers, sales representatives, suppliers, licensors, licensees, distributors and others having material business dealings with any of the Company Parties in connection with their business; (iii) file or post Company Information within the time periods required under the Exchange Act, or reasonably promptly thereafter, in each case in accordance with ordinary course of business consistent with past practice; (iv) maintain its physical assets, properties and facilities in all material respects in their current working order, condition and repair as of the date hereof, ordinary wear and tear excepted; (v) operate its businesses in compliance with all applicable Laws in all material respects; and (vi) maintain all insurance policies, or suitable replacements therefor, in full force and effect through the close of business on the Effective Date in all material respects; and (b) the Company shall not: (i) sell, license to any Person, transfer, assign, abandon, subject to a security interest, or allow to lapse or expire any Intellectual Property (other than expiration of any issued or registered Intellectual Property at the end of its respective maximum statutory term); or (ii) enter into any transaction that is material to the Company Parties' business other than (A) transactions in the ordinary course of business that are consistent with prior business practices of the Company Parties, and (B) transactions expressly contemplated by the RSA and the Plan.

For the avoidance of doubt and without limiting the generality of the foregoing, the following shall be deemed to occur outside of the ordinary course of business of the Company Parties and shall require the prior written consent of the Required Backstop Parties unless the same would otherwise be permissible under the RSA or the Plan: (a) material amendments of the Company's certificate of incorporation and bylaws or other organizational documents; (b) adopting any new executive compensation or retention plans; or (c) approving or adopting any executive bonuses or retention payments.

5.2 Non-Disclosure of Holdings Information. The Company shall not, and shall cause each of the other Company Parties not to, disclose publicly **Schedule 2** to this Agreement or the information set forth thereon or the holdings information of any Backstop Party as of the date hereof or any time hereafter; provided, that in connection with the Chapter 11 Cases, on or after the Petition Date, the Company Parties may file this Agreement with the Bankruptcy Court and the SEC, but shall redact **Schedule 2** and any holdings information of any Backstop Party set forth in **Schedule 2**; provided, further, that the Company shall be permitted to disclose in connection with the Chapter 11 Cases, on or after the Petition Date, the aggregate principal amount of, and aggregate percentage of, the Notes held by the Backstop Parties and Consenting Creditors, in each case, as a group.

5.3 **Use of Proceeds**. The Company will apply the proceeds from the Rights Offering for purposes identified in the Plan and other Definitive Documents.

5.4 **Blue Sky**. The Company shall, on or before the Effective Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Convertible Preferred Stock to be issued pursuant to this Agreement, at the Effective Date, under applicable securities and "Blue Sky" Laws of the states of the United States (or to obtain an exemption from such qualification). The Company shall timely make all filings and reports relating to the offer and sale of the Remaining Shares issued hereunder required under applicable securities and "Blue Sky" Laws of the states of the United States following the Effective Date. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 5.4.

5.5 **Rights Offering.** Subject to the terms and conditions of this Agreement and the RSA, the Company shall use commercially reasonable efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable in order to consummate and effectuate the Rights Offering in accordance with the Plan, the RSA, the Definitive Documents and this Agreement.

5.6 **The New Convertible Preferred Stock**. Subject to the entry of the Confirmation Order and the occurrence of the Effective Date, the New Convertible Preferred Stock, when issued, will be duly and validly issued and outstanding and will be fully paid and non-assessable. As of the Effective Date, the Company shall have the ability to issue sufficient New Convertible Preferred Stock to consummate the transaction contemplated under this Agreement, the RSA and the Plan.

5.7 **Backstop Notice**. The Company shall determine the aggregate amount of Remaining Shares and Purchase Price, if any, set forth in the Backstop Notice in good faith, and shall direct the Subscription Agent to provide such written backup relating to the calculation thereof as the Backstop Parties may reasonably request.

5.8 **Facilitation**. The Company shall use commercially reasonable efforts to, and cause each of the other Company Parties to, and each Backstop Party shall use commercially reasonable efforts to, support and take all actions necessary or reasonably requested by the Required Backstop Parties to facilitate the Rights Offering and confirmation and consummation of the Plan within the timeframes contemplated by the RSA.

5.9 **Access to Information; Confidentiality**. Subject to applicable Law, upon reasonable, prior written notice given prior to the Effective Date and for a reasonable business purpose, the Debtors shall afford the Backstop Parties and the Backstop Party Professionals upon request, reasonable access, during normal business hours and without unreasonable disruption or interference with the business or operations of the Company Parties or any of their Subsidiaries, to the Debtors' properties, books, assets, Contracts and records and, prior to the Effective Date, the Debtors shall furnish promptly to such parties all reasonable information concerning the Debtors' business, properties and personnel as may reasonably be requested by any such party; provided that the foregoing shall not require the Company to: (i) permit any inspection, or disclose any information, that in the reasonable judgment

of the Company, would cause any of the Company Parties or any of their Subsidiaries to violate any of their respective obligations with respect to confidentiality to a third-party; (ii) disclose any legally privileged information of any of the Company Parties or any of their Subsidiaries; (iii) violate any applicable Law; or (iv) permit any invasive environmental sampling; provided, that, in each case, the Company Parties will use commercially reasonably efforts to use a method of disclosure which would not cause such violation of confidentiality obligations, compromise such privilege or cause such violation of applicable Law. All requests for information and access made in accordance with this Section 5.9 shall be directed to Kirkland and Ellis LLP ("***Kirkland***"), Perella Weinberg Partners L.P. ("***Perella***") or any other entity or person identified by any of them in writing; provided, however, that the Backstop Parties may initiate communications with the Company's officers, directors or management with the advance written consent of Kirkland or Perella.

5.10 Regulatory Approvals.

5.10.1 Each Party agrees to use commercially reasonable efforts to make all filings and to obtain all consents, approvals and authorizations required to be obtained from any governmental authority, in each case in order to consummate the transactions contemplated hereby, and to make effective the Plan and the Rights Offering Documents, including (i) if applicable, filing, or causing to be filed, the Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement with the Antitrust Division of the United States Department of Justice and the United States Federal Trade Commission and any filings (or, if required by any Antitrust Authority, any drafts thereof) under any other Antitrust Laws that are necessary to consummate and make effective the transactions contemplated by this Agreement as soon as reasonably practicable after the commencement of the Rights Offering (and with respect to any filings required pursuant to the HSR Act, if any, no later than five (5) Business Days following the date of the commencement of the Rights Offering) and (ii) promptly furnishing any documents or information reasonably requested by any Antitrust Authority.

5.10.2 The Company and each Backstop Party subject to an obligation pursuant to the Antitrust Laws to notify any transaction contemplated by this Agreement, the RSA, the Plan or the Rights Offering Documents that has notified the Company in writing of such obligation (each such Backstop Party, a "***Filing Party***") agree to reasonably cooperate with each other as to the appropriate time of filing such notification and its content. The Company and each Filing Party shall, to the extent permitted by applicable Law: (i) promptly notify each other of, and if in writing, furnish each other with copies of (or, in the case of material oral communications, advise each other orally of) any material communications from or with an Antitrust Authority; (ii) not participate in any meeting with an Antitrust Authority unless it consults with each other Filing Party and the Company, as applicable, in advance and, to the extent permitted by the Antitrust Authority and applicable Law, give each other Filing Party and the Company, as applicable, a reasonable opportunity to attend and participate thereat; (iii) furnish each other Filing Party and the Company, as

applicable, with copies of all material correspondence and communications between such Filing Party or the Company and the Antitrust Authority; (iv) furnish each other Filing Party with such necessary information and reasonable assistance as may be reasonably necessary in connection with the preparation of necessary filings or submission of information to the Antitrust Authority; and (v) not withdraw its filing, if any, under the HSR Act without the prior written consent of the Backstop Parties and the Company.

5.10.3 Should a Filing Party be subject to an obligation under the Antitrust Laws to jointly notify with one or more other Filing Parties (each, a "***Joint Filing Party***") any transaction contemplated by this Agreement, the RSA, the Plan or the Rights Offering Documents, such Joint Filing Party shall promptly notify each other Joint Filing Party of, and if in writing, furnish each other Joint Filing Party with copies of (or, in the case of material oral communications, advise each other Joint Filing Party orally of) any communications from or with an Antitrust Authority.

5.10.4 The Company and each Filing Party shall use their commercially reasonable efforts to obtain all authorizations, approvals, consents, or clearances under any applicable Antitrust Laws or to cause the termination or expiration of all applicable waiting periods under any Antitrust Laws in connection with the transactions contemplated by this Agreement at the earliest possible date after the date of filing. The communications contemplated by this Section 5.10 may be made by the Company or a Filing Party on an outside counsel-only basis or subject to other agreed upon confidentiality safeguards.

6. CONDITIONS TO THE BACKSTOP PARTIES' CLOSING OBLIGATIONS

6.1 Conditions to the Backstop Parties' Closing Obligations. The obligation of the Backstop Parties to consummate the Backstop Purchase shall be subject to the satisfaction of each of the following conditions on the Effective Date:

6.1.1 Certain Documents. Each of the Exit Facility Documents, the Rights Offering Documents and the Definitive Documents is in form and substance substantially in accordance with the RSA or as otherwise set forth in the Plan, and otherwise reasonably acceptable to the Required Backstop Parties.

6.1.2 Agreements. The RSA and this Agreement shall not have been terminated.

6.1.3 Antitrust Approval. All terminations or expirations of waiting periods imposed by any Governmental Authority required under any Antitrust Laws, if applicable, shall have occurred and other notifications, consents, authorizations and approvals required to be made or obtained from any Governmental Authority any Antitrust Law, if applicable, shall have been made or obtained for the transactions contemplated by this Agreement

6.1.4 Approval Order. The Bankruptcy Court shall have entered the Approval Order in form and substance acceptable to the Required Backstop Parties, and such order shall not be reversed, stayed, dismissed, vacated, reconsidered, modified or

amended in any material respect (other than in accordance with the terms of this Agreement or the RSA).

6.1.5 Confirmation Order. The Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to the Required Backstop Parties and such order shall not be reversed, stayed, dismissed, vacated, reconsidered, modified or amended in any material respect (other than in accordance with the terms of this Agreement or the RSA).

6.1.6 Plan. The Company and all of the other Company Parties shall have complied in all material respects with the terms of the Plan, once filed, that are to be performed by the Company and the other Company Parties on or prior to the Effective Date, and the conditions to the occurrence of the Effective Date (other than the consummation of the Backstop Purchase) set forth in the Plan shall have been satisfied or waived in accordance with the terms of the Plan.

6.1.7 Expense Reimbursement. The Company shall have paid the Expense Reimbursement in full in cash, or such amount shall be paid concurrently with the Effective Date, in each case, to the extent invoiced in accordance with the terms hereof.

6.1.8 Rights Offering. The Rights Offering shall have been conducted in accordance with this Agreement and the Rights Offering Documents and the New Convertible Preferred Stock and New Common Stock shall have been issued free and clear of all Liens.

6.1.9 Backstop Notice. The Backstop Parties shall have received the Backstop Notice in accordance with the terms of this Agreement.

6.1.10 Material Adverse Effect. Since the date of this Agreement, there shall not have occurred a Material Adverse Effect.

6.1.11 Representations and Warranties.

(a) The representations and warranties of the Company contained in Section 3.1, Section 3.2 Section 3.3 and Section 3.13 shall be true and correct in all respects on and as of the Effective Date (except for any de minimis inaccuracies) after giving effect to the Plan with the same effect as if made on and as of the Effective Date after giving effect to the Plan (except for such representations and warranties made as of a specified date, which shall be true and correct in all respects only as of the specified date, except for any de minimis inaccuracies).

(b) The representations and warranties of the Company contained in this Agreement other than those referred to in clauses (a) above shall be true and correct (disregarding all materiality or Material Adverse Effect qualifiers) on and as of the Effective Date after giving effect to the Plan with the same effect as if made on and as of the Effective Date after giving effect to the

Plan (except for such representations and warranties made as of a specified date, which shall be true and correct (disregarding all materiality or Material Adverse Effect qualifiers) only as of the specified date), except where the failure to be so true and correct would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

6.1.12 Covenants. The Company, on behalf of itself and the other Company Parties, shall have performed and complied, in all material respects, with all of its respective covenants and agreements contained in this Agreement that contemplate, by their terms, performance or compliance prior to the Effective Date.

6.1.13 Officer's Certificate. The Backstop Parties shall have received on and as of the Effective Date a certificate of the chief executive officer or chief financial officer of the Company confirming that the conditions set forth in Sections 6.1.10, 6.1.11 and Section 6.1.12 have been satisfied.

6.1.14 No Legal Impediment. No Law, Order or Legal Proceeding shall have been enacted, adopted or issued by or before any Governmental Authority that prohibits or materially restrains the consummation of the Restructuring or the transactions contemplated by this Agreement.

6.2 Conditions to the Company's Closing Obligations. The obligation of the Company to consummate the Closing shall be subject to the satisfaction of each of the following conditions on the Effective Date:

6.2.1 Confirmation Order. The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Required Backstop Parties and such order shall not be reversed, stayed, dismissed, vacated, reconsidered, modified or amended in any material respect (other than in accordance with the terms of this Agreement or the RSA).

6.2.2 Plan. The conditions to the occurrence of the Effective Date (other than the consummation of the Rights Offering and the Backstop Purchase) set forth in the Plan shall have been satisfied or waived in accordance with the terms of the Plan.

6.2.3 Representations and Warranties. Each of the representations and warranties of each of the Backstop Parties, set forth in Section 4 hereof, shall be true and correct in all respects (disregarding all materiality qualifiers) as of the Effective Date (except with respect to representations and warranties that expressly speak of an earlier date, which shall be true and correct in all material respects (disregarding all materiality qualifiers) as of such date), except where the failure to be so true and correct would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Backstop Parties to consummate the transactions contemplated hereby or under the Plan or the RSA.

6.2.4 Covenants. Each of the Backstop Parties, on its own behalf and in its capacity as investment manager for its managed funds and accounts party hereto, if applicable, shall have performed and complied, in all material respects, with all of its respective

covenants and agreements contained in this Agreement that contemplate, by their terms, performance or compliance prior to the Effective Date.

6.2.5 No Legal Impediment. No Law, Order or Legal Proceeding shall have been enacted, adopted or issued by or before any Governmental Authority that prohibits or materially restrains the consummation of the Restructuring or the transactions contemplated by this Agreement.

6.2.6 Antitrust Approval. All terminations or expirations of waiting periods imposed by any Governmental Authority required under any Antitrust Laws, if applicable, shall have occurred and other notifications, consents, authorizations and approvals required to be made or obtained from any Governmental Authority under any Antitrust Law, if applicable, shall have been made or obtained for the transactions contemplated by this Agreement.

6.2.7 Proceeds of Rights Offering. The Company shall have received each of the Backstop Party's respective Funding Amounts in accordance with the terms of this Agreement.

7. INDEMNIFICATION AND CONTRIBUTION

7.1 Indemnification Obligations. The Company and the other Company Parties (the "***Indemnifying Parties***" and each, an "***Indemnifying Party***") shall, jointly and severally, indemnify and hold harmless each Backstop Party and its Affiliates, equity holders, members, partners, general partners, managers, directors, officers and its and their respective representatives, attorneys, and controlling Persons (each, an "***Indemnified Person***") from and against any and all losses, claims, damages, liabilities and costs and expenses (collectively, "***Indemnified Losses***") that any such Indemnified Person may incur or to which any such Indemnified Person may become subject arising out of or in connection with this Agreement or the transactions contemplated hereby, or any Legal Proceeding relating to any of the foregoing, regardless of whether any Indemnified Person is a party thereto, whether or not such proceedings are brought by the Company, the other Company Parties, their respective equity holders, Affiliates, creditors or any other Person, and reimburse each Indemnified Person upon demand for reasonable and documented out-of-pocket legal or other third-party expenses of counsel (which, so long as there are no actual conflicts of interests among such Indemnified Persons, shall be limited to one law firm serving as counsel for the Indemnified Persons) incurred in connection with investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as a witness with respect to, any Legal Proceeding relating to any of the foregoing (including in connection with the enforcement of the indemnification obligations set forth herein), irrespective of whether or not the transactions contemplated by this Agreement or the Plan are consummated or whether or not this Agreement is terminated; provided, that the foregoing indemnity will not, as to any Indemnified Person, apply to Indemnified Losses (a) as to a Defaulting Backstop Party, its Affiliates or any Indemnified Person related thereto, principally caused by a default by such Defaulting Backstop Party (or Indemnified Persons related thereto) or any breach by any Backstop Party (or Indemnified Persons related thereto) under this Agreement, or (b) to the extent they are

found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the willful misconduct or fraud of such Indemnified Person. Notwithstanding anything to the contrary in this Agreement, the Indemnifying Parties will not be liable for, and no Indemnified Person shall claim or seek to recover, any punitive, special, indirect or consequential damages.

7.2 **Indemnification Procedure**. Promptly after receipt by an Indemnified Person of notice of the commencement of any indemnified claim, challenge, litigation, investigation or proceeding (an "***Indemnified Claim***"), such Indemnified Person will, if a claim is to be made hereunder against an Indemnifying Party in respect thereof, notify such Indemnifying Party in writing of the commencement thereof; provided, that (a) the omission to so notify the Indemnifying Party will not relieve the Indemnifying Party from any liability that it may have hereunder except to the extent it has been materially and irrevocably prejudiced by such failure and (b) the omission to so notify the Indemnifying Party will not relieve the Indemnifying Party from any liability that it may have to such Indemnified Person other than on account of this Section 7.2 or otherwise under this Agreement. In case any such Indemnified Claims are brought against any Indemnified Person and it notifies the Indemnifying Party of the commencement thereof, the Indemnifying Party will be entitled to participate therein, and, at its election by providing written notice to such Indemnified Person, the Indemnifying Party will be entitled to assume the defense thereof, with counsel reasonably acceptable to such Indemnified Person; provided, that if the parties (including any impleaded parties) to any such Indemnified Claims include both such Indemnified Person and the Indemnifying Party and based on advice of such Indemnified Person's counsel there are legal defenses available to such Indemnified Person that are different from or additional to those available to the Indemnifying Party, such Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such Indemnified Claims; and provided, further, that the Indemnifying Party may not assume control of the defense of an Indemnified Claim (i) involving alleged or potential criminal liability, (ii) if such Indemnified Claim seeks primarily injunctive or other equitable relief against the Indemnified Party, (iii) if a bona fide conflict of interest exists between the Indemnifying Party and the Indemnified Party, or (iv) if the defense or prosecution of such Indemnified Claim has been tendered to the Indemnified Party's insurance carrier and such insurance carrier has assumed the defense thereunder pursuant to such applicable insurance policy. Upon receipt of notice from the Indemnifying Party to such Indemnified Person of its election to so assume the defense of such Indemnified Claims with counsel reasonably acceptable to the Indemnified Person, the Indemnifying Party shall not be liable to such Indemnified Person for expenses incurred by such Indemnified Person in connection with the defense thereof or participation therein (other than reasonable and documented costs of investigation) unless (a) such Indemnified Person shall have employed separate counsel (in addition to any local counsel) in connection with the assertion of legal defenses in accordance with the proviso to the immediately preceding sentence (it being understood, however, that the Indemnifying Party shall not be liable for the expenses of more than one separate counsel representing the Indemnified Persons who are parties to such Indemnified Claims (in addition to one local counsel in each jurisdiction in which local counsel is required)), (b) after the Indemnifying Party assumes the defense of the Indemnified Claims, the Indemnified Person determines in good faith that the Indemnifying Party has failed or is failing to

defend such claim and provides written notice of such determination and the basis for such determination, and such failure is not reasonably cured within ten (10) Business Days of receipt of such notice, or (c) the Indemnifying Party shall have authorized in writing the employment of counsel for such Indemnified Person.

7.3 **Settlement of Indemnified Claims.** The Indemnifying Party shall not, without the prior written consent of an Indemnified Person (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement compromise, consent to the entry of any judgment with respect to any pending or threatened Indemnified Claims in respect of which indemnity or contribution has been sought hereunder by such Indemnified Person unless (a) such settlement, compromise or consent includes an unconditional release of such Indemnified Person from all liability on the claims that are the subject matter of such Indemnified Claims and (b) such settlement, compromise or consent does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

7.4 **Contribution**. If for any reason the foregoing indemnification is unavailable to any Indemnified Person or insufficient to hold it harmless from Indemnified Losses that are subject to indemnification pursuant to Section 7.1, then the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Person as a result of such loss in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnifying Party, on the one hand, and such Indemnified Person, on the other hand, but also the relative fault of the Indemnifying Party, on the one hand, and such Indemnified Person, on the other hand, as well as any relevant equitable considerations. It is hereby agreed that the relative benefits to the Indemnifying Party, on the one hand, and all Indemnified Persons, on the other hand, shall be deemed to be in the same proportion as (a) the total value received or proposed to be received by the Company pursuant to the issuance and sale of the unsubscribed New Convertible Preferred Stock in the Rights Offering contemplated by this Agreement and the Plan bears to (b) the Backstop Commitment Premium paid or proposed to be paid to the Backstop Parties. The Indemnifying Parties also agree that no Indemnified Person shall have any liability based on their comparative or contributory negligence or otherwise to the Indemnifying Parties, any Person asserting claims on behalf of or in right of any of the Indemnifying Parties, or any other Person in connection with an Indemnified Claim.

7.5 **Treatment of Indemnification Payments**. All amounts paid by an Indemnifying Party to an Indemnified Person under this Article 7 shall, to the extent permitted by applicable Law, be treated as adjustments to the Purchase Price for all Tax purposes. The provisions of this Article 7 are an integral part of the transactions contemplated by this Agreement and without these provisions the Backstop Parties would not have entered into this Agreement. The Approval Order shall provide that the obligations of the Company under this Article 7 shall constitute allowed administrative expenses of the Debtors' estate under sections 503(b) and 507 of the Bankruptcy Code and are payable without further order of the Bankruptcy Court, and that the Company may comply with the requirements of this Article 7 without further order of the Bankruptcy Court.

8. MISCELLANEOUS

8.1 **Notice**. Any notice or other communication required or which may be given pursuant to this Agreement will be in writing and either delivered personally to the addressee or sent via electronic mail, courier, by certified mail, or registered mail (return receipt requested), and will be deemed given when so delivered personally or sent via electronic mail, or, if mailed, five (5) calendar days after the date of mailing, as follows:

if to a Backstop Party, to the address or email address provided to the Company from time to time:

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Attention: Alan Kornberg, Kenneth Schneider, Robert Britton, Chaim Theil
E-mail address: akornberg@paulweiss.com, kschneider@paulweiss.com, rbritton@paulweiss.com, ctheil@paulweiss.com

if to the Company, to:

Gulfport Energy Corporation
14313 N. May Avenue, Suite 100
Oklahoma City, Oklahoma 73134
Attn.: Patrick Craine
E-mail address: pcraine@gulfportenergy.com

with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Steven N. Serajeddini, P.C.
E-mail address: steven.serajeddini@kirkland.com

and

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: Christopher S. Koenig
E-mail address:
chris.koenig@kirkland.com

with copies to:

Latham & Watkins LLP

885 Third Avenue
New York, NY 10022
Attention: Trevor Womack, Adam Goldberg, and Hugh Murtagh
E-mail address: trevor.womack@lw.com, adam.goldberg@lw.com, and hugh.murtagh@lw.com

8.2 **Assignment**. Except as described in this Section 8.2, this Agreement will be binding upon and inure to the benefit of each and all of the Parties, and neither this Agreement nor any of the rights, interests or obligations hereunder will be assigned by any of the Parties without the prior written consent of the Company. Notwithstanding the foregoing, any Backstop Party may assign or reallocate its rights and obligations hereunder (including its Backstop Commitment, Backstop Obligation, Subscription Rights and right to receive its Backstop Commitment Premium) prior to the Effective Date, in whole or in part, to (a) any other Consenting Noteholder in a manner consistent with the terms of the RSA that agrees as part of such assignment to assume such Backstop Party's Backstop Commitment, Backstop Obligation, Subscription Rights and/or right to receive its Backstop Commitment Premium, as applicable, or (b) any Backstop Party or to any of its or their Affiliates (and/or any Affiliate thereof); provided, that, in each case, any such assignment shall not release such Backstop Party from any of its obligations under this Agreement in the event that such assignee does not fulfill its obligations hereunder; provided, further, that (i) such assignee and the assigning Backstop Party shall have duly executed and delivered to the Company and Kirkland a written notice of such assignment in substantially the form attached as Exhibit A hereto (a "***Notice of Assignment***"); and (ii) with respect to any assignee that is not a party to this Agreement, such assignee shall be required, by delivery of an executed agreement in substantially the form attached as Exhibit B hereto (a "***Joinder Agreement***"), to be bound by the obligations of such assignee's assigning Backstop Party hereunder. Upon the effectiveness of any assignment pursuant to this Section 8.2, the Company shall promptly update **Schedule 2** hereto to reflect such assignment.

8.3 **Survival.** Subject to Section 8.12, (a) all representations and warranties made in this Agreement and the schedules attached hereto shall not survive the Effective Date (other than in the case of actual and intentional fraud) and (b) covenants and agreements that by their terms are to be satisfied after the Effective Date, including, without limitation, the Expense Reimbursement set forth in Section 2.3.1 and the covenants set forth in Section 5.3, shall survive the Effective Date until satisfied in accordance with their terms.

8.4 **Entire Agreement**. This Agreement, including the terms of the agreements contemplated hereby and referred to herein (including the RSA and Rights Offering Documents), contain the entire agreement by and between the Company and the Backstop Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements and representations, written or oral, with respect thereto. To the extent there is an inconsistency between the provisions in this Agreement and the agreements contemplated hereby and referred to herein, the provisions in this Agreement shall control. To the extent there is an inconsistency between the provisions in this Agreement and the Plan, the Plan shall control; provided, that notwithstanding anything to the contrary in the Plan (including any amendments, supplements or modifications thereto) or the Confirmation Order (and any amendments, supplements or modifications thereto) or an affirmative vote to accept

the Plan submitted by any Backstop Party, nothing contained in the Plan (including any amendments, supplements or modifications thereto) or Confirmation Order (including any amendments, supplements or modifications thereto) shall alter, amend or modify the rights of the Backstop Parties under this Agreement unless such alteration, amendment or modification has been made in accordance with Section 8.5.

8.5 Waivers and Amendments. This Agreement may be amended, modified or superseded, and the terms and conditions of this Agreement may be waived, only by a written instrument signed by the Company and the Backstop Parties whose aggregate Backstop Commitment and Subscription Price represents at least two-thirds of the Aggregate Commitment Amount (the "***Required Backstop Parties***"); provided, that, notwithstanding anything to the contrary in this Agreement, no amendment that reduces or otherwise modifies the Backstop Commitment Premium, Purchase Price, or increases or otherwise modifies a Backstop Party's Backstop Obligation or any other funding or financial obligation of any Backstop Party hereunder shall be effective against any Backstop Party without such Backstop Party's prior written consent; provided, further, that **Schedule 2** hereto may be amended with the prior written consent of all the Backstop Parties without the consent of the Company so long as the Aggregate Commitment Amount is not modified. No delay on the part of any Party in exercising any right, power or privilege pursuant to this Agreement will operate as a waiver thereof. No waiver on the part of any Party of any right, power or privilege pursuant to this Agreement, nor any single or partial exercise of any right, power or privilege pursuant to this Agreement, shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege pursuant to this Agreement. The rights and remedies provided pursuant to this Agreement are cumulative and are not exclusive of any rights or remedies which any Party otherwise may have at law or in equity.

8.6 Governing Law; Jurisdiction; Venue; Process. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any conflict of laws principles that would require the application of the Law of any other jurisdiction. Each Party hereby irrevocably submits, for itself and its property, to the exclusive jurisdiction of the courts of the State of Delaware located in the County of New Castle, for purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Each Party irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Notwithstanding the foregoing, during the pendency of the Chapter 11 Cases, all proceedings contemplated by this Section 8.6 shall be brought in the Bankruptcy Court.

8.7 Counterparts. This Agreement may be executed in two or more counterparts (including via facsimile or other electronic means), each of which will be deemed an original but all of which together will constitute one and the same instrument. All such counterparts will be deemed an original, will be construed together and will constitute one and the same instrument.

8.8 **Headings**. The headings in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

8.9 **Severability**. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein will not be in any way impaired thereby, it being intended that all of the rights and privileges of the parties hereto will be enforceable to the fullest extent permitted by Law.

8.10 **Termination**. This Agreement shall terminate:

8.10.1 automatically if the RSA is terminated pursuant to the terms thereof;

8.10.2 if the Company and the Required Backstop Parties mutually agree in writing to terminate this Agreement;

8.10.3 at the Company's election, by written notice to the Backstop Parties, in the event of a material breach of this Agreement by any Backstop Party or any Replacing Backstop Party that has prevented the satisfaction of any condition, or the Company's or any Backstop Party's performance of any of its obligations hereunder or under the RSA, if such violation or breach has not been waived by the Company or cured in all material respects by the applicable Backstop Party or Replacing Backstop Party within ten (10) Business Days after written notice thereof from the Company (provided, however, that the Company may not seek to terminate this Agreement based upon a material breach arising out of its own actions or omissions in breach hereof or if any of the Company Parties is then in material breach of this Agreement or the RSA); or

8.10.4 at the Required Backstop Parties' election, by written notice to the Company, in the event that a material breach of this Agreement by any of the Company Parties has prevented the satisfaction of any condition to the effectiveness of the Plan, or the Company's or any Backstop Party's performance of any of its obligations hereunder or under the RSA, if such violation or breach has not been waived by the Required Backstop Parties or been cured in all material respects by the applicable Company Party within ten (10) Business Days after written notice thereof from the Backstop Parties (provided, however, that the Backstop Parties may not seek to terminate this Agreement based upon a material breach arising out of the actions or omissions of any Backstop Party in breach hereof or if any Backstop Party is then in material breach of this Agreement or the RSA).

8.11 **Breach**. Regardless of the termination of this Agreement pursuant to Section 8.10, each Party shall remain liable for any breaches of this Agreement prior to its termination.

8.12 **Effect of Termination**.

8.12.1 Upon termination of this Agreement pursuant to Section 8.10, this Agreement shall forthwith become void and there shall be no further obligations or liabilities on the

part of the parties hereto; provided, that (a) the obligation of the Company to pay the Expense Reimbursement to Backstop Parties pursuant to Section 2.3.1 and to pay the Backstop Commitment Premium if payable pursuant to Sections 2.2.3, Section 2.4, and/or 8.12.2 shall survive the termination of this Agreement and shall remain in full force and effect until such obligation has been satisfied (except as otherwise set forth herein), (b) the provisions set forth in this Section 8.12, Section 8.13, Section 8.14, Section 8.16, Section 8.17, Section 8.18, Section 8.19 and Section 8.21 shall survive the termination of this Agreement in accordance with their terms and (c) subject to Section 8.14, nothing in this Section 8.12 shall relieve any Party from liability for its intentional fraud or any willful or intentional breach of this Agreement occurring prior to the date of termination of this Agreement. For purposes of this Agreement, "willful or intentional breach" means a breach of this Agreement that is a consequence of an intentional act undertaken by the breaching party with the knowledge that the taking of such act would, or would reasonably be expected to, cause a breach of this Agreement. For the avoidance of doubt, the failure to timely pay the Purchase Price by any of the Backstop Parties in accordance with the terms of this Agreement (and subject to the applicable cure period set forth in Section 8.10.3) shall constitute a willful breach of this Agreement.

8.12.2 If this Agreement is terminated by the Required Backstop Parties under Section 8.10.4, the Company shall, promptly after the date of such termination, pay the Backstop Commitment Premium; provided that the Backstop Commitment Premium is payable pursuant to Section 2.2.3 and, if applicable, Section 2.4, entirely in cash to each Backstop Party or its designee(s). The Backstop Commitment Premium shall (to the extent payable in cash hereunder) pursuant to an Approval Order, constitute allowed administrative expenses of the Debtors' estates under sections 503(b) and 507 of the Bankruptcy Code and shall be payable by the Debtors as provided in this Agreement without further order of the Bankruptcy Court.

8.13 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHTS TO TRIAL BY JURY IN ANY JURISDICTION IN ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE.

8.14 Damages. Notwithstanding anything to the contrary in this Agreement, no Party will be liable for, and no Party shall claim or seek to recover, any punitive, special, indirect or consequential damages.

8.15 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions without the necessity of posting a bond to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Unless otherwise expressly stated in this Agreement,

no right or remedy described or provided in this Agreement is intended to be exclusive or to preclude a Party from pursuing other rights and remedies to the extent available under this Agreement, at law or in equity.

8.16 **No Reliance**. No Backstop Party or any of its Affiliates shall have any duties or obligations to the other Backstop Parties in respect of this Agreement, the transactions contemplated hereby, the Definitive Documents or the Restructuring, except those expressly set forth herein. Without limiting the generality of the foregoing, (a) no Backstop Party or any of its Affiliates shall be subject to any fiduciary or other implied duties to the other Backstop Parties, (b) no Backstop Party or any of its Affiliates shall have any duty to take any discretionary action or exercise any discretionary powers on behalf of any other Backstop Party, (c) no Backstop Party or any of its Affiliates shall have any duty to the other Backstop Parties to obtain, through the exercise of diligence or otherwise, to investigate, confirm, or disclose to the other Backstop Parties any information relating to the Company or any of its Affiliates that may have been communicated to or obtained by such Backstop Party or any of its Affiliates in any capacity, (d) no Backstop Party may rely, and each Backstop Party confirms that it has not relied, on any due diligence investigation that any other Backstop Party or any Person acting on behalf of such other Backstop Party may have conducted with respect to the Company or any of its Affiliates or any of their respective securities, and (e) each Backstop Party acknowledges that no other Backstop Party is acting as a placement agent, initial purchaser, underwriter, broker or finder with respect to its Backstop Obligation.

8.17 **Publicity**. Except as required by Law, at all times prior to the Effective Date or the earlier termination of this Agreement in accordance with its terms, the Company and the Backstop Parties shall consult with each other prior to issuing any press releases (and provide each other a reasonable opportunity to review and comment upon such release) or otherwise making public announcements with respect to the transactions contemplated by this Agreement. No Party may identify or use the name of any Backstop Party in connection with any press release or other public announcement related to this Agreement without the prior written consent of such Backstop Party.

8.18 **Settlement Discussions**. This Agreement and the transactions contemplated herein are part of a proposed settlement of a dispute between the Parties. Nothing herein shall be deemed an admission of any kind. Pursuant to section 408 of the U.S. Federal Rules of Evidence and any applicable state rules of evidence, this Agreement and all negotiations relating thereto shall not be admissible into evidence in any Legal Proceeding (other than a legal proceeding to approve or enforce the terms of this Agreement).

8.19 **No Recourse**. Notwithstanding anything that may be expressed or implied in this Agreement, and notwithstanding the fact that certain of the Parties may be partnerships or limited liability companies, each Party covenants, agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any Affiliates of any Party other than the parties to this Agreement and each of their respective successors and permitted assignees under this Agreement, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable Law, it being expressly agreed and

acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any of the Affiliates of any Party, as such, for any obligation or liability of any Party or any documents or instruments delivered in connection herewith for any claim based on, in respect of or by reason of such obligations or liabilities or their creation; provided, however, that nothing in this Section 8.19 shall relieve or otherwise limit the liability of any Party or any of their respective successors or permitted assigns for any breach or violation of its obligations under this Agreement or such other documents or instruments. For the avoidance of doubt, none of the parties hereto will have any recourse, be entitled to commence any proceeding or make any claim under this Agreement or in connection with the transactions contemplated hereby except against any of the parties hereto or their respective successors and permitted assigns, as applicable.

8.20 Release. Subject to the occurrence of the Payment Date, the Company Parties (the "***Releasing Parties***"), jointly and severally, shall conclusively, absolutely, irrevocably and forever release and discharge (the "***Company Release***") each Backstop Party and its Affiliates, equity holders, members, partners, general partners, managers, directors and officers and its and their respective representatives, attorneys, and controlling Persons, in each case in their capacities as such (the "***Released Parties***"), from any and all causes of action, including any derivative claims asserted on behalf of any Company Party, whether known or unknown, foreseen or unforeseen, matured or unmatured, liquidated, unliquidated or contingent, existing or hereafter arising, in law, equity, Contract, tort, or otherwise, that any Company Party, or any of its successors or assigns, would have been legally entitled to assert (whether individually or collectively) against or with respect to any Released Party, and hereby agrees and covenants not to assert or prosecute, or assist or otherwise aid any other Person in the assertion or prosecution, against any or all of the Released Parties, based on or relating to, or in any manner arising from, in whole or in part, any Company Party, any Company Party's capital structure, any investments by any Released Party in any Company Party, any transaction or agreement between any Released Party and any Company Party, the management of any Company Party, the assertion or enforcement of rights and remedies against any Company Party, the Company Parties' refinancing efforts, intercompany transactions between or among the Company Parties, the Restructuring, the Rights Offering, the RSA, the Definitive Documents or any other Contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring. Notwithstanding anything to the contrary in the foregoing, the Company Release shall not apply to any Defaulting Backstop Party and shall not otherwise release any Released Party for liability arising from any breach of this Agreement or for any actions taken after the date hereof.

8.21 Other Interpretive Matters. Unless otherwise expressly provided herein, for purposes of this Agreement, the following rules of interpretation shall apply: (a) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded and, if the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day; (b) any reference in this Agreement to "$" or "dollars" shall mean U.S. dollars; (c) all exhibits and schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein and any capitalized terms used in any such exhibit

or schedule but not otherwise defined therein shall be defined as set forth in this Agreement; (d) words imparting the singular number only shall include the plural and vice versa; (e) words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires; (f) the word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it; (g) the division of this Agreement into Sections and other subdivisions are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement; and (h) all references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

[*Signature pages follow*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized officers, solely in their respective capacity as officers of the undersigned and not in any other capacity, as of the date first set forth above.

GULFPORT ENERGY CORPORATION

By: _____

Name: Quentin R. Hicks
Title: Chief Financial Officer

[BACKSTOP PARTY SIGNATURES OMITTED]

SCHEDULE 1

COMPANY PARTIES

Gulfport Energy Corporation, a Delaware corporation

Gator Marine, Inc., a Delaware corporation

Gator Marine Ivanhoe, Inc., a Delaware corporation

Grizzly Holdings, Inc., a Delaware corporation

Gulfport Appalachia, LLC, a Delaware limited liability company

Gulfport Midcon, LLC, a Delaware limited liability company

Gulfport Midstream Holdings, LLC, a Delaware limited liability company

Jaguar Resources LLC, a Delaware limited liability company

Mule Sky LLC, a Delaware limited liability company

Puma Resources, Inc., a Delaware limited liability company

Westhawk Minerals LLC, a Delaware limited liability company

SCHEDULE 2

Backstop Parties

[REDACTED]

SCHEDULE 3

Material Contracts

[REDACTED]

SCHEDULE 4

Transportation Contracts

[REDACTED]

EXHIBIT A

Form of Notice of Assignment

Gulfport Energy Corporation
14313 N. May Avenue, Suite 100
Oklahoma City, Oklahoma 73134
Attn.: Patrick Craine¶
E-mail address: pcraine@gulfportenergy.com

with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Steven N. Serajeddini, P.C.
E-mail address: steven.serajeddini@kirkland.com

and

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: Christopher S. Koenig
E-mail address: chris.koenig@kirkland.com

[_____]
[Address]
Attn.: [___]
Email address: [_____]

Re: Transfer Notice Under Backstop Agreement

Reference is hereby made to that certain Backstop Commitment Agreement, dated as of November 13, 2020 (as amended, supplemented or otherwise modified from time to time, the "**Backstop Commitment Agreement**"), by and among the Company and the Backstop Parties. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Backstop Commitment Agreement.

The purpose of this notice ("**Notice**") is to advise you, pursuant to Section 8.2 of the Backstop Commitment Agreement, of the proposed transfer by [●] (the "**Transferor**") to [●] (the "**Transferee**") of (as applicable):

(i) [[•]% of the Subscription Rights of the Transferor, which represents the rights to subscribe for [•] shares of New Convertible Preferred Stock;] [and]

(ii) [the Backstop Commitment representing [●]% of the aggregate Backstop Commitments as of the date hereof, which represents $[●] of the Transferor's Backstop Commitment.]

[If applicable: The Transferee represents to the Company and the Transferor that it is a Backstop Party under the Backstop Commitment Agreement.]

By signing this Notice below, Transferee represents to the Company and the Transferor that it will execute and deliver a joinder to the Backstop Agreement.

This Notice shall serve as a transfer notice in accordance with the terms of the Backstop Commitment Agreement. Please acknowledge receipt of this Notice delivered in accordance with Section 8.2 by returning a countersigned copy of this Notice to counsel to the Backstop Parties via the contact information set forth above.

EXHIBIT B

Form of Joinder Agreement

JOINDER AGREEMENT

This Joinder Agreement (the "***Joinder Agreement***") to the Backstop Commitment Agreement dated as of November 13, 2020 (as amended, supplemented or otherwise modified from time to time, the "***Backstop Commitment Agreement***"), among the Company and the Backstop Parties is executed and delivered by the undersigned (the "***Joining Party***") as of _____, 2020 (the "***Joinder Date***"). Each capitalized term used herein but not otherwise defined shall have the meaning set forth in the Backstop Commitment Agreement.

Agreement to be Bound. The Joining Party hereby agrees to be bound by all of the terms of the Backstop Commitment Agreement, a copy of which is attached to this Joinder Agreement as **Annex 1** (as the same has been or may be hereafter amended, restated or otherwise modified from time to time in accordance with the provisions hereof). The Joining Party shall hereafter be deemed to be a "Backstop Party" for all purposes under the Backstop Commitment Agreement.

Representations and Warranties. The Joining Party hereby severally and not jointly makes the representations and warranties of the Backstop Parties as set forth in Section 4 of the Backstop Commitment Agreement to the Company as of the date hereof.

Governing Law. This Joinder Agreement shall be governed by and construed in accordance with the Laws of the State of New York, but without giving effect to applicable principals of conflicts of law to the extent that the application of the Law of another jurisdiction would be required thereby.

[*Signature pages to follow*]

IN WITNESS WHEREOF, the Joining Party has caused this Joinder to be executed as of the date first written above.

[JOINING PARTY]

By:_____
Name:
Title:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
GULFPORT ENERGY CORPORATION, *et al.*,[1]	)	Case No. 20-35562 (DRJ)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. __**

ORDER (I) APPROVING (A) THE ASSUMPTION OF THE BACKSTOP COMMITMENT AGREEMENT AND (B) THE PAYMENT OF FEES AND EXPENSES RELATED THERETO, AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), (i) approving (a) the assumption of the Backstop Commitment Agreement and (b) the payment of fees and expenses related thereto, and (ii) granting related relief, all as more fully set forth in the Motion; and upon the McGovern Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gulfport Energy Corporation (1290); Gator Marine, Inc. (1710); Gator Marine Ivanhoe, Inc. (4897); Grizzly Holdings, Inc. (9108); Gulfport Appalachia, LLC (N/A); Gulfport MidCon, LLC (N/A); Gulfport Midstream Holdings, LLC (N/A); Jaguar Resources LLC (N/A); Mule Sky LLC (6808); Puma Resources, Inc. (6507); and Westhawk Minerals LLC (N/A). The location of the Debtors' service address is: 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the Backstop Commitment Agreement, as applicable.

interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED, FOUND, AND DETERMINED THAT:

1. The terms and conditions of the Backstop Commitment Agreement are fair, reasonable, and the best available to the Debtors under the circumstances. Such terms reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, are based on good, sufficient, and sound business purposes and justifications, and are supported by reasonably equivalent value and consideration. The Backstop Commitment Agreement was negotiated in good faith and at arm's length among the Debtors, the Backstop Parties, and their respective professional advisors.

2. The Debtors are authorized and directed to assume the Backstop Commitment Agreement, and the Debtors are further authorized to take any and all actions necessary and proper to implement the terms of the Backstop Commitment Agreement and to perform all obligations thereunder on the conditions set forth therein.

3. The Backstop Commitment Premium and the Expense Reimbursement are hereby approved as reasonable and non-refundable and shall not be subject to any avoidance, disgorgement, reduction, setoff, recoupment, offset, recharacterization, subordination (whether contractual, equitable, or otherwise), counterclaims, cross-claims, defenses, disallowance,

impairment, or any other challenges under any theory at law or in equity or any applicable law or regulation by any person or entity.

4. The Backstop Commitment Premium, the Expense Reimbursement, and any indemnities payable under the Backstop Commitment Agreement are actual and necessary costs of preserving the Debtors' estates due to (i) the significant benefit to the Debtors' estates of having definitive and binding equity commitments to fund the Plan, (ii) the substantial time, effort, and costs incurred by the Backstop Parties in negotiating and documenting the Backstop Commitment Agreement and the Restructuring Support Agreement and reserving the funds to make the equity investments contemplated thereby pending confirmation and effectiveness of the Plan, and (iii) the risk to the Backstop Parties that the Debtors may ultimately enter into an Alternative Restructuring Proposal (as defined in the Restructuring Support Agreement), and as such shall be treated as allowed administrative expenses of the Debtors pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code and are hereby approved as reasonable. If the Backstop Parties are entitled to payment of the Backstop Commitment Premium in cash, the Backstop Commitment Premium shall constitute an allowed administrative expense of the Debtors' estates under sections 503(b) and 507 of the Bankruptcy Code. The Debtors are authorized to pay and/or reimburse, as applicable, the fees, premiums, and expenses provided for or permitted by the Backstop Commitment Agreement (including the Backstop Commitment Premium, the Expense Reimbursement, and any indemnities payable under the Backstop Commitment Agreement), each in accordance with its terms and as required by the Backstop Commitment Agreement without further application to or order of this Court.

5. The Backstop Commitment Premium and the Expense Reimbursement shall not be discharged, modified, or otherwise affected by any chapter 11 plan of the Debtors, dismissal of

these cases, or conversion of these chapter 11 cases to chapter 7 cases, nor shall any of such amounts be required to be disgorged upon the reversal or modification on appeal of this Order.

6. The Backstop Commitment Agreement and the provisions of this Order, including all findings herein, shall be effective and binding upon all parties in interest in these chapter 11 cases, including, without limitation, all creditors of any of the Debtors, or any creditors' committee or any other committee appointed in these chapter 11 cases, and the Debtors, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereafter appointed or elected for any of the Debtors, any examiner appointed pursuant to section 1104 of the Bankruptcy Code, a responsible person, officer, or any other party appointed as a legal representative or designee of any of the Debtors or with respect to the property of the estate of any of the Debtors) whether in these chapter 11 cases, in any successor chapter 11 or chapter 7 cases (the "Successor Cases"), or upon any dismissal of any of these chapter 11 cases or any Successor Cases, and shall inure to the benefit of the Backstop Parties and the Debtors and their respective permitted successors and assigns.

7. The Debtors are authorized, but not directed, to enter into amendments to the Backstop Commitment Agreement from time to time as necessary, subject to the terms and conditions set forth in the Backstop Commitment Agreement and without further order of the Court.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of the Bankruptcy Rules and the Bankruptcy Local Rules are satisfied by such notice.

9. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Houston, Texas
Dated: _____, 2020

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE