

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

**FORM 8-K**

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

**Date of Report (Date of earliest event reported): August 18, 2025**

**VIPER ENERGY, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other Jurisdiction  
of Incorporation)

**333-288431**  
(Commission  
File No.)

**39-2596878**  
(I.R.S. Employer  
Identification No.)

**500 West Texas Ave.,  
Suite 100  
Midland, TX**  
(Address of principal executive offices)

**79701**  
(Zip code)

**(432) 221-7400**  
(Registrant's telephone number, including area code)

**New Cobra Pubco, Inc.**  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2):

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, par value \$0.000001 per share	VNOM	The Nasdaq Stock Market LLC (NASDAQ Global Select Market)

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

Emerging growth company

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

## Introductory Note

Effective August 19, 2025, Viper Energy, Inc. (formerly New Cobra Pubco, Inc.), a Delaware corporation (“New Viper”), completed the previously announced transactions contemplated by the Agreement and Plan of Merger, dated June 2, 2025 (the “Merger Agreement”), by and among VNOP Sub, Inc. (formerly Viper Energy, Inc.), a Delaware corporation (“Former Viper”), Viper Energy Partners LLC, a Delaware limited liability company (“Viper Opco”), Sitio Royalties Corp., a Delaware corporation (“Sitio”), Sitio Royalties Operating Partnership, LP, a Delaware limited partnership (“Sitio Opco”), New Viper, Cobra Merger Sub, Inc., a Delaware corporation (“Viper Merger Sub”), and Scorpion Merger Sub, Inc., a Delaware corporation (“Sitio Merger Sub”).

The Merger Agreement provides for, among other things, the acquisition of Sitio by Former Viper in an all-equity transaction through: (i) the merger of Sitio Merger Sub with and into Sitio, with Sitio continuing as the surviving corporation and a wholly owned subsidiary of New Viper (the “Sitio Pubco Merger”), (ii) the merger of Viper Merger Sub with and into Former Viper, with Former Viper continuing as the surviving corporation and a wholly owned subsidiary of New Viper (the “Viper Pubco Merger” and, together with the Sitio Pubco Merger, the “Pubco Mergers”), and (iii) the merger of Sitio Opco with and into Viper Opco, with Viper Opco continuing as the surviving entity (the “Opco Merger” and, together with the Pubco Mergers, the “Mergers”), in each case on the terms set forth in the Merger Agreement.

As a result of the Mergers, among other things:

- at the effective time of the Sitio Pubco Merger (the “Sitio Pubco Merger Effective Time”, which was 12:01 a.m., Eastern Time, on August 19, 2025), (A) each share of Sitio’s Class A common stock, par value \$0.0001 per share (“Sitio Class A Common Stock”), issued and outstanding immediately prior to the Sitio Pubco Merger Effective Time (other than certain excluded shares) was cancelled and automatically converted into the right to receive 0.4855 fully paid and nonassessable shares of New Viper’s Class A common stock, par value \$0.000001 per share (“New Viper Class A Common Stock”), and (B) each share of Sitio’s Class C common stock, par value \$0.0001 per share (“Sitio Class C Common Stock”), issued and outstanding immediately prior to the Sitio Pubco Merger Effective Time was automatically cancelled and ceased to exist;
- at the effective time of the Viper Pubco Merger (the “Viper Pubco Merger Effective Time”, which was 12:01 a.m., Eastern Time, on August 19, 2025), (A) each share of Former Viper’s Class A common stock, par value \$0.000001 per share (“Former Viper Class A Common Stock”), issued and outstanding immediately prior to the Viper Pubco Merger Effective Time (other than certain excluded shares) was cancelled and automatically converted into one share of New Viper Class A Common Stock and (B) each share of Former Viper’s Class B common stock, par value \$0.000001 per share, issued and outstanding immediately prior to the Viper Pubco Merger Effective Time was automatically cancelled and converted into one share of New Viper’s Class B common stock, par value \$0.000001 per share (the “New Viper Class B Common Stock” and together with the New Viper Class A Common Stock, the “New Viper Common Stock”);
- at the Sitio Pubco Merger Effective Time, each award of restricted stock units in respect of Sitio Class A Common Stock that was outstanding immediately prior to the Sitio Pubco Merger Effective Time, whether or not subject in whole or in part to performance-based vesting conditions, vested in full, with any performance goals in respect of any incomplete performance period deemed achieved based on target performance, and was cancelled and converted into the right to receive (i) 0.4855 shares of New Viper Class A Common Stock in respect of each share subject to such restricted stock unit award and (ii) an amount in cash equal to any accrued but unpaid cash-based dividend equivalents;
- immediately prior to the Sitio Pubco Merger Effective Time, each award of restricted securities consisting of a number of common units representing limited partnership interests in Sitio Opco (“Sitio Opco Units”) and an equivalent number of shares of Sitio Class C Common Stock (each, a “Sitio Opco Unit Award”) that was outstanding immediately prior to the Sitio Pubco Merger Effective Time vested in full and each Sitio Opco Unit and share of Sitio Class C Common Stock subject to such Sitio Opco Unit Award was treated as described above and below, as if such Sitio Opco Unit and share of Sitio Class C Common Stock was not subject to such Sitio Opco Unit Award;

- at the Viper Pubco Merger Effective Time, each award of restricted stock units in respect of Former Viper Class A Common Stock that was outstanding immediately prior to the Viper Pubco Merger Effective Time, whether or not subject in whole or in part to performance-based vesting conditions, was cancelled and converted into a corresponding award in respect of the same number of shares of New Viper Class A Common Stock, subject to the same terms and conditions as were applicable to the award immediately prior to the Viper Pubco Merger Effective Time; and
- following the Pubco Mergers, at the effective time of the Opco Merger (the “Opco Merger Effective Time”, which was 12:02 a.m., Eastern Time, on August 19, 2025), (A) each Sitio Opco Unit held by Former Viper, Sitio, New Viper, or any of their wholly owned subsidiaries immediately prior to the Opco Merger Effective Time was converted into 0.4855 common units representing limited liability company membership interests in Viper Opco (the “Viper Opco Units”) and (B) each other Sitio Opco Unit issued and outstanding immediately prior to the Opco Merger Effective Time (other than certain excluded units) was converted into the right to receive (i) 0.4855 Viper Opco Units and (ii) 0.4855 shares of New Viper Class B Common Stock.

On August 19, 2025, the Mergers were consummated in accordance with the Merger Agreement. In connection with the consummation of the Mergers, Former Viper changed its name from “Viper Energy, Inc.” to “VNOM Sub, Inc.” and New Viper changed its name from “New Cobra Pubco, Inc.” to “Viper Energy, Inc.”

The issuance of New Viper Class A Common Stock pursuant to the Mergers was registered under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to New Viper’s registration statement on [Form S-4](#) (File No. 333-288431) initially filed with the U.S. Securities and Exchange Commission (the “SEC”) on June 30, 2025, and declared effective by the SEC on July 18, 2025, including the definitive joint information statement/proxy statement/prospectus forming a part thereof (as amended or supplemented, the “Joint Information Statement/Proxy Statement/Prospectus”). For a more detailed description of the Mergers and the Merger Agreement, please see the Joint Information Statement/Proxy Statement/Prospectus.

The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which was filed as Exhibit 2.1 to Former Viper’s Current Report on [Form 8-K](#), filed with the SEC on June 4, 2025 and is incorporated herein by reference.

This Current Report on Form 8-K (this “Current Report”) establishes New Viper as the successor issuer to Former Viper pursuant to Rule 12g-3(c) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Pursuant to Rule 12g-3(d) under the Exchange Act, shares of New Viper Class A Common Stock are deemed to be registered under Section 12(b) of the Exchange Act, and New Viper is subject to the informational requirements of the Exchange Act, and the rules and regulations promulgated thereunder. New Viper hereby reports this succession in accordance with Rule 12g-3(f) under the Exchange Act. All filings with the SEC by New Viper will be filed under CIK No. 0002074176. All filings made by Former Viper can be found under CIK No. 0001602065.

Shares of New Viper Class A Common Stock are listed on the Nasdaq Global Select Market (“Nasdaq”) under the trading symbol “VNOM”, which is the same symbol formerly used for the Former Viper Class A Common Stock, and will begin trading at the market opening on August 19, 2025. Shares of New Viper Class A Common Stock have a new CUSIP number of 64361Q101.

## **Item 1.01 Entry into a Material Definitive Agreement**

### *Registration Rights Agreement*

At the closing of the Mergers (the “Closing”), New Viper entered into a registration rights agreement (the “Registration Rights Agreement”) with certain holders of Sitio Opco Units as of immediately prior to the Closing (who now are holders of Viper Opco Units and New Viper Class B Common Stock pursuant to the Mergers) (the “RRA Parties”). The Registration Rights Agreement grants each RRA Party certain registration rights with respect to its registrable securities, consisting of shares of New Viper Class A Common Stock.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is filed as Exhibit 4.1 to this Current Report and is incorporated herein by reference.

#### *Fourth Amended and Restated Limited Liability Company Agreement of Viper Opco*

In connection with the Closing, Former Viper, New Viper, Diamondback Energy, Inc. a Delaware corporation (“Diamondback”), Diamondback E&P LLC, a Delaware limited liability company, Tumbleweed Royalty IV, LLC, a Delaware limited liability company, former holders of Sitio Opco Units and certain other parties thereto entered into a Fourth Amended and Restated Limited Liability Company Agreement of Viper Opco (the “Fourth A&R Viper Opco LLC”) amending and restating the Third Amended and Restated Limited Liability Company Agreement of Viper Opco (the “Third A&R Viper Opco LLC”). The Fourth A&R Viper Opco LLC provides, among other things, that the references to Former Viper in the Third A&R Viper Opco LLC are amended to refer to New Viper.

The Fourth A&R Viper Opco LLC also provides that members of Viper Opco, other than New Viper, as the managing member, or each of New Viper’s wholly owned subsidiaries that owns one or more Viper Opco Units (“Viper Opco Members”), may require New Viper to redeem (each, a “Redemption”) all or a portion of the shares of New Viper Class B Common Stock held by such Viper Opco Member, together with an equal number of Viper Opco Units (one share of New Viper Class B Common Stock and one Viper Opco Unit, together, a “Paired Unit”, and a Paired Unit that has in fact been tendered for Redemption, a “Tendered Unit”), in exchange for a number of shares of New Viper Class A Common Stock equal to the number of Tendered Units. The Fourth A&R Viper Opco LLC also provides that, in lieu of any Redemption, New Viper will be entitled, subject to the redeeming Viper Opco Member’s acceptance in writing, to purchase some or all of the Tendered Units from such redeeming Viper Opco Member for an amount of cash equal to the product of (x) (A) the number of Tendered Units, *multiplied by* (B) the average of the daily closing prices per share of New Viper Class A Common Stock for the 20 consecutive trading days immediately prior to the date of determination, *multiplied by* (y) the percentage of such Tendered Units being settled in cash, expressed as a percentage of the total number of Tendered Units rounded up to the nearest Tendered Unit (with the remainder of any Tendered Units not settled in cash to be redeemed for shares of New Viper Class A Common Stock). Subject to certain exceptions, without New Viper’s consent, no Viper Opco Member may (i) effect a Redemption for less than 2,000 Paired Units, if such Viper Opco Member holds at least 2,000 Paired Units, (ii) effect a Redemption for less than all of the Paired Units held by such Viper Opco Member, if such Viper Opco Member holds less than 2,000 Paired Units or (iii) effect a Redemption more than one time in any calendar month.

The foregoing description of the Fourth A&R Viper Opco LLC does not purport to be complete and is qualified in its entirety by reference to the Fourth A&R Viper Opco LLC, a copy of which is included as Exhibit 3.4 to this Current Report and is incorporated herein by reference.

#### *Assignment and Assumption Agreements*

In connection with the Closing, Former Viper and New Viper entered into Assignment and Assumption Agreements with various counterparties, pursuant to which Former Viper assigned to New Viper, and New Viper assumed from Former Viper, the following agreements:

- Second Amended and Restated Registration Rights Agreement, dated as of November 10, 2023, effective as of November 13, 2023, by and between Viper Energy Partners LP and Diamondback;
- Amended and Restated Registration Rights Agreement, dated as of January 30, 2025 by and among Former Viper, Tumbleweed Royalty IV, LLC and the other holders party thereto;
- Registration Rights Agreement, dated as of February 14, 2025, by and among Former Viper and certain affiliates of Morita Ranches Minerals, LLC;
- Exchange Agreement, dated as of February 14, 2025, by and among Former Viper, Viper Opco and certain affiliates of Morita Ranches Minerals, LLC;

- Class B Common Stock Option Agreement, dated as of October 1, 2024, by and between Former Viper, Viper Opco and Tumbleweed Royalty IV, LLC;
- Second Amended and Restated Exchange Agreement, dated as of October 1, 2024, by and among Former Viper, Viper Opco, Diamondback E&P LLC, Diamondback and Tumbleweed Royalty IV, LLC;
- Services and Secondment Agreement, dated as of November 2, 2023, by and among Diamondback E&P LLC, Viper Energy Partners LP, Viper Energy Partners GP LLC and Viper Opco (the “Services and Secondment Agreement”); and
- Amended and Restated Tax Sharing Agreement, dated as of November 10, 2023, effective as of November 13, 2023, by and between Former Viper and Diamondback.

Descriptions of the foregoing agreements are included in Former Viper’s Current Reports on Form 8-K filed with the SEC on [November 13, 2023](#) and [October 2, 2024](#), and its definitive proxy statement for Former Viper’s 2025 Annual Meeting of Stockholders, filed with the SEC on [Schedule 14A](#) on April 10, 2025 (the “2025 Annual Proxy”), in the sections entitled “Payment to Diamondback and Its Affiliates under the Services and Secondment Agreement”, “Diamondback Registration Rights Agreement and Exchange Agreement”, “Tax Sharing Agreement” and “Agreements with TWR IV and Morita Ranches Equity Recipients”, which descriptions are incorporated herein by reference. These descriptions do not purport to be complete and are qualified in their entirety by reference to such documents, copies of which are filed as Exhibits 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 10.1 and 10.2, respectively, to this Current Report and are incorporated herein by reference.

The foregoing description of the assignment and assumption agreements does not purport to be complete and is qualified in its entirety by reference to the form of assignment and assumption agreement, a copy of which is filed as Exhibit 10.3 to this Current Report and is incorporated herein by reference.

### *Second Supplemental Indenture*

As previously disclosed, on July 23, 2025, Viper Opco, as issuer, and Computershare Trust Company, National Association, as trustee (the “Trustee”) entered into an Indenture (the “Base Indenture”) providing for the issuance of an unlimited principal amount of securities (the “Securities”) and, pursuant to that certain First Supplemental Indenture dated as of July 23, 2025, by and between Viper Opco, Former Viper and the Trustee, Viper Opco issued Securities in the form of \$500,000,000 in aggregate principal amount of 4.900% Senior Notes due 2030 (the “2030 Notes”) and \$1,100,000,000 in aggregate principal amount of 5.700% Senior Notes due 2035 (such notes, together with the 2030 Notes, the “Notes”).

In connection with the Closing, on August 19, 2025, New Viper, Viper Opco and the Trustee entered into a Second Supplemental Indenture (the “Second Supplemental Indenture”) to the Base Indenture. Pursuant to the Second Supplemental Indenture, New Viper provided a full and unconditional guarantee of Viper Opco’s obligations with respect to the Securities (including the Notes).

The foregoing description of the Second Supplemental Indenture does not purport to be complete and is qualified in its entirety by reference to the Second Supplemental Indenture, a copy of which is filed as Exhibit 4.8 to this Current Report and is incorporated herein by reference.

### **Item 2.01 Completion of Acquisition or Disposition of Assets**

The information set forth in the Introductory Note above is incorporated herein by reference.

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

The information set forth under Item 1.01 under the heading “Second Supplemental Indenture” and under Item 8.01 under the headings “Revolving Credit Agreement Guarantee” and “Term Loan Credit Agreement Guarantee” is incorporated herein by reference.

### Item 3.02 Unregistered Sales of Equity Securities

The disclosure set forth in the Introductory Note and Item 1.01, insofar as it relates to the issuance of approximately 73.3 million Viper Opco Units and approximately 193.1 million shares of New Viper Class B Common Stock and the terms by which such Viper Opco Units, together with the Viper Opco Units outstanding immediately prior to the Closing, and shares of New Viper Class B Common Stock may be redeemed or exchanged for approximately 193.1 million shares of New Viper Class A Common Stock, is incorporated into this Item 3.02 by reference. The issuance of Viper Opco Units and shares of New Viper Class B Common Stock was made in reliance on the exemption from registration requirements under the Securities Act, pursuant to Section 4(a)(2) thereof.

### Item 3.03 Material Modification to Rights of Security Holders

The sections entitled “Description of New Viper Securities” and “Comparison of Stockholder Rights and Corporate Governance Matters” beginning on pages 127 and 140, respectively, of the Joint Information Statement/Proxy Statement/Prospectus are incorporated by reference herein and are qualified in their entirety by reference to the amended and restated certificate of incorporation of New Viper (the “Amended and Restated Certificate of Incorporation”), as amended by the Certificate of Amendment to the Amended and Restated Certificate of Incorporation (the “Certificate of Amendment”), and the amended and restated bylaws of New Viper (the “Amended and Restated Bylaws”), which are filed as Exhibit 3.1, Exhibit 3.2 and Exhibit 3.3, respectively, to this Current Report and incorporated by reference herein.

The information set forth in the Introductory Note and in Items 2.01 and 5.03 of this Current Report is incorporated herein by reference.

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

#### Appointment of Directors

Effective as of August 19, 2025, in connection with the completion of the Mergers, consistent with the information set forth in the Joint Information Statement/Proxy Statement/Prospectus, the members of the Board of Directors of New Viper (the “New Viper Board”) are the same as the members of the board of directors of Former Viper immediately prior to the Closing.

Each of W. Wesley Perry, Spencer D. Armour, III, Frank C. Hu and James L. Rubin was appointed to the Audit Committee. Each of James L. Rubin, Laurie H. Argo, Spencer D. Armour, III and W. Wesley Perry was appointed to the Compensation Committee. Each of Laurie H. Argo, Spencer D. Armour, III, Frank C. Hu and W. Wesley Perry was appointed to the Nominating and Corporate Governance Committee.

The table below sets forth the composition of the committees of the New Viper Board following the Closing:

<u>Board Member</u>	<u>Audit Committee</u>	<u>Compensation Committee</u>	<u>Nominating and Corporate Governance Committee</u>
Kaes Van't Hof			
Steven E. West			
Laurie H. Argo		X	X (Chair)
Spencer D. Armour, III	X	X	X
Frank C. Hu	X		X
W. Wesley Perry	X (Chair)	X	X
James L. Rubin	X	X (Chair)	
Travis D. Stice			

Biographical information for each of the above named directors is set forth in the 2025 Annual Proxy, in the section entitled “Director Nominations” and is incorporated herein by reference.

Any transactions in which any of New Viper’s directors have a material interest subject to disclosure under Item 404(a) of Regulation S-K have been previously reported in the 2025 Annual Proxy, in the section entitled “Certain Relationships and Related Party Transactions”, which is incorporated herein by reference.

Effective retroactive to April 1, 2025, in connection with the completion of the Mergers, New Viper adopted the Viper Energy, Inc. 2025 Director Compensation Program. Under the program, each non-employee director will receive an annual cash fee of \$80,000, payable quarterly in advance. Each non-employee director will also receive an annual grant of restricted stock units in respect of New Viper Common Stock with a grant date value of \$175,000. Such restricted stock units will be granted annually at the close of business on the date of the annual meeting of stockholders, and will fully vest on the earlier of the first anniversary of the date of grant or the occurrence of the next annual meeting of stockholders following the date of grant. Members of the Audit Committee will receive additional cash fees of \$10,000 (or \$15,000 in the case of the Chair of the Audit Committee) and members of other committees of the New Viper Board will receive additional cash fees of \$5,000 (or \$10,000 in the case of the Chair of the committee), payable quarterly in advance.

#### Appointment of Executive Officers

Effective as of August 19, 2025, in connection with the completion of the Mergers, consistent with the information set forth in the Joint Information Statement/Proxy Statement/Prospectus, the executive officers of New Viper and their ages, positions and titles, which are listed below, are the same as the executive officers of Former Viper immediately prior to the Closing.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Kaes Van’t Hof	39	Chief Executive Officer
Austen Gilfillian	32	President
Teresa L. Dick	55	Executive Vice President, Chief Financial Officer and Assistant Secretary
Matt Zmigrosky	47	Executive Vice President, General Counsel and Secretary
Al Barkmann	44	Executive Vice President and Chief Engineer

Biographical information for each of the above listed executive officers is set forth in the 2025 Annual Proxy, in the section entitled “Executive Officers” and is incorporated herein by reference.

Any transactions to which New Viper is a party in which any of New Viper’s executive officers have a material interest subject to disclosure under Item 404(a) of Regulation S-K have been previously been reported in the 2025 Annual Proxy, in the section entitled “Certain Relationships and Related Party Transactions”, which is incorporated herein by reference.

The compensation payable to the above listed executive officers of New Viper is described in the 2025 Annual Proxy, in the sections entitled “Compensation Discussion and Analysis” and “Compensation Tables”, which such descriptions are incorporated herein by reference, except for the compensation payable to New Viper’s President, Austen Gilfillian, who was appointed to the executive officer position of President effective February 20, 2025 and was not an executive officer of Former Viper during 2024, and whose compensation was described in Former Viper’s Current Report on [Form 8-K](#), filed with the SEC on February 20, 2025, which such description is incorporated herein by reference.

The services provided by the foregoing executive officers of New Viper are governed by the terms of the Services and Secondment Agreement, pursuant to which Diamondback and its wholly owned subsidiary, Diamondback E&P LLC, provide general and administrative services to New Viper, including the services of New Viper’s executive officers.

A description of the Services and Secondment Agreement is included in the 2025 Annual Proxy, in the section entitled “Compensation Discussion and Analysis—Executive Compensation Policy and Objections” and is incorporated herein by reference. This description does not purport to be complete and is qualified in its entirety by reference to the Services and Secondment Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report and is incorporated herein by reference.

## Indemnification of Directors and Officers

On August 19, 2025, New Viper entered into indemnification agreements with each of the directors and officers of New Viper. These agreements require New Viper to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to New Viper, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

The foregoing description of the indemnification agreements does not purport to be complete and is qualified in its entirety by reference to the form of indemnification agreement, a copy of which is filed as Exhibit 10.4 to this Current Report, is incorporated herein by reference and is substantially similar to the indemnification agreements entered into with each of New Viper's directors and officers.

## Compensatory Plans

In connection with the Closing, New Viper assumed the Viper Energy, Inc. Amended and Restated 2024 Long Term Incentive Plan (the "Viper LTIP") and the outstanding equity awards thereunder (including awards held by the above described directors and executive officers), subject to applicable adjustments to such equity awards in the manner set forth in the Merger Agreement. New Viper also assumed the remaining share reserves available for issuance under the Viper LTIP, in each case subject to applicable adjustments to relate to New Viper Common Stock.

A description of the Viper LTIP is included in the 2025 Annual Proxy, in the section entitled "Compensation Discussion and Analysis" and is incorporated herein by reference. This description does not purport to be complete and is qualified in its entirety by reference to the Viper LTIP, a copy of which is filed as Exhibit 10.5 to this Current Report and is incorporated herein by reference.

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

Effective as of August 18, 2025, in connection with the Mergers, New Viper amended and restated its certificate of incorporation and its bylaws to reflect the changes contemplated by the Merger Agreement and described in the Joint Statement/Proxy Statement/Prospectus, other than changing its corporate name to "Viper Energy, Inc." as described below.

Effective as of immediately following the completion of the Mergers on August 19, 2025 and in accordance with the Merger Agreement, New Viper changed its corporate name from "New Cobra Pubco, Inc." to "Viper Energy, Inc." and filed the Certificate of Amendment and amended and restated its bylaws to reflect such name change.

Descriptions of New Viper's Amended and Restated Certification of Incorporation and Amended and Restated Bylaws, and the amendments made thereto in connection with the Mergers, are included in the Joint Information Statement/Proxy Statement/Prospectus in the sections entitled "Description of New Viper Securities" and "Comparison of Stockholder Rights and Corporate Governance Matters" beginning on pages 127 and 140 of the Joint Information Statement/Proxy Statement/Prospectus, respectively, and are incorporated herein by reference. These descriptions do not purport to be complete and are qualified in their entirety by reference to New Viper's Amended and Restated Certificate of Incorporation, Certificate of Amendment and Amended and Restated Bylaws, copies of which are filed as Exhibits 3.1, 3.2 and 3.3, respectively, to this Current Report and are incorporated herein by reference.

## **Item 7.01 Regulation FD Disclosure**

On August 19, 2025, New Viper issued a press release announcing the consummation of the Mergers. A copy of the press release is furnished as Exhibit 99.1 to this Current Report and is incorporated herein by reference.

The information contained in this Item 7.01, including Exhibit 99.1, is being furnished and shall not be deemed “filed” for the purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any registration statement or other filing under the Securities Act, except as shall be expressly set forth by specific reference to such filing.

## **Item 8.01 Other Events**

### Revolving Guaranty Agreement Joinder

As previously disclosed, on June 12, 2025, Viper Opco, as borrower, Former Viper as guarantor, the lenders party thereto and Wells Fargo Bank, National Association, as administrative agent (the “Revolving Administrative Agent”), entered into a credit agreement providing for a revolving credit facility (the “Revolving Credit Agreement”). In accordance with the terms of the Revolving Credit Agreement, guarantors including Former Viper executed a Guaranty Agreement (the “Revolving Guaranty Agreement”), dated as of June 12, 2025, in favor of the Revolving Administrative Agent.

In connection with the Closing, on August 19, 2025, New Viper entered into a Joinder Agreement in favor of the Revolving Administrative Agent, pursuant to which New Viper became party to the Revolving Guaranty Agreement and fully and unconditionally guaranteed Viper Opco’s obligations with respect to the Revolving Credit Agreement.

### Term Loan Guaranty Agreement Joinder

As previously disclosed, on July 23, 2025, Viper Opco, as borrower, Former Viper as guarantor, the lenders party thereto and Goldman Sachs Bank USA, as administrative agent (the “Term Loan Administrative Agent”), entered into a credit agreement providing for a term loan facility (the “Term Loan Credit Agreement”). In connection with the Term Loan Credit Agreement, Former Viper executed a Guaranty Agreement (the “Term Loan Guaranty Agreement”), dated as of July 23, 2025, in favor of the Term Loan Administrative Agent.

In connection with the Closing, on August 19, 2025, New Viper entered into a Joinder Agreement in favor of the Term Loan Administrative Agent, pursuant to which New Viper became party to the Term Loan Guaranty Agreement and fully and unconditionally guaranteed Viper Opco’s obligations with respect to the Term Loan Credit Agreement.

### Description of Capital Stock

The Description of Capital Stock set forth in Exhibit 4.9 is being filed for the purpose of providing a description of the capital stock of New Viper and is incorporated into this Item 8.01 by reference. This summary does not purport to be complete and is qualified in its entirety by reference to New Viper’s Amended and Restated Certificate of Incorporation, Certificate of Amendment and Amended and Restated Bylaws, copies of which are filed as Exhibit 3.1, 3.2 and Exhibit 3.3, respectively, to this Current Report and are incorporated herein by reference, as well as applicable provisions of Delaware law.

## **Item 9.01 Financial Statements and Exhibits**

### **(a) Financial Statements of Business Acquired**

To be filed by amendment not later than 71 days after the latest date this Current Report is required to be filed with the SEC.

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**(b) Pro Forma Financial Information**

To be filed by amendment not later than 71 days after the latest date this Current Report is required to be filed with the SEC.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description of Exhibit</u>
2.1*	<a href="#"><u>Agreement and Plan of Merger, dated as of June 2, 2025, by and among Former Viper, Viper Opco, Sitio, Sitio Opco, New Viper, Viper Merger Sub and Sitio Merger Sub (incorporated by reference to Exhibit 2.1 of Former Viper's Current Report on Form 8-K dated June 4, 2025).</u></a>
3.1	<a href="#"><u>Amended and Restated Certificate of Incorporation of New Viper.</u></a>
3.2	<a href="#"><u>Certificate of Amendment to the Certificate of Incorporation of New Viper.</u></a>
3.3	<a href="#"><u>Amended and Restated Bylaws of New Viper.</u></a>
3.4*	<a href="#"><u>Fourth Amended and Restated Limited Liability Company Agreement of Viper Opco.</u></a>
4.1	<a href="#"><u>Registration Rights Agreement, dated August 19, 2025, between New Viper and certain holders of Sitio Opco Units.</u></a>
4.2	<a href="#"><u>Second Amended and Restated Registration Rights Agreement, dated as of November 10, 2023, effective as of November 13, 2023, by and between Viper Energy Partners LP and Diamondback (incorporated by reference to Exhibit 10.3 of Former Viper's Current Report on form 8-K filed on November 13, 2023).</u></a>
4.3	<a href="#"><u>Amended and Restated Registration Rights Agreement, dated as of January 30, 2025, by and among Former Viper, Tumbleweed Royalty IV, LLC and the other holders party thereto (incorporated by reference to Exhibit 4.4 of Former Viper's Registration Statement on Form S-3, filed on April 1, 2025).</u></a>
4.4	<a href="#"><u>Registration Rights Agreement, dated as of February 14, 2025, by and among Former Viper and certain affiliates of Morita Ranches Minerals, LLC (incorporated by reference to Exhibit 4.4 of Former Viper's Annual Report on Form 10-K filed on February 26, 2025).</u></a>
4.5	<a href="#"><u>Exchange Agreement, dated as of February 14, 2025, by and among Former Viper, Viper Opco and certain affiliates of Morita Ranches Minerals, LLC (incorporated by reference to Exhibit 4.5 of Former Viper's Annual Report on Form 10-K filed on February 26, 2025).</u></a>
4.6	<a href="#"><u>Class B Common Stock Option Agreement, dated as of October 1, 2024, by and between Former Viper, Viper Opco and Tumbleweed Royalty IV, LLC (incorporated by reference to Exhibit 4.1 of Former Viper's Current Report on Form 8-K filed on October 2, 2024).</u></a>
4.7	<a href="#"><u>Second Amended and Restated Exchange Agreement, dated October 1, 2024, by and among Former Viper, Viper Opco, Diamondback E&amp;P LLC, Diamondback and Tumbleweed Royalty IV, LLC (incorporated by reference to Exhibit 4.2 of Former Viper's Current Report on Form 8-K filed on October 2, 2024).</u></a>
4.8	<a href="#"><u>Second Supplemental Indenture, dated as of August 19, 2025, by and among Viper Opco, New Viper and Computershare Trust Company, National Association.</u></a>
4.9	<a href="#"><u>Description of Capital Stock.</u></a>
10.1	<a href="#"><u>Services and Secondment Agreement, dated as of November 2, 2023, by and among Diamondback E&amp;P LLC, Viper Energy Partners LP, Viper Energy Partners GP LLC and Viper Opco (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K, filed by Viper Energy Partners LP with the SEC on November 2, 2023).</u></a>
10.2	<a href="#"><u>Amended and Restated Tax Sharing Agreement, dated as of November 10, 2023, effective as of November 13, 2023, by and between Former Viper and Diamondback (incorporated by reference to Exhibit 10.2 of the Former Viper's Current Report on Form 8-K filed on November 13, 2023).</u></a>
10.3	<a href="#"><u>Form of Assignment and Assumption Agreement.</u></a>
10.4	<a href="#"><u>Form of Indemnification Agreement.</u></a>

10.5 [Viper Energy, Inc. 2024 Amended and Restated Long Term Incentive Plan \(incorporated by reference to Appendix A to the definitive proxy statement for Former Viper's 2024 Annual Meeting of Stockholders, filed with the SEC on Schedule 14A on April 25, 2024\).](#)

99.1\*\* [Press Release, dated August 19, 2025.](#)

\* Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant will furnish copies of any such schedules or exhibits to the U.S. Securities and Exchange Commission upon request.

\*\* Furnished, not filed.

**SIGNATURES**

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

**VIPER ENERGY, INC.**  
(FORMERLY NEW COBRA PUBCO, INC.)

Date: August 19, 2025

By: /s/ Matt Zmigrosky  
Name: Matt Zmigrosky  
Title: Executive Vice President, General Counsel and Secretary

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
NEW COBRA PUBCO, INC.**

New Cobra Pubco, Inc., a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies as follows:

1. The original certificate of incorporation of the Corporation (the “*Original Certificate of Incorporation*”) was filed with the Secretary of State of the State of Delaware on June 2, 2025.
2. This Amended and Restated Certificate of Incorporation (this Amended and Restated Certificate of Incorporation, including any Preferred Stock Designations (as defined below) or any resolution or resolutions providing for the issuance of such series of stock adopted by the Board, as any of the foregoing may be amended from time to time, this “*Certificate*”), which amends and restates the Original Certificate of Incorporation, was duly adopted by the board of directors of the Corporation (the “*Board*”) in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware (as amended from time to time, the “*DGCL*”) and by the written consent of its sole stockholder in accordance with Section 228 of the DGCL.
3. The Original Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety to read as follows:

**ARTICLE I  
NAME**

The name of the Corporation is New Cobra Pubco, Inc.

**ARTICLE II  
PURPOSE**

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

**ARTICLE III  
REGISTERED AGENT**

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

**ARTICLE IV  
CAPITALIZATION**

Section 4.1 Authorized Capital Stock.

(a) The total number of shares of capital stock that the Corporation is authorized to issue is 2,100,000,000 shares, divided into three classes, consisting of: (i) 1,000,000,000 shares of Class A common stock, with par value of \$0.000001 per share (the “**Class A Common Stock**”); (ii) 1,000,000,000 shares of Class B common stock, with par value of \$0.000001 per share (the “**Class B Common Stock**” and, together with Class A Common Stock, “**Common Stock**”); and (iii) 100,000,000 shares of preferred stock, par value \$0.000001 per share and thereafter as may be established by the Board with respect to any series thereof in the applicable preferred stock designation (the “**Preferred Stock**”). At the Effective Time, all shares of common stock, par value \$0.01 per share, of the Corporation issued and outstanding immediately prior to the Effective Time shall be reclassified into one share of Class A Common Stock, without any further action of the Corporation or any holder thereof.

(b) Subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of this Certificate:

(i) the number of authorized shares of Class A Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the Corporation entitled to vote, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL;

(ii) in addition to any vote required by law, the number of authorized shares of Class B Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Class B Common Stock, voting separately as a class; and

(iii) the number of authorized shares of any class of stock, other than the Class B Common Stock, may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the Corporation entitled to vote, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL.

Notwithstanding the immediately preceding sentence, the number of shares of Class A Common Stock shall not be decreased at any time below the number of shares of Class A Common Stock then outstanding plus the number of shares of Class A Common Stock issuable at such time in connection with (x) the exchange of all then-outstanding Paired Interests, pursuant to the Exchange Agreement and (y) to the extent required by law, the exercise of all then-outstanding options, warrants, exchange rights, conversion rights or similar rights for Class A Common Stock. Notwithstanding anything in this Certificate to the contrary, the Corporation hereby expressly elects to be governed by Section 242(d) of the DGCL, except to the extent otherwise provided in Section 4.1(b)(ii) of this Certificate or pursuant to the rights of the holders of any series of Preferred Stock.

Section 4.2 Preferred Stock. Shares of Preferred Stock may be issued in one or more series from time to time with each such series to consist of such number of shares and to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the Board and included in a certificate of designations (a “**Preferred Stock Designation**”) filed pursuant to the DGCL, and the Board is hereby expressly vested with the authority, to the full extent now or hereafter provided by law, to adopt any such resolution or resolutions.

Section 4.3 Voting Rights.

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

(b) Except as otherwise expressly required in this Certificate or as required by applicable law, the holders of Class A Common Stock and Class B Common Stock shall vote together as a single class (or, if the holders of more than one series of Preferred Stock are entitled to vote together with the holders of Class A Common Stock and Class B Common Stock, together as a single class with the holders of such other series of Preferred Stock) on all matters submitted to the vote of stockholders generally. There shall be no cumulative voting.

Section 4.4 Dividends, Stock Splits or Combinations.

(a) Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference senior to or the right to participate with the Class A Common Stock with respect to the payment of dividends, dividends of cash or property may be declared and paid on the Class A Common Stock to the extent not prohibited by law, at the times and in the amounts as the Board in its discretion may determine.

(b) Dividends of cash or property shall not be declared or paid on shares of Class B Common Stock, except for: (i) the holders of Class B Common Stock shall be entitled to receive, except to the extent prohibited by law, a mandatory cash dividend, paid quarterly, in an amount per share of Class B Common Stock equal to (A) \$20,000 divided by (B) the number of shares of Class B Common Stock then outstanding; and (ii) as provided in Section 4.4(c) with respect to stock dividends.

(c) In no event shall any stock dividend, stock split, reverse stock split or combination or subdivision of stock be declared or made on any class of Common Stock (each, a “**Stock Adjustment**”) unless either:

(1) (i) a corresponding Stock Adjustment in the class of Common Stock not so adjusted (or corresponding voting power adjustment in the case of shares of Class B Common Stock) at the time outstanding is made in the same proportion and the same manner and (ii) the Corporation causes the Stock Adjustment to be reflected in the same economically equivalent manner on all OpCo Units; or

(2) the act or transaction is approved by the affirmative vote of the holders of each of (i) a majority of the Class A Common Stock outstanding, voting as a separate class; and (ii) a majority of the Class B Common Stock outstanding, voting as a separate class.

Stock dividends with respect to Class A Common Stock may only be paid with Class A Common Stock or Preferred Stock (or rights to acquire Class A Common Stock or Preferred Stock). Stock dividends with respect to Class B Common Stock may only be paid with Class B Common Stock or Preferred Stock (or rights to acquire Class B Common Stock or Preferred Stock). This Section 4.4(c) shall not be amended unless (i) corresponding changes are made to the OpCo Limited Liability Company Agreement and (ii) such amendment is approved by the affirmative vote of the holders of at least 80% of the Class B Common Stock outstanding, voting as a separate class.

Section 4.5 Liquidation and Other Events. In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock are entitled, if any, the remaining assets of the Corporation available for distribution shall (i) first be distributed, *pari passu*, to the holders of Class B Common Stock, ratably in proportion to the number of shares of Class B Common Stock, until the holders of all outstanding Class B Common Stock have received \$0.014 (which amount shall be adjusted accordingly in the case of any stock split, subdivision or combination with respect to Class B Common Stock) in respect of each share of Class B Common Stock then outstanding (the “**Class B Liquidation Preference**”), and (ii) then be distributed, *pari passu*, to the holders of all outstanding shares of Class A Common Stock, ratably in proportion to the number of shares of Class A Common Stock. Without limiting the rights of the holders of Class B Common Stock to exchange their shares of Class B Common Stock, together with the corresponding OpCo Units constituting the remainder of any Paired Interests in which such shares are included, for shares of Class A Common Stock in accordance with the Exchange Agreement (or for the amounts payable in respect of shares of Class A Common Stock in such voluntary or involuntary liquidation, dissolution or winding-up), the holders of shares of Class B Common Stock, as such, will not be entitled to receive, with respect to such shares, any assets of the Corporation in excess of the Class B Liquidation Preference in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

Section 4.6 Issuance and Transfers of Class B Common Stock.

(a) For the avoidance of doubt, a holder of Class B Common Stock may surrender such shares of Class B Common Stock to the Corporation for no consideration at any time. Following the surrender of any shares of Class B Common Stock to the Corporation, the Corporation will take all necessary actions to retire such shares and such shares will not be reissued by the Corporation.

(b) No shares of Class B Common Stock may be issued except to a holder of OpCo Units, such that after such issuance of Class B Common Stock such holder of OpCo Units holds an identical number of OpCo Units and shares of Class B Common Stock; *provided*, that no shares of Class B Common Stock shall be cancelled in connection with a transfer of an equal number of shares of Class B Common Stock and OpCo Units in accordance with Section 4.6(c) and the provisions of the Exchange Agreement and the OpCo Limited Liability Company Agreement. Any stock certificate representing shares of Class B Common Stock shall include a legend referencing the transfer restrictions set forth herein.

(c) No holder of Class B Common Stock may transfer or assign shares of Class B Common Stock (or any legal or beneficial interest in such shares) to any person unless such holder transfers a corresponding number of OpCo Units to the same person in accordance with the provisions of the Exchange Agreement and the OpCo Limited Liability Company Agreement. If any outstanding share of Class B Common Stock ceases to be held by a holder of a corresponding OpCo Unit, such share shall automatically and without further action on the part of the Corporation or such holder be transferred to the Corporation for no consideration and retired.

(d) To the extent OpCo Units are issued to any person, such holder of one or more OpCo Units shall have the right to acquire an equal number of fully paid and non-assessable shares of Class B Common Stock (subject to adjustment as set forth herein) for consideration equal to the aggregate par value thereof, to the same person to which such OpCo Units are issued.

Section 4.7 Shares Deliverable in Exchange. The Corporation will at all times reserve and keep available out of its authorized and unissued shares of Class A Common Stock, solely for the purpose of the issuance upon exchange of Paired Interests, the number of shares of Class A Common Stock that are issuable upon exchange of all outstanding Paired Interests pursuant to the Exchange Agreement; *provided*, that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such exchange by delivery of purchased shares of Class A Common Stock (which may or may not be held in the treasury of the Corporation) or, at the Corporation's election, cash of an equivalent value in accordance with the Exchange Agreement. Each share of Class A Common Stock that is issued upon the exchange of any Paired Interests will, upon issuance, be validly issued, fully paid and non-assessable.

Section 4.8 Reclassifications. In the event of a reclassification, recapitalization or other similar transaction as a result of which the shares of Class A Common Stock are converted into or exchanged for another security, cash or any other property, then a holder of shares of Class B Common Stock shall be entitled to receive upon conversion or exchange of such shares (together with an equal number of OpCo Units) the number of such securities or the amount of cash or other property that such holder would have received if such conversion or exchange had occurred immediately prior to the record date of such reclassification, recapitalization or other similar transaction, taking into account any adjustment as a result of any subdivision (by any stock split or dividend, reclassification or otherwise) or combination (by reverse stock split, reclassification or otherwise) of such security that occurs after the effective time of such reclassification, recapitalization or other similar transaction or, at the Corporation's election, cash of an equivalent value in accordance with the Exchange Agreement.

**ARTICLE V**  
**RELATED PARTY TRANSACTIONS AND CORPORATE OPPORTUNITIES**

The following provisions have been inserted in recognition of the facts set forth in Section 13.1 of Article XIII of this Certificate and are inserted for the management of the business and for the conduct of the affairs of the Corporation, in furtherance of and not in limitation of the powers conferred by law:

Section 5.1 Related Party Transactions. No contract or other transaction of the Corporation with any other person, firm, corporation or other entity in which the Corporation has an interest, shall be invalidated by the fact that any one or more of the directors or officers of the Corporation, individually or jointly with others, may be a party to or may be interested in any contract or transaction so long as the contract or other transaction is approved by the Board in accordance with the DGCL.

Section 5.2 Corporate Opportunities.

(a) In recognition and anticipation that (i) certain directors, principals, officers, employees and/or other representatives of Diamondback Energy, Inc. ("**Diamondback**") and its respective Affiliates (defined below) may serve as directors or officers of the Corporation, (ii) Diamondback and its respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (iii) members of the Board who are not employees or officers of the Corporation ("**Non-Employee Directors**") and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Section 5.2 are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve Diamondback, the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

(b) None of (i) Diamondback or any of its Affiliates or (ii) any Non-Employee Director or his or her Affiliates (the persons identified in (i) and (ii) above being referred to, collectively, as "**Identified Persons**" and, individually, as an "**Identified Person**") shall have any duty to refrain from directly or indirectly (x) engaging in a corporate opportunity in the same or similar business activities or lines of business in which the Corporation or any of its subsidiaries now engages or proposes to engage or (y) otherwise competing with the Corporation, and, to the fullest extent permitted by the DGCL, no Identified Person shall (A) be deemed to have acted in bad faith or in a manner inconsistent with the best interests of the Corporation or its stockholders or to have acted in a manner inconsistent with or opposed to any fiduciary duty to the Corporation or its stockholders or (B) be liable to the Corporation or its stockholders for breach of any fiduciary duty, in each case, by reason of the fact that such Identified Person engages in any such activities. The Corporation hereby renounces any interest or expectancy in, or in being offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified

Person and the Corporation or any of its subsidiaries, except as provided in paragraph (c) of this Section 5.2. In the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself or himself and the Corporation or any of its subsidiaries, such Identified Person shall have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its subsidiaries and, to the fullest extent permitted by the DGCL, shall not (A) be deemed to have acted in bad faith or in a manner inconsistent with the best interests of the Corporation or its stockholders or to have acted in a manner inconsistent with or opposed to any fiduciary duty to the Corporation or its stockholders or (B) be liable to the Corporation or its stockholders for breach of any fiduciary duty as a stockholder, director or officer of the Corporation, in each case, by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself or himself, or offers or directs such corporate opportunity to another Person.

(c) The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of the Corporation) if such opportunity is expressly offered to such person solely in his or her capacity as a director of the Corporation and the provisions of Section 5.2(b) shall not apply to any such corporate opportunity.

(d) In addition to and notwithstanding the foregoing provisions of this Section 5.2, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

(e) For purposes of this Section 5.2, "*Affiliate*" shall mean (i) in respect of Diamondback, any person that, directly or indirectly, is controlled by Diamondback, controls Diamondback or is under common control with Diamondback and shall include any principal member, director, partner, shareholder, officer, employee or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), (ii) in respect of a Non-Employee Director, any person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (iii) in respect of the Corporation, any person that, directly or indirectly, is controlled by the Corporation other than a person who is an Affiliate of Diamondback pursuant to clause (i) of this paragraph.

(f) To the fullest extent permitted by law, any person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Section 5.2.

**ARTICLE VI  
BOARD OF DIRECTORS**

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

Section 6.2 Number, Election and Term.

(a) The number of directors constituting the Board shall be not fewer than three nor more than twelve. Subject to the previous sentence, the precise number of directors of the Corporation, other than those who may be elected by the holders of one or more series of Preferred Stock voting separately by class or series, shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Whole Board. For purposes of this Certificate, “*Whole Board*” shall mean the total number of directors the Corporation would have if there were no vacancies.

(b) Subject to Section 6.5, a director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor has been elected and qualified, subject, however, to such director’s earlier death, resignation, retirement, disqualification or removal.

(c) Unless and except to the extent that the Bylaws shall so require, the election of directors need not be by written ballot.

Section 6.3 Newly Created Directorships and Vacancies. Subject to Section 6.5, newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely by a majority vote of the directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders), and any director so chosen shall hold office for the remainder of the full term of the class of directors to which the new directorship was added or in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director’s earlier death, resignation, retirement, disqualification or removal.

Section 6.4 Removal. Subject to Section 6.5, any or all of the directors may be removed from office at any time, with or without cause, by the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class and acting at a meeting of the stockholders called and held in accordance with the DGCL, this Certificate and the Bylaws.

Section 6.5 Preferred Stock - Directors. Notwithstanding any other provision of this Article VI, and except as otherwise required by law, whenever the holders of one or more series of Preferred Stock shall have the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of Preferred Stock as set forth in this Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this Article VI unless expressly provided by such terms.

Section 6.6 Rights with respect to Diamondback Designees.

(a) In connection with any annual or special meeting of stockholders of the Corporation at which directors are elected (or any action by stockholder consent to elect directors in lieu of a stockholder meeting), for so long as the Diamondback Entities collectively beneficially own at least 25% of the outstanding Common Stock, Diamondback shall have the right to designate up to three persons to serve as directors of the Company (any person so designated, a “***Diamondback Designee***”).

(b) Initially there are two Diamondback Designees: Travis D. Stice and Kaes Van’t Hof, and the size of the Board shall be increased to allow for the election or appointment, as applicable, of any additional Diamondback Designees. In the event of the removal, death or resignation of a Diamondback Designee, Diamondback shall have the right to designate a replacement Diamondback Designee to fill the resulting vacant directorship. Before the expiration of a Diamondback Designee’s term of office at a meeting of stockholders (or pursuant to a stockholder consent in lieu of a meeting), Diamondback may designate a successor Diamondback Designee as a replacement to serve as a director upon the expiration of the term of the predecessor designee.

(c) Whenever Diamondback designates a Diamondback Designee to serve as a director of the Corporation pursuant to this Certificate of Incorporation, Diamondback will cause such designee to complete all questionnaires then required of the other directors of the Corporation and shall make the designee available for an interview with the Board or one of its authorized committees. The Board shall promptly nominate (in the case of a director election by stockholders) or appoint (in the case of a vacancy or newly created directorship) the Diamondback Designee as a director unless the Board withholds its consent to such designee, *provided* that such consent shall not be unreasonably withheld. If the Board withholds its consent, the Board shall notify Diamondback of its objections to the Diamondback Designee in a writing that explains with reasonable detail the basis for withholding consent. If the Board reasonably withholds its consent, Diamondback shall designate a substitute person as a Diamondback Designee who shall be nominated (in the case of a director election by stockholders) or appointed (in the case of a vacancy or newly created directorship) as a director of the Corporation by the Board in accordance with, and subject to, this paragraph.

(d) For the avoidance of doubt, the rights provided to Diamondback in this Section 6.6 are not exclusive, and Diamondback shall have the same rights and privileges that are accorded to other stockholders with respect to the nomination, election and removal of all directors and may exercise any rights or privileges of proxy access accorded to stockholders under this Certificate of Incorporation, the Bylaws or applicable law.

(e) The foregoing provisions of this Section 6.6 have been inserted in this Certificate of Incorporation in accordance with Section 141(a) of the Delaware General Corporation Law. The Board of Directors is hereby directed to comply with this Section 6.6, and the business and affairs of the Corporation shall be managed by or at the direction of the Board of Directors constituted, appointed and elected in accordance with this Article VI, including this Section 6.6.

(f) Whenever the Corporation solicits proxy or consent materials for the election of directors, the Corporation shall include in its proxy or consent materials, and on each proxy or consent card, each Diamondback Designee, irrespective of whether the Board has reasonably withheld its consent to the Diamondback Designee's appointment as a director or nomination for director election. The proxy materials shall also contain a statement by Diamondback in favor of each Diamondback Designee, *provided* that Diamondback shall be solely responsible for any liability relating to any inaccuracy in such statement. Neither Diamondback, nor any Diamondback Designee, shall be subject to the provisions in the Bylaws that (but for this Article) would otherwise apply for the nomination by stockholders of candidates for director election or that would otherwise apply to allow stockholders to include such candidates in the Corporation's proxy materials or on its proxy card.

(g) The provisions of this Section 6.6 shall apply notwithstanding any other provision of this Certificate of Incorporation to the contrary. In addition to any other vote required or provided by law, any amendment, alteration or repeal of, or the adoption of any provision inconsistent with, this Section 6.6, in each case, whether by merger, consolidation, conversion or otherwise, shall require the affirmative vote of the holders of at least 75% of the voting power of the Class A Common Stock and Class B Common Stock, considered together as one class. From and after the first date that the Diamondback Entities collectively beneficially own less than 25% of the outstanding Common Stock, this Section 6.6 shall no longer be effective and shall be rendered inoperative, except that any Diamondback Designee then serving as a director of the Corporation shall serve the remainder of his or her term of office and shall continue in office until his or her resignation or removal or until a successor is elected and qualified.

## **ARTICLE VII BYLAWS**

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power to adopt, amend, alter or repeal the Bylaws. The affirmative vote of a majority of the Whole Board shall be required to adopt, amend, alter or repeal the Bylaws. The Bylaws also may be adopted, amended, altered or repealed by the stockholders; *provided, however*, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by this Certificate (including any Preferred Stock Designation), the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the Bylaws.

## **ARTICLE VIII MEETINGS OF STOCKHOLDERS**

Section 8.1 No Action by Written Consent. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, any action required or permitted to be taken by stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders, unless the Board approves in advance the taking of such action by means of written consent of the stockholders.

Section 8.2 Special Meetings. Except as otherwise required by law or the terms of any one or more series of Preferred Stock, special meetings of stockholders of the Corporation may be called by any of the following: (i) at any time by any of the Chairman of the Board, Chief Executive Officer, or the Board pursuant to a resolution adopted by a majority of the Whole Board; and (ii) subject to the procedures and limitations set forth in the Bylaws, by the Chairman of the Board or the Board following receipt by the Secretary of the Corporation of the written request (which request shall comply with the requirements and procedures set forth in the Bylaws) of one or more stockholders of the Corporation (acting on their own behalf and not by assigning or delegating their rights to any other person or entity) that hold, for their own accounts, beneficial ownership of at least 20% of the issued and outstanding voting stock of the Corporation entitled to vote generally in the election of directors. Special meetings of stockholders of the Corporation may not be called by any person or persons other than those specified in this Section 8.2.

Section 8.3 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

## ARTICLE IX LIMITATION OF DIRECTOR LIABILITY; INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 9.1 Limitation of Director and Officer Liability. To the fullest extent that the DGCL or any other law of the State of Delaware (as the same exists or is hereafter amended) permits the limitation or elimination of the liability of directors or officers, no person who is or was a director or officer of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director or officer, as applicable. Any repeal or amendment of this Section 9.1 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 9.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors and/or officers) and shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision. Solely for purposes of this Section 9.1, “officer” shall have the meaning determined in accordance with Section 102(b)(7) of the DGCL, as amended from time to time.

### Section 9.2 Indemnification and Advancement of Expenses.

(a) To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “*proceeding*”) by reason of the fact that he or she is or was a director or officer of

the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an “*indemnitee*”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all expenses, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection with such proceeding. The right to indemnification conferred by this Section 9.2 shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition; *provided, however*, that, if the DGCL requires, an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the indemnitee is not entitled to be indemnified for the expenses under this Section 9.2 or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 9.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 9.2, except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

(b) The rights to indemnification and advancement of expenses conferred on any indemnitee by this Section 9.2 shall not be exclusive of any other rights that any indemnitee may have or hereafter acquire under law, this Certificate, the Bylaws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 9.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 9.2, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 9.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than indemnitees.

#### **ARTICLE X AMENDMENT OF CERTIFICATE OF INCORPORATION**

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

**ARTICLE XI  
SECTION 203**

The Corporation shall not be governed by the provisions of Section 203 of the DGCL.

**ARTICLE XII  
CHOICE OF FORUM**

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders; (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL, this Certificate or Bylaws; or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine. The foregoing sentence shall not apply to claims arising under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or other federal securities laws for which there is exclusive federal or concurrent federal and state jurisdiction. Any person or entity purchasing or otherwise acquiring any interest in share of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article XII.

**ARTICLE XIII  
OTHER MATTERS**

Section 13.1 Acknowledgments. The provisions of Section 6.6 and this Article XIII have been adopted and effected in recognition that:

(a) The Corporation engages in a line of business to own and acquire mineral and royalty interests in oil and natural gas properties.

(b) The Corporation has entered into, and desires to continue to enter into, leases of its mineral or other oil and gas interests with one or more Diamondback Entities as the operator.

Section 13.2 Services Agreement. The Board of Directors is hereby authorized and directed to cause the Corporation to perform its obligations pursuant to the Services Agreement, and the business and affairs of the Corporation may be managed in accordance with the terms of the Services Agreement.

Section 13.3 Officer Appointments.

(a) So long as Diamondback Entities collectively own at least 25% of all outstanding shares of Common Stock, the Board shall not appoint any person other than a Seconded Employee (as defined in the Services Agreement) as an executive officer of the Corporation unless such appointment is approved, in advance of the effectiveness of such appointment, by either (i) the written consent of Diamondback (which consent shall not be unreasonably withheld or conditioned) or (ii) the affirmative vote of the holders of at least 80% of the voting power of the capital stock of the Corporation entitled to vote thereon.

(b) During the term of the Services Agreement, with respect to any Seconded Employee (as defined in the Services Agreement) who may be a “named executive officer” (as defined in Item 402(a)(3) of Regulation S-K promulgated under the Securities Exchange Act of 1934) of the Corporation or of Diamondback, the Corporation shall not pay, award or issue any equity compensation (or any other compensation) to such Seconded Employee unless such payment, award or issuance is approved by either (i) the written consent of Diamondback (which consent shall not be unreasonably withheld or conditioned) or (ii) the affirmative vote of the holders of at least 80% of the voting power of the capital stock of the Corporation entitled to vote thereon.

Section 13.4 Authorization; Amendment; and Effect.

(a) The foregoing provisions of this Article XIII have been adopted pursuant to Section 141(a) of the DGCL, and the Board of Directors of the Corporation shall manage the business and affairs of the Corporation in a manner consistent with such provisions. The directors of the Corporation shall have no duty to consider or take any action inconsistent with this Article XIII.

(b) In addition to any other vote required or provided by law, any amendment, alteration or repeal of, or the adoption of any provision inconsistent with, this Article XIII, in each case, whether by merger, consolidation, conversion or otherwise, shall require the affirmative vote of the holders of at least 75% of the voting power of the Class A Common Stock and Class B Common Stock, considered together as one class.

(c) From and after the first date that the Diamondback Entities collectively beneficially own less than 25% of the outstanding shares of Common Stock, Sections 13.1 through Sections 13.3 and subsection (a) and (b) of this Section 13.4 of this Article XIII shall no longer be effective in any respect and shall be rendered inoperative.

**ARTICLE XIV  
CERTAIN DEFINITIONS AND OTHER PROVISIONS**

Section 14.1 Certain Definitions. As used in this Certificate, unless the context otherwise requires or as set forth in another Article or Section of this Certificate, the term:

(a) “**Diamondback Entity**” means Diamondback or any of its subsidiaries (excluding the Corporation and its subsidiaries, including Viper OpCo).

(b) “**Exchange Agreement**” means that certain Amended and Restated Exchange Agreement, among the Corporation, Viper OpCo, Diamondback and Diamondback E&P LLC, as such agreement may be amended, supplemented, or restated from time to time.

(c) “**OpCo Limited Liability Company Agreement**” means the limited liability company agreement of Viper OpCo as in effect at the applicable time of determination.

(d) “**OpCo Unit**” means a limited liability company interest in Viper OpCo having the rights and obligations specified with respect to a “Unit” in the OpCo Limited Liability Company Agreement.

(e) “**Paired Interest**” means one OpCo Unit together with one share of Class B Common Stock, subject to adjustment pursuant to the Exchange Agreement.

(f) “**person**” means any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

(g) “**Services Agreement**” means that certain Services and Secondment Agreement among the Corporation, Viper OpCo, and Diamondback E&P LLC, as such agreement may be further amended, supplemented or restated from time to time.

(h) “**Viper OpCo**” means Viper Energy Partners LLC or its successor (including pursuant to a merger, share exchange, conversion or other similar transaction in which the equity interests of Viper OpCo are exchanged or converted for equity interests of another entity (“**New OpCo**”), in which case Viper OpCo shall refer to New OpCo or its successor from and after the closing of such transaction).

Section 14.2 Facts Ascertainable. When the terms of this Certificate refer to a specific agreement or other document or a decision by any body, person or entity to determine the meaning or operation of a provision of this Certificate, the Secretary of the Corporation shall maintain a copy of such agreement, document or decision at the principal executive offices of the Corporation and a copy thereof shall be provided free of charge to any stockholder who makes a request therefor. Unless otherwise expressly provided in this Certificate, a reference to any specific agreement or other document shall be deemed a reference to such agreement or document as amended from time to time in accordance with the terms of such agreement or document.

Section 14.3 Severability. To the extent that any provision of this Certificate is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Certificate, and following any determination by a court of competent jurisdiction that any provision of this Certificate is invalid or unenforceable, this Certificate shall contain only such provisions (i) as were in effect immediately before such determination and (ii) were not so determined to be invalid or unenforceable.

Section 14.4 Effective Time. This Certificate of Incorporation shall become effective at 11:59 pm (local time in Wilmington, Delaware) on August 18, 2025 (the “**Effective Time**”).

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer of the Corporation, on August 18, 2025.

By: /s/ Kaes Van't Hof

Name: Kaes Van't Hof

Title: Chief Executive Officer

**CERTIFICATE OF AMENDMENT  
TO THE  
CERTIFICATE OF INCORPORATION  
OF  
NEW COBRA PUBCO, INC.**

New Cobra Pubco, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "DGCL"), hereby certifies as follows:

**FIRST:** The original certificate of incorporation of the Corporation (the "Original Certificate of Incorporation") was filed with the Secretary of State of the State of Delaware on June 2, 2025. The amended and restated certificate of incorporation of the Corporation (the "Amended and Restated Certificate of Incorporation"), which amended and restated the Certificate of Incorporation of the Corporation in its entirety, was filed with the Secretary of State of the State of Delaware on August 18, 2025 and became effective at 11:59 pm (local time in Wilmington, Delaware) on August 18, 2025.

**SECOND:** Article I of the Amended and Restated Certificate of Incorporation of the Corporation is hereby amended in its entirety to read as follows (the "Amendment"):

"The name of the Corporation is Viper Energy, Inc."

**THIRD:** The Amendment was duly adopted in accordance with Section 242 of the DGCL.

**FOURTH:** The Amendment shall become effective at 12:03 am (local time in Wilmington, Delaware) on August 19, 2025.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed on August 18, 2025.

**NEW COBRA PUBCO, INC**

By: /s/ Kaes Van't Hof

Name: Kaes Van't Hof

Title: Chief Executive Officer

*[Signature Page New Cobra Pubco, Inc. Certificate of Amendment]*

**AMENDED AND RESTATED BYLAWS**

**OF**

**VIPER ENERGY, INC.**

**A DELAWARE CORPORATION**

**(THE "CORPORATION")**

**ADOPTED AS OF AUGUST 19, 2025**

**AMENDED AND RESTATED BYLAWS  
OF  
VIPER ENERGY, INC.**

**ARTICLE I  
OFFICES**

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

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

**ARTICLE II  
STOCKHOLDERS MEETINGS**

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

**Section 2.2 Special Meetings.**

(a) Right to Call Special Meetings. Except as otherwise required by law or provided in the Corporation's Certificate of Incorporation (as such may be amended, restated or otherwise modified from time to time, the "**Certificate of Incorporation**") or the terms of any one or more series of preferred stock of the Corporation ("**Preferred Stock**"), special meetings of stockholders of the Corporation may be called by any of the following: (i) at any time by the Chairman of the Board, the Chief Executive Officer, or the Board pursuant to a resolution adopted by a majority of the Whole Board (as defined below); and (ii) by the Chairman of the Board or the Board following receipt by the Secretary of the Corporation of the written request (which request shall comply with the requirements and procedures set forth in this Section 2.2) of one or more stockholders of the Corporation (acting on their own behalf and not by assigning or delegating their rights to any other person or entity) that together have continuously held, for their own accounts, beneficial ownership of at least 20% aggregate "net long position" of the issued and outstanding voting stock of the Corporation entitled to vote generally in the election of directors (the "**Requisite Percent**") for at least one year prior to the date such request is delivered to the Corporation and at the special meeting date. For purposes of determining the Requisite Percent, "net long position" shall be determined with respect to each requesting stockholder by subtracting such stockholder's short position from such stockholder's long position, based on Rule 14e-4 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") (as such Rule is

amended from time to time or, if applicable, any successor Rule), provided that: (i) for the purposes of such definition, reference in such Rule to: (A) the “date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired” shall be the date of the relevant special meeting request; (B) the “highest tender offer price or stated amount of the consideration offered for the subject security” shall refer to the closing sales price of the Corporation’s common stock on the primary securities exchange on which such stock is listed on such date (or, if such date is not a trading day, the next succeeding trading day); (C) the “person whose securities are the subject of the offer” shall refer to the Corporation; and (D) a “subject security” shall refer to the issued and outstanding voting stock of the Corporation; and (ii) the net long position of such stockholder shall be reduced by the number of shares as to which such stockholder does not, or will not, have the right to vote on its own behalf at the special meeting or as to which such stockholder has entered into any derivative or other agreement, arrangement, or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. Special meetings of stockholders of the Corporation may not be called by any person or persons other than those specified in this Section 2.2(a) and the Certificate of Incorporation. For purposes of these Bylaws, the “**Whole Board**” shall mean the total number of directors the Corporation would have if there were no vacancies.

(b) Stockholder Requests for Special Meetings. In order for a special meeting upon stockholder request (a “**stockholder requested special meeting**”) to be called, one or more requests for a special meeting (each, a “**special meeting request**,” and collectively, the “**special meeting requests**”) must be signed by the stockholders of the Corporation holding the Requisite Percent of the voting stock of the Corporation and must be delivered to the Secretary at the principal executive offices of the Corporation by registered or certified mail, return receipt requested; provided, however, that no stockholder requested special meeting shall be called pursuant to any special meeting request unless one or more special meeting requests relating to such meeting from stockholder(s) constituting the Requisite Percent have been delivered to the Secretary in compliance with all of the requirements of Section 2.2 of these Bylaws within 60 days of the earliest dated special meeting request in respect of such stockholder requested special meeting. The special meeting request(s) shall: (i) set forth the name and address, as they appear on the Corporation’s books and records maintained by the Corporation’s transfer agent and registrar, of each stockholder of the Corporation signing such request, together with the identity of the beneficial owner, if any, directing such stockholder of record to submit such request; (ii) state the specific purpose or purposes of the special meeting, the matter or matters proposed to be acted on at the special meeting, the reasons for conducting such business at the special meeting, and the text of any proposal or business to be considered at the special meeting (including the text of any resolutions proposed to be considered and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), which language shall be contained in the notice of special meeting required by Section 2.3 of these Bylaws; (iii) bear the date of signature of each such stockholder signing the special meeting request; (iv) provide documentary evidence that the stockholder(s) requesting the special meeting together have continuously owned, for their own account, the Requisite Percent for at least one year prior to the date such special meeting request is delivered to the Corporation and attach a notarized affidavit swearing to the net long position of such stockholder(s); (v) provide a representation by each stockholder signing the special meeting request that such stockholder intends to appear in person at the stockholder requested special meeting and is entitled to vote thereat, and an agreement to promptly inform the

Corporation in the event such representation becomes inaccurate (in which event any shares of voting stock of the Corporation owned by such stockholder shall cease to be counted as contributing to the Requisite Percent); (vi) provide a representation by each stockholder signing the special meeting request that such stockholder intends to continue net long ownership of such shares through the date of the special meeting and an agreement to promptly inform the Corporation in the event such representation becomes inaccurate (in which event any shares of voting stock of the Corporation owned by such stockholder shall cease to be counted as contributing to the Requisite Percent); (vii) provide the acknowledgement of each stockholder signing the special meeting request that the special meeting request shall be deemed to be revoked (and any special meeting scheduled in response thereto may be cancelled) if the net long position in shares of voting stock owned by such signing stockholders is less than the Requisite Percent at any time between the date of the special meeting request and the date of the applicable special meeting; (viii) with respect to special meeting requests related to the election of directors, include all additional information required by Section 3.2 to be included in a stockholder's notice of nomination of persons for election to the Board; and (ix) with respect to all other special meeting requests, include all additional information required by Section 2.7 to be included in a stockholder's notice of business (other than the nomination of persons for election to the Board) to be brought before an annual meeting. A beneficial owner who wishes to deliver a special meeting request must cause the nominee or other person who serves as the stockholder of record of such beneficial owner's stock to sign the special meeting request. If a stockholder of record is the nominee for more than one beneficial owner of stock, the stockholder of record may deliver a special meeting request solely with respect to the capital stock of the Corporation beneficially owned by the beneficial owner(s) who are directing such stockholder of record to sign such special meeting request.

(c) Revocation of Special Meeting Requests.

(i) Any requesting stockholder may revoke a request for a special meeting at any time by written revocation delivered to the Secretary of the Corporation at the principal executive offices of the Corporation;

(ii) All special meeting requests shall be deemed to be revoked upon the first date that, after giving effect to any revocation(s), the net long position in the shares of voting stock of the Corporation owned by the stockholders listed on the unrevoked special meeting requests decreases to a number of shares representing less than the Requisite Percent.

(iii) If the revocation of all special meeting requests (giving effect to deemed revocations pursuant to Section 2.2(c)(ii)) has occurred, then the Board, in its discretion, may cancel the special meeting of the stockholders (or, if the special meeting has not yet been called, may direct the Chairman of the Board or Chief Executive Officer, as applicable, not to call such a meeting).

(d) Business Considered at Special Meetings. Business transacted at any stockholder requested special meeting shall be limited to the purpose(s) stated in the valid special meeting request(s) signed by stockholders holding the Requisite Percent of the Corporation's voting stock; provided, however, that nothing herein shall prohibit the Board from submitting matters, whether or not described in the stockholder special meeting request(s), to the stockholders

at any stockholder requested special meeting. If none of the stockholders who submitted a special meeting request appears at or sends a qualified representative to the stockholder requested special meeting to present the matters to be presented for consideration that were specified in the special meeting request, the Corporation need not present such matters for a vote at such meeting, notwithstanding the fact that proxies or votes may have been received by the Corporation with respect thereto.

(e) Improper or Overlapping Business. Notwithstanding anything to the contrary contained in this Section 2.2 or these Bylaws, the Secretary shall not accept and shall consider ineffective a special meeting request, and neither the Chairman of the Board nor the Board (following receipt by the Secretary of the Corporation of the written request pursuant to Section 2.2(a)(ii), which request has been delivered to the Corporation in compliance with the requirements of Section 2.2 of these Bylaws) shall be required to call a stockholder requested special meeting in connection therewith, if:

(i) the special meeting request relates to an item of business that (A) is not a proper subject for stockholder action under these Bylaws or applicable law, (B) is the same or a similar to an item of business that was presented at any meeting of stockholders held within 120 calendar days prior to the receipt by the Corporation of the special meeting request; or (C) is the same or similar to an item included in the Corporation's notice as an item of business to be brought before a stockholder meeting that has been called but not yet held;

(ii) the special meeting request is received by the Corporation (A) during the period commencing 90 calendar days prior to the first anniversary of the preceding year's annual meeting of stockholders and ending on the date of the next annual meeting of stockholders or (B) in the 30 days following the date of any annual meeting of stockholders; or

(iii) the special meeting request otherwise does not comply with or has not been delivered in accordance with the provisions of this Section 2.2. Nominations pursuant to Section 3.4 of these Bylaws may not be made in connection with a special meeting of stockholders.

For purposes of Section 2.2(e)(i)(B), the removal of directors and the filling of resulting vacancies shall be considered the same or similar to the election of directors at the preceding annual meeting of stockholders.

(f) Determination by the Board. Except as otherwise provided by law, in the case of a stockholder requested special meeting, the Board shall have the power and duty: (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the requirements and procedures set forth in this Section 2.2 and other applicable provisions of these Bylaws; and (ii) if any proposed nomination or business was not made or proposed in accordance with the requirements and procedures set forth in this Section 2.2 and other applicable provisions of these Bylaws or applicable law, to declare that such nomination shall be disregarded (and such nominee shall be disqualified from standing for election or re-election) or that such proposed business shall not be transacted. The Board, in its discretion, also may cancel a special meeting (or, if the special meeting has not yet been called, may direct the Chairman of the Board or the Chief Executive Officer, as applicable, not to call such a meeting) if, at any time after receipt by the Secretary of the Corporation of a proper special meeting request, there are no longer valid special meeting requests from stockholders holding in the aggregate at least the Requisite Percent, whether because of revoked requests or otherwise.

(g) Right to Engage Independent Inspectors. In the event of the delivery, in the manner provided in this Section 2.2, to the Corporation of the requisite special meeting request or requests and/or any related revocation or revocations, the Board may engage, in its discretion, one or more nationally recognized independent inspectors for the purpose of promptly performing a ministerial review of the validity of the requests and/or revocations. For the purpose of permitting the inspectors to perform such review, no special meeting request shall be granted until such date as the independent inspectors certify to the Board and the Corporation that the special meeting request(s) delivered to the Corporation in accordance with this Section 2.2, and not revoked, by such stockholder(s) (acting on their own behalf and not by assigning or delegating their rights to any other person or entity) together represent at least the Requisite Percent of the Corporation's voting stock that has been continuously held by such stockholders, for their own account, for at least one year prior to the date of delivery of such requests to the Corporation, all in accordance with this Section 2.2. Nothing contained in this Section 2.2 shall in any way be construed to suggest or imply that the Board or any stockholder shall not be entitled to contest the validity of any request or revocation thereof, whether before or after such certification by the independent inspectors, or take any other action (including, without limitation, the commencement, prosecution, or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(h) Place, Time and Date of Special Meetings. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the special meeting given under Section 2.3 of these Bylaws, provided that the Board may in its sole discretion determine that the special meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a), provided further that, except as otherwise set forth in these Bylaws or unless a later date is required in order to allow the Corporation to file the information required under Item 8 (or any other applicable provision) of Schedule 14A under the Exchange Act, if applicable, the date of any stockholder requested special meeting shall be: (i) not more than 90 days after the determination of the validity of the special meeting request(s) by the independent inspectors; or (ii) if no such independent inspectors are engaged to review the validity of one or more special meeting requests, not more than 90 days after the special meeting request(s) complying with the requirements and procedures of this Section 2.2 have been delivered to the Secretary of the Corporation.

**Section 2.3 Notices**. Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting if such date is different from the record date for determining stockholders entitled to notice of the meeting shall be given in any manner permitted by Section 9.3 to the stockholders entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting. Such notice shall be given by the Corporation not less than 10 nor more than 60 days before the date of the meeting. If said notice is for a stockholders meeting other than an annual meeting, it shall in

addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any special meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement (as defined in Section 2.7(b)) given before the date previously scheduled for such meeting.

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

#### **Section 2.5 Voting of Shares.**

(a) Voting Lists. The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order for each class of stock and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. Except as otherwise required by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

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

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

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

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

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

(d) Required Vote.

(i) Uncontested Election. Subject to the rights of any holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, in an election of directors other than a contested election, each director shall be elected by a vote of the majority of the votes cast at any meeting for the election of directors at which a quorum is present. For purposes of this Section 2.5(d)(i), a

majority of the votes cast means that the number of shares voted “for” a director must exceed the number of votes cast “against” that director. In an uncontested election, any incumbent director who is not elected because he or she does not receive a majority of the votes cast shall immediately tender his or her resignation for consideration by the Board. The Board will evaluate whether to accept or reject such resignation or whether other action should be taken; provided, however, that the Board will act on such resignation, and the Corporation shall publicly disclose the Board’s decision to accept or reject such resignation and, if applicable, the rationale behind such decision, within 90 days from the date of the certification of the director elections results. The Board may fill any vacancy resulting from the non-election or resignation of a director as provided in these Bylaws or the Certificate of Incorporation.

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

(iii) All Other Matters. Except as set forth in Section 2.5(d)(i) and Section 2.5(d)(ii), all other matters shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these Bylaws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter.

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

**Section 2.6 Adjournments.** Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. When a meeting is adjourned to another time or place, (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), notice need not be given of any such adjourned meeting if the date, time and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are (i) announced at the meeting at which the adjournment is taken, (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication, or (iii) set forth in the notice of meeting given in accordance with Section 2.3 of these Bylaws. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 2.3, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

**Section 2.7 Advance Notice for Business.**

(a) Annual Meetings of Stockholders. No business may be transacted at an annual meeting of stockholders, other than business that is either (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board or an authorized committee thereof, (ii) otherwise properly brought before the annual meeting by or at the direction of the Board or (iii) otherwise properly brought before the annual meeting by any stockholder of the Corporation (x) who is a stockholder of record both on the date of the giving of the notice provided for in this Section 2.7(a) and on the date for such annual meeting and who is entitled to vote at such annual meeting and (y) who complies with the notice procedures set forth in this Section 2.7(a). Except for proposals properly made in accordance with Rule 14a-8 under the Exchange Act and included in the notice of meeting given by or at the direction of the Board, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of stockholders. Stockholders seeking to nominate persons for election to the Board must comply with Section 3.2 or Section 3.4 of these Bylaws, and this Section 2.7 shall not be applicable to nominations.

(i) In addition to any other applicable requirements, for business (other than nominations) to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation and such business must otherwise be a proper matter for stockholder action. Subject to Section 2.7(a)(iv), a stockholder's notice to the Secretary with respect to such business, to be timely, must (x) comply with the provisions of this Section 2.7(a)(i) and (y) be timely updated

and/or supplemented by the times and in the manner required by the provisions of Section 2.7(a)(iii). A stockholder's notice must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the opening of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that if the annual meeting is called for a date that is more than 30 days earlier or more than 60 days later than such anniversary date, or if no annual meeting was held or deemed to have been held in the preceding year, notice by the stockholder to be timely must be so received not earlier than the opening of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation. The adjournment, rescheduling or postponement of an annual meeting (or the public announcement thereof) shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 2.7(a).

(ii) To be in proper written form, a stockholder's notice to the Secretary with respect to any business (other than nominations) must set forth (A) as to each such matter such stockholder proposes to bring before the annual meeting (1) a brief description of the business desired to be brought before the annual meeting and any material interest (including any substantial interest within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and any Stockholder Associated Person (as defined below), individually or in the aggregate, (2) the text of the proposal or business (including the text of any resolutions proposed for consideration and if such business includes a proposal to amend these Bylaws, the text of the proposed amendment) and (3) the reasons for conducting such business at the annual meeting, (B) the name and address of the stockholder proposing such business, as they appear on the Corporation's books, and the name and address of any Stockholder Associated Person, (C) the class or series and number of shares of capital stock of the Corporation that are owned of record or are directly or indirectly owned beneficially by such stockholder and by any Stockholder Associated Person, (D) any option, warrant, convertible security, stock appreciation right, swap or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right is subject to settlement in the underlying class or series of shares of the Corporation or otherwise (a "*Derivative Instrument*") directly or indirectly owned beneficially by such stockholder or by any Stockholder Associated Person and any other direct or indirect opportunity of such stockholder or any Stockholder Associated Person to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (E) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), contract, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote any shares of the Corporation, (F) any short interest in any security of the Corporation held by such stockholder or any Stockholder Associated Person (for purposes of this Section 2.7 a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (G) any rights owned beneficially by such stockholder or Stockholder Associated Person to dividends on the shares of the Corporation that

are separated or separable from the underlying shares of the Corporation, (H) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or any Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (I) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of such stockholder's or any Stockholder Associated Person's immediate family sharing the same household, (J) a description of all agreements, arrangements or understandings (written or oral) between or among such stockholder, any Stockholder Associated Person or any other person or persons (including their names) in connection with the proposal of such business by such stockholder, (K) any other information relating to such stockholder and any Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitation of proxies for election of directors (even if an election contest is not involved), or would be otherwise required, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (L) a representation that such stockholder (or a qualified representative thereof) intends to appear in person or by proxy at the annual meeting to bring such business before the meeting, and (M) a statement of whether such stockholder or any Stockholder Associated Person intends, or is part of a group that intends, to solicit proxies in connection with the proposal.

(iii) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.7(a) shall be true and correct as of the record date for determining the stockholders entitled to notice of the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (x) in the case of the update and supplement required to be made as of such record date, not later than five business days after such record date and (y) in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof, as applicable, not later than eight business days prior to the date for the meeting or any adjournment or postponement thereof, if practicable (or if not practicable, on the first practicable date prior to the date for the meeting or such adjournment or postponement thereof).

(iv) The foregoing notice requirements of this Section 2.7(a), shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Exchange Act, and such stockholder's proposal has been included in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. No business (other than nominations) shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.7(a), provided, however, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.7(a) shall be deemed to preclude discussion by any stockholder of any such business. If the Board or the chairman of the annual meeting determines that any stockholder proposal was not made in accordance with the provisions of this Section 2.7(a) or that the

information provided in a stockholder's notice does not satisfy the information requirements of this Section 2.7(a), such proposal shall not be presented for action at the annual meeting. Notwithstanding the foregoing provisions of this Section 2.7(a), if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

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

(b) **Definitions.** For purposes of these Bylaws, "**public announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the United States Securities and Exchange Commission ("**SEC**") pursuant to Sections 13, 14 or 15(d) of the Exchange Act; "**Stockholder Associated Person**" shall mean for any stockholder (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii); and a "**qualified representative**" of a stockholder shall mean a duly authorized officer, manager, trustee or partner of such stockholder or a person authorized by a writing executed by such stockholder (or a reliable reproduction of the writing) stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders, which writing or reproduction must be delivered to the Corporation not fewer than five business days before the stockholder meeting. For purposes of these Bylaws, "**close of business**" shall mean 6:00 p.m. local time at the principal executive offices of the Corporation on the applicable calendar day, whether or not the day is a business day; and "**opening of business**" shall mean 9:00 a.m. local time at the principal executive offices of the Corporation on the applicable calendar day, whether or not the day is a business day.

**Section 2.8 Conduct of Meetings.** The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these Bylaws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules,

regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; (e) limitations on the time allotted to questions or comments by participants; and (f) any additional attendance or other procedures or requirements for stockholders submitting a proposal pursuant to Rule 14a-8 under the Exchange Act. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

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

shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the limitations on delivery in the previous sentence, consents given by electronic transmission may be otherwise delivered to the Corporation's principal place of business or to the Secretary if, to the extent, and in the manner provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders were delivered to the Corporation as provided in this [Section 2.9](#).

**Section 2.10 Delivery to the Corporation.** Except as otherwise set forth in [Section 2.9](#), whenever this [Article II](#) requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information (other than a document authorizing another person to act for a stockholder by proxy at a meeting of stockholders pursuant to Section 212 of the Delaware General Corporation Law ("*DGCL*")) to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), the Corporation shall not be required to accept delivery of such document or information unless the document or information is in writing exclusively (and not in an electronic transmission) and delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested.

### **ARTICLE III DIRECTORS**

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

#### **Section 3.2 Advance Notice for Nomination of Directors.**

(a) Only persons who are nominated in accordance with the following procedures or the procedures set forth in [Section 3.4](#) of these Bylaws shall be eligible for election as directors by the stockholders of the Corporation, except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of holders of one or more series of Preferred Stock to elect directors. Nominations of persons for election to the Board at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in the Corporation's notice of such special meeting, may be made (i) by or at the direction of the Board or an authorized committee thereof, (ii) by any stockholder of the Corporation (x) who is a stockholder of record both on the date of the giving of the notice provided for in this [Section 3.2](#) and on the date of the applicable meeting and who is entitled to vote in the election of directors at such meeting and (y) who complies with the notice procedures and other requirements set forth in this [Section 3.2](#), (iii) in the case of a stockholder-

requested special meeting, by any stockholder of the Corporation pursuant to Section 2.2 of these Bylaws, or (iv) by any Eligible Holder (as defined below) who satisfies the requirements and complies with the procedures set forth in Section 3.4 of these Bylaws. For the avoidance of doubt, the foregoing clause (ii), (iii) and (iv) shall be the exclusive means for a stockholder to make nominations at an annual meeting of stockholders.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, (1) such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation, (2) such stockholder must have complied in all respects with the requirements of Regulation 14A under the Exchange Act including, without limitation, the applicable requirements of Rule 14a-19 (as such rule and regulations may be amended from time to time), and (3) the Board, an authorized committee thereof or an executive officer designated thereby shall determine that the stockholder has satisfied the requirements of this Section 3.2 as well as the satisfaction of any undertaking delivered under Section 3.2(d) below. To be timely, a stockholder's notice to the Secretary must (x) comply with the provisions of this Section 3.2(b) and (y) be timely updated and/or supplemented by the times and in the manner required by the provisions of Section 3.2(e). A stockholder's notice must be received by the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not later than the close of business on the 90th day nor earlier than the opening of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that if the annual meeting is called for a date that is more than 30 days earlier or more than 60 days after such anniversary date, or if no annual meeting was held or deemed to have been held in the preceding year, notice by the stockholder to be timely must be so received not earlier than the opening of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation; and (ii) in the case of a special meeting of stockholders (other than a stockholder requested special meeting) called for the purpose of electing directors, not earlier than the opening of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the special meeting is first made by the Corporation. The public announcement of an adjournment, rescheduling or postponement of an annual meeting or special meeting for which notice has been given or for which a public announcement of the date of the meeting has been made by the Corporation shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 3.2.

Notwithstanding any other provision of these Bylaws, in the case of a stockholder requested special meeting, no stockholder may nominate a person for election to the Board or propose any other business to be considered at the meeting, except pursuant to the stockholder special meeting request(s) delivered for such special meeting pursuant to Section 2.2(b).

(c) In no event may a nominating stockholder provide timely notice with respect to a greater number of director candidates than are subject to election by stockholders at the applicable meeting. Notwithstanding anything in Section 3.2(b) to the contrary, if the number of directors to be elected to the Board at an annual meeting is greater than the number of directors whose terms expire on the date of the annual meeting and there is no public announcement by the

Corporation naming all of the nominees for the additional directors to be elected or specifying the size of the increased Board at least 10 days before the last day a stockholder may deliver a notice in accordance with Section 3.2(b) above, a stockholder's notice required by this Section 3.2 shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase that are to be filled by election at such annual meeting, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the date on which such public announcement was first made by the Corporation.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth (i) a written undertaking by the stockholder giving the notice that such stockholder or a Stockholder Associated Person will solicit holders of shares representing at least 67% of the voting power of the stock entitled to vote in the election of directors in accordance with Rule 14a-19 under the Exchange Act, if applicable; (ii) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class or series and number of shares of capital stock of the Corporation that are owned of record or are directly or indirectly owned beneficially by the person, (D) any Derivative Instrument directly or indirectly owned beneficially by such nominee and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (E) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder and (F) the questionnaire, representation and agreement required by Section 3.2(i), completed and signed by such nominee; and (iii) as to the stockholder giving the notice and any Stockholder Associated Person, (A) the name and address of such stockholder as they appear on the Corporation's books, and the name and address of any Stockholder Associated Person, (B) the class or series and number of shares of capital stock of the Corporation that are owned of record or directly or indirectly owned beneficially by such stockholder and any Stockholder Associated Person, (C) any Derivative Instrument directly or indirectly owned beneficially by such stockholder or Stockholder Associated Person and any other direct or indirect opportunity of such stockholder or any Stockholder Associated Person to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (D) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), contract, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote any shares of the Corporation, (E) any short interest in any security of the Corporation held by such stockholder or any Stockholder Associated Person (for purposes of this Section 3.2 a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (F) any rights beneficially owned, directly or indirectly, by such stockholder or Stockholder Associated Person to dividends on the shares of the Corporation that are separated or separable from the underlying shares of the Corporation, (G) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or any Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a

general partner, (H) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of such stockholder's or any Stockholder Associated Person's Family Member, (I) a description of all agreements, arrangements or understandings (written or oral) between or among such stockholder, any Stockholder Associated Person, any proposed nominee or any other person or persons (including their names) (x) pursuant to which the nomination or nominations are to be made by such stockholder, and (y) related to any subject matter that will be material in the stockholder's solicitation of stockholders, regardless of whether such agreement, arrangement or understanding relates specifically to the Corporation, (J) a representation that such stockholder (or a qualified representative thereof) intends to appear in person or by proxy at the meeting to nominate the persons named in its notice, (K) any other information relating to such stockholder and any Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (L) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder or any Stockholder Associated Person, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, and (M) a statement of whether such stockholder or any Stockholder Associated Person intends, or is part of a group that intends, to solicit proxies for the election of the proposed nominee. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee in a proxy statement and form of proxy relating to the meeting at which directors are to be elected and to serve as a director if elected. For purposes of this Section 3.2(d), each reference to a nominating stockholder shall include, collectively, any stockholder giving the notice of director nomination or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made, such beneficial owner, and if such stockholder or beneficial owner is an entity, each Control Person thereof (in each case of a stockholder, beneficial owner or Control Person, together with any Family Member thereof); and a nominating stockholder shall be deemed to be "acting in concert" with a person if such stockholder has knowingly acted (whether or not pursuant to an express agreement, arrangement or understanding) at any time during the prior two years in concert with such Person (or Control Person thereof) in relation to matters (whether or not specific to the Corporation) that will be material to the nominating stockholder's solicitation of stockholders; provided, however, that a stockholder shall not be deemed to be acting in concert with a person whose primary business is to serve as investment manager or adviser with respect to investing and trading in securities for a client or its own account. Additionally, for purposes of this Section 3.2(d), "Control Person" shall mean, with respect to any person, collectively, (1) any direct and indirect control person of such first person, and (2) such first person's and any control person's respective directors, trustees, executive officers and managing members (including, with respect to an entity exempted from taxation under Section 501(1) of the Internal Revenue Code, each member of the board of trustee, board of directors, executive council or similar governing body thereof), and "Family Member" shall mean a person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and anyone (other than domestic employees) who shares the person's home.

(e) A stockholder providing notice of a director nomination shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 3.2 shall be true and correct as of the record date for determining the stockholders entitled to notice of the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by the Secretary at the principal executive offices of the Corporation (x) in the case of the update and supplement required to be made as of such record date, not later than five business days after such record date and (y) in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof, as applicable, not later than eight business days prior to the date for the meeting or any adjournment or postponement thereof, if practicable (or if not practicable, on the first practicable date prior to the date for the meeting or such adjournment or postponement thereof). In addition, at the request of the Board, a proposed nominee shall furnish to the Secretary of the Corporation within ten days after receipt of such request such information as may reasonably be required by the Corporation to (i) determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee or (ii) facilitate disclosure to stockholders of all material facts that, in the reasonable discretion of the Corporation, are relevant for stockholders to make an informed decision on the director election proposal, including information regarding any Stockholder Associated Person, and if such information is not furnished within such time period, the notice of such director's nomination shall not be considered to have been timely given for purposes of this Section 3.2.

(f) Except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of one or more series of Preferred Stock to nominate and elect directors, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with the applicable procedures set forth in Section 2.2(b), this Section 3.2 or Section 3.4 of these Bylaws. If the Board or the chairman of the meeting of stockholders determines that any nomination was not made in accordance with the applicable provisions of Section 2.2(a), this Section 3.2 or Section 3.4 of these Bylaws or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 3.2 or Section 3.4 of these Bylaws, then such nomination shall not be considered at the meeting in question. Notwithstanding the foregoing provisions of this Section 3.2, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded (and such nominee shall be disqualified from standing for election or re-election), notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(g) Notwithstanding the provisions of Section 2.2 or Section 3.2 of these Bylaws, unless otherwise required by law, if any stockholder that nominates persons for election under Section 2.2 or Section 3.2 of these Bylaws (1) provides notice pursuant to Rule 14a-19(b) under the Exchange Act and (2) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) under the Exchange Act, then the Corporation shall disregard any proxies or votes solicited for the such proposed nominees and such nominee(s) shall be disqualified from standing for election or reelection. Upon request by the Corporation, if any nominating stockholder or Stockholder Associated Person provides notice pursuant to Rule 14a-19(b) under the Exchange Act, such nominating stockholder or Stockholder Associated Person shall deliver to the Corporation, no later than five business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) under the Exchange Act.

(h) In addition to the provisions of Section 2.2 or Section 3.2 of these Bylaws, as applicable, a stockholder shall also comply with all of the applicable requirements of the Exchange Act and the rules and regulations thereunder (including, without limitation, Rule 14a-19) with respect to the matters set forth herein; and any failure to comply therewith shall be deemed a failure to comply with Section 2.2 or Section 3.2 of these Bylaws, as applicable. Nothing in this Section 3.2 shall be deemed to affect any rights of the holders of Preferred Stock to elect directors pursuant to the Certificate of Incorporation or the right of the Board to fill newly created directorships and vacancies on the Board pursuant to the Certificate of Incorporation.

(i) To be eligible to be a nominee for election or re-election pursuant to a nomination made by a stockholder under Section 2.2(b), Section 3.2(a)(ii) or Section 3.4 of these Bylaws, a stockholder must deliver with such stockholder's request (in the case of Section 2.7 of these Bylaws) or notice (in the case of Section 3.2 or 3.4 of these Bylaws) must include a written questionnaire with respect to the background, qualifications, stock ownership and independence of such proposed nominee (in the form provided by the Secretary within ten (10) days following a written request therefor by a stockholder of record) and a written representation and executed agreement (in the form provided by the Secretary within ten (10) days following a written request therefor by a stockholder of record) that such nominee (i) will act as a representative of all of the stockholders of the Corporation while serving as a director; (ii) has read and agrees, and, if elected to serve as a member of the Board, will be in compliance with and adhere to the Corporation's Corporate Governance Guidelines and Code of Business Conduct and Ethics and any other company policies and guidelines applicable to directors; (iii) is not and will not become a party to (1) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with nomination, service or action as a director of the Corporation that has not been disclosed to the Corporation prior to or concurrently with the delivery of the stockholder's request (in the case of Section 2.2 of these Bylaws) or notice (in the case of Section 3.2 or 3.4 of these Bylaws), (2) any agreement, arrangement or understanding with any person or entity as to how the nominee would vote or act on any issue or question as a director (a "**Voting Commitment**") that has not been disclosed to the Corporation prior to or concurrently with the delivery of the stockholder's request (in the case of Section 2.2 of these Bylaws) or notice (in the case of Section 3.2 or 3.4 of these Bylaws) or (3) any Voting Commitment that could limit or interfere with the nominee's ability to comply, if elected as a director of the Corporation, with the nominee's fiduciary duties under applicable law; (iv) if elected as a director of the Corporation, intends to serve the entire term until the next meeting at which such candidate would face re-election; (v) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made not misleading and (vi) will provide to the Corporation such other information as it may reasonably request.

**Section 3.3 Compensation.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board or an authorized committee thereof shall have the authority to fix the compensation of directors. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

**Section 3.4 Proxy Access.**

(a) Subject to the provisions of this Section 3.4, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any annual meeting of stockholders:

(i) the name of any person nominated for election to the Board (the “*Nominee*”), which shall also be included on the Corporation’s form of proxy and ballot (together with the proxy statement, the “*proxy materials*”), by any Eligible Holder (as defined below) or group of up to 20 Eligible Holders that, as determined by the Board or its designee, acting in good faith, has both (individually and collectively, in the case of a group) satisfied all applicable conditions and complied with all applicable procedures set forth in this Section 3.4 (such Eligible Holder or group of Eligible Holders being a “*Nominating Stockholder*”);

(ii) disclosure about the Nominee and the Nominating Stockholder required under the rules of the SEC or other applicable law to be included in the proxy statement;

(iii) any written statement included by the Nominating Stockholder in the Nomination Notice (as defined below) for inclusion in the proxy statement in support of the Nominee’s election to the Board (subject, without limitation, to Section 3.4(g)), if such statement does not exceed 500 words; and

(iv) any other information that the Corporation or the Board determines, in their discretion, to include in the proxy statement relating to the nomination of the Nominee, including, without limitation, any statement in opposition to the nomination and any of the information provided pursuant to this Section 3.4.

(b) The maximum number of Nominees nominated by all Nominating Stockholders that will be included in the Corporation’s proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (x) two and (y) 20% of the total number of directors of the Corporation (rounded down to the nearest whole number) on the last day on which a Nomination Notice may be submitted pursuant to this Section 3.4 (the “*Maximum Number*”); *provided*, that (i) any individual nominated by a Nominating Stockholder for inclusion in the Corporation’s proxy materials pursuant to this Section 3.4 who is subsequently withdrawn or that the Board itself decides to nominate for election at such annual meeting and (ii) any incumbent directors who had been Nominees, or nominees of a stockholder pursuant to Section 3.2 of these Bylaws, with respect to any of the preceding two annual meetings of stockholders and whose election at the upcoming annual meeting is being recommended by the Board, shall be counted as Nominees for purposes of determining when the Maximum Number has been reached. In the event that one or more vacancies for any reason occurs on the Board after the deadline set forth in Section 3.4(d) below but before the date of the annual meeting, and the Board resolves to reduce

the size of the Board in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced. If the number of Nominees pursuant to this Section 3.4 for any annual meeting of stockholders exceeds the Maximum Number then, promptly upon notice from the Corporation, each Nominating Stockholder will select one Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Nominating Stockholder's Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Stockholder has selected one Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Section 3.4(d), a Nominating Stockholder becomes ineligible or withdraws its nomination, or a Nominee becomes ineligible, unwilling or unable to serve on the Board, or a Nominee is thereafter nominated for election by the Board, whether before or after the mailing of the definitive proxy statement, then the nomination shall be disregarded, and the Corporation: (i) shall not be required to include in its proxy materials the disregarded Nominee or any successor or replacement nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder; and (ii) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy materials, that the Nominee will not be included as a Nominee in the proxy materials and will not be voted on at the annual meeting.

(c) For purposes of this Section 3.4:

(i) An "**Eligible Holder**" is a person who has owned (as defined below) the Required Ownership Percentage (as defined below) of the Corporation's outstanding common stock (the "**Required Shares**") continuously for the Minimum Holding Period (as defined below) as of both the date that the Nomination Notice is delivered to, or mailed to and received by, the Secretary of the Corporation in accordance with this Section 3.4 and the record date for determining the stockholders entitled to vote at the annual meeting and must continue to own the Required Shares through the annual meeting date. The "**Required Ownership Percentage**" is 3% or more of the Corporation's outstanding common stock, and the "**Minimum Holding Period**" is 3 years. For purposes of this Section 3.4, (i) a group of funds under common management and investment control, (ii) a group of funds under common management and funded primarily by a single employer or (iii) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, shall be treated as one Eligible Holder if such Eligible Holder shall provide together with the Nomination Notice documentation reasonably satisfactory to the Corporation in its sole and absolute discretion that demonstrates that the funds meet the criteria of clause (i), (ii) or (iii). For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all requirements and obligations for an individual Eligible Holder that are set forth in this Section 3.4, including the Minimum Holding Period, shall apply to each member of such group; *provided, however*, that the Required Ownership Percentage shall apply to the ownership of the group in the aggregate. Should any stockholder withdraw from a group of Eligible Holders at any time prior to the annual meeting of stockholders, the group of Eligible Stockholders shall only be deemed to own the shares held by the remaining members of the group.

(ii) An Eligible Holder “owns” only those outstanding shares of the Corporation as to which the Eligible Holder possesses both:

(A) the full voting and investment rights pertaining to the shares; and

(B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares;

*provided* that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares: (1) sold by such Eligible Holder or any of its affiliates in any transaction that has not been settled or closed, (2) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an agreement to resell, or (3) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder’s or any of its affiliates’ full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, any gain or loss arising from the full economic interest in such shares by such Eligible Holder or any of its affiliates.

An Eligible Holder “owns” shares held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Holder’s ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Holder. An Eligible Holder’s ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares; provided, that the Eligible Holder has the power to recall such loaned shares on no more than five business days’ notice and has recalled such loaned shares as of the date of the Nomination Notice and holds such shares through the date of the annual meeting. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. Whether outstanding shares of the Corporation are “owned” for these purposes shall be determined by the Board or its designee acting in good faith.

(iii) No person shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any person appears as a member of more than one group, it shall be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.

(d) To nominate a Nominee, the Nominating Stockholder must submit the Nomination Notice no earlier than 150 calendar days and no later than 120 calendar days before the anniversary of the date that the Corporation mailed its proxy statement for the prior year’s annual meeting of stockholders; *provided, however*, that, subject to the immediately following sentence, if the annual meeting is called for a date that is more than 30 days earlier or more than

60 days after such anniversary date, or if no annual meeting was held in the preceding year, for notice by the Nominating Stockholder to be timely, it must be so received not later than the later of (x) the close of business on the 180th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation. The public announcement of an adjournment or postponement of an annual meeting shall not commence a new time period for the giving of a Nomination Notice under this Section 3.4. Within the time period specified in this Section 3.4(d) for delivering the Nomination Notice, a Nominating Stockholder must submit to the Secretary of the Corporation at the principal executive offices of the Corporation all of the following information and documents (collectively, the “*Nomination Notice*”):

(i) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven calendar days prior to the date the Nomination Notice is delivered to, or mailed to and received by, the Secretary of the Corporation, the Nominating Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Nominating Stockholder’s agreement to provide, within five business days after (A) the record date for the annual meeting (if, prior to the record date, the Corporation (1) has made a public announcement of such record date or (2) delivered a written notice of the record date (including by electronic mail) to the Nominating Stockholder) or (B) the date on which the Corporation delivered to the Nominating Stockholder written notice (including by electronic mail) of the record date (if such notice is provided after the record date), written statements from the record holder and intermediaries verifying the Nominating Stockholder’s continuous ownership of the Required Shares through the record date;

(ii) a copy of the Schedule 14N (or any successor form) relating to the Nominee, completed and filed with the SEC by the Nominating Stockholder as applicable, in accordance with SEC rules;

(iii) the information required with respect to the nomination of directors pursuant to Section 3.2 of these Bylaws;

(iv) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(v) the consent of each Nominee to being named in the proxy statement as a nominee and to serving as a director if elected;

(vi) a representation and warranty by the Nominating Stockholder (including each group member):

(A) that the Nominating Stockholder acquired the Required Shares in the ordinary course of business and neither the Nominating Stockholder nor the Nominee nor their respective affiliates and associates acquired, or are holding, securities of the Corporation for the purpose, or with the effect, of influencing or changing control of the Corporation;

(B) that the Nominating Stockholder intends to maintain the Required Ownership Percentage through the date of the annual meeting and as to whether or not the Nominating Stockholder intends to continue to hold the Required Shares for at least one year following the annual meeting;

(C) that the Nominee's candidacy or, if elected, Board membership would not violate applicable state or federal law or the rules of any stock exchange on which the Corporation's securities are traded;

(D) that the Nominating Stockholder has not nominated and will not nominate for election any individual as a director at the annual meeting other than its Nominee(s);

(E) that the Nominating Stockholder has not and will not engage in a, and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) (without reference to the exception in Rule 14a-1(l)(2)(iv)) (or any successor rules) with respect to the annual meeting, other than with respect to the Nominee or any nominee of the Board; and

(F) that the Nominating Stockholder will not use any proxy card other than the Corporation's proxy card in soliciting stockholders in connection with the election of a Nominee at the annual meeting;

(vii) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

(viii) an executed agreement, in a form deemed satisfactory by the Board or its designee, acting in good faith, pursuant to which the Nominating Stockholder (including each group member) agrees to:

(A) comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

(B) file any written solicitation materials with the Corporation's stockholders relating to one or more of the Corporation's directors or director nominees or any Nominee with the SEC, regardless of whether any such filing is required under rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(C) assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder or the Nominee with the Corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;

(D) indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers, employees, agents, affiliates, Control Persons or other persons acting on behalf of the Corporation individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers, employees, agents, affiliates, Control Persons or other persons acting on behalf of the Corporation arising out of or relating to a failure or alleged failure of the Nominating Stockholder or the Nominee to comply with, or any breach or alleged breach of, his, her or its, as applicable, obligations, agreements or representations under this Section 3.4; and

(E) provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made not misleading;

(ix) the questionnaire, representation and agreement required by Section 3.2(i), completed and signed by the Nominee:

The information and documents required by this Section 3.4(d) shall be: (1) provided with respect to and executed by each group member, in the case of information applicable to group members; and (2) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in this Section 3.4(d) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

(e) In the event that any information or communication provided by the Nominating Stockholder or any Nominee(s) to the Corporation or its stockholders ceases to be true and correct in all material respects or omits a material fact necessary to make the statements made not misleading, each Nominating Stockholder or Nominee, as the case may be, shall promptly (and in any event within 48 hours of discovering such misstatement or omission) notify the Secretary of the Corporation of (i) any defect in such previously provided information and (ii) the information that is required to correct any such defect. In the event that the Nominating Stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Section 3.4(c), such Nominating Stockholder shall promptly notify the Secretary of the Corporation.

(f) Notwithstanding anything to the contrary contained in this Section 3.4, the Corporation may omit from its proxy statement any Nominee and any information concerning such Nominee (including a Nominating Stockholder's statement in support), and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of the Nominee, if:

(i) the Corporation receives a notice pursuant to Section 3.2 of these Bylaws that a stockholder intends to nominate a candidate for director at the annual meeting;

(ii) if the Nominating Stockholder who has nominated such Nominee has engaged in or is currently engaged in a, or has been or is a “participant” in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Nominee(s) or a nominee of the Board;

(iii) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the annual meeting of stockholders to present the nomination submitted pursuant to this Section 3.4 or the Nominating Stockholder withdraws its nomination;

(iv) the Board, acting in good faith, determines that such Nominee’s nomination or election to the Board would result in the Corporation violating or failing to be in compliance with these Bylaws or the Corporation’s Certificate of Incorporation or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of any stock exchange on which the Corporation’s securities are traded;

(v) the Nominee was nominated for election to the Board pursuant to this Section 3.4 at one of the Corporation’s two preceding annual meetings of stockholders and either withdrew or became ineligible or unavailable for election at such annual meeting or received a vote of less than 25% of the shares of common stock entitled to vote for such Nominee at either such annual meeting;

(vi) the Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended;

(vii) the Corporation is notified, or the Board or its designee acting in good faith determines, that a Nominating Stockholder has failed to continue to satisfy the eligibility requirements described in Section 3.4(c), any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statement not misleading), the Nominee becomes unwilling or unable to serve on the Board or any violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Stockholder or the Nominee under this Section 3.4;

(viii) if the Nominee (A) is not independent under the listing standards of each principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the SEC and any publicly disclosed standards used by the Board in determining and disclosing independence of the Corporation’s directors, in each case as determined by the Board in its sole discretion, or (B) does not qualify as independent under the audit committee independence requirements set forth in the rules of the principal U.S. exchange on which shares of the Corporation are listed or as a “non-employee director” under Exchange Act Rule 16b-3;

(ix) if the Nominee is a named subject of a pending criminal proceeding (excluding traffic violations and other minor misdemeanors) or has been convicted in such a criminal proceeding within the past 10 years; and

(x) if the Nominee is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended.

(g) Notwithstanding anything to the contrary contained in this Section 3.4, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the statement in support of the Nominee included in the Nomination Notice, if the Board or its designee in good faith determines that (i) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading, (ii) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any individual, corporation, partnership, association or other entity, organization or governmental authority, (iii) the inclusion of such information in the proxy statement would otherwise violate the SEC proxy rules or any other applicable law, rule or regulation or (iv) the inclusion of such information in the proxy statement would impose a material risk of liability upon the Corporation.

(h) The Corporation may solicit against, and include in the proxy statement its own statement relating to, any Nominee.

(i) This Section 3.4 shall be the exclusive method for stockholders to include nominees for director in the Corporation's proxy materials.

**Section 3.5 White Proxy Card.** Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board.

#### **ARTICLE IV BOARD MEETINGS**

**Section 4.1 Annual Meetings.** The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

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

**Section 4.3 Special Meetings.** Special meetings of the Board (a) may be called by the Chairman of the Board or Chief Executive Officer and (b) shall be called by the Chairman of the Board, Chief Executive Officer or Secretary on the written request of at least a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place (if any) as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at

least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these Bylaws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.3.

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

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

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

## **ARTICLE V COMMITTEES OF DIRECTORS**

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

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

**Section 5.3 Alternate Members.** The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee.

**Section 5.4 Procedures.** Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these Bylaws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these Bylaws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these Bylaws.

## **ARTICLE VI OFFICERS**

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

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

(b) President. The President, if any, shall be subject to the direction and control of the Chief Executive Officer and the Board and shall have such powers and duties as the board of directors, or the Chief Executive Officer may assign to the President. In the absence (or inability or refusal to act) of the Chief Executive Officer, the President shall preside when present at all meetings of the stockholders and (if he or she shall be a director) of the Board.

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

(d) Secretary.

(i) The Secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chief Executive Officer or the President. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or any Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

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

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

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

**Section 6.2 Term of Office; Removal; Vacancies.** The elected officers of the Corporation may be elected annually by the Board at its first meeting held after each annual meeting of stockholders. All officers elected by the Board shall hold office until their successors are duly elected and qualified or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chief Executive Officer or President may also be removed, with or without cause, by the Chief Executive Officer or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chief Executive Officer or President may be filled by the Chief Executive Officer or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

**Section 6.3 Other Officers.** The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

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

## **ARTICLE VII SHARES**

**Section 7.1 Certificated and Uncertificated Shares.** The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed in accordance with Section 7.3 representing the number of shares registered in certificate form. The Corporation shall not have power to issue a certificate representing shares in bearer form.

**Section 7.2 Multiple Classes of Stock.** If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise

provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

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

**Section 7.4 Consideration and Payment for Shares.**

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

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued.

**Section 7.5 Lost, Destroyed or Wrongfully Taken Certificates.**

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

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

#### **Section 7.6 Transfer of Stock.**

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VIII INDEMNIFICATION**

**Section 8.1 Right to Indemnification.** Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "*proceeding*"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter a "*Covered Person*"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, against all expenses, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person in connection with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify or advance expenses to a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

**Section 8.2 Right to Advancement of Expenses.** In addition to the right to indemnification conferred in Section 8.1, a Covered Person shall also have the right to be paid by the Corporation the expenses (including, without limitation, attorneys' fees) incurred in defending, testifying, or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an "**advancement of expenses**"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Covered Person, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "**undertaking**"), by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "**final adjudication**") that such Covered Person is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

**Section 8.3 Right of Indemnitee to Bring Suit.** If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim to the fullest extent permitted by law. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Covered Person shall also be entitled to be paid the expense of prosecuting or defending such suit. In any suit brought by (a) the Covered Person to enforce a right to indemnification hereunder (but not in a suit brought by a Covered Person to enforce a right to an advancement of expenses) it shall be a defense that, and (b) the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Covered Person has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Covered Person has not met such applicable standard of conduct, shall create a presumption that the Covered Person has not met the applicable standard of conduct or, in the case of such a suit brought by the Covered Person, shall be a defense to such suit. In any suit brought by the Covered Person to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Covered Person is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

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

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

**Section 8.6 Indemnification of Other Persons.** This Article VIII shall not limit the right of the Corporation to the extent and in the manner permitted by law to indemnify and to advance expenses to persons other than Covered Persons. Without limiting the foregoing, the Corporation may grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Covered Persons under this Article VIII.

**Section 8.7 Amendments.** Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these Bylaws inconsistent with this Article VIII, shall, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Covered Persons on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

**Section 8.8 Certain Definitions.** For purposes of this Article VIII, (a) references to “other enterprise” shall include any employee benefit plan; (b) references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “serving at the request of the Corporation” shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” for purposes of Section 145 of the DGCL.

**Section 8.9 Contract Rights.** The rights provided to Covered Persons pursuant to this Article VIII (a) shall be contract rights based upon good and valuable consideration, pursuant to which a Covered Person may bring suit as if the provisions of this Article VIII were set forth in a separate written contract between the Covered Person and the Corporation, (b) shall fully vest at the time the Covered Person first assumes his or her position as a director or officer of the Corporation, (c) are intended to be retroactive and shall be available with respect to any act or omission occurring prior to the adoption of this Article VIII, (d) shall continue as to a Covered Person who has ceased to be a director or officer of the Corporation and (e) shall inure to the benefit of the Covered Person’s heirs, executors and administrators.

**Section 8.10 Severability.** If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

## ARTICLE IX MISCELLANEOUS

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

### **Section 9.2 Fixing Record Dates.**

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a record date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 9.2(a) at the adjourned meeting.

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

(c) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is otherwise required, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or the Secretary of the Corporation. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is otherwise required, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

### **Section 9.3 Means of Giving Notice.**

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

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these Bylaws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. Each document enclosed with or annexed or appended to a notice will be deemed to be a part of such notice for purposes of the foregoing.

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

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

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

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

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

**Section 9.4 Waiver of Notice.** Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these Bylaws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, the Board or a committee of the Board need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

**Section 9.5 Meeting Attendance via Remote Communication Equipment.**

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

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote

communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) **Board Meetings.** Unless otherwise restricted by applicable law, the Certificate of Incorporation, or these Bylaws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

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

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

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

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

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

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

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

**Section 9.13 Surety Bonds.** Such officers, employees and agents of the Corporation (if any) as the Chief Executive Officer, the President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chief Executive Officer, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

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

**Section 9.15 Amendments.**

(a) The Board shall have the power to adopt, amend, alter or repeal the Bylaws. The affirmative vote of a majority of the Whole Board shall be required to adopt, amend, alter or repeal the Bylaws.

(b) The Bylaws may be adopted, amended, altered or repealed by the stockholders at any special meeting of the stockholders if duly called for that purpose (provided; that in the notice of such special meeting, notice of such purpose shall be given), or at any annual meeting; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by applicable law or the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the Bylaws.

**FOURTH AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
VIPER ENERGY PARTNERS LLC**

**Dated as of August 19, 2025**

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**FOURTH AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**VIPER ENERGY PARTNERS LLC**

A Delaware Limited Liability Company

This Fourth Amended and Restated Limited Liability Company Agreement (the “**Agreement**”) of Viper Energy Partners LLC, a Delaware limited liability company (the “**Company**”), dated as of August 19, 2025 (the “**Effective Date**”), is entered into by and among VNOM Sub, Inc. (f/k/a Viper Energy, Inc.), a Delaware corporation (“**Old Viper**”), Viper Energy, Inc. (f/k/a New Cobra Pubco, Inc.), a Delaware corporation (“**Viper**”), as Managing Member, Diamondback Energy, Inc., a Delaware corporation (“**Diamondback**”), Diamondback E&P LLC, a Delaware limited liability company (“**Diamondback E&P**”), Tumbleweed Royalty IV, LLC, a Delaware limited liability company (“**TWR IV**”), and the other parties listed on Exhibit A hereto. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

**RECITALS**

WHEREAS, prior to the Effective Date the Company was governed by that certain Third Amended and Restated Limited Liability Company Agreement, dated as of October 1, 2024 (as amended, the “**Previous Agreement**”); and

WHEREAS, Old Viper, the Company, Viper, Cobra Merger Sub, Inc., a Delaware corporation, Scorpion Merger Sub, Inc., a Delaware corporation, Sitio Royalties Corp., a Delaware corporation and Sitio Royalties Operating Partnership, LP, a Delaware limited partnership (“**Sitio Opco**”), have entered into that certain Agreement and Plan of Merger, dated as of June 2, 2025 (the “**Merger Agreement**”), pursuant to which, among other things, the Company agreed to issue Units to unitholders of Sitio Opco and to amend and restate the Previous Agreement.

NOW, THEREFORE, the Previous Agreement is hereby amended and, as so amended, is restated in its entirety as follows:

**ARTICLE I  
DEFINITIONS**

Section 1.1 *Definitions*. The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

“**Adjusted Capital Account**” means, with respect to any Member, the balance in such Member’s Capital Account at the end of each taxable period of the Company, after giving effect to the following adjustments: (a) credit to such Capital Account any amounts that such Member is obligated to restore under the standards set by Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (or is deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5)) and (b) debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“**Adjusted Property**” means any property the Carrying Value of which has been adjusted pursuant to Section 5.3(d).

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by or is under common Control with, the Person in question.

“**Agreed Allocation**” means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 6.1, including a Curative Allocation (if appropriate to the context in which the term “**Agreed Allocation**” is used).

“**Agreed Value**” of (a) a Contributed Property means the fair market value of such property or other consideration at the time of contribution and (b) an Adjusted Property means the fair market value of such Adjusted Property on the date of the Revaluation Event, in each case as determined by the Managing Member.

“**Associate**” means, when used to indicate a relationship with any Person, (a) any corporation or organization of which such Person is a director, officer, manager, general partner or managing member or is, directly or indirectly, the owner of 20% or more of any class of voting stock or other voting interest, (b) any trust or other estate in which such Person has at least a 20% beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity, and (c) any relative or spouse of such Person, or any relative of such spouse, who has the same principal residence as such Person.

“**Audit Committee**” means the Audit Committee of the Board of Directors of Viper.

“**Bad Faith**” means, with respect to any determination, action or omission, of any Person, board or committee, that such Person, board or committee reached such determination, or engaged in or failed to engage in such act or omission, with the belief that such determination, action or omission was adverse to the interest of the Company.

“**Book-Tax Disparity**” means, with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for U.S. federal income tax purposes as of such date. A Member’s share of the Company’s Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Member’s Capital Account balance as maintained pursuant to Section 5.3 and the hypothetical balance of such Member’s Capital Account computed as if it had been maintained strictly in accordance with U.S. federal income tax accounting principles.

“**Business Day**” means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America or the State of Texas shall not be regarded as a Business Day.

“**Capital Account**” means the capital account maintained for a Member pursuant to Section 5.3.

“**Capital Contribution**” means any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Member contributes to the Company or that is contributed or deemed contributed to the Company on behalf of a Member (including in the case of an underwritten offering of Class A Shares, the amount of any underwriting discounts and commissions).

“**Carrying Value**” means (a) with respect to a Contributed Property or Adjusted Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, Simulated Depletion, amortization and other cost recovery deductions charged to the Members’ Capital Accounts in respect of such property and (b) with respect to any other Company property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. In the case of any oil and gas property (as defined in Section 614 of the Code), adjusted basis shall be determined pursuant to Treasury Regulation Section 1.613A-3(e)(3)(iii)(C). The Carrying Value of any property shall be adjusted from time to time in accordance with Section 5.3(e) and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Company properties, as deemed appropriate by the Managing Member.

“**Cash Amount**” means an amount of cash equal to (i) the number of Tendered Units multiplied by (ii) the Current Market Price as of the date of determination.

“**Certificate**” means a certificate, in such form as may be adopted by the Managing Member, issued by the Company evidencing ownership of one or more classes of Membership Interests.

“**Certificate of Formation**” means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on September 18, 2013, as such Certificate of Formation may be amended, supplemented or restated from time to time.

“**Charter**” means the Certificate of Incorporation of Viper, as amended from time to time.

“**Class A Share**” means a share of Class A common stock, par value \$0.000001 per share, of Viper.

“**Class B Common Stock Option Agreement**” means the Class B Common Stock Option Agreement, dated as of October 1, 2024 by and between Viper, the Company and TWR IV.

“**Class B Share**” means a share of Class B common stock, par value \$0.000001 per share, of Viper.

“**Closing Price**” means, as of the date of determination, the last sale price on such day, regular way, or in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the principal National Securities Exchange on which the Class A Shares are listed or admitted to trading.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended and in effect from time to time. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of any successor law.

“**Commission**” means the United States Securities and Exchange Commission.

“**Common Share Amount**” means a number of Class A Shares equal to the number of Tendered Units.

“**Company Group**” means, collectively, the Company and its Subsidiaries.

“**Company Minimum Gain**” means that amount determined in accordance with the principles of Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

“**Contributed Property**” means each property or other asset, in such form as may be permitted by the Delaware LLC Act, but excluding cash, contributed or deemed contributed to the Company. Once the Carrying Value of a Contributed Property is adjusted pursuant to [Section 5.3\(d\)](#), such property or other asset shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

“**Control**” or “**control**” (including the terms “**controlled**” or “**controlling**”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Curative Allocation**” means any allocation of an item of income, gain, deduction, loss or credit pursuant to the provisions of [Section 6.1\(c\)\(xii\)](#).

“**Current Market Price**” means, as of the date of determination, the average of the daily Closing Prices per Class A Share for the 20 consecutive Trading Days immediately prior to such date.

“**Cut-Off Date**” means the fifth (5th) Business Day after Viper’s receipt of a Notice of Redemption.

“**Delaware LLC Act**” means the Delaware Limited Liability Company Act, 6 Del C. Section 18-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

“**Economic Risk of Loss**” has the meaning set forth in Treasury Regulation Section 1.752-2(a).

“**Exchange**” means (i) a Redemption by the Company and the Managing Member of one or more Paired Units for Class A Shares and (ii) the purchase of Tendered Units by the Managing Member from any Non-Managing Member for the Cash Purchase Price.

“**Exchange Agreement**” means (i) the Second Amended & Restated Exchange Agreement, dated as of October 1, 2024 by and among Viper, Diamondback, Diamondback E&P, the Company and TWR IV and (ii) Exchange Agreement, dated as of February 14, 2025, by and among Viper, the Company, EnCap Energy Capital Fund X, L.P. and NGU Management LLC.

“**Exchange Right**” means the rights of the Members and Viper pursuant to Section 14.1(a) and Section 14.1(b), respectively, of this Agreement.

“**Good Faith**” means, with respect to any determination, action or omission, of any Person, board or committee, that such determination, action or omission was not taken in Bad Faith.

“**Gross Liability Value**” means, with respect to any Liability of the Company described in Treasury Regulation Section 1.752-7(b)(3)(i), the amount of cash that a willing assignor would pay to a willing assignee to assume such Liability in an arm’s-length transaction.

“**Group**” means two or more Persons that, with or through any of their respective Affiliates or Associates, have any contract, arrangement, understanding or relationship for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent given to such Person in response to a proxy or consent solicitation made to 10 or more Persons), exercising investment power over or disposing of any Membership Interests with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, Membership Interests.

“**Group Member**” means a member of the Company Group.

“**Group Member Agreement**” means the partnership agreement of any Group Member that is a limited or general partnership, the limited liability company agreement of any Group Member that is a limited liability company, other than the Company, the certificate of incorporation and bylaws or similar organizational documents of any Group Member that is a corporation, the joint venture agreement or similar governing document of any Group Member that is a joint venture and the governing or organizational or similar documents of any other Group Member that is a Person other than a limited or general partnership, limited liability company, corporation or joint venture, as such may be amended, supplemented or restated from time to time.

“**Indemnitee**” means (a) any Member, (b) any Person who is or was an Affiliate of such Member, (c) any Person who is or was a manager, managing member, general partner, director, officer, employee, agent, fiduciary or trustee of any Group Member, a Member or any of their respective Affiliates, (d) any Person who is or was serving at the request of a Managing Member or any of its Affiliates as an officer, director, manager, managing member, general partner, employee, agent, fiduciary or trustee of another Person owing a fiduciary or similar duty to any Group Member; *provided that* a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services, (e) any Person who controls a Member and (f) any Person the Managing Member designates as an “Indemnitee” for purposes of this Agreement because such Person’s service, status or relationship exposes such Person to potential claims, demands, actions, suits or proceedings relating to the Company Group’s business and affairs.

**“Investor Group”** shall mean any of the following groups: (1) BX Royal Aggregator LP, a Delaware limited partnership, and RRR Aggregator LLC, a Delaware limited liability company, collectively, (2) Source Energy Leasehold, LP, a Delaware limited partnership, Source Energy Permian II, LLC, a Delaware limited liability company, Permian Mineral Acquisitions, LP, a Delaware limited partnership, and Sierra Energy Royalties, LLC, a Delaware limited liability company, collectively, or (3) KMF DPM HoldCo, LLC, a Delaware limited liability company, and Chambers DPM HoldCo, LLC, a Delaware limited liability company, collectively.

**“Liability”** means any liability or obligation of any nature, whether accrued, contingent or otherwise.

**“Liquidation Date”** means the date on which any event giving rise to the dissolution of the Company occurs.

**“Liquidator”** means one or more Persons selected by the Managing Member to perform the functions described in Section 12.2 as liquidating trustee of the Company within the meaning of the Delaware LLC Act.

**“Managing Member”** means Viper and its successors and permitted assigns that are admitted to the Company as the managing member of the Company, in its capacity as the managing member of the Company. The Managing Member is the sole managing member of the Company and the holder of the Managing Member Interest.

**“Managing Member Interest”** means the interest of the Managing Member and its wholly-owned Subsidiaries in the Company (including with respect to the Managing Member in its capacity as managing member without reference to any Units), evidenced by Units held by the Managing Member and its wholly-owned Subsidiaries, and includes any and all rights, powers and benefits to which the Managing Member and its wholly-owned Subsidiaries are entitled as provided in this Agreement, together with all obligations of the Managing Member and its wholly-owned Subsidiaries to comply with the terms and provisions of this Agreement.

**“Member”** means any of the Managing Member, the wholly-owned Subsidiaries of the Managing Member and the Non-Managing Members.

**“Member Nonrecourse Debt”** has the meaning set forth in Treasury Regulation Section 1.704-2(b)(4).

**“Member Nonrecourse Debt Minimum Gain”** has the meaning set forth in Treasury Regulation Section 1.704-2(i)(2).

**“Member Nonrecourse Deductions”** means any and all items of loss, deduction or expenditure (including any expenditure described in Section 705(a)(2)(B) of the Code), Simulated Depletion or Simulated Loss that, in accordance with the principles of Treasury Regulation Section 1.704-2(i), are attributable to a Member Nonrecourse Debt.

**“Membership Interest”** means, as applicable, the Managing Member Interest and any Non-Managing Member Interests.

**“National Securities Exchange”** means an exchange registered with the Commission under Section 6(a) of the Securities Exchange Act (or any successor to such Section) and any other securities exchange (whether or not registered with the Commission under Section 6(a) of the Securities Exchange Act (or successor to such Section)) that the Managing Member shall designate as a National Securities Exchange for purposes of this Agreement.

**“Net Agreed Value”** means, (a) in the case of any Contributed Property, the Agreed Value of such Contributed Property reduced by any Liabilities either assumed by the Company upon such contribution or to which such Contributed Property is subject when contributed and (b) in the case of any property distributed to a Member by the Company, the Company’s Carrying Value of such property (as adjusted pursuant to Section 5.3(d)) at the time such property is distributed, reduced by any Liabilities either assumed by such Member upon such distribution or to which such property is subject at the time of distribution, in either case as determined and required by the Treasury Regulations promulgated under Section 704(b) of the Code.

**“Net Income”** means, for any taxable period, the excess, if any, of the Company’s items of income and gain for such taxable period over the Company’s items of loss and deduction for such taxable period. The items included in the calculation of Net Income shall be determined in accordance with Section 5.3(b) and shall include Simulated Gain (as provided in Section 6.1(c)(iii)), but shall not include Simulated Depletion, Simulated Loss or items specially allocated under Section 6.1(b).

**“Net Loss”** means, for any taxable period, the excess, if any, of the Company’s items of loss and deduction for such taxable period over the Company’s items of income and gain for such taxable period. The items included in the calculation of Net Loss shall be determined in accordance with Section 5.3(b) and shall include Simulated Gain (as provided in Section 6.1(c)(iii)), but shall not include Simulated Depletion, Simulated Loss or any items specially allocated under Section 6.1(b).

**“Non-Managing Member”** means each Person other than the Managing Member or each of its wholly-owned Subsidiaries that owns one or more Units.

**“Non-Managing Member Interest”** means an interest of a Non-Managing Member in the Company, evidenced by Units held by such Non-Managing Member, and includes any and all benefits to which such Member is entitled as provided in this Agreement, together with all obligations of such Member pursuant to the terms and provisions of this Agreement.

**“Noncompensatory Option”** has the meaning set forth in Treasury Regulation Section 1.721-2(f).

**“Nonrecourse Built-in Gain”** means with respect to any Contributed Properties or Adjusted Properties that are subject to a mortgage or pledge securing a Nonrecourse Liability, the amount of any taxable gain that would be allocated to the Members pursuant to Section 6.2(c) if such properties were disposed of in a taxable transaction in full satisfaction of such liabilities and for no other consideration.

**“Nonrecourse Deductions”** means any and all items of loss, deduction or expenditure (including any expenditure described in Section 705(a)(2)(B) of the Code), Simulated Depletion or Simulated Loss that, in accordance with the principles of Treasury Regulation Section 1.704-2(b)(1), are attributable to a Nonrecourse Liability.

“**Nonrecourse Liability**” has the meaning set forth in Treasury Regulation Section 1.752-1(a)(2).

“**Organizational Documents**” means any charter, certificate of incorporation, articles of association, partnership agreements, limited liability company agreements, bylaws, operating agreements or similar formation or governing documents and instruments.

“**Outstanding**” means, with respect to Membership Interests, all Membership Interests that are issued by the Company and reflected as outstanding on the books and records as of the date of determination; *provided* that any Unit held by a Non-Managing Member shall not be entitled to vote and shall not be considered to be Outstanding for voting purposes under this Agreement.

“**Partnership Representative**” has the meaning set forth in Section 9.4(a).

“**Percentage Interest**” means as of any date of determination as to any Unitholder with respect to Units, the quotient obtained by dividing (i) the number of Units held by such Unitholder by (ii) the total number of Outstanding Units.

“**Person**” means an individual or a corporation, firm, limited liability company, partnership, joint venture, trust, unincorporated organization, association, government agency or political subdivision thereof or other entity.

“**Pro Rata**” means (a) when used with respect to Units or any class thereof, apportioned among all designated Units in accordance with their relative Percentage Interests and (b) when used with respect to Members or Record Holders, apportioned among all Members or Record Holders in accordance with their relative Percentage Interests.

“**PSA**” means that certain Purchase and Sale Agreement, dated as of September 11, 2024, by and among Old Viper, the Company, TWR IV SellCo Parent, LLC, a Delaware limited liability company, and TWR IV.

“**Quarter**” means, unless the context requires otherwise, a fiscal quarter of the Company.

“**Recapture Income**” means any gain recognized by the Company (computed without regard to any adjustment required by Section 734 or Section 743 of the Code) upon the disposition of any property or asset of the Company, which gain is characterized as ordinary income because it represents the recapture of deductions previously taken with respect to such property or asset.

“**Record Date**” means the date established by the Managing Member or otherwise in accordance with this Agreement for determining the identity of Record Holders entitled to receive any report or distribution or to participate in any offer.

“**Record Holder**” means the Person in whose name any Membership Interest is registered in the books and records of the Company as of the Company’s close of business on a particular Business Day.

“**Required Allocations**” means any allocation of an item of income, gain, loss or deduction pursuant to Section 6.1(b)(i), 6.1(b)(ii), 6.1(b)(iv), 6.1(b)(v), 6.1(b)(vi), 6.1(b)(vii), 6.1(b)(ix) and 6.1(c).

“**Revaluation Event**” means an event that results in an adjustment of the Carrying Value of each Company property pursuant to Section 5.3(d).

“**Securities Act**” means the Securities Act of 1933, as amended, supplemented or restated from time to time, and any successor to such statute.

“**Securities Exchange Act**” means the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time, and any successor to such statute.

“**Simulated Basis**” means the Carrying Value of any oil and gas property (as defined in Section 614 of the Code).

“**Simulated Depletion**” means, with respect to an oil and gas property (as defined in Section 614 of the Code), a depletion allowance computed in accordance with federal income tax principles set forth in Treasury Regulation Section 1.611-2(a)(1) (as if the Simulated Basis of the property was its adjusted tax basis) and in the manner specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(k)(2), applying the cost depletion method. For purposes of computing Simulated Depletion with respect to any oil and gas property (as defined in Section 614 of the Code), the Simulated Basis of such property shall be deemed to be the Carrying Value of such property, and in no event shall such allowance for Simulated Depletion, in the aggregate, exceed such Simulated Basis. If the Carrying Value of an oil and gas property is adjusted pursuant to Section 5.3(d) during a taxable period, following such adjustment Simulated Depletion shall thereafter be calculated under the foregoing provisions based upon such adjusted Carrying Value.

“**Simulated Gain**” means the excess, if any, of the amount realized from the sale or other disposition of an oil or gas property (as defined in Section 614 of the Code) over the Carrying Value of such property and determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(k)(2).

“**Simulated Loss**” means the excess, if any, of the Carrying Value of an oil or gas property (as defined in Section 614 of the Code) over the amount realized from the sale or other disposition of such property and determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(k)(2).

“**Sitio Unitholders**” means those Persons listed on Exhibit C.

“**Specified Redemption Date**” means the tenth (10th) Business Day after the receipt by the Company of a Notice of Redemption (or an election to receive the Common Share Amount in respect of Tendered Units) or as otherwise agreed to in writing by the Members, or such later date (i) specified in the Notice of Redemption or (ii) on which a contingency described in Section 14.1(a)(i) that is specified in the Notice of Redemption is satisfied.

“**Subsidiary**” means, with respect to any Person, (a) a corporation of which more than 50% of the voting power of shares entitled (without regard to the occurrence of any contingency) to vote in the election of directors or other governing body of such corporation is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries of such Person or a combination thereof, (b) a partnership (whether general or limited) in which such Person or a Subsidiary of such Person is, at the date of determination, a general partner of such partnership, but only if such Person, directly or by one or more Subsidiaries of such Person, or a combination thereof, controls such partnership, directly or indirectly, at the date of determination or (c) any other Person in which such Person, one or more Subsidiaries of such Person, or a combination thereof, directly or indirectly, at the date of determination, has (i) a majority ownership interest or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person.

“**Tax Matters Partner**” has the meaning set forth in Section 9.4(a).

“**Trading Day**” means a day on which the principal National Securities Exchange on which the Class A Shares are listed or admitted to trading is open for the transaction of business.

“**Treasury Regulations**” means the regulations (including temporary regulations) promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar or substitute, temporary or final Treasury Regulations.

“**Unit**” means a limited liability company interest in the Company having the rights and obligations specified with respect to “Units” in this Agreement; *provided* that any Unit held by a Non-Managing Member shall not be entitled to vote and shall not be considered to be Outstanding for voting purposes under this Agreement.

“**Unitholders**” means the Record Holders of Units.

“**Unrealized Gain**” means, as of any date of determination, the excess, if any, attributable to any item of Company property, of (a) the fair market value of such property as of such date (as determined under Section 5.3(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.3(d), as of such date).

“**Unrealized Loss**” means, as of any date of determination, the excess, if any, attributable to any item of Company property, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.3(d), as of such date) over (b) the fair market value of such property as of such date (as determined under Section 5.3(d)).

“**U.S. GAAP**” means United States generally accepted accounting principles, as in effect from time to time, consistently applied.

Section 1.2 *Construction*. Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; (c) the terms “include,” “includes,” “including” and words of like import shall be deemed to be followed by the words “without limitation”; and (d) the terms “hereof,” “herein” and “hereunder” refer to this Agreement as a whole and not to any particular provision of this Agreement. The table of contents and headings contained in this Agreement are for reference purposes only, and shall not

affect in any way the meaning or interpretation of this Agreement. The Managing Member has the power to construe and interpret this Agreement and to act upon any such construction or interpretation. Any construction or interpretation of this Agreement by the Managing Member and any action taken pursuant thereto and any determination made by the Managing Member in good faith shall, in each case, be conclusive and binding on all Record Holders and all other Persons for all purposes.

## **ARTICLE II ORGANIZATION**

Section 2.1 *Formation*. The Company was formed as a limited liability company pursuant to the provisions of the Delaware LLC Act. The Members hereby amend and restate the Previous Agreement in its entirety, effective as of the date of this Agreement. Except as expressly provided to the contrary in this Agreement, the rights, duties, liabilities and obligations of the Members and the administration, dissolution and termination of the Company shall be governed by the Delaware LLC Act.

Section 2.2 *Name*. The name of the Company shall be “Viper Energy Partners LLC.” Subject to applicable law, the Company’s business may be conducted under any other name or names as determined by the Managing Member, including the name of the Managing Member. The words “limited liability company,” “LLC” or similar words or letters shall be included in the Company’s name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The Managing Member may change the name of the Company at any time and from time to time and shall notify the Non-Managing Member(s) of such change in the next regular communication to the Non-Managing Member(s).

Section 2.3 *Registered Office; Registered Agent; Principal Office; Other Offices*. Unless and until changed by the Managing Member, the registered office of the Company in the State of Delaware shall be located at 251 Little Falls Drive, Wilmington, Delaware 19808, and the registered agent for service of process on the Company in the State of Delaware at such registered office shall be Corporation Service Company. The principal office of the Company shall be located at 500 West Texas Avenue, Suite 100, Midland, Texas 79701 or such other place as the Managing Member may from time to time designate by notice to the other Members. The Company may maintain offices at such other place or places within or outside the State of Delaware as the Managing Member determines to be necessary or appropriate. The address of the Managing Member shall be 500 West Texas Avenue, Suite 100, Midland, Texas 79701 or such other place as the Managing Member may from time to time designate by notice to the other Members.

Section 2.4 *Purpose and Business*. The purpose and nature of the business to be conducted by the Company shall be to (a) engage directly in, or enter into or form, hold and dispose of any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the Managing Member, in its sole discretion, and that lawfully may be conducted by a limited liability company organized pursuant to the Delaware LLC Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Company pursuant to the agreements relating to such business activity, and (b) do anything necessary or appropriate to the foregoing, including the making of capital

contributions or loans to a Group Member; *provided, however*, that the Managing Member shall not cause the Company to engage, directly or indirectly, in any business activity that the Managing Member determines would be reasonably likely to cause the Company to be treated as an association taxable as a corporation or otherwise taxable as an entity for federal income tax purposes. The Managing Member has no obligation or duty (including any fiduciary duty) to the Company or the other Members to propose or approve, and may decline to propose or approve, the conduct by the Company of any business in its sole discretion.

Section 2.5 *Powers*. The Company shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described in Section 2.4 and for the protection and benefit of the Company.

Section 2.6 *Term*. The term of the Company commenced upon the filing of the Certificate of Formation in accordance with the Delaware LLC Act and shall continue in existence until the dissolution of the Company in accordance with the provisions of Article XII. The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the Delaware LLC Act.

Section 2.7 *Title to Company Assets*. Title to the assets of the Company, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such assets of the Company or any portion thereof. Title to any or all assets of the Company may be held in the name of the Company, the Managing Member, one or more of its Affiliates or one or more nominees of the Managing Member or its Affiliates, as the Managing Member may determine. The Managing Member hereby declares and warrants that any assets of the Company for which record title is held in the name of the Managing Member or one or more of its Affiliates or one or more nominees of the Managing Member or its Affiliates shall be held by the Managing Member or such Affiliate or nominee for the use and benefit of the Company in accordance with the provisions of this Agreement; *provided, however*, that the Managing Member shall use reasonable efforts to cause record title to such assets (other than those assets in respect of which the Managing Member determines that the expense and difficulty of conveyancing makes transfer of record title to the Company impracticable) to be vested in the Company or one or more of the Company's designated Affiliates as soon as reasonably practicable; *provided, further*, that, prior to the withdrawal or removal of the Managing Member or as soon thereafter as practicable, the Managing Member shall use reasonable efforts to effect the transfer of record title to the Company and, prior to any such transfer, will provide for the use of such assets in a manner satisfactory to any successor Managing Member. All assets of the Company shall be recorded as the property of the Company in its books and records, irrespective of the name in which record title to such assets of the Company is held.

### **ARTICLE III RIGHTS OF MEMBERS**

Section 3.1 *Limitation of Liability*. The Members shall have no liability under this Agreement except as expressly provided in this Agreement or the Delaware LLC Act.

Section 3.2 *Management of Business*. Other than the Managing Member, no Member, in its capacity as such, shall participate in the operation, management or control of the Company's business, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company.

Section 3.3 *Outside Activities of Members*. Each Member shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Company, including business interests and activities in direct competition with the Company Group. Neither the Company nor any of the other Members shall have any rights by virtue of this Agreement in any business ventures of any Member.

Section 3.4 *Rights of Members*.

(a) ARTICLE I Each Member shall have the right, upon written request and at such Member's own expense to obtain a copy of this Agreement and the Certificate of Formation and all amendments thereto.

(b) Each of the Members and each other Person or Group who acquires an interest in Membership Interests hereby agrees to the fullest extent permitted by law that they do not have any rights as Members to receive any information either pursuant to Section 18-305(a) of the Delaware LLC Act or otherwise except for the right to obtain a copy of this Agreement and the Certificate of Formation set forth in Section 3.4(a).

#### **ARTICLE IV CERTIFICATES; RECORD HOLDERS; TRANSFER OF MEMBERSHIP INTERESTS**

Section 4.1 *Certificates*. Notwithstanding anything to the contrary in this Agreement, unless the Managing Member shall determine otherwise in respect of some or all of any or all classes of Membership Interests, Membership Interests shall not be evidenced by certificates. Certificates that are issued, if any, shall be executed on behalf of the Company by the President, Chief Executive Officer or any Vice President and the Chief Financial Officer or the Secretary or any Assistant Secretary of the Company, or by the Managing Member.

Section 4.2 *Unitholders*. The names and addresses of the Members and number of Units of the Members are set forth on Exhibit A attached hereto and incorporated herein. The Managing Member is hereby authorized to complete or amend Exhibit A from time to time to reflect the admission of Members, the withdrawal of a Member, the forfeiture of some or all of the interests of a Member, the transfer of any Membership Interests, and the change of address and other information called for by Exhibit A related to any Member, and to correct, update or amend Exhibit A at any time and from time to time. Such completion, correction or amendment may be made from time to time as and when the Managing Member considers it appropriate.

Section 4.3 *Record Holders*. The Company and the Managing Member shall be entitled to recognize the Record Holder as the Member with respect to any Membership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in, such Membership Interest on the part of any other Person, regardless of whether the Company shall have actual or other notice thereof, except as otherwise provided by law.

(a) The term “*transfer*,” when used in this Agreement with respect to a Membership Interest, shall mean a transaction by which the holder of a Membership Interest assigns all or any part of such Membership Interest to another Person who is or becomes a Member as a result thereof, and includes a sale, assignment, gift, exchange or any other disposition by law or otherwise (but not, in the case of the Membership Interests owned by the Managing Member or any of its wholly-owned Subsidiaries, the pledge, grant of security interest, encumbrance, hypothecation or mortgage), including any transfer upon foreclosure or other exercise of remedies of any pledge, security interest, encumbrance, hypothecation or mortgage. For the avoidance of doubt, the Managing Member is permitted to pledge, encumber and/or grant a lien or other security interest in any or all of its Units.

(b) Except as expressly permitted by this Article IV or Article XIV, no Member may transfer all or any portion of its Units or other Membership Interests except with the written consent of the Managing Member (which may be granted or withheld in the Managing Member’s sole discretion); *provided, further*, that notwithstanding the foregoing and in addition to the requirements of Section 4.5, a Non-Managing Member may not transfer any of such Member’s Units (other than pursuant to and in accordance with the applicable Exchange Agreement or Article XIV) unless the Company provides a written determination in Good Faith based on the most current practically available geological data that there is sufficient Unrealized Gain or Unrealized Loss (or to the extent necessary, items thereof) attributable to the Company assets to make an allocation pursuant to Section 6.1(b)(x) to cause the Capital Account balances of the Members to be equal to the same ratio as the Members’ Percentage Interests immediately prior to such transfer.

(c) Subject to Section 4.6 or Section 4.7, any Non-Managing Member may exchange any of its Units for Class A Shares at any time and from time to time pursuant to the terms of the applicable Exchange Agreement or Article XIV.

(d) Unless the Managing Member determines in Good Faith that a proposed transfer would violate Section 4.4 or Section 4.5, the Managing Member shall be deemed to have consented to a transfer of Units by (i) a Non-Managing Member to another Non-Managing Member or to an Affiliate of Diamondback or, (ii) solely with respect to TWR IV, to any single Affiliate of TWR IV, it being understood that in no event shall more than one Person hold such Units; *provided*, that in connection with any such transfer, the transferor shall transfer an equivalent number of Class B Shares (with respect to TWR IV, solely to the extent TWR IV has exercised its option to acquire any corresponding Class B Shares pursuant to the Class B Common Stock Option Agreement and such Class B Shares remain outstanding) to the transferee, in accordance with the terms of Viper’s governing documents.

(e) Any purported transfer of all or a portion of a Member’s Units or other Membership Interests not complying with this Article IV shall be void and shall not create any obligation on the part of the Company or the other Members to recognize that transfer or to deal with the Person to which the transfer purportedly was made.

Section 4.5 *Restrictions on Transfers.*

(a) Notwithstanding the other provisions of this Article IV, no transfer of any Membership Interests shall be made if such transfer would (A) violate the then-applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer, (B) terminate the existence or qualification of the Company under the laws of the jurisdiction of its formation; or (C) cause the Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for U.S. federal income tax purposes (to the extent not already so treated or taxed).

(b) The Managing Member may impose restrictions on the transfer of Membership Interests if it receives written advice of counsel that such restrictions are necessary or advisable to avoid a significant risk of the Company's becoming taxable as a corporation or otherwise becoming taxable as an entity for federal income tax purposes (to the extent not already so treated or taxed). The Managing Member may impose such restrictions by amending this Agreement.

Section 4.6 *TRW IV Restrictions on Transfers.*

(a) Notwithstanding the other provisions of this Article IV, but subject to Section 4.6(b), TWR IV shall not transfer any of its Units (or take any action that would constitute a transfer if the transferee were admitted as a Member) other than (i) in exchange for Class A Shares pursuant to, and in accordance with, the applicable Exchange Agreement or Article XIV or (ii) as permitted under Section 4.4(d).

(b) For the avoidance of doubt, nothing in this Agreement shall prohibit or otherwise limit transfers of equity interest in any direct or indirect equity holder (including EnCap Investments, L.P. and its Affiliates) of TWR IV, except to the extent the purpose of such transfer is to enter into a transaction with respect to Units or Class A Shares that would be prohibited pursuant to Section 4.6(a).

Section 4.7 *Sitio Unitholder Restrictions on Transfers.*

(a) Notwithstanding the other provisions of this Article IV, no Sitio Unitholder shall transfer any Units or Class B Shares held by such Sitio Unitholder other than, after the date that is five (5) Business Days following the Effective Date, (i) in exchange for Class A Shares pursuant to, and in accordance with, Article XIV or (ii) as permitted under Section 4.4(d). Any transfer of Units and/or Class B Shares in violation of this Section 4.7(a) will be void *ab initio*.

(b) For the avoidance of doubt, nothing in this Agreement shall prohibit or otherwise limit transfers of equity interest in any direct or indirect equity holder of any Sitio Unitholder, except to the extent the purpose of such transfer is to enter into a transaction with respect to Units or Class A Shares that would be prohibited pursuant to Section 4.7(a).

**ARTICLE V  
CAPITAL CONTRIBUTIONS AND ISSUANCE OF MEMBERSHIP INTERESTS**

Section 5.1 *Capitalization.* On and as of the Effective Date, the Members and number of Units of the Members are set forth on Exhibit A attached hereto and incorporated herein.

Section 5.2 *Interest and Withdrawal*. No interest shall be paid by the Company on Capital Contributions. No Member shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Company may be considered as such by law and then only to the extent provided for in this Agreement. Except to the extent expressly provided in this Agreement, no Member shall have priority over any other Member either as to the return of Capital Contributions or as to profits, losses or distributions.

Section 5.3 *Capital Accounts*.

(a) (i) The Company shall maintain for each Member (or a beneficial owner of Membership Interests held by a nominee, agent or representative in any case in which such nominee, agent or representative has furnished the identity of such beneficial owner to the Company in accordance with Section 6031(c) of the Code or any other method acceptable to the Managing Member) owning a Membership Interest a separate Capital Account with respect to such Membership Interest in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). The Capital Account shall in respect of each such Membership Interest be increased by (i) the amount of all Capital Contributions made to the Company with respect to such Membership Interest (including the amount paid to the Company for any Noncompensatory Option), (ii) all items of Company income and gain (including income and gain exempt from tax) computed in accordance with Section 5.3(b) and allocated with respect to such Membership Interest pursuant to Section 6.1, and (iii) the portion of any amount realized from the disposition of an oil and gas property that constitutes Simulated Gain allocated with respect to such Membership Interest in accordance with Section 6.1(c)(iii) and decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Membership Interest, (y) all items of Company deduction and loss computed in accordance with Section 5.3(b) and allocated with respect to such Membership Interest pursuant to Section 6.1, and (z) Simulated Depletion and Simulated Loss in accordance with Section 6.1(c)(ii).

(ii) The Capital Account balance of each Member on the date hereof is shown on Schedule 5.3(a).

(b) For purposes of computing the amount of any item of income, gain, loss, deduction, Simulated Depletion, Simulated Gain or Simulated Loss that is to be allocated pursuant to Article VI and is to be reflected in the Members' Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including any method of depreciation, cost recovery or amortization used for that purpose), *provided, that*:

(i) Solely for purposes of this Section 5.3, the Managing Member in its discretion may treat the Company as owning directly its share (as determined by the Managing Member based upon the provisions of the applicable Group Member Agreement or governing, organizational or similar documents) of all property owned by (x) any other Group Member that is classified as a partnership for federal income tax purposes and (y) any other partnership, limited liability company, unincorporated business or other entity classified as a partnership for federal income tax purposes of which a Group Member is, directly or indirectly, a partner, member or other equity holder.

(ii) All fees and other expenses incurred by the Company to promote the sale of (or to sell) a Membership Interest that can neither be deducted nor amortized under Section 709 of the Code, if any, shall, for purposes of Capital Account maintenance, be treated as an item of deduction at the time such fees and other expenses are incurred and shall be allocated among the Members pursuant to Section 6.1.

(iii) The computation of all items of income, gain, loss, deduction, Simulated Depletion, Simulated Gain or Simulated Loss shall be made (x) except as otherwise provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m), without regard to any election under Section 754 of the Code that may be made by the Company and (y) as to those items described in Section 705(a)(1)(B) or 705(a)(2)(B) of the Code, without regard to the fact that such items are not includable in gross income or are neither currently deductible nor capitalized for U.S. federal income tax purposes.

(iv) To the extent an adjustment to the adjusted basis of any Company asset pursuant to Section 734(b) of the Code (including pursuant to Treasury Regulation Section 1.734-2(b)(1)) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

(v) In the event the Carrying Value of Company property is adjusted pursuant to Section 5.3(d), any Unrealized Gain resulting from such adjustment shall be treated as an item of gain and any Unrealized Loss resulting from such adjustment shall be treated as an item of loss.

(vi) Any income, gain, loss Simulated Gain or Simulated Loss attributable to the taxable disposition of any Company property shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Company's Carrying Value with respect to such property as of such date.

(vii) Any deductions for depreciation, amortization or other cost recovery attributable to any Contributed Property or Adjusted Property shall be determined using any reasonable method selected by the Managing Member in accordance with Section 704(c) and the Treasury Regulations and Section 6.2(c). Simulated Depletion will be computed in accordance with the provisions of the definition of Simulated Depletion.

(viii) The Gross Liability Value of each Liability of the Company described in Treasury Regulation Section 1.752-7(b)(3)(i) shall be adjusted at such times as provided in this Agreement for an adjustment to Carrying Values. The amount of any such adjustment shall be treated for purposes hereof as an item of loss (if the adjustment increases the Carrying Value of such Liability of the Company) or an item of gain (if the adjustment decreases the Carrying Value of such Liability of the Company).

(c) A transferee of a Membership Interest shall succeed to a Pro Rata portion of the Capital Account of the transferor relating to the Membership Interest so transferred.

(d) (i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(h)(2), on an issuance of any Membership Interests for cash or Contributed Property, on an issuance of a Noncompensatory Option or the issuance of Membership Interests as consideration for the provision of services, the Capital Account of each Member and the Carrying Value of each Company property immediately prior to such issuance shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property; *provided, however*, that in the event of the issuance of a Membership Interest pursuant to the exercise of a Noncompensatory Option where the right to share in Company capital represented by such Membership Interest differs from the consideration paid to acquire and exercise such option, the Carrying Value of each Company property immediately after the issuance of such Membership Interest shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property and the Capital Accounts of the Members shall be adjusted in a manner consistent with Treasury Regulation Section 1.704-1(b)(2)(iv)(s); *provided further, however*, that in the event of an issuance of Membership Interests for a de minimis amount of cash or Contributed Property, or in the event of an issuance of a de minimis amount of Membership Interests as consideration for the provision of services, the Managing Member may determine that such adjustments are unnecessary for the proper administration of the Company. Any such Unrealized Gain or Unrealized Loss (or items thereof) shall be allocated (x) in accordance with Section 6.1(b)(x) and (y) thereafter to the Members, Pro Rata. In determining such Unrealized Gain or Unrealized Loss, the aggregate fair market value of all Company property (including cash or cash equivalents) immediately prior to the issuance of additional Membership Interests (or, in the case of an issuance of a Noncompensatory Option, immediately after such issuance if required pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(s)(1)) shall be determined by the Managing Member using such method of valuation as it may adopt. In making its determination of the fair market values of individual properties, the Managing Member may first determine an aggregate value for the assets of the Company that takes into account the current trading price of the Class A Shares, the fair market value of the Membership Interests at such time and the amount of Company Liabilities. The Managing Member may allocate such aggregate value among the individual properties of the Company (in such manner as it determines appropriate).

(ii) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(e), immediately prior to any actual distribution to a Member of any Company property (other than a distribution of cash that is not in redemption or retirement of a Membership Interest), the Capital Accounts of all Members and the Carrying Value of all Company property shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property in the same manner as that provided in Section 5.3(d)(i). In determining such Unrealized Gain or Unrealized Loss the aggregate fair market value of all Company property (including cash or cash equivalents) immediately prior to a distribution shall (A) in the case of a distribution that is not made pursuant to Section 12.4, be determined in the same manner as that provided in Section 5.3(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 12.4, be determined by the Liquidator using such method of valuation as it may adopt.

(e) In connection with the issuance of Units to TWR IV, the Company shall adjust the Carrying Value of all Company property and the Capital Accounts of the non-contributing Members upwards to reflect any Unrealized Gain attributable to the Company property as provided in Section 5.3(d) such that the Capital Accounts of such Members (taking into account the contribution of the Assets (as defined the PSA) by TWR IV to the Company) are in proportion to the Members' Percentage Interests. If there is a purchase price adjustment made in Units pursuant to the PSA, the Company shall make corresponding adjustments to the Capital Accounts of the Members such that the Capital Accounts of the Members will remain in proportion to the Members' Percentage Interests.

*Section 5.4 Issuances of Additional Units.*

(a) The Company is expressly authorized to issue additional Units for any Company purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the Managing Member shall determine, all without any further act, approval or vote of any other Member.

(b) The Managing Member shall take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Units pursuant to this Section 5.4, (ii) to reflect admission of additional Non-Managing Member(s) in the books and records of the Company (including Exhibit A hereto) as the Record Holders of such Non-Managing Member Interests and (iii) all additional issuances of Units. The Managing Member shall do all things necessary to comply with the Delaware LLC Act and is authorized and directed to do all things that it determines to be necessary or appropriate in connection with any future issuance of Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency.

(c) No fractional Units shall be issued by the Company.

*Section 5.5 Issuances of Securities by the Managing Member.* If the Managing Member issues any additional Class A Shares, the Managing Member shall contribute (or cause a wholly-owned Subsidiary of the Managing Member to contribute) the net cash proceeds or other consideration received, if any, from the issuance of such additional Class A Shares in exchange for an equivalent number of Units. In addition, (a) if the Managing Member issues Class A Shares pursuant to the Exchange Agreement or Article XIV, the Company shall issue to the Managing Member (or a wholly-owned Subsidiary of the Managing Member) an equivalent number of Units, such that the number of Units held by the Managing Member and its wholly-owned Subsidiaries is equal to the number of Class A Shares outstanding, and (b) if the Managing Member issues Class A Shares pursuant to a distribution (including any split or combination) of Class A Shares to all of the holders of Class A Shares, the Company shall, as necessary, issue (i) to the Managing Member (or a wholly-owned Subsidiary of the Managing Member) an equivalent number of Units, such that the number of Units held by the Managing Member and its wholly-owned Subsidiaries is equal to the number of Class A Shares outstanding and (ii) to the Non-Managing Members a number of Units such that each of their percentage ownership of the Company is equal to that immediately prior to such issuance by the Managing Member. In the event that the Managing Member issues any additional Class A Shares and contributes (or causes to be contributed) the net cash proceeds or other consideration, if any, received from the issuance thereof to the Company, the Company is authorized to issue a number of Units equal to the number of Class A Shares so issued without any further act, approval or vote of any Member or any other Persons.

Section 5.6 *Redemption, Repurchase or Forfeiture of Class A Shares*. If, at any time, any Class A Shares are redeemed, repurchased or otherwise acquired (whether by exercise of a put or call, automatically or by means of another arrangement) by the Managing Member or its wholly-owned Subsidiaries, then, immediately prior to such redemption, repurchase or acquisition of Class A Shares, the Company shall redeem a number of Units held by the Managing Member equal to the number of Class A Shares so redeemed, repurchased or acquired, such redemption, repurchase or acquisition to be upon the same terms and for the same price per Unit as such Class A Shares that are redeemed, repurchased or acquired.

Section 5.7 *Issuance of Class B Shares*. In the event that the Company issues Units to, or cancels Units held by, any Person other than the Managing Member or its wholly-owned Subsidiaries, the Managing Member shall issue Class B Shares to such Person or cancel Class B Shares held by such Person, as applicable, such that the number of Class B Shares held by such Person is equal to the number of Units held by such Person; *provided*, that, the Managing Member may instead issue to such Person an option to acquire such number of Class B Shares.

Section 5.8 *Fully Paid and Non-Assessable Nature of Units*. All Units issued pursuant to, and in accordance with the requirements of, this Article V shall be fully paid and non-assessable Units in the Company, except as such non-assessability may be affected by Sections 18-607 and 18-804 of the Delaware LLC Act.

## ARTICLE VI ALLOCATIONS AND DISTRIBUTIONS

Section 6.1 *Allocations for Capital Account Purposes*. For purposes of maintaining the Capital Accounts and in determining the rights of the Members among themselves, the Company's items of income, gain, loss, deduction, amount realized and Simulated Gain (computed in accordance with Section 5.3(b)) for each taxable period shall be allocated among the Members, and the Capital Accounts of the Members shall be adjusted for Simulated Depletion and Simulated Loss, as provided herein below.

(a) Net Income and Net Losses. After giving effect to the special allocations set forth in Section 6.1(b) and the Capital Account adjustments pursuant to Section 6.1(c)(ii), Net Income and Net Losses for each taxable period and all items of income, gain, loss, deduction, and, to the extent provided in Section 6.1(c)(iii), Simulated Gain taken into account in computing Net Income and Net Losses for such taxable period shall be allocated to the Members, Pro Rata.

(b) Special Allocations. Notwithstanding any other provision of this Section 6.1, the following special allocations shall be made for such taxable period in the following order:

(i) Company Minimum Gain Chargeback. Notwithstanding any other provision of this Section 6.1, if there is a net decrease in Company Minimum Gain during any Company taxable period, each Member shall be allocated items of Company income, gain and Simulated Gain for such period (and, if necessary, subsequent periods) in the

manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. For purposes of this Section 6.1(b), each Member's Adjusted Capital Account balance shall be determined, and the allocation of income, gain and Simulated Gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(b) with respect to such taxable period (other than an allocation pursuant to Section 6.1(b)(vi) and Section 6.1(b)(vii)). This Section 6.1(b)(i) is intended to comply with the Company Minimum Gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Chargeback of Member Nonrecourse Debt Minimum Gain. Notwithstanding the other provisions of this Section 6.1 (other than Section 6.1(b)(i)), except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Company taxable period, any Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such taxable period shall be allocated items of Company income, gain and Simulated Gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. For purposes of this Section 6.1(b), each Member's Adjusted Capital Account balance shall be determined, and the allocation of income, gain and Simulated Gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(b) with respect to such taxable period (other than an allocation pursuant to Section 6.1(b)(i), Section 6.1(b)(vi) and Section 6.1(b)(vii)). This Section 6.1(b)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) [Reserved].

(iv) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company gross income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under Section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible; *provided*, that an allocation pursuant to this Section 6.1(c)(iv) shall be made only if and to the extent that such Member would have a deficit balance in its Adjusted Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if this Section 6.1(c)(iv) were not in this Agreement. This Section 6.1(c)(iv) is intended to constitute a "*qualified income offset*" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(v) Gross Income Allocation. In the event any Member has a deficit balance in its Capital Account at the end of any taxable period in excess of the sum of (A) the amount such Member is required to restore pursuant to the provisions of this Agreement and (B) the amount such Member is deemed obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), such Member shall be specially allocated items of Company gross income, gain and Simulated Gain in the amount of such excess as quickly as possible; *provided*, that an allocation pursuant to this Section 6.1(c)(v) shall be made only if and to the extent that such Member would have a deficit balance in its Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if Section 6.1(c)(iv) and this Section 6.1(c)(v) were not in this Agreement.

(vi) Nonrecourse Deductions. Nonrecourse Deductions for any taxable period shall be allocated to the Members Pro Rata. If the Managing Member determines that the Company's Nonrecourse Deductions should be allocated in a different ratio to satisfy the safe harbor requirements of the Treasury Regulations promulgated under Section 704(b) of the Code, the Managing Member is authorized, upon notice to the other Members, to revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

(vii) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any taxable period shall be allocated 100% to the Member that bears the Economic Risk of Loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i). If more than one Member bears the Economic Risk of Loss with respect to a Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Member in accordance with the ratios in which they share such Economic Risk of Loss.

(viii) Nonrecourse Liabilities. For purposes of Treasury Regulation Section 1.752-3(a)(3), the Members agree that Nonrecourse Liabilities of the Managing Member in excess of the sum of (A) the amount of Company Minimum Gain and (B) the total amount of Nonrecourse Built-in Gain shall be allocated among the Members Pro Rata.

(ix) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code (including pursuant to Treasury Regulation Section 1.734-2(b)(1)) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain or Simulated Gain (if the adjustment increases the basis of the asset) or loss or Simulated Loss (if the adjustment decreases such basis) taken into account pursuant to Section 5.3, and such item of gain, loss, Simulated Gain or Simulated Loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(x) Equalization of Capital Accounts. All items of income or gain recognized by the Company upon liquidation or the sale, exchange or other disposition of all or substantially all of the assets of the Company Group or any Unrealized Gain or Unrealized Loss (or to the extent necessary, items thereof) deemed recognized as a result of a Revaluation Event shall be allocated among the Members in a manner such that, after giving effect to this Section 6.1(b)(x), the Capital Account balances of the Members, immediately after making such allocations, are equal to the same ratio as the Members' respective Percentage Interests.

(xi) Noncompensatory Option. Any Member who has received its interest pursuant to the exercise of a Noncompensatory Option shall be allocated gain or loss or reallocated capital from other Members' Capital Accounts as necessary to comply with Treasury Regulation Section 1.704-1(b)(2)(iv)(5).

(xii) Curative Allocation.

(A) Notwithstanding any other provision of this Section 6.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of gross income, gain, loss, deduction, Simulated Depletion, Simulated Gain and Simulated Loss allocated to each Member pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Member under the Agreed Allocations had the Required Allocations and the related Curative Allocation not otherwise been provided in this Section 6.1 and Simulated Depletion and Simulated Loss had been included in the definition of Net Income and Net Loss. In exercising its discretion under this Section 6.1(b)(xii)(A), the Managing Member may take into account future Required Allocations that, although not yet made, are likely to offset other Required Allocations previously made. Allocations pursuant to this Section 6.1(b)(xii)(A) shall only be made with respect to Required Allocations to the extent the Managing Member determines that such allocations will otherwise be inconsistent with the economic agreement among the Members.

(B) The Managing Member shall, with respect to each taxable period, (1) apply the provisions of Section 6.1(b)(xii)(A) in whatever order is most likely to minimize the economic distortions that might otherwise result from the Required Allocations, and (2) divide all allocations pursuant to Section 6.1(b)(xii)(A) among the Members in a manner that is likely to minimize such economic distortions.

(c) Simulated Basis; Simulated Depletion and Simulated Loss; Simulated Gain; Amount Realized.

(i) Simulated Basis. For purposes of determining and maintaining the Members' Capital Accounts, (i) the initial Simulated Basis of each oil and gas property (as defined in Section 614 of the Code) of the Company shall be allocated among the Members, Pro Rata and (ii) if the Carrying Value of an oil and gas property (as defined in Section 614 of the Code) is adjusted pursuant to Section 5.3(d), the Simulated Basis of such property (as adjusted to reflect the adjustment to the Carrying Value of such property), shall be allocated to the Members, Pro Rata.

(ii) Simulated Depletion and Simulated Loss. For purposes of applying clause (z) of the second sentence of Section 5.3(a), Simulated Depletion and Simulated Loss with respect to each oil and gas property (as defined in Section 614 of the Code) of the Company shall reduce each Member's Capital Account in proportion to the manner in which the Simulated Basis of such property is allocated among the Members pursuant to Section 6.1(c)(i).

(iii) Simulated Gain. For purposes of applying clause (iii) of the second sentence of Section 5.3(a), Simulated Gain for any taxable period will be treated as included in either Net Income or Net Loss and allocated pursuant to Section 6.1(a).

(iv) Amount Realized. For purposes of Treasury Regulation Sections 1.704-1(b)(2)(iv)(k)(2) and 1.704-1(b)(4)(iii), the amount realized on the disposition of any oil and gas property (as defined in Section 614 of the Code) of the Company shall be allocated (i) first to the Members in an amount equal to the remaining Simulated Basis of such property in the same proportions as the Simulated Basis of such property was allocated among the Members pursuant to Section 6.1(c)(i), and (ii) any remaining amount realized shall be allocated to the Members in the same ratio as Simulated Gain from the disposition of such oil and gas property is allocated pursuant to Section 6.1(a).

#### Section 6.2 *Allocations for Tax Purposes.*

(a) Except as otherwise provided herein, for federal income tax purposes, each item of income, gain, loss, deduction and credit shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Section 6.1.

(b) The deduction for depletion with respect to each separate oil and gas property (as defined in Section 614 of the Code) shall be computed for federal income tax purposes separately by the Members rather than by the Company in accordance with Section 613A(c)(7)(D) of the Code. Except as provided in Section 6.2(c), for purposes of such computation (before taking into account any adjustments resulting from an election made by the Company under Section 754 of the Code), the adjusted tax basis of each oil and gas property (as defined in Section 614 of the Code) that is (i) a Contributed Property shall initially be allocated among the non-contributing Members, Pro Rata, but not in excess of any such Member's share of Simulated Basis as determined pursuant to Section 6.1(c)(i), and (ii) not a Contributed Property or an Adjusted Property shall initially be allocated to the Members in proportion to each such Member's share of Simulated Basis as determined pursuant to Section 6.1(c)(i). If there is an event described in Section 5.3(d), the Managing Member shall reallocate the adjusted tax basis of each oil and gas property in a manner consistent with the principles of Section 704(c) of the Code and Section 6.2(c).

Each Member shall separately keep records of his share of the adjusted tax basis in each oil and gas property, allocated as provided above, adjust such share of the adjusted tax basis for any cost or percentage depletion allowable with respect to such property, and use such adjusted tax basis in the computation of its cost depletion or in the computation of his gain or loss on the disposition of such property by the Company.

(c) In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation, amortization and cost recovery deductions shall be allocated for federal income tax purposes among the Members in the manner provided under Section 704(c) of the Code, and the Treasury Regulations promulgated under Section 704(b) and 704(c) of the Code, with any permissible method determined to be appropriate by the Managing Member (taking into account the Managing Member's discretion under Section 6.1(c)(x)); *provided* that solely with respect to any Book-Tax Disparities attributable to (x) any Asset (as defined in the PSA) acquired from TWR IV pursuant to the PSA or (y) any asset of Sitio Opco at the time of the Opco Merger (as defined in the Merger Agreement), the Company shall use the "traditional method with curative allocations" described in Treasury Regulations Section 1.704-3(c) solely using curative items of depletion.

(d) In accordance with Treasury Regulation Sections 1.1245-1(e) and 1.1250-1(f), any gain allocated to the Members upon the sale or other taxable disposition of any Company asset shall, to the extent possible, after taking into account other required allocations of gain pursuant to this Section 6.2, be characterized as Recapture Income in the same proportions and to the same extent as such Members (or their predecessors in interest) have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

(e) All items of income, gain, loss, deduction and credit recognized by the Company for federal income tax purposes and allocated to the Members in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the Code that may be made by the Company; *provided, however*, that such allocations, once made, shall be adjusted (in the manner determined by the Managing Member) to take into account those adjustments permitted or required by Sections 734 and 743 of the Code.

(f) Each item of Company income, gain, loss and deduction, for federal income tax purposes, shall be determined for each taxable period and the Managing Member shall prorate and allocate such items to the Members in a manner permitted by Section 706 of the Code and the regulations and rulings promulgated thereunder.

(g) If, as a result of an exercise of a Noncompensatory Option, a Capital Account reallocation is required under Treasury Regulation Section 1.704-1(b)(2)(iv)(s)(3), the Managing Member shall make corrective allocations pursuant to Treasury Regulation Section 1.704-1(b)(4)(x).

### Section 6.3 *Distributions to Record Holders.*

(a) The Managing Member may adopt a cash distribution policy, which it may change from time to time without amendment to this Agreement.

(b) The Company will make distributions, if any, to all Record Holders of Units, Pro Rata.

(c) Notwithstanding Section 6.3(b), in the event of the dissolution and liquidation of the Company, all cash received during or after the Quarter in which the Liquidation Date occurs shall be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.4.

(d) Each distribution in respect of a Unit shall be paid by the Company, directly or through any other Person or agent, only to the Record Holder of such Unit as of the Record Date set for such distribution. Such payment shall constitute full payment and satisfaction of the Company's liability in respect of such payment, regardless of any claim of any Person who may have an interest in such payment by reason of an assignment or otherwise.

## ARTICLE VII MANAGEMENT AND OPERATION OF BUSINESS

### Section 7.1 *Management.*

(a) The business, property and affairs of the Company shall be managed under the sole, absolute and exclusive direction of the Managing Member, which may from time to time delegate authority to its officers or to others to act on behalf of the Company. Without limiting the foregoing provisions of this Section 7.1(a), the Managing Member shall have the sole power to manage or cause the management of the Company, including the power and authority to effectuate the sale, lease, transfer, exchange or other disposition of any, all or substantially all of the assets of the Company (including, but not limited to, the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Company) or the merger, consolidation, reorganization or other combination of the Company with or into another entity.

(b) No Non-Managing Member, in his or her or its capacity as such, shall participate in or have any control over the business of the Company. Except as expressly provided herein, neither the Units nor the fact of a Non-Managing Member's admission as a member of the Company confer any rights upon the Non-Managing Members to participate in the management of the affairs of the Company. Except as expressly provided herein, no Non-Managing Member shall have any right to vote on any matter involving the Company, including with respect to any merger, consolidation, combination or conversion of the Company, or any other matter that a Member might otherwise have the ability to vote or consent with respect to under the Delaware LLC Act, at law, in equity or otherwise. The conduct, control and management of the Company shall be vested exclusively in the Managing Member. In all matters relating to or arising out of the conduct of the operation of the Company, the decision of the Managing Member shall be the decision of the Company. Except as required by law or expressly provided in Section 7.1(c) or by separate agreement with the Company, no Non-Managing Member (and acting in such capacity) shall take any part in the management or control of the operation or business of the Company in its capacity as a Member, nor shall any Non-Managing Member (and acting in such capacity) have any right, authority or power to act for or on behalf of or bind the Company in his or her or its capacity as a Member in any respect or assume any obligation or responsibility of the Company or of any other Member.

(c) To the fullest extent permitted by law, the Managing Member shall have the power and authority to delegate to one or more other Persons the Managing Member's rights and powers to manage and control the business and affairs of the Company, including to delegate to officers, agents and employees of the Company, the Managing Member, or its Affiliates (including officers), and to delegate by a management agreement or another agreement with, or otherwise to, other Persons. The Managing Member may authorize any Person (including any Member or officer) to enter into and perform any document on behalf of the Company.

(d) Without limiting the generality of Section 7.1(a)-(c), the Managing Member may appoint such officers as it shall deem necessary or advisable who shall hold their offices for such terms, shall have authority (subject to such conditions as may be prescribed by the Managing Member) to sign deeds, mortgages, bonds, contracts or other instruments on behalf of the Company and shall exercise such other powers and perform such other duties as shall be determined from time to time by the Managing Member. Unless otherwise determined by the Managing Member, each such officer shall hold office until his or her successor is chosen and qualified. Any officer appointed by the Managing Member may be removed at any time, with or without cause, upon notice by the Managing Member. Any vacancy occurring in any office of the Company shall be filled by the Managing Member in its sole discretion. Any number of offices may be held by the same person. The officers of the Company on and as of the Effective Date have previously been appointed by the Managing Member.

*Section 7.2 Replacement of Fiduciary Duties.* Notwithstanding any other provision of this Agreement, to the extent that, at law or in equity, the Managing Member or any other Indemnitee would have duties (including fiduciary duties) to the Company, to another Member, to any Person who acquires an interest in the Company or to any other Person bound by this Agreement, all such duties (including fiduciary duties) are hereby eliminated, to the fullest extent permitted by law, and replaced with the duties expressly set forth herein. The elimination of duties (including fiduciary duties) and replacement thereof with the duties expressly set forth herein are approved by the Company, each of the Members, each other Person who acquires an interest in the Company and each other Person bound by this Agreement.

*Section 7.3 Indemnification.*

(a) To the fullest extent permitted by law, all Indemnitees shall be indemnified and held harmless by the Company from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all threatened, pending or completed claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, and whether formal or informal and including appeals, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee and acting (or refraining to act) in such capacity; *provided*, that the Indemnitee shall not be indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Agreement, the Indemnitee acted in Bad Faith or engaged in willful misconduct or fraud or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful. Any indemnification pursuant to this Section 7.3 shall be made only out of the assets of the Company, it being agreed that the Managing Member shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 7.3(a) in appearing at, participating in or defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 7.3, the Indemnitee is not entitled to be indemnified upon receipt by the Company of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall be ultimately determined that the Indemnitee is not entitled to be indemnified as authorized by this Section 7.3.

(c) The indemnification provided by this Section 7.3 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the holders of Outstanding Non-Managing Member Interests, as a matter of law, in equity or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(d) The Company may purchase and maintain (or reimburse the Managing Member or its Affiliates for the cost of) insurance, on behalf of the Managing Member, its Affiliates, the Indemnitees and such other Persons as the Managing Member shall determine, against any liability that may be asserted against, or expense that may be incurred by, such Person in connection with the Company's activities or such Person's activities on behalf of the Company, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) For purposes of this Section 7.3, (i) the Company shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Company also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; (ii) excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 7.3(a); and (iii) action taken or omitted by an Indemnitee with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interests of the Company.

(f) In no event may an Indemnitee subject the Non-Managing Members to personal liability by reason of the indemnification provisions set forth in this Agreement.

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.3 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 7.3 are for the benefit of the Indemnitees and their heirs, successors, assigns, executors and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 7.3 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Company, nor the obligations of the Company to indemnify any such Indemnitee under and in accordance with the provisions of this Section 7.3 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

*Section 7.4 Limitation of Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, any Group Member Agreement, or under the Delaware LLC Act or any other law, rule or regulation or at equity, no Indemnitee shall be liable for monetary damages or otherwise to the Company, to another Member, to any other Person who acquires an interest in a Membership Interest or to any other Person bound by this Agreement, for losses sustained or liabilities incurred, of any kind or character, as a result of its or any of any other Indemnitee's determinations, act(s) or omission(s) in their capacities as Indemnitees; *provided, however*, that an Indemnitee shall be liable for losses or liabilities sustained or incurred by the Company, the other Members, any other Persons who acquire an interest in a Membership Interest or any other Person bound by this Agreement, if it is determined by a final and non-appealable judgment entered by a court of competent jurisdiction that such losses or liabilities were the result of the conduct of that Indemnitee engaged in by it in Bad Faith or engaged in willful misconduct or fraud, or, with respect to any criminal conduct, with the knowledge that its conduct was unlawful.

(b) The Managing Member may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and the Managing Member shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the Managing Member if such appointment was not made in Bad Faith.

(c) To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Company, to the Members, to any Person who acquires an interest in a Membership Interest or to any other Person bound by this Agreement, the Managing Member and any other Indemnitee acting in connection with the Company's business or affairs shall not be liable to the Company, to any Member, to any Person who acquires an interest in a Membership Interest or to any other Person bound by this Agreement for its reliance on the provisions of this Agreement.

(d) Any amendment, modification or repeal of this Section 7.4 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this Section 7.4 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

(a) Whenever the Managing Member, acting in its capacity as the managing member of the Company, or any Affiliate of the Managing Member makes a determination or takes or omits to take any action in such capacity, whether or not under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, then, unless another lesser standard is provided for in this Agreement, the Managing Member or such Affiliate (i) shall make such determination, or take or omit to take such action, in Good Faith and (ii) shall not make any such determination, or take or omit to take any such action, that disproportionately and materially adversely affects any Non-Managing Member, solely in its capacity as a Member, relative to the other Non-Managing Members, solely in their capacity as Members. The foregoing and other lesser standards provided for in this Agreement are the sole and exclusive standards governing any such determinations, actions and omissions of the Managing Member and any Affiliate of the Managing Member and no such Person shall be subject to any fiduciary duty or other duty or obligation, or any other, different or higher standard (all of which duties, obligations and standards are hereby waived and disclaimed), under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, or under the Delaware LLC Act or any other law, rule or regulation or at equity. Any such determination, action or omission by the Managing Member or of any Affiliate of the Managing Member will for all purposes be presumed to have been in Good Faith. In any proceeding brought by or on behalf of the Company, any Member, or any other Person who acquires an interest in the Company or any other Person who is bound by this Agreement, challenging such determination, act or omission, the Person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or omission was not in Good Faith.

(b) Whenever the Managing Member makes a determination or takes or omits to take any action, or any Affiliate of the Managing Member causes the Managing Member to do so, not acting in its capacity as the managing member of the Company, whether or not under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, then the Managing Member, or such Affiliate causing it to do so, are entitled, to the fullest extent permitted by law, to make such determination or to take or omit to take such action free of any fiduciary duty or duty of Good Faith or other duty or obligation existing at law, in equity or otherwise whatsoever to the Company, to another Member, to any Person who acquires an interest in the Company or to any other Person bound by this Agreement, and the Managing Member or such Affiliate causing it to do so, shall not, to the fullest extent permitted by law, be required to act in Good Faith or pursuant to any fiduciary or other duty or standard imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware LLC Act or any other law, rule or regulation or at equity.

(c) For purposes of Section 7.5(a) and Section 7.5(b) of this Agreement, “acting in its capacity as the managing member of the Company” means and is solely limited to, the Managing Member exercising its authority as a managing member under this Agreement, other than when it is “acting in its individual capacity.” For purposes of this Agreement, “acting in its individual capacity” means: (i) any action by the Managing Member or its Affiliates other than through the exercise of the Managing Member of its authority as a managing member under this Agreement; and (ii) any action or inaction by the Managing Member by the exercise (or failure to exercise) of its rights, powers or authority under this Agreement that are modified by: (A) the phrase “at the option of the Managing Member,” (B) the phrase “in its sole discretion” or “in its discretion” or (iii) some variation of the phrases set forth in clauses (i) and (ii). For the avoidance of doubt, whenever the Managing Member votes, acquires Membership Interests or transfers its Membership Interests, or refrains from voting or transferring its Membership Interests, it shall be and be deemed to be “acting in its individual capacity.”

(d) Notwithstanding anything to the contrary in this Agreement, the Managing Member and its Affiliates or any other Indemnitee shall have no duty or obligation, express or implied, to (i) sell or otherwise dispose of any asset of the Company Group or (ii) permit any Group Member to use any facilities or assets of the Managing Member and its Affiliates, except as may be provided in contracts entered into from time to time specifically dealing with such use. Any determination by the Managing Member or any of its Affiliates to enter into such contracts or transactions shall be in its sole discretion.

(e) The Members and each Person who acquires an interest in the Company or is otherwise bound by this Agreement hereby authorize the Managing Member, on behalf of the Company as a partner or member of a Group Member, to approve actions by the general partner or managing member of such Group Member similar to those actions permitted to be taken by the Managing Member pursuant to this Section 7.5.

(f) For the avoidance of doubt, whenever the Managing Member or any Affiliate of the Managing Member makes a determination on behalf of the Managing Member, or cause the Managing Member to take or omit to take any action, whether in the Managing Member's capacity as the Managing Member or in its individual capacity, the standards of care applicable to the Managing Member shall apply to such Persons, and such Persons shall be entitled to all benefits and rights of the Managing Member hereunder, including waivers and modifications of duties, protections and presumptions, as if such Persons were the Managing Member hereunder.

#### *Section 7.6 Other Matters Concerning the Managing Member.*

(a) The Managing Member may rely, and shall be protected in acting or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The Managing Member may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the advice or opinion of such Persons as to matters that the Managing Member reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in Good Faith and in accordance with such advice or opinion.

(c) The Managing Member shall have the right, in respect of any of its powers or obligations hereunder, to act through any of its or the Company's duly authorized officers, a duly appointed attorney or attorneys-in-fact.

*Section 7.7 Reliance by Third Parties.* Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Company shall be entitled to assume that the Managing Member and any officer of the Company has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Company and to enter into any authorized contracts on behalf of the Company, and such Person shall be entitled to deal with the Managing

Member or any such officer as if it were the Company's sole party in interest, both legally and beneficially. Each Non-Managing Member, each other Person who acquires an interest in a Membership Interest and each other party who becomes bound by this Agreement hereby waives, to the fullest extent permitted by law, any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the Managing Member or any such officer in connection with any such dealing. In no event shall any Person dealing with the Managing Member or any such officer or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the Managing Member or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Company by the Managing Member or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Company and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Company.

## **ARTICLE VIII BOOKS, RECORDS, ACCOUNTING AND REPORTS**

Section 8.1 *Records and Accounting*. The Managing Member shall keep or cause to be kept at the principal office of the Company appropriate books and records with respect to the Company's business. Any books and records maintained by or on behalf of the Company in the regular course of its business, including the record of the Record Holder of Units or other Membership Interests, books of account and records of Company proceedings, may be kept on, or be in the form of, computer disks, hard drives, magnetic tape, photographs, micrographics or any other information storage device; *provided*, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Company shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP.

Section 8.2 *Fiscal Year*. The fiscal year of the Company shall be a fiscal year ending December 31.

Section 8.3 *Reports*. The Managing Member shall cause to be prepared and delivered to the Members such reports, forecasts, studies, budgets and other information as the Members may reasonably request from time to time.

## **ARTICLE IX TAX MATTERS**

Section 9.1 *Tax Returns and Information*. The Company shall timely file all returns of the Company that are required for federal, state and local income tax purposes on the basis of the taxable period or year that it is required by law to adopt, from time to time, as determined by the Managing Member. In the event the Company is required to use a taxable period other than a year ending on December 31, the Managing Member shall use reasonable efforts to change the taxable

period of the Company to a year ending on December 31. The tax information reasonably required by Members for federal and state income tax reporting purposes with respect to a taxable period (including a Schedule K-1) shall be furnished to them no later than February 28 of the calendar year following the end of the Company's taxable period; *provided* that the Company will promptly provide the Members any adjustments or revisions to such Member's Schedule K-1. In addition, the Company shall furnish to each Non-Managing Member any additional tax information reasonably requested by such Non-Managing Member in order to comply with its Organizational Documents, including additional detail regarding the source of any items of income, gain, loss, deduction, or credit allocated to such Non-Managing Member to the extent not otherwise reflected in the information provided to the Members under the preceding sentence.

Section 9.2 *Tax Characterization*. Unless otherwise determined by the Managing Member, the Company shall be treated as a partnership and not as an association taxable as a corporation for U.S. federal income tax purposes. The Members and the Company shall not take any action that would cause the Company to be treated as a corporation for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes) and shall file all tax returns consistent with the tax characterization set forth in this Section 9.2.

Section 9.3 *Tax Elections*.

(a) The Company shall make the election under Section 754 of the Code in accordance with applicable regulations thereunder, subject to the reservation of the right to seek to revoke any such election upon the Managing Member's determination that such revocation is in the best interests of the Non-Managing Members.

(b) Except as otherwise provided herein, the Managing Member shall determine whether the Company should make any other elections permitted by the Code.

Section 9.4 *Tax Controversies*.

(a) Subject to the provisions hereof, (i) with respect to tax returns filed for taxable years ending before January 1, 2018, the Managing Member shall be designated as the "tax matters partner" (as defined in Section 6231 of the Code in effect prior to the amendment by the Bipartisan Budget Act of 2015, P.L. 114-74) (the "**Tax Matters Partner**") and (ii) with respect to tax returns filed for taxable years beginning on or after January 1, 2018, the Managing Member is designated as the "partnership representative" as defined in Section 6223 of the Code (the "**Partnership Representative**"). The Partnership Representative shall designate from time to time a "designated individual" to act on behalf of the Partnership Representative, and such designated individual shall be subject to replacement by the Partnership Representative in accordance with the Code and Treasury Regulations.

(b) The Tax Matters Partner or the Partnership Representative shall give prompt written notice to the other Members of any and all notices it receives from the Internal Revenue Service or any other taxing authority concerning the tax matters of the Company. The Company shall reimburse the Tax Matters Partner or the Partnership Representative for any expenses that the Tax Matters Partner or the Partnership Representative incurs in connection with its obligations as Tax Matters Partner or Partnership Representative. The Tax Matters Partner or the Partnership

Representative shall not agree to extend the statute of limitations with respect to partnership items of the Company without the consent of all of the Members. No Member shall take any other action with respect to a partnership level audit item which would be binding on the other Member in computing its liability for taxes (or interest, penalties or additions to tax) without the consent of the other Members. Neither the Tax Matters Partner nor the Partnership Representative shall be liable to the Company or the Members for acts or omissions taken or suffered by it in its capacity as either the Tax Matters Partner or the Partnership Representative, as the case may be, in good faith; *provided* that such act or omission is not in willful violation of this Agreement and does not constitute gross negligence, fraud or a willful violation of law.

(c) With respect to tax returns filed for taxable years beginning on or after January 1, 2018, if permissible, the Partnership Representative may cause the Company to, with the consent of the Members, make the election under Section 6221(b) of the Code with respect to determinations of adjustments at the partnership level and take any other action such as filings, disclosures and notifications necessary to effectuate such election for each year for which the election may be made. If the election described in the preceding sentence is not available and to the extent applicable, if the Company receives a notice of final partnership adjustment as described in Section 6226 of the Code the Partnership Representative may, with the consent of the Members, cause the Company to make the election under Section 6226(a) of the Code with respect to the alternative to payment of imputed underpayment by the Company and take other action such as filings, disclosures and notifications necessary to effectuate such election. If the election under Section 6226(a) is not made, then the Company shall make any payment required pursuant to Section 6225 and the Members shall have the obligations set forth in Section 9.5. The Members shall reasonably cooperate with the Company and the Partnership Representative, and undertake any action reasonably requested by the Company, in connection with any elections made by the Partnership Representative or as determined to be reasonably necessary by the Partnership Representative; *provided* that no Member shall be required to file an amended tax return.

#### Section 9.5 *Withholding*.

(a) If taxes and related interest, penalties or additions to taxes are paid by the Company on behalf of all or less than all the Members or former Members, including, without limitation, any payment by the Company of an imputed underpayment under Section 6225 of the Code, the Managing Member may treat such payment as a distribution of cash to such Members, treat such payment as a general expense of the Company, or require that persons who were Members of the Company in the taxable year to which the payment relates (including former Members) indemnify the Company upon request for their allocable share of that payment, in each case as determined appropriate under the circumstances by the Managing Member. The amount of any such indemnification obligation of, or deemed distribution of cash to, a Member or former Member in respect of an imputed underpayment under Section 6225 of the Code shall be reduced to the extent that the Company receives a reduction in the amount of the imputed underpayment under Section 6225(c) of the Code which, in the determination of the Managing Member, is attributable to actions taken by, the tax status or attributes of, or tax information provided by or attributable to, such Managing Member or former Member pursuant to or described in Section 6225(c) of the Code.

(b) Notwithstanding any other provision of this Agreement, the Managing Member is authorized to take any action determined, in its discretion, to be necessary or appropriate to cause the Company and other Group Members to comply with any withholding requirements established under the Code or any other federal, state or local law including pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Company is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation of distribution of income or from a distribution to any Member (including by reason of Section 1446 of the Code), the amount withheld may at the discretion of the Managing Member be treated by the Company as a distribution of cash pursuant to Section 6.3 or Section 12.4(c) in the amount of such withholding from such Member.

## **ARTICLE X ADMISSION OF MEMBERS**

Section 10.1 *Admission of New Members*. Without the consent of any other Person, the Managing Member shall have the right to admit as a Member, any Person who acquires an interest in the Company, or any part thereof, from a Member or from the Company. Concurrently with the admission of such Member, the Managing Member shall forthwith (a) amend Exhibit A hereto to reflect the name and address of such new Member and to eliminate or modify, as applicable, the name and address of the transferring Member with regard to the transferred Units and (b) cause any necessary papers to be filed and recorded and notice to be given wherever and to the extent required showing the substitution of a transferee as a Member in place of the transferring Member, or the admission of a Member, in each case, at the expense, including payment of any professional and filing fees incurred, of such Member.

Section 10.2 *Conditions and Limitations*. The admission of any Person as a Member shall be conditioned upon such Person's written acceptance and adoption of all the terms and provisions of this Agreement by execution and delivery of the Adoption Agreement in the form attached hereto as Exhibit B or such other written instrument(s) in form and substance satisfactory to the Managing Member on behalf of the Company.

## **ARTICLE XI WITHDRAWAL OR REMOVAL OF MEMBERS**

Section 11.1 *Member Withdrawal*. No Member shall have the power or right to withdraw or otherwise resign or be expelled from the Company prior to the dissolution and winding up of the Company, except pursuant to a transfer in accordance with Section 4.4.

Section 11.2 *Removal of the Managing Member*. The Managing Member may not be removed as the managing member of the Company except by unanimous consent of the Members (including the Managing Member). The removal of the Managing Member as the managing member of the Company shall also automatically constitute the removal of the Managing Member as general partner or managing member, to the extent applicable, of the other Group Members of which the Managing Member is a general partner or a managing member. If a Person is elected as a successor Managing Member in accordance with the terms of this Section 11.2, such Person shall automatically become a successor general partner or managing member, to the extent applicable, of the other Group Members of which the Managing Member is a general partner or a managing member.

**ARTICLE XII  
DISSOLUTION AND LIQUIDATION**

Section 12.1 *Dissolution*. The Company shall not be dissolved by the admission of additional Non-Managing Members or by the admission of a successor Managing Member in accordance with the terms of this Agreement. The Company shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

- (a) an election to dissolve the Company by the Managing Member ;
- (b) the entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Delaware LLC Act; or
- (c) at any time there are no Members, unless the Company is continued without dissolution in accordance with the Delaware LLC Act.

Section 12.2 *Liquidator*. Upon dissolution of the Company in accordance with the provisions of this Article XII, the Managing Member shall select one or more Persons to act as Liquidator. The Liquidator (if other than the Managing Member) shall be entitled to receive such compensation for its services as may be approved by the Managing Member. The Liquidator (if other than the Managing Member) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by the Managing Member. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be selected by the Managing Member. The right to select a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator selected in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the Managing Member under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) necessary or appropriate to carry out the duties and functions of the Liquidator hereunder for and during the period of time required to complete the winding up and liquidation of the Company as provided for herein.

Section 12.3 *Liquidation*. The Liquidator shall proceed to dispose of the assets of the Company, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as determined by the Liquidator, subject to Section 18-804 of the Delaware LLC Act and the following:

(a) The assets may be disposed of by public or private sale or by distribution in kind to one or more Members on such terms as the Liquidator and such Member or Members may agree. If any property is distributed in kind, the Member receiving the property shall be deemed for purposes of Section 12.3(c) to have received cash equal to its Net Agreed Value; and contemporaneously therewith, appropriate cash distributions must be made to the other Members. The Liquidator may defer liquidation or distribution of the Company's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Company's assets would be impractical or would cause undue loss to the Members. The Liquidator may distribute the Company's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Members.

(b) Liabilities of the Company include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 12.2) and amounts to Members otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) All property and all cash in excess of that required to satisfy or discharge liabilities as provided in Section 12.3(b) shall be distributed to the Members in accordance with, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.3(c)) for the taxable period of the Company during which the liquidation of the Company occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable period (or, if later, within 90 days after said date of such occurrence).

Section 12.4 Cancellation of Certificate of Formation. Upon the completion of the distribution of Company cash and property as provided in Section 12.3 in connection with the liquidation of the Company, the Certificate of Formation and all qualifications of the Company as a foreign limited liability company in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Company shall be taken.

Section 12.5 Return of Contributions. The Managing Member shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate, the return of the Capital Contributions of the Members or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from assets of the Company.

Section 12.6 Waiver of Partition. To the maximum extent permitted by law, each Member hereby waives any right to partition of the Company property.

Section 12.7 Capital Account Restoration. No Non-Managing Member shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Company. Each of the Managing Member and its wholly-owned Subsidiaries shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Company by the end of the taxable year of the Company during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

**ARTICLE XIII  
AMENDMENT OF LIMITED LIABILITY COMPANY AGREEMENT**

Section 13.1 *Amendments*. This Agreement may be amended, supplemented, waived or modified by the written consent of the Managing Member in its sole discretion without the approval of any other Member or other Person; *provided* that except as otherwise provided herein, no amendment may modify the limited liability of any Member, or increase the liabilities or obligations of any Member, in each case, without the consent of each such affected Member. Any amendment to this Agreement may be implemented and reflected in a writing executed solely by the Managing Member, and the Non-Managing Member(s) and the wholly-owned Subsidiaries of the Managing Member shall be deemed a party to and bound by such amendment. Notwithstanding the foregoing, the Managing Member shall not amend this Agreement in a manner that disproportionately and adversely affects any Non-Managing Member relative to the other Non-Managing Members (other than in a de minimis non-economic respect), in each case, solely in each such Non-Managing Member's capacity as a Member, without the written consent of such adversely affected Non-Managing Member.

**ARTICLE XIV  
EXCHANGE RIGHTS**

Section 14.1 *Redemption and Purchase Rights*.

(a) Subject to Article IV, a Non-Managing Member shall have the right, at any time and from time to time (subject to the terms and conditions set forth herein), to require the Managing Member to redeem (each, a "**Redemption**") all or a portion of the Class B Shares held by such Non-Managing Member, which must be accompanied by an equal number of Units held by such Non-Managing Member (one Unit and one Class B Share are referred to herein as one "**Paired Unit**", and Paired Units that have in fact been tendered for Redemption being hereafter referred to as "**Tendered Units**"), in each case, in exchange for the Common Share Amount.

(i) If a Non-Managing Member desires to exercise its right to require a Redemption, it shall deliver a written notice to the Managing Member and the Company specifying the number of Paired Units such Non-Managing Member desires to tender in such Redemption and whether the exercise of its right to require a Redemption is to be contingent (including as to timing) upon the closing of a sale of the Class A Shares to be received for such Paired Units in such Redemption or the closing of an announced merger, consolidation or other transaction or event in which the Class A Shares would be exchanged or converted or become exchangeable for or convertible into cash or other securities or property (the "**Notice of Redemption**"). The Managing Member and the Company shall not be obligated to effect a Redemption until the Specified Redemption Date (it being understood that the Managing Member and the Company will not be required to consummate such Redemption with respect to any Tendered Units that are purchased by the Managing Member pursuant to Section 14.1(b)(i)).

(ii) The Common Share Amount shall be delivered by the Managing Member on or before the Specified Redemption Date as duly authorized, validly issued, fully paid and non-assessable Class A Shares, free of any pledge, lien, encumbrance or restriction, other than the restrictions provided in the Securities Act and relevant state securities or “blue sky” laws. Notwithstanding any delay in such delivery, such Member shall be deemed the owner of such Class A Shares for all purposes, including, without limitation, rights to vote and consent, receive dividends and distributions, and exercise rights, as of the Specified Redemption Date. Class A Shares issued upon a Redemption pursuant to this Section 14.1(a) may contain such legends regarding restrictions under the Securities Act and applicable state securities laws as the Managing Member in good faith determines to be necessary or advisable in order to ensure compliance with such laws.

(b) In lieu of any Redemption described in Section 14.1(a), the Managing Member may, in its sole and absolute discretion (but subject to the approval of the Audit Committee), offer to purchase some or all of the Tendered Units (such amount, expressed as a percentage of the total number of Tendered Units rounded up to the nearest Tendered Unit, being referred to as the “**Applicable Percentage**”) from the Non-Managing Members by delivering a written notice of such election on or before the close of business on the Cut-Off Date. If a Non-Managing Member, in each case, accepts such offer in writing, on the Specified Redemption Date the Non-Managing Member, in each case, shall sell such number of the Tendered Units to the Managing Member in exchange for a cash sum (the “**Cash Purchase Price**”) equal to the product of the Cash Amount and the Applicable Percentage. If the Managing Member offers, subject to the approval of the Audit Committee, to purchase some or all of the Tendered Units and a Non-Managing Member accepts such offer:

(i) the Cash Purchase Price shall be delivered, in each case, in the Non-Managing Member’s sole and absolute discretion, by wire transfer or as a certified or bank check payable to the Non-Managing Member, in each case, in immediately available funds and on or before the Specified Redemption Date; and

(ii) the remaining Tendered Units shall be subject to Redemption pursuant to Section 14.1(a).

(c) In the event the Managing Member elects to exercise its offer rights pursuant to Section 14.1(b), the Managing Member shall provide a written notice to that effect (an “**Exercise Notice**”) to the Company and the Non-Managing Member on or before the close of business on the Cut-Off Date. The failure of the Managing Member to provide an Exercise Notice by the close of business on the Cut-Off Date shall be deemed to be an election by the Managing Member not to make an offer to purchase any of the Tendered Units. The Non-Managing Member shall have five (5) Business Days after receipt of the Exercise Notice to give written notice of acceptance.

(d) Without limiting the remedies of the Non-Managing Members, if the Managing Member offers to purchase some or all of the Tendered Units under Section 14.1(b) for the Cash Purchase Price and a Non-Managing Member accepts, and the Cash Purchase Price is not paid on or before the Specified Redemption Date, interest shall accrue with respect to the Cash Purchase Price from the day after the Specified Redemption Date to and including the date on which the Cash Purchase Price is paid at a rate equal to the Applicable Federal Short-Term Rate as published monthly by the United States Internal Revenue Service.

(e) Notwithstanding anything herein to the contrary, with respect to any Redemption pursuant to Section 14.1(a), or any purchase of Paired Units by the Managing Member pursuant to Section 14.1(b) hereof:

(i) Without the consent of the Managing Member, no Non-Managing Member may effect a Redemption (A) if such Non-Managing Member holds at least two thousand (2,000) Paired Units, for less than two thousand (2,000) Paired Units, (B) if such Non-Managing Member holds less than two thousand (2,000) Paired Units, for less than all of the Paired Units held by such Non-Managing Member, or (C) more than one time in any calendar month; provided, that each of the Investor Groups shall have the right to request up to two (2) Redemptions per calendar month per Investor Group for all or a portion of the Paired Units held by such Investor Group for Class A Shares, subject to the other terms and conditions hereof; provided, further, that if two or more entities within an Investor Group exercise such request concurrently (and such Redemption occurs concurrently), such request shall be deemed to be a single request. Without limiting the foregoing, no Non-Managing Member shall effect a Redemption pursuant to this Section 14.1 for a period commencing on the Effective Date and ending on the date that is five (5) Business Days following the Effective Date.

(ii) If (A) a Non-Managing Member surrenders Tendered Units during the period after the record date with respect to a distribution payable to holders of Units, and before the record date established by the Managing Member for a distribution to its stockholders of some or all of its portion of such Company distribution, and (B) the Managing Member elects to purchase any of such Tendered Units pursuant to Section 14.1(b), then such Non-Managing Member shall pay to the Managing Member on the Specified Redemption Date an amount in cash equal to the Company distribution paid or payable in respect of such Tendered Units.

(iii) Notwithstanding anything to the contrary herein, the consummation of a Redemption pursuant to Section 14.1(a) hereof or a purchase of Tendered Units by the Managing Member pursuant to Section 14.1(b) hereof, as the case may be, shall not be permitted to the extent the Managing Member determines that such Redemption or purchase (A) would be prohibited by applicable law or regulation (including, without limitation, the Securities Act, the Delaware LLC Act or the Delaware General Corporation Law) or (B) would not be permitted under the Charter, this Agreement or any other agreements to which the Managing Member or the Company may be party or any written policies of the Managing Member related to unlawful or improper trading (including, without limitation, the policies of the Managing Member relating to insider trading).

(f) The Managing Member, the Company and each applicable Non-Managing Member tendering Paired Units shall bear their own expenses in connection with the consummation of any Exchange, whether or not any such Exchange is ultimately consummated, except that the Company shall bear any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, any Exchange; *provided, however*, that if any Class A Shares are to be delivered in a name other than that of a Non-Managing Member, then such Non-Managing Member and/or the Person in whose name such shares are to be delivered shall pay to the Company the amount of any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, such Exchange or shall establish to the reasonable satisfaction of the Managing Member that such tax has been paid or is not payable.

Section 14.2 *Adjustment*. If there is any reclassification, reorganization, recapitalization or other similar transaction in which the Units, Class A Shares or Class B Shares, as applicable, are converted or changed into another security, securities or other property, then upon any subsequent Exchange, each Member shall be entitled to receive the amount of such security, securities or other property that such Member would have received if such Exchange had occurred immediately prior to the effective date of such reclassification, reorganization, recapitalization or other similar transaction, taking into account any adjustment as a result of any subdivision (by any split, distribution or dividend, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse split, reclassification, recapitalization or otherwise) of such security, securities or other property that occurs after the effective time of such reclassification, reorganization, recapitalization or other similar transaction. For the avoidance of doubt, if there is any reclassification, reorganization, recapitalization or other similar transaction in which the Units, Class A Shares or Class B Shares, as applicable, are converted or changed into another security, securities or other property, this Section 14.2 shall continue to be applicable, mutatis mutandis, with respect to such security or other property. This Article XIV shall apply to, mutatis mutandis, and all references to “Units,” “Class A Shares” or “Class B Shares” shall be deemed to include, any security, securities or other property of the Company or the Managing Member, as applicable, which may be issued in respect of, in exchange for or in substitution of the Units, Class A Shares or Class B Shares, as applicable, by reason of any distribution or dividend, split, reverse split, combination, reclassification, reorganization, recapitalization, merger, exchange (other than an Exchange) or other transaction.

Section 14.3 *Existing Exchange Agreements*. For the avoidance of doubt, parties to Exchange Agreements may, in lieu of utilizing the Exchange Rights provided herein with respect to such parties’ Units, utilize the exchange rights provided in such Exchange Agreements.

Section 14.4 *Tax Matters with Respect to Exchanges*.

(a) If the Managing Member or the Company shall be required to withhold any amounts by reason of any federal, state, local or foreign tax rules or regulations in respect of any Exchange, the Managing Member or the Company, as the case may be, shall be entitled to take such action as it deems appropriate in order to ensure compliance with such withholding requirements, including, without limitation, at its option withholding from, and paying over to the appropriate taxing authority, any consideration otherwise payable to the Members under this Article XIV, and any such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made. Notwithstanding anything to the contrary herein, each of the Managing Member and the Company may, at its own discretion, require as a condition to the effectiveness of an Exchange that an exchanging holder of Tendered Units deliver to the Managing Member or the Company, as the case may be, a duly completed and executed IRS Form W-8 or Form W-9, as applicable.

(b) For any taxable period that includes an Exchange by a Member pursuant to this Article XIV, the Managing Member shall cause the Company to deliver to the applicable Member, reasonably in advance of the due date for the U.S. federal income tax return for such period, a draft of such tax return (including Internal Revenue Service Schedule K-1 of such Member, any statements required under Section 1.751-1(a)(3) of the Treasury Regulations and any allocation required under Section 755 of the Code) for review and reasonable comment by such Member, as applicable, solely with respect to any items of such tax return related to such Member's calculation of its gain or loss (and the character thereof including amounts attributable to Section 1254 of the Code) attributable to such Exchange(s), and the Company shall incorporate any reasonable comments provided to the Company in writing prior to the due date for filing such tax return in the preparation of such tax return (including the related Internal Revenue Service Schedule K-1 of such Member, any statements required under Section 1.751-1(a)(3) of the Treasury Regulations and any allocation required under Section 755 of the Code).

(c) For U.S. federal income (and applicable state and local) tax purposes, each of the Managing Member and its Affiliates, the Non-Managing Member requesting the relevant Redemption and the Company agrees to treat the transfer of the Tendered Units to the Managing Member (whether in exchange for the Common Share Amount or the Cash Purchase Price) as (i) a taxable sale of the Unit(s) forming part of such Tendered Unit(s) to the Managing Member in exchange for Class A Shares or cash, as applicable, and (ii) the cancellation for no consideration of the Class B Share(s) forming part of such Tendered Unit(s).

## ARTICLE XV GENERAL PROVISIONS

### Section 15.1 *Addresses and Notices; Written Communications.*

(a) Any notice, demand, request, report or proxy materials required or permitted to be given or made to the Members under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Members at the address described below. Any notice, payment or report to be given or made to the Members hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Membership Interests at his address as shown in the records of the Company, regardless of any claim of any Person who may have an interest in such Membership Interests by reason of any assignment or otherwise. Notwithstanding the foregoing, if (i) the Members shall consent to receiving notices, demands, requests, reports or proxy materials via electronic mail or by the Internet or (ii) the rules of the Commission shall permit any report or proxy materials to be delivered electronically or made available via the Internet, any such notice, demand, request, report or proxy materials shall be deemed given or made when delivered or made available via such mode of delivery. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 15.1(a) executed by the Managing Member or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report given or made in accordance with the provisions of this Section 15.1(a) is returned marked to indicate that such notice, payment or report was unable to be delivered, such notice, payment or report and, in the case of notices, payments or reports returned by the United States Postal Service (or other physical mail delivery mail service outside the United States of America), any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing

(until such time as such Record Holder or another Person notifies the Company of a change in his address) or other delivery if they are available for the Member at the principal office of the Company for a period of one year from the date of the giving or making of such notice, payment or report to the other Members. Any notice to the Company shall be deemed given if received by the Managing Member at the principal office of the Company designated pursuant to Section 2.3. The Managing Member may rely and shall be protected in relying on any notice or other document from any Member or other Person if believed by it to be genuine.

(b) The terms “in writing,” “written communications,” “written notice” and words of similar import shall be deemed satisfied under this Agreement by use of e-mail and other forms of electronic communication.

Section 15.2 *Further Action*. The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.3 *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.4 *Integration*. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 15.5 *Creditors*. None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Company.

Section 15.6 *Waiver*. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

Section 15.7 *Counterparts*. This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

Section 15.8 *Applicable Law; Forum; Venue and Jurisdiction; Waiver of Trial by Jury; Attorney Fees*.

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

(b) Each of the Members and each Person holding any beneficial interest in the Company (whether through a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing or otherwise):

(i) irrevocably agrees that any claims, suits, actions or proceedings (A) arising out of or relating in any way to this Agreement (including any claims, suits or actions to interpret, apply or enforce the provisions of this Agreement or the duties, obligations or liabilities among Members or of Members to the Company, or the rights or powers of, or restrictions on, the Members or the Company), (B) brought in a derivative manner on behalf of the Company, (C) asserting a claim of breach of a fiduciary or other duty owed by any director, officer, or other employee of the Company, or owed by the Managing Member, to the Company or the Non-Managing Members, (D) asserting a claim arising pursuant to any provision of the Delaware LLC Act or (E) asserting a claim governed by the internal affairs doctrine shall be exclusively brought in the Court of Chancery of the State of Delaware (or, if such court does not have subject matter jurisdiction thereof, any other court located in the State of Delaware with subject matter jurisdiction), in each case regardless of whether such claims, suits, actions or proceedings sound in contract, tort, fraud or otherwise, are based on common law, statutory, equitable, legal or other grounds, or are derivative or direct claims;

(ii) irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, if such court does not have subject matter jurisdiction thereof, any other court located in the State of Delaware with subject matter jurisdiction) in connection with any such claim, suit, action or proceeding;

(iii) agrees not to, and waives any right to, assert in any such claim, suit, action or proceeding that (A) it is not personally subject to the jurisdiction of the Court of Chancery of the State of Delaware or of any other court to which proceedings in the Court of Chancery of the State of Delaware may be appealed, (B) such claim, suit, action or proceeding is brought in an inconvenient forum, or (C) the venue of such claim, suit, action or proceeding is improper;

(iv) expressly waives any requirement for the posting of a bond by a party bringing such claim, suit, action or proceeding;

(v) consents to process being served in any such claim, suit, action or proceeding by mailing, certified mail, return receipt requested, a copy thereof to such party at the address in effect for notices hereunder, and agrees that such services shall constitute good and sufficient service of process and notice thereof; *provided*, nothing in this clause (v) shall affect or limit any right to serve process in any other manner permitted by law;

(vi) IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY SUCH CLAIM, SUIT, ACTION OR PROCEEDING;  
and

(vii) agrees that if such Member or Person does not obtain a judgment on the merits that substantially achieves, in substance and amount, the full remedy sought in any such claim, suit, action or proceeding, then such Member or Person shall be obligated to reimburse the Company and its Affiliates for all fees, costs and expenses of every kind and description, including but not limited to all reasonable attorneys' fees and other litigation expenses, that the parties may incur in connection with such claim, suit, action or proceeding.

Section 15.9 *Invalidity of Provisions*. If any provision or part of a provision of this Agreement is or becomes for any reason, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions and part thereof contained herein shall not be affected thereby and this Agreement shall, to the fullest extent permitted by law, be reformed and construed as if such invalid, illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

Section 15.10 *Consent of Members*. Each Member hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon then affirmative vote or consent of less than all of the Members, such action may be so taken upon the concurrence of less than all of the Members and each Member shall be bound by the results of such action.

Section 15.11 *Facsimile and Email Signatures*. The use of facsimile signatures and signatures delivered by email in portable document format (.pdf) or similar format affixed in the name and on behalf of the Company on certificates representing Membership Interests is expressly permitted by this Agreement.

Section 15.12 *Third-Party Beneficiaries*. Each Member agrees that any Indemnitee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Indemnitee.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**Viper Energy, Inc.**

By: /s/ Kaes Van't Hof  
Name: Kaes Van't Hof  
Title: Chief Executive Officer

**VNOM Sub, Inc.**

By: /s/ Kaes Van't Hof  
Name: Kaes Van't Hof  
Title: Chief Executive Officer

**Diamondback Energy, Inc.**

By: /s/ Kaes Van't Hof  
Name: Kaes Van't Hof  
Title: Chief Executive Officer

**Diamondback E&P LLC**

By: /s/ Kaes Van't Hof  
Name: Kaes Van't Hof  
Title: Chief Executive Officer

[Signature Page to Fourth Amended and Restated Limited Liability Company Agreement]

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**Tumbleweed Royalty IV, LLC**

By: /s/ John Sellers  
Name: John Sellers  
Title: Co-Chief Executive Officer

**NGU Management LLC**

By: /s/ Austen Campbell  
Name: Austen Campbell  
Title: Chief Executive Officer

**EnCap Energy Capital Fund X, L.P.**

By: EnCap Equity Fund X GP, L.P., its general partner

By EnCap Investments L.P., its general partner

By /s/ Jason M. DeLorenzo  
Name: Jason M. DeLorenzo  
Title: Managing Partner

[Signature Page to Fourth Amended and Restated Limited Liability Company Agreement]

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**EXHIBIT A**

**Unitholders**

As of August 19, 2025

[On file with the Company]

**EXHIBIT B**

**Adoption Agreement**

This Adoption Agreement is executed by the undersigned pursuant to the Fourth Amended and Restated Limited Liability Company Agreement of Viper Energy Partners LLC (the "**Company**"), dated as of August 19, 2025, as amended, restated or supplemented from time to time, a copy of which is attached hereto and is incorporated herein by reference (the "**Agreement**"). By the execution of this Adoption Agreement, the undersigned agrees as follows:

1. Acknowledgment. The undersigned acknowledges that he/she is acquiring [\_\_\_\_] Units of the Company as a Member, subject to the terms and conditions of the Agreement (including the Exhibits thereto), as amended from time to time. Capitalized terms used herein without definition are defined in the Agreement and are used herein with the same meanings set forth therein.
2. Agreement. The undersigned hereby joins in, and agrees to be bound by, subject to, and enjoy the benefit of the applicable rights set forth in, the Agreement (including the Exhibits thereto), as amended from time to time, with the same force and effect as if he/she were originally a party thereto.
3. Notice. Any notice required or permitted by the Agreement shall be given to the undersigned at the address listed below.

EXECUTED AND DATED on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[NAME]

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

Name:

Title:

Notice Address:

Facsimile:

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**EXHIBIT C**

**Sitio Class C Unitholders**

As of August 19, 2025

[On file with the Company]

**REGISTRATION RIGHTS AGREEMENT**

This **REGISTRATION RIGHTS AGREEMENT**, dated as of August 19, 2025 (this "Agreement"), is by and among Viper Energy, Inc. (f/k/a New Cobra Pubco, Inc.), a Delaware corporation (the "Company"), and each of the other parties listed on the signature pages hereto (collectively, the "Initial Holders"), and each individually, an "Initial Holder") and the other Holders (as defined herein) from time to time party hereto.

**RECITALS**

**WHEREAS**, on June 2, 2025, the Company, Viper Energy, Inc., (f/k/a Viper Energy, Inc.), a Delaware corporation ("Parent"), Parent's operating subsidiary, Viper Energy Partners LLC, a Delaware limited liability company ("OpCo"), Sitio Royalties Corp., a Delaware corporation ("Scorpion"), Sitio Royalties Operating Partnership, LP, a Delaware limited partnership, Cobra Merger Sub, Inc., a Delaware corporation, and Scorpion Merger Sub, Inc., a Delaware corporation, entered into that certain Agreement and Plan of Merger (the "Merger Agreement");

**WHEREAS**, in connection with the closing of the transactions contemplated by the Merger Agreement and contemporaneously herewith, the Initial Holders were issued [•] units representing limited liability company interests ("OpCo Units") in OpCo and an equal number of Class B Shares (defined herein);

**WHEREAS**, contemporaneously herewith, each Initial Holder entered into an Adoption Agreement to the Fourth Amended and Restated Limited Liability Company Agreement of OpCo (the "OpCo LLCA"), whereby each Initial Holder agreed to be bound by the terms of the OpCo LLCA (the "Adoption Agreement");

**WHEREAS**, pursuant to the terms of the OpCo LLCA, the Initial Holders may, from time to time, exchange some or all of their respective OpCo Units, together with an equal number of Class B Shares, for an equal number of Class A Shares; and

**WHEREAS**, the resale by the Holders of Class A Shares may be required to be registered under the Securities Act and applicable state securities laws, depending upon the status of a Holder or the intended method of distribution of such Class A Shares.

**NOW, THEREFORE**, in consideration of the premises, mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I - DEFINITIONS****1.1 Definitions.**

(a) For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1; provided, however, that capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Merger Agreement.

“Affiliate” means, with respect to any Person, any Person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with any Person.

“Automatic Shelf Registration Statement” means an “Automatic Shelf Registration Statement,” as defined in Rule 405 under the Securities Act.

“Business Day” means any day on which Nasdaq is open for trading.

“Class A Shares” means shares of Class A common stock, par value \$0.000001 per share, of the Company.

“Class B Shares” means shares of Class B common stock, par value \$0.000001 per share, of the Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations promulgated by the SEC thereunder.

“Holder” means (i) each Initial Holder and (ii) any direct or indirect transferee of any such securityholder, including any securityholder that receives Registrable Securities upon a distribution or liquidation of a Holder, who has been assigned the rights of the transferor Holder under this Agreement in accordance with Section 2.6.

“Nasdaq” means the Nasdaq Global Select Market.

“Person” or “person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof.

“Prospectus” means the prospectus (including any preliminary, final or summary prospectus) included in any Registration Statement, all amendments and supplements to such prospectus and all other material incorporated by reference in such prospectus.

“register,” “registered” and “registration” refer to a registration effected by preparing and filing a Registration Statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such Registration Statement.

“Registrable Securities” means, at any time, (i) any Class A Shares acquired (or that may be acquired) by the Initial Holder or any subsequent permitted Holder pursuant to the terms of the OpCo LLCA and (ii) any securities issued or issuable with respect to any such Class A Shares by way of conversion, concession, dividend in the form of Class A Shares or split or other distribution, recapitalization or reclassification or similar transaction; provided, however, that Registrable Securities shall cease to be Registrable Securities when (x) they have been distributed to the public pursuant to an offering registered under the Securities Act or (y) the later of (1) the date they have all been distributed, or may all legally be distributed in one transaction, to the public pursuant to Rule 144 without volume or manner of sale restrictions or the need for “current public information” or (2) the date that all Holders collectively own a number of OpCo Units and Class A Shares for which OpCo Units were exchanged that is less than 50% of the aggregate of the number of OpCo Units issued to the Initial Holders on the Closing Date.

“Registration Expenses” means all expenses (other than Selling Expenses) arising from or incident to the Company’s performance of or compliance with this Agreement, including, without limitation: (i) SEC, stock exchange, Financial Industry Regulatory Authority, Inc. and other registration and filing fees; (ii) all fees and expenses incurred in connection with complying with any securities or blue sky laws (including, without limitation, fees, charges and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities); (iii) all printing, messenger and delivery expenses; (iv) the fees, charges and disbursements of counsel to the Company and of its independent public accountants, reserve engineers, and any other accounting and legal fees, charges and expenses incurred by the Company (including, without limitation, any expenses arising from any special audits or “comfort” letters required in connection with or incident to any registration); (v) the fees and expenses incurred in connection with the listing of the Registrable Securities on Nasdaq (or the New York Stock Exchange or any other national securities exchange on which the Class A Shares may then be listed) or the quotation of Registrable Securities on any inter-dealer quotation system; and (vi) reasonable fees and expenses of counsel to the Holders in connection with the filing or amendment of any Registration Statement or Prospectus hereunder; provided that, with respect to any offering, Registration Expenses shall only include such fees and expenses (not to exceed \$50,000 in the aggregate) of one counsel to the Holders and one local counsel per jurisdiction with respect to any offering (which, in each case, shall be chosen by the Holders of a majority of Registrable Securities to be included in such offering).

“Registration Statement” means any registration statement of the Company that covers the resale of any Registrable Securities pursuant to the provisions of this Agreement filed with, or to be filed with, the SEC under the rules and regulations promulgated under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits, financial information and all other material incorporated by reference in such registration statement or Prospectus.

“Required Holders” means Holders who then own beneficially more than 50% of the Registrable Securities.

“Rule 144” means Rule 144 promulgated by the SEC pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC as a replacement thereto having substantially the same effect as such rule.

“SEC” means the Securities and Exchange Commission or any other Federal agency at the time administering the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations promulgated by the SEC thereunder.

“Selling Expenses” means the underwriting fees, discounts and commissions, placement fees of underwriters, broker commissions and any transfer taxes, in each case, applicable to all Registrable Securities registered by the Holders and the fees and expenses of counsel engaged by any Holder (other than expenses for counsel that are the Company’s expense under the definition of Registration Expenses).

“Shelf Registration Statement” means a “shelf” registration statement of the Company that covers all the Registrable Securities (and may cover other securities of the Company) on Form S-3 and under Rule 415 under the Securities Act or, if the Company is not then eligible to file on Form S-3, on Form S-1 or any other appropriate form under the Securities Act, or any successor rule that may be adopted by the SEC, including without limitation any such registration statement filed pursuant to Section 2.1, and all amendments and supplements to such “shelf” registration statement, including post-effective amendments, in each case, including the Prospectus contained therein, all exhibits thereto and any document incorporated by reference therein.

(b) For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Adoption Agreement	Recitals
Advice	2.3
Agreement	Introductory Paragraph
Blackout Period	2.2(s), 2.3(s)
Company	Introductory Paragraph
Filing Date	2.1(a)
Initial Holder	Introductory Paragraph
Initial Holders	Introductory Paragraph
Merger Agreement	Recitals
OpCo	Recitals
OpCo LLCA	Recitals
OpCo Units	Recitals
Parent	Recitals
Records	2.2(l)
Scorpion	Recitals
Seller Affiliates	2.5(a)
Suspension Notice	2.3
Suspension Period	2.1(b)

1.2 **Other Definitional and Interpretive Matters**. Unless otherwise expressly provided or the context otherwise requires, for purposes of this Agreement the following rules of interpretation 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 is excluded. If the last day of such period is a non-Business Day, the period in question ends on the next succeeding Business Day.

(b) Any reference in this Agreement to \$ means U.S. dollars.

(c) Any reference in this Agreement to gender includes all genders, and words imparting the singular number also include the plural and vice versa.

(d) The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and do not affect, and should not be utilized in, the construction or interpretation of this Agreement.

(e) All references in this Agreement to any “Article” or “Section” are to the corresponding Article or Section of this Agreement.

(f) The words “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.

(g) The word “including” or any variation thereof means “including, but not limited to,” and does not limit any general statement that it follows to the specific or similar items or matters immediately following it.

## ARTICLE II - REGISTRATION RIGHTS

### 2.1 Shelf Registration.

(a) The Company will prepare and file on or before the date that is five (5) Business Days following the date of this Agreement (the “Filing Date”), a Shelf Registration Statement (which Shelf Registration Statement shall be an Automatic Shelf Registration Statement if the Company is then eligible to file an Automatic Shelf Registration Statement), registering for resale the Registrable Securities under the Securities Act subject to compliance by the Holders of the Registrable Securities with their obligations under this Agreement, including specifically those obligations set forth in Section 2.1(c). The plan of distribution indicated in the Shelf Registration Statement will include all such methods of sale as any Holder may reasonably request in writing at least five Business Days prior to the filing of the Shelf Registration Statement and that can be included in the Shelf Registration Statement under the rules and regulations of the SEC. To the extent the Shelf Registration Statement is not effective upon filing, the Company shall use its reasonable best efforts to have the Shelf Registration Statement and any amendment declared effective by the SEC at the earliest possible date. Until such time as all Registrable Securities cease to be Registrable Securities, the Company shall use its reasonable best efforts to keep current and effective such Shelf Registration Statement and file such supplements or amendments to such Shelf Registration Statement (or file a new Shelf Registration Statement (which Shelf Registration Statement shall be an Automatic Shelf Registration Statement if the Company is then eligible to file an Automatic Shelf Registration Statement) when such preceding Shelf Registration Statement expires pursuant to the rules of the SEC) as may be necessary or appropriate to keep such Shelf Registration Statement continuously effective and useable for the resale of all Registrable Securities under the Securities Act. Any Shelf Registration Statement when declared effective (including the documents incorporated therein by reference) will comply in all material respects as to form with all applicable requirements of the Securities Act and the Exchange Act and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(b) Upon written notice to the Holders of Registrable Securities, the Company shall be entitled to suspend, for a period of time not to exceed the periods specified in Section 2.2(s) (each, a “Suspension Period”), the use of any Registration Statement or Prospectus and shall not be required to amend or supplement the Registration Statement, any related Prospectus or any document incorporated therein by reference during such Suspension Period if: (i) the Company receives any request by the SEC or any other federal or state governmental authority for amendments or supplements to such Registration Statement or Prospectus or for additional information that pertains to such Holders as sellers of Registrable Securities; (ii) the SEC issues any stop order suspending the effectiveness of the Registration Statement covering any or all of the Registrable Securities or the initiation of any proceedings for that purpose; (iii) the Company receives any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose; or (iv) the board of directors, chief executive officer or chief financial officer of the Company determines in its or his or her reasonable good faith judgment that the Registration Statement or any Prospectus may contain an untrue statement of a material fact or may omit any fact necessary to make the statements in the Registration Statement or Prospectus not misleading; provided, that the Company shall use its good faith efforts to amend the Registration Statement or Prospectus to correct such untrue statement or omission as promptly as reasonably practicable, unless the Company determines in good faith that such amendment would reasonably be expected to have a materially detrimental effect on the Company.

(c) Each of the Holders hereby agrees (i) to cooperate with the Company and to furnish to the Company all such information regarding such Holder, its ownership of Registrable Securities and the disposition of such securities in connection with the preparation of the Registration Statement and any filings with any state securities commission as the Company may reasonably request, and (ii) to the extent required by the Securities Act, to deliver or cause delivery of the Prospectus contained in the Registration Statement, any amendment or supplement thereto, to any purchaser of Registrable Securities covered by the Registration Statement from the Holder.

**2.2 Registration Procedures.** In connection with the registration and sale of Registrable Securities pursuant to this Agreement, the Company will use its reasonable best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company will:

(a) if the Registration Statement is not automatically effective upon filing, use reasonable best efforts to cause such Registration Statement to become effective as promptly as reasonably practicable;

(b) promptly notify each Holder, promptly after the Company receives notice thereof, of the time when such Registration Statement has been declared effective or a supplement to any prospectus forming a part of such Registration Statement has been filed;

(c) after the Registration Statement becomes effective, promptly notify each Holder of any request by the SEC that the Company amend or supplement such Registration Statement or Prospectus;

(d) prepare and file with the SEC such amendments and supplements to the Registration Statement and the Prospectus used in connection therewith as may be reasonably necessary to keep the Registration Statement effective during the period set forth in, and subject to the terms and conditions of, this Agreement, and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by the Registration Statement for the period required to effect the distribution of the Registrable Securities as set forth in Article II hereof;

(e) furnish to the Holders such numbers of copies of such Registration Statement, each amendment and supplement thereto, each Prospectus (including each preliminary Prospectus and Prospectus supplement) and such other documents as the Holder may reasonably request in order to facilitate the disposition of the Registrable Securities;

(f) use its reasonable best efforts to register and qualify the Registrable Securities under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the Holders and do any and all other acts and things that may be reasonably necessary or advisable to enable the Holders and to consummate the disposition of the Registrable Securities in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business in or to file a general consent to service of process in any jurisdiction, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act, or subject itself to taxation in any such jurisdiction, unless the Company is already subject to taxation in such jurisdiction;

(g) use its reasonable best efforts to cause all such Registrable Securities to be listed on a national securities exchange or trading system and each securities exchange and trading system (if any) on which similar equity securities issued by the Company are then listed;

(h) provide a transfer agent and registrar for the Registrable Securities and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of the Registration Statement;

(i) if requested by the Holders, cooperate with the Holders to facilitate the timely preparation and delivery of certificates (which shall not bear any restrictive legends unless required under applicable law) representing securities sold under the Registration Statement, and enable such securities to be in such denominations and registered in such names as such Holders may request and keep available and make available to the Company's transfer agent prior to the effectiveness of such Registration Statement a supply of such certificates;

(j) upon execution of confidentiality agreements in form and substance reasonably satisfactory to the Company, promptly make available for inspection by the Holders, and any attorney or accountant or other agent retained or selected by the Holders, all financial and other records, pertinent corporate documents, and properties of the Company reasonably requested thereby (collectively, "Records"), and use reasonable best efforts to cause the Company's officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such Registration Statement and to conduct appropriate due diligence in connection therewith; provided, that Records that the Company determines, in good

faith, to be confidential and that it notifies such Holders are confidential shall not be disclosed by such Holders unless the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction or is otherwise required by applicable law. Each Holder agrees that information obtained by it as a result of such inspections shall be deemed confidential and shall not be used by it or its Affiliates (other than with respect to such Holders' due diligence) unless and until such information is made generally available to the public, and further agrees that, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, to the extent permitted and to the extent practicable it shall give notice to the Company and allow the Company to undertake appropriate action to prevent disclosure of the Records deemed confidential;

(k) promptly notify the Holders of the notification to the Company by the SEC of its initiation of any proceeding with respect to the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement, and in the event of the issuance of any stop order suspending the effectiveness of such Registration Statement, or of any order suspending or preventing the use of any related Prospectus or suspending the qualification of any Registrable Securities included in such Registration Statement for sale in any jurisdiction, use its reasonable best efforts to obtain promptly the withdrawal of such order;

(l) promptly notify the Holders at any time when a Prospectus relating thereto is required to be delivered under the Securities Act of the occurrence of any event as a result of which the Prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made, and at the request of any Holder promptly prepare and furnish to such Holder a reasonable number of copies of a supplement to or an amendment of such Prospectus, or a revised Prospectus, as may be necessary so that, as thereafter delivered to the purchasers of such securities, such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made (following receipt of any supplement or amendment to any Prospectus, the Holders shall deliver such amended, supplemental or revised Prospectus in connection with any offers or sales of Registrable Securities, and shall not deliver or use any Prospectus not so supplemented, amended or revised);

(m) promptly notify the Holders of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the applicable securities or blue sky laws of any jurisdiction;

(n) make available to each Holder (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company, one copy of each Registration Statement and any amendment thereto, each preliminary Prospectus and Prospectus and each amendment or supplement thereto, each letter written by or on behalf of the Company to the SEC or the staff of the SEC (or other governmental agency or self-regulatory body or other body having jurisdiction, including any domestic or foreign securities exchange), and each item of correspondence from the SEC or the staff of the SEC (or other governmental agency or self-regulatory body or other body having jurisdiction, including any domestic or foreign securities exchange), in each case relating to such Registration Statement, and (ii) such number of copies of

each Prospectus, including a preliminary Prospectus, and all amendments and supplements thereto and such other documents as any Holder may reasonably request in order to facilitate the disposition of the Registrable Securities. The Company will promptly notify the Holders of the effectiveness of each Registration Statement or any post-effective amendment or the filing of any supplement or amendment to such Registration Statement or of any Prospectus supplement. The Company will promptly respond to any and all comments received from the SEC, with a view towards causing each Registration Statement or any amendment thereto to be declared effective by the SEC as soon as practicable and shall file an acceleration request, if necessary, as soon as practicable following the resolution or clearance of all SEC comments or, if applicable, following notification by the SEC that any such Registration Statement or any amendment thereto will not be subject to review;

(o) take no direct or indirect action prohibited by Regulation M under the Exchange Act; provided, that, to the extent that any prohibition is applicable to the Company, the Company will take all reasonable action to make any such prohibition inapplicable;

(p) if requested by Holders in connection with any transaction involving any Registrable Securities (including any sale or other transfer of such Registrable Securities without registration under the Securities Act, pledges pursuant to margin loans, hedges or other transactions or arrangements (including, without limitation, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined)), provide such Holders with customary and reasonable assistance (at such Holder's sole expense and cost) to facilitate such transaction, including, without limitation such action as such Holders may reasonably request from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act;

(q) cooperate with and assist any Holder to facilitate the transfer of such Holder's Registrable Securities to a DTC custodial or brokerage account as reasonably requested by such Holder (including the delivery of instruction letters by the Company or its counsel to the Company's transfer agent, the delivery of customary legal opinions by counsel to the Company and the delivery of such Registrable Securities without restrictive legends), *provided*, that the Holder shall (i) deliver such documents and undertakings reasonably requested by the Company, its counsel or its transfer agent in connection with such request and (ii) agree not to sell such shares unless an effective registration statement is on file with the SEC or there is an applicable exemption from registration for such sale under the Securities Act or the rules promulgated thereunder;

(r) take such other actions as are reasonably necessary in order to facilitate the disposition of such Registrable Securities; and

(s) notwithstanding any other provision of this Agreement, the Company shall not be required to file a Registration Statement (or any amendment thereto) (or, if the Company has filed a Shelf Registration Statement and has included Registrable Securities therein, the Company shall be entitled to suspend the offer and sale of Registrable Securities pursuant to such Registration Statement) for a period of up to 60 days if (i) the board of directors of the Company determines that a postponement is in the best interest of the Company and its stockholders generally due to a proposed transaction involving the Company and determines in good faith that the Company's ability to pursue or consummate such a transaction would be materially and

adversely affected by any required disclosure of such transaction in the Shelf Registration Statement, (ii) the board of directors of the Company determines such registration would render the Company unable to comply with applicable securities laws or (iii) the board of directors of the Company determines such registration would require disclosure of material information that the Company has a bona fide business purpose for preserving as confidential (any such period, a “Blackout Period”); provided, however, that in no event shall any Blackout Period and/or Suspension Period collectively exceed an aggregate of 90 days in any 12-month period.

**2.3 Suspension of Dispositions.** Each Holder agrees by acquisition of any Registrable Securities that, upon receipt of any notice (a “Suspension Notice”) from the Company of the occurrence of any event of the kind described in Section 2.1(b), Section 2.2(l) or Section 2.2(s), such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement until such Holder’s receipt of the copies of the supplemented or amended Prospectus, or until it is advised in writing (the “Advice”) by the Company that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings which are incorporated by reference in the Prospectus. The Company shall extend the period of time during which the Company is required to maintain the Registration Statement effective pursuant to this Agreement by the number of days during the period from and including the date of the giving of such Suspension Notice to and including the date such Holder either receives the supplemented or amended Prospectus or receives the Advice. If so directed by the Company, such Holder will deliver to the Company all copies, other than permanent file copies then in such Holder’s possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. The Company shall use its reasonable best efforts and take such actions as are reasonably necessary to render the Advice as promptly as practicable.

#### **2.4 Registration Expenses.**

(a) All Registration Expenses shall be borne by the Company. In addition, for the avoidance of doubt, the Company shall pay its internal expenses in connection with the performance of or compliance with this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit or quarterly review, the expense of any liability insurance and the expenses and fees for listing the securities to be registered on each securities exchange on which they are to be listed. All Selling Expenses relating to Registrable Securities registered shall be borne by the Holders of such Registrable Securities pro rata on the basis of the number of Registrable Securities sold.

(b) Any Holder may deliver written notice (an “Opt-Out Notice”) to the Company requesting that such Holder not receive notice from the Company of any event that would lead to a Suspension Period as contemplated by Section 2.1(b) or Blackout Period as contemplated by Section 2.2(s); provided, however, that such Holder may later revoke any such Opt-Out Notice in writing. Following receipt of an Opt-Out Notice from a Holder (unless subsequently revoked), the Company shall not deliver any notice to such Holder pursuant to Section 2.1(b), Section 2.2(l) or Section 2.2(s), as applicable, and each time prior to a Holder’s intended use of an effective Registration Statement, such Holder will notify the Company in writing at least two Business Days in advance of such intended use, and if a notice of a Suspension Period or Blackout Period was previously delivered (or would have been delivered but for the provisions of this Section (b)) and the Suspension Period or Blackout Period remains in effect, the

Company will so notify such Holder, within one Business Day of such Holder's notification to the Company, by delivering to such Holder a copy of such previous notice of such Suspension Period or Blackout Period, and thereafter will provide such Holder with the related notice of the conclusion of such Suspension Period or Blackout Period immediately upon its availability.

## **2.5 Indemnification.**

(a) The Company agrees to indemnify and reimburse, to the fullest extent permitted by law, each Holder that is a seller of Registrable Securities, and each of its employees, advisors, agents, representatives, partners, officers, and directors and each Person who controls such Holder (within the meaning of the Securities Act or the Exchange Act) (collectively, the "Seller Affiliates") (i) against any and all losses, claims, damages, liabilities and expenses, joint or several (including, without limitation, attorneys' fees and disbursements except as limited by Section 2.5(c)) based upon, (A) in the case of any Registration Statement, arising out of, related to or resulting from any untrue or alleged untrue statement of a material fact contained in any Registration Statement or any amendment thereof or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (B) in the case of any Prospectus or supplement thereto, arising out of, based upon or resulting from the inclusion of an untrue or alleged untrue statement of a material fact or the omission or alleged omission to state therein a material fact necessary to make the statements made therein, in the light of the circumstances in which they were made, not misleading, (ii) against any and all losses, liabilities, claims, damages and expenses whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon, arising out of, related to or resulting from any such untrue statement or omission or alleged untrue statement or omission, and (iii) against any and all costs and expenses (including reasonable fees, charges and disbursements of counsel) as may be reasonably incurred in investigating, preparing or defending against any litigation, investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon, arising out of, related to or resulting from any such untrue statement or omission or alleged untrue statement or omission, or such violation of the Securities Act or Exchange Act, to the extent that any such expense or cost is not paid under subparagraph (i) or (ii) above; except insofar as any such statements are made in reliance upon information furnished to the Company in writing by such seller or any Seller Affiliate expressly for use therein. The reimbursements required by this Section 2.5(a) will be made by periodic payments during the course of the investigation or defense, as and when bills are received or expenses incurred.

(b) In connection with any Registration Statement or Prospectus covering the sale of Registrable Securities in which a Holder that is a seller of Registrable Securities is participating, each such Holder will (i) cooperate with and furnish to the Company such information and affidavits as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus or any filings with any state securities commissions, (ii) to the extent required by the Securities Act, deliver or cause delivery of the Prospectus to any purchaser of the Registrable Securities covered by such Prospectus from such Holder and (iii) if requested by the Company, notify the Company of any sale of Registrable Securities by such Holder, and to the fullest extent permitted by law, each such seller will indemnify the Company and its directors and officers and each Person who controls the Company (within the meaning of

the Securities Act or the Exchange Act) against any and all losses, claims, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and disbursements except as limited by Section 2.5(c)) (A) in the case of any Registration Statement, arising out of, related to or resulting from any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any amendment thereof or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (B) in the case of any Prospectus or supplement thereto, arising out of, based upon or resulting from the inclusion of an untrue statement or alleged untrue statement of a material fact or the omission or alleged omission to state therein a material fact necessary to make the statements made therein, in the light of the circumstances in which they were made, not misleading, but only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission is contained in any information or affidavit so furnished by such seller or any of its Seller Affiliates in writing expressly for inclusion in the Registration Statement or Prospectus, as the case may be; provided, that the obligation to indemnify will be several, not joint and several, among such sellers of Registrable Securities, and the liability of each such seller of Registrable Securities will be in proportion to the amount of Registrable Securities registered by them; provided, further, that such liability will be limited to the net amount of proceeds received by such seller from the sale of Registrable Securities pursuant to such Registration Statement.

(c) Any Person entitled to indemnification hereunder will (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give such notice shall not limit the rights of such Person) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any Person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (A) the indemnifying party has agreed to pay such fees or expenses or (B) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such Person. If such defense is not assumed by the indemnifying party as permitted hereunder, the indemnifying party will not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld, conditioned or delayed). If such defense is assumed by the indemnifying party pursuant to the provisions hereof, such indemnifying party shall not settle or otherwise compromise the applicable claim unless (i) such settlement or compromise contains a full and unconditional release of the indemnified party or (ii) the indemnified party otherwise consents in writing (which consent will not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified (which shall be chosen by the Holders of a majority of Registrable Securities so indemnified) by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party, a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which event the indemnifying party shall be obligated to pay the reasonable fees and disbursements of such additional counsel or counsels.

(d) Each party hereto agrees that, if for any reason the indemnification provisions contemplated by Section 2.5(a) or Section 2.5(b) are unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, liabilities or expenses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party in connection with the actions which resulted in the losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 2.5(d) were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 2.5(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such indemnified party in connection with investigating or, except as provided in Section 2.5(c), defending any such action or claim. Notwithstanding the provisions of this Section 2.5(d), no Holder shall be required to contribute an amount greater than the dollar amount by which the net proceeds received by such Holder with respect to the sale of any Registrable Securities exceeds the amount of damages which such Holder has otherwise been required to pay by reason of any and all untrue or alleged untrue statements of material fact or omissions or alleged omissions of material fact made in any Registration Statement or Prospectus or any amendment thereof or supplement thereto related to such sale of Registrable Securities. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Holders' obligations in this Section 2.5(d) to contribute shall be several in proportion to the amount of Registrable Securities registered by them and not joint.

If indemnification is available under this Section 2.5, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Section 2.5(a) and Section 2.5(b), without regard to the relative fault of said indemnifying party or indemnified party or any other equitable consideration provided for in this Section 2.5(d), subject, in the case of the Holders, to the limited dollar amounts set forth in Section 2.5(b).

(e) No indemnifying party shall be liable for any settlement effected without its written consent (which consent may not be unreasonably delayed or withheld). Each indemnifying party agrees that it will not, without the indemnified party's prior written consent, consent to entry of any judgment or settle or compromise any pending or threatened claim, action or proceeding in respect to which indemnification or contribution may be sought hereunder unless the foregoing contains and unconditional release, in form and substance reasonably satisfactory to the indemnified parties, of the indemnified parties from all liability and obligation arising therefrom.

(f) The indemnification and contribution provided for under this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and will survive the transfer of securities.

**2.6 Transfer of Registration Rights.** The registration rights of a Holder under this Agreement with respect to any Registrable Securities may be transferred or assigned to any purchaser or transferee of Registrable Securities; provided, however, that (i) such Holder shall give the Company written notice prior to the time of such transfer stating the name and address of the transferee and identifying the securities with respect to which the rights under this Agreement are being transferred; (ii) such transferee shall agree in writing, in form and substance reasonably satisfactory to the Company, to be bound as a Holder by the provisions of this Agreement; and (iii) immediately following such transfer the further disposition of such securities by such transferee shall be restricted to the extent set forth under applicable law.

**2.7 Current Public Information.** With a view to making available to the Holders of Registrable Securities the benefits of Rule 144 and Rule 144A promulgated under the Securities Act and other rules and regulations of the SEC that may at any time permit a Holder of Registrable Securities to sell securities of the Company to the public without registration, the Company covenants that it will (a) for as long as the Class A Shares are registered pursuant to Section 12(b), Section 12(g) or Section 15(d) of the Exchange Act, use its reasonable best efforts to file in a timely manner all reports and other documents required, if any, to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted thereunder and (b) if it is not required to file such reports, make available information necessary to comply with Rule 144 and Rule 144A, if available with respect to resales of the Registrable Securities under the Securities Act, at all times, all to the extent required from time to time to enable such Holder to sell Registrable Securities to the public without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 and Rule 144A promulgated under the Securities Act (if available with respect to resales of the Registrable Securities), as such rules may be amended from time to time or (ii) any other rules or regulations now existing or hereafter adopted by the SEC.

**2.8 Company Obligations Regarding Transfers.** The Company shall reasonably cooperate with and assist any Holder to facilitate the removal of any legend, notation or similar designation restricting transferability of the Registrable Securities from the certificates or book-entries evidencing Registrable Securities, including instructing the transfer agent in connection therewith, if (a) such Class A Share is sold pursuant to an effective registration statement under the Securities Act; (b) a registration statement covering the resale of such Class A Shares is effective under the Securities Act and the applicable Holder delivers to the Company a representation and/or “will comply” letter, as applicable, reasonably acceptable to the Company; (c) such Class A Share is sold or transferred pursuant to Rule 144; or (d) such Class A Share is eligible for sale under Rule 144 without the requirement that the Company has complied with the public reporting requirements of the Exchange Act. Each Holder agrees to provide the Company, its counsel and/or the transfer agent with evidence reasonably requested by it in order to cause the removal of such legend, including, as may be appropriate, any information the Company deems necessary to determine that the legend, notation or similar designation is no longer required under the Securities Act or applicable state laws, including a certification that the holder is not an

Affiliate of the Company (and a covenant to inform the Company if it should thereafter become an Affiliate and to consent to exchange any certificates or instruments representing the Class A Share for ones bearing an appropriate restrictive legend) and regarding the length of time the Class A Share has been held. Any fees of the Company, the transfer agent and Company counsel associated with the issuance of any legal opinion required by the Company's transfer agent or the removal of such legend shall be borne by the Company.

### ARTICLE III - TERMINATION

3.1 **Termination.** The provisions of this Agreement shall terminate and be of no further force and effect when all Registrable Securities held by the Holders no longer constitute Registrable Securities.

### ARTICLE IV - MISCELLANEOUS

4.1 **Notices.** Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered by hand, by electronic mail transmission, or by certified or registered mail, postage prepaid and return receipt requested. Notices shall be deemed to have been given upon delivery, if delivered by hand, three days after mailing, if mailed, and upon receipt of an appropriate electronic confirmation, if delivered by electronic mail transmission. Notices shall be delivered to the parties at the addresses set forth below:

If to the Company:

Viper Energy, Inc.  
500 W. Texas Ste. 1200  
Midland, Texas 79701  
E-mail: mzmigrosky@diamondbackenergy.com  
Attention: Matthew Zmigrosky  
E-mail: wkrueger@diamondbackenergy.com  
Attention: Will Krueger

With copies to (which shall not constitute notice):

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019  
E-mail: SRGreen@wlrk.com  
Attention: Steven R. Green

If to any Holder, at its address listed on the signature pages hereof.

Any party may from time to time change its address or designee for notification purposes by giving the other parties prior notice in the manner specified above of the new address or the new designee and the subsequent date upon which the change shall be effective.

#### **4.2 Choice of Law; Exclusive Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be constructed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the State of Delaware without regard to principles of conflicts of law.

(b) All actions and proceedings for the enforcement of or based on, arising out of or relating to this Agreement shall be heard and determined exclusively in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over the particular matter, any other court of the State of Delaware, or any federal court sitting in the State of Delaware), and each of the parties hereto hereby (i) irrevocably submits to the exclusive jurisdiction of such courts (and, in the case of appeals, appropriate appellate courts therefrom) in any such action or proceeding, (ii) irrevocably waives the defense of an inconvenient forum to the maintenance of any such action or proceeding, (iii) agrees that it shall not bring any such action in any court other than the Court of Chancery of the State of Delaware (or, only if the Delaware Court of Chancery declines to accept jurisdiction over the particular matter, any other court of the State of Delaware, or any federal court sitting in the State of Delaware), and (iv) irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which the Company or Holder, as the case may be, is to receive notice in accordance with Section 4.1. The parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

(c) Each of the parties hereto hereby irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or related to this Agreement.

**4.3 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement; provided, however, the parties hereto hereby acknowledge that the Persons set forth in Section 2.5 are express third-party beneficiaries of the obligations of the parties hereto set forth in Section 2.5.

**4.4 Successors and Assigns.** Except as otherwise expressly provided herein, this Agreement shall be binding upon and benefit the Company, each Holder and their respective successors and assigns. The Company shall not, directly or indirectly, enter into any merger, consolidation or reorganization in which the Company shall not be the surviving entity unless the surviving entity shall, prior to such merger, consolidation or reorganization, agree in writing to assume the obligations of the Company under this Agreement, and for that purpose references hereunder to “Registrable Securities” shall be deemed to include the common equity interests or other securities, if any, which the Holders would be entitled to receive in exchange for Registrable Securities under any such merger, consolidation or reorganization, provided that, to the extent the Holders receive securities that are by their terms convertible into common equity interests of the issuer thereof, then any such common equity interests as are issued or issuable upon conversion of said convertible securities shall be included within the definition of “Registrable Securities.”

4.5 **Counterparts.** This Agreement may be executed by the parties in separate counterparts (including by means of executed counterparts delivered via electronic means), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.6 **Severability.** In case any provision in this Agreement shall be 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 the remaining provisions shall not in any way be affected or impaired thereby.

4.7 **No Waivers; Amendments.**

(a) No failure or delay on the part of the Company or any Holder in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to the Company or any Holder at law or in equity or otherwise.

(b) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Company and the Required Holders.

4.8 **Entire Agreement.** This Agreement and the other writings referred to herein or therein or delivered pursuant hereto or thereto, contain the entire agreement between the Holders and the Company with respect to the subject matter hereof and supersede all prior and contemporaneous arrangements or understandings with respect thereto.

4.9 **Remedies; Specific Performance.**

(a) Each Holder shall have all rights and remedies reserved for such Holder pursuant to this Agreement and all rights and remedies which such Holder has been granted at any time under any other agreement or contract and all of the rights which such Holder has under any law or equity. Any Person having any rights under any provision of this Agreement will be entitled to enforce such rights specifically, to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law or equity.

(b) The parties hereto recognize and agree that money damages may be insufficient to compensate the Holders of any Registrable Securities for breaches by the Company of the terms hereof and, consequently, that the equitable remedies of injunctive relief and of specific performance of the terms hereof will be available in the event of any such breach. If any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law.

4.10 **Negotiated Agreement.** This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to the construction or interpretation hereof.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first written above.

**VIPER ENERGY, INC.**

By: /s/ Kaes Van't Hof

Name: Kaes Van't Hof

Title: Chief Executive Officer

*[Signature Page to Registration Rights Agreement]*

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[Signatures of Holders on file with the Company]

## SECOND SUPPLEMENTAL INDENTURE

SECOND SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of August 19, 2025, by and among Viper Energy Partners LLC, a Delaware limited liability company (the "Company"), Viper Energy, Inc. (f/k/a New Cobra Pubco, Inc.), a Delaware corporation ("New Parent"), and Computershare Trust Company, National Association, as trustee under the Indenture referred to below (the "Trustee").

## WITNESSETH

WHEREAS, the Company and the Trustee are party to that certain Indenture dated as of July 23, 2025 (as amended and supplemented prior to the date hereof, including through the First Supplemental Indenture (as defined below), the "Indenture"), providing for the issuance of the Company's Securities in one or more series as provided in the Indenture;

WHEREAS, the Company, VNOM Sub, Inc. (f/k/a Viper Energy, Inc.) and the Trustee are party to that certain First Supplemental Indenture dated as of July 23, 2025 (the "First Supplemental Indenture"), providing for the issuance of two series of Securities;

WHEREAS, Section 901 of the Indenture provides that the Company and the Trustee may, without the consent of any Holder, enter into a supplemental indenture in accordance with clause (4) thereof, to add guarantees with respect to the Securities;

WHEREAS, Article XIV of the Indenture and Article IX of the First Supplemental Indenture provide that, concurrently with consummation of the Sitio Acquisition and New Parent becoming a guarantor with respect to the Revolving Credit Facility, New Parent shall execute a supplemental indenture to the Indenture providing for the guarantee of the Securities, including the Notes (the "Guarantee"), and shall thereafter be the "Parent Guarantor" under and as defined in the Indenture; and

WHEREAS, substantially concurrently with the execution of this Supplemental Indenture, the Sitio Acquisition has been consummated and New Parent has become a guarantor with respect to the Revolving Credit Facility.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company, New Parent and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. New Parent hereby, jointly and severally with all other Guarantors, fully and unconditionally guarantees to each Holder, and to the Trustee on behalf of each such Holder, the due and punctual payment of the principal of, and premium, if any, and interest, if any, on the Securities (including the Notes) when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, in accordance with the terms of such Security and of the Indenture. In case of the failure of the Company punctually to make any such payment, New Parent hereby agrees to cause such payment to be made punctually when and as the same shall become due and payable, whether at the Stated Maturity or by acceleration, call for redemption or otherwise, and as if such payment were made by the Company.

3. NO RECOURSE AGAINST OTHERS. No past, present or future director, officer, employee, manager, member, partner, incorporator or stockholder of New Parent or any employee or agent of any Affiliate of New Parent who has been seconded to New Parent or any of its Subsidiaries will have any liability for any obligations of the Company or any Guarantor, respectively, under this Guarantee, the Securities or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities. The waiver may not be effective to waive liabilities under the federal securities laws.

4. NEW YORK LAW TO GOVERN. THIS SUPPLEMENTAL INDENTURE, THE INDENTURE (AS IT RELATES TO THE SECURITIES), THE SECURITIES AND THE GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

5. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or Portable Document Format ("PDF") transmission shall constitute effective execution and delivery of this instrument as to the parties hereto and may be used in lieu of the original instrument for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by New Parent and the Company.

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

VIPER ENERGY PARTNERS LLC,  
as the Company

By: /s/ Teresa L. Dick

Name: Teresa L. Dick

Title: Executive Vice President, Chief Financial  
Officer and Assistant Secretary

VIPER ENERGY, INC., as New Parent

By: /s/ Kaes Van't Hof

Name: Kaes Van't Hof

Title: Chief Executive Officer

*[Signature Page to Second Supplemental Indenture]*

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TRUSTEE:

COMPUTERSHARE TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

By: /s/ Eric Schlemmer

Name: Eric Schlemmer

Title: Vice President

*[Signature Page to Second Supplemental Indenture]*

## DESCRIPTION OF CAPITAL STOCK

*The following summary is a description of the material terms of the capital stock of Viper Energy, Inc. (f/k/a New Cobra Pubco, Inc.) ("Viper"). The following descriptions of Viper's Class A common stock, par value \$0.000001 per share ("Class A Common Stock"), Class B common stock, par value \$0.000001 per share ("Class B Common Stock" and, together with Class A Common Stock, "Viper Common Stock"), preferred stock, par value \$0.000001 per share ("Preferred Stock"), and the relevant provisions of Viper's amended and restated certificate of incorporation (as amended, the "Amended and Restated Certificate of Incorporation") and amended and restated bylaws (the "Amended and Restated Bylaws") are summaries thereof and are qualified in their entirety by reference to the full text of the Amended and Restated Certificate of Incorporation, the Certificate of Amendment to the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws, which are filed as Exhibits 3.1, 3.2 and 3.3, respectively, to the Current Report on Form 8-K12B filed by Viper on August 19, 2025.*

### Authorized Capital Stock

Viper's authorized capital stock consists of (i) 1,000,000,000 shares of Class A Common Stock, (ii) 1,000,000,000 shares of Class B Common Stock and (iii) 100,000,000 shares of Preferred Stock. Each share of Class B Common Stock is exchangeable, at the discretion of the holder of such share of Class B Common Stock, together with one unit representing limited liability company interests in Viper Energy Partners LLC ("Viper Opco" and such units, "Viper Opco Units"), into one share of Class A Common Stock.

### Common Stock

Holders of Viper Common Stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. Holders of Class A Common Stock and holders of Class B Common Stock vote together as a single class. Shares of Viper Common Stock do not have cumulative voting rights, which means that the holders of more than 50% of the shares voting for the election of the board of directors will be able to elect all the directors to be elected at that time, and, in such event, the holders of the remaining shares will be unable to elect any directors to be elected at that time. The Amended and Restated Certificate of Incorporation denies stockholders any preemptive rights to acquire or subscribe for any stock, obligation, warrant or other securities of Viper. Holders of shares of Viper Common Stock will have no redemption or conversion rights, other than as may be set forth in any exchange agreements or the Fourth Amended and Restated Limited Liability Company Agreement of Viper Opco, nor will they be entitled to the benefits of any sinking fund provisions.

In the event of Viper's liquidation, dissolution or winding up, the remaining assets of Viper available for distribution shall (i) first be distributed, *pari passu*, to the holders of Class B Common Stock, ratably in proportion to the number of shares of Class B Common Stock, until the holders of all outstanding Class B Common Stock have received \$0.014 (which amount will be adjusted accordingly in the case of any stock split, subdivision or combination with respect to Class B Common Stock) in respect of each share of Class B Common Stock then outstanding and (ii) then be distributed, *pari passu*, to the holders of all outstanding shares of Class A Common Stock, ratably in proportion to the number of shares of Class A Common Stock.

Holders of record of shares of Class A Common Stock are entitled to receive dividends when and if declared by the board of directors of Viper (the "Viper Board") out of any assets legally available for such dividends, subject to (i) the rights of all outstanding shares of capital stock ranking senior to the Viper Common Stock in respect of dividends and (ii) to any dividend restrictions contained in debt agreements. Holders of Class B Common Stock are entitled to receive a mandatory cash dividend, paid quarterly, in an amount per share of Class B Common Stock equal to (A) \$20,000 divided by (B) the number of shares of Viper Class B Common Stock then outstanding.

All outstanding shares of Class A Common Stock and Class B Common Stock are fully paid and non-assessable.

### **Preferred Stock**

The Viper Board is authorized to issue up to 100,000,000 shares of Preferred Stock in one or more series. The Viper Board may fix for each series:

- the distinctive serial designation and number of shares of the series;
- the voting powers and the right, if any, to elect a director or directors;
- the terms of office of any directors the holders of preferred shares are entitled to elect;
- the dividend rights, if any;
- the terms of redemption, and the amount of and provisions regarding any sinking fund for the purchase or redemption thereof;
- the liquidation preferences and the amounts payable on dissolution or liquidation;
- the terms and conditions under which shares of the series may or shall be converted into any other series or class of stock or debt of the corporation; and
- any other terms or provisions which the Viper Board is legally authorized to fix or alter.

Viper does not need stockholder approval to issue or fix the terms of the Preferred Stock. The actual effect of the authorization of the Preferred Stock upon the rights of holders of Viper Common Stock is unknown until the Viper Board determines the specific rights of owners of any series of Preferred Stock. Depending upon the rights granted to any series of Preferred Stock, the voting power, liquidation preference or other rights of Viper stockholders could be adversely affected. The Preferred Stock may be issued in acquisitions or for other corporate purposes. Issuance in connection with a stockholder rights plan or other takeover defense could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from acquiring, control of Viper.

### **Related Party Transactions**

Subject to the limitations of applicable law, the Amended and Restated Certificate of Incorporation, among other things:

- permits Viper to enter into transactions with entities in which one or more of its officers or directors are financially or otherwise interested, so long as it has been approved by the Viper Board;
- permits certain of Viper's stockholders, officers and directors, including its non-employee directors, to conduct business that competes with Viper and to make investments in any kind of property in which Viper may make investments; and
- provides that if certain of Viper's officers or directors, including its non-employee directors, becomes aware of a potential business opportunity, transaction or other matter (other than one expressly offered to that director or officer solely in his or her capacity as a director or officer of Viper), that director or officer will have no duty to communicate or offer that opportunity to Viper, and will be permitted to communicate or offer that opportunity to any other entity or individual and that director or officer will not be deemed to have (i) acted in a manner inconsistent with his or her fiduciary duty to Viper or its stockholders regarding the opportunity or (ii) acted in bad faith or in a manner inconsistent with Viper's best interests.

## **Anti-Takeover Effect of Provisions of the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws**

Some provisions of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws contain provisions that could make it more difficult to acquire Viper by means of a merger, tender offer, proxy contest or otherwise, or to remove its incumbent officers and directors. These provisions, summarized below, are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of Viper to first negotiate with the Viper Board.

**Undesignated preferred stock.** The ability to authorize and issue undesignated Preferred Stock may enable the Viper Board to render more difficult or discourage an attempt to change control of Viper by means of a merger, tender offer, proxy contest or otherwise. For example, if in the due exercise of its fiduciary obligations, the Viper Board were to determine that a takeover proposal is not in its best interest, the Viper Board could cause shares of Preferred Stock to be issued without stockholder approval in one or more private offerings or other transactions that might dilute the voting or other rights of the proposed acquirer or insurgent stockholder or stockholder group.

**Stockholder meetings.** The Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws provide that a special meeting of stockholders may be called only by the chairman of the Viper Board, the chief executive officer, by a resolution adopted by a majority of the Viper Board, assuming there are no vacancies, or by the chairman of the Viper Board following receipt of a written request of one or more stockholders that together have continuously held, for their own accounts, beneficial ownership of at least 20% aggregate “net long position” (as such term is defined in the Amended and Restated Bylaws) of the issued and outstanding voting stock of Viper entitled to vote generally in the election of directors for at least one year prior to the date such request is delivered to Viper and at the special meeting date.

**Requirements for advance notification of stockholder nominations and proposals.** The Amended and Restated Bylaws establish advance notice requirements and certain documentary, information and other procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the Viper Board.

**Board designees.** Under the Amended and Restated Certificate of Incorporation, Diamondback Energy, Inc. (“Diamondback”) will have the right to designate up to three persons to serve as directors for so long as Diamondback along with its affiliates collectively own at least 25% of the outstanding Viper Common Stock. Kaes Van’t Hof and Travis D. Stice are the current directors designated by Diamondback to serve on the Viper Board. These designation rights are not exclusive.

**Stockholder action by written consent.** The Amended and Restated Certificate of Incorporation provides that, except as may otherwise be provided with respect to the rights of the holders of Preferred Stock, no action that is required or permitted to be taken by Viper’s stockholders at any annual or special meeting may be effected by written consent of stockholders in lieu of a meeting of stockholders, unless the action to be effected by written consent of stockholders and the taking of such action by such written consent have expressly been approved in advance by the Viper Board. This provision, which cannot be amended except by the affirmative vote of at least a majority of the voting power of all then-outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class, makes it difficult for stockholders to initiate or effect an action by written consent that is opposed by the Viper Board.

**Amendment of the bylaws.** Under Delaware law, the power to adopt, amend or repeal bylaws is conferred upon the stockholders. A corporation may, however, in its certificate of incorporation also confer upon the board of directors the power to adopt, amend or repeal its bylaws. The Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws grant the Viper Board the power to adopt, amend and repeal the Amended and Restated Bylaws at any regular or special meeting of the Viper Board on the affirmative vote of a majority of the directors, assuming there are no vacancies. Viper’s stockholders are able to adopt, amend or repeal the Amended and Restated Bylaws but only at any regular or special meeting of stockholders by an affirmative vote of holders of at least a majority of the voting power of all then-outstanding shares of capital stock of Viper entitled to vote generally in the election of directors, voting together as a single class.

**Removal of directors.** The Amended and Restated Certificate of Incorporation provides that members of the Viper Board may only be removed by the affirmative vote of holders of a majority of the voting power of all then outstanding shares of capital stock of Viper entitled to vote generally in the election of directors, voting together as a single class.

Additionally, an increase in the number of authorized shares of Viper Common Stock could be used to make it more difficult to, or discourage an attempt to, obtain control of Viper by means of a takeover bid that the Viper Board determines is not in Viper's best interests or the best interests of its stockholders.

The provisions of the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of Viper Common Stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in Viper's management. It is possible that these provisions could make it more difficult to accomplish transactions which stockholders may otherwise deem to be in their best interests.

#### **Officer Appointments**

The Amended and Restated Certificate of Incorporation provides that so long as Diamondback and its affiliates collectively own at least 25% of all outstanding shares of Viper Common Stock, the Viper Board will not appoint any person other than a Diamondback-seconded employee as an executive officer of Viper, unless such appointment is approved in advance by either (a) Diamondback (which approval may not be unreasonably withheld or conditioned) or (b) the affirmative vote of holders of at least 80% of the voting power of capital stock of Viper.

#### **Choice of Forum**

The Amended and Restated Certificate of Incorporation provides that unless Viper consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for: (i) any derivative action or proceeding brought on its behalf; (ii) any action asserting a claim of breach of a fiduciary duty owed by any of its directors, officers or other employees to it or its stockholders; (iii) any action asserting a claim against it arising pursuant to any provision of the Delaware General Corporation Law or its certificate of incorporation or bylaws; or (iv) any action asserting a claim against it pertaining to internal affairs of the corporation. The Amended and Restated Certificate of Incorporation also provides that any person or entity purchasing or otherwise acquiring any interest in shares of Viper capital stock will be deemed to have notice of and to have consented to this choice of forum provision.

This provision does not apply to claims arising under the Securities Act of 1933, as amended (the "Securities Act"), the Securities Exchange Act of 1934, as amended (the "Exchange Act") or other federal securities laws for which there is exclusive federal or concurrent federal and state jurisdiction. To the extent that any such claims may be based upon federal law claims, Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. Accordingly, both state and federal courts have jurisdiction to entertain claims under the Securities Act.

It is possible that a court of law could rule that the choice of forum provision contained in the Viper Charter is inapplicable or unenforceable if it is challenged in a proceeding or otherwise.

## **Registration Rights**

Viper has assumed the following registration rights from VNOM Sub, Inc. (f/k/a Viper Energy, Inc.) (“Old Viper”): (i) the Second Amended and Restated Registration Rights Agreement, dated as of November 10, 2023, by and among Old Viper and the other parties thereto (the “Diamondback RRA”), (ii) the Amended and Restated Registration Rights Agreement, dated as of January 30, 2025, by and among Old Viper and the other parties thereto (the “Tumbleweed RRA”), and (iii) the Registration Rights Agreement, dated as of February 14, 2025, by and among Old Viper and the other parties thereto (the “Morita Ranches RRA”). Viper is also party to the Registration Rights Agreement, dated as of August 19, 2025, by and among Viper and the other parties thereto (the “Sitio RRA” and, together with the Diamondback RRA, the Tumbleweed RRA and the Morita Ranches RRA, the “Viper Registration Rights Agreements”). Pursuant to the Viper Registration Rights Agreements, Viper has agreed to register for resale, pursuant to Rule 415 of the Securities Act, certain shares of Class A Common Stock held by certain stockholders, including any shares of Class A Common Stock issued or issuable upon the redemption of certain shares of Class B Common Stock and Viper Opco Units held by such stockholders. Additionally, in the Tumbleweed RRA and the Morita Ranches RRA, certain stockholders received certain piggyback rights to participate in underwritten offerings of Viper, subject to customary exceptions, and to demand certain underwritten offerings. The foregoing description of the Viper Registration Rights Agreements is a summary only and is qualified in its entirety by reference to the Viper Registration Rights Agreements, copies of which were filed with the SEC (w) in the case of the Diamondback RRA, on November 13, 2023 as Exhibit 10.3 to the Current Report on Form 8-K of Old Viper and which is incorporated herein by reference, (x) in the case of the Tumbleweed RRA, on April 1, 2025 as Exhibit 4.4 to Old Viper’s Registration Statement on Form S-3 and which is incorporated herein by reference, (y) in the case of the Morita Ranches RRA, on February 26, 2025, as Exhibit 4.4 to Old Viper’s Current Report on Form 8-K and which is incorporated herein by reference, and (z) in the case of the Sitio RRA, on August 19, 2025 as Exhibit 4.1 to Viper’s Current Report on Form 8-K12B.

## **Transfer Agent and Registrar**

The transfer agent and registrar for Viper Common Stock is Computershare Trust Company.

## **Listing**

Class A Common Stock is listed on the Nasdaq under the symbol “VNOM.”

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “Agreement”), dated as of August [●], 2025, is made by and among Viper Energy, Inc., a Delaware corporation (“Old Viper”), New Cobra Pubco, Inc., a Delaware corporation and wholly owned subsidiary of Old Viper (“New Viper”), and [●], a [●] (“Counterparty”). Old Viper, New Viper and Counterparty are each referred to herein as a “Party” and collectively as the “Parties”.

**WHEREAS**, Old Viper and Counterparty are party to that certain [●] (the “Assigned Contract”);

**WHEREAS**, Old Viper and New Viper are party to that certain Agreement and Plan of Merger, by and among Old Viper, Viper Energy Partners LLC (“Viper Opco”), a Delaware limited liability company, New Viper, Cobra Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of New Viper (“Viper Merger Sub”), Scorpion Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of New Viper, Sitio Royalties Corp., a Delaware corporation, and Sitio Royalties Operating Partnership, LP, a Delaware limited partnership, dated as of June 2, 2025 (the “Merger Agreement”),

**WHEREAS**, pursuant to the Merger Agreement, Viper Merger Sub shall merge with and into Old Viper, with Old Viper continuing as the surviving corporation (the “Viper Merger”)

**WHEREAS**, as of the effective time of the Viper Merger (the “Effective Time”), New Viper shall, among other things, become the parent company of Old Viper;

**WHEREAS**, in connection with the closing of the transactions contemplated by the Merger Agreement (the “Closing”), Old Viper desires to assign, transfer and convey to New Viper all of its right, title and interest in and to the Assigned Contract; and

**WHEREAS**, New Viper desires to accept such assignment, transfer and conveyance and assume Old Viper’s obligations under the Assigned Contract as of the Effective Time.

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, intending to be legally bound, hereby agree as follows:

1. **Assignment.** Effective as of the Effective Time, Old Viper hereby assigns, transfers and conveys to New Viper all of Old Viper’s right, title, benefit, privilege and interest in, to and under the Assigned Contract.
2. **Assumption.** Effective as of the Effective Time, New Viper hereby accepts and assumes the Assigned Contract and all liabilities and obligations arising out of, relating to or resulting from the Assigned Contract.
3. **Governing Law; Jurisdiction; Waiver of Jury Trial.** Section [●] of the Assigned Contract is incorporated by reference herein, *mutatis mutandis*.

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4. **Counterparts.** This Agreement may be executed in one or more counterparts (each of which will be deemed to be an original copy and all of which taken together shall constitute one instrument) and delivered by electronic means.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**VIPER ENERGY, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**NEW COBRA PUBCO, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**[COUNTERPARTY]**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Assignment and Assumption Agreement]*

## FORM OF INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this "*Agreement*") is made and entered into as of [\_\_\_\_], by and among Viper Energy, Inc. (f/k/a New Cobra Pubco, Inc.), a Delaware corporation (the "*Company*"), and [\_\_\_\_] ("*Indemnitee*").

## WITNESSETH THAT:

WHEREAS, highly competent persons have become more reluctant to serve companies as directors or officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the Company or any of its subsidiaries;

WHEREAS, the Board of Directors of the Company (the "*Board*") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. In addition, the Company's Amended and Restated Certificate of Incorporation (the "*Certificate of Incorporation*") and the Company's Amended and Restated Bylaws (the "*Bylaws*") each provide for indemnification of directors and officers of the Company and other individuals who are or were serving at the request of the Company as directors, officers, employees or agents of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan, and for advancement of expenses. The Certificate of Incorporation and the Bylaws each state that the rights to indemnification and advancement of expenses conferred therein are not exclusive of any other rights that any indemnitee may have or hereafter acquire under law, the Certificate of Incorporation, the Bylaws, an agreement, vote of stockholders or disinterested directors, or otherwise;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and the Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Certificate of Incorporation, the Bylaws and the Company's insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director of the Company without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified.

NOW, THEREFORE, in consideration of Indemnitee's agreement to serve or continue to serve as an officer and/or director of the Company from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of Indemnitee's Company Status (as hereinafter defined), Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company, which is governed by Section 1(b). Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of Indemnitee's Company Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Company Status, a party to and is successful, on the merits or otherwise, in any Proceeding, Indemnitee shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is

successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 1(c) and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on Indemnitee's behalf if, by reason of Indemnitee's Company Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

### 3. Contribution

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such Proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in Section 3(a), if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such Proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in

such Expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and the directors, officers, employees and agents of the Company) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Company Status, a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Company Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the Certificate of Incorporation, the Bylaws, the Delaware General Corporation Law and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following five methods, which, except for the fourth method in the event of a Change of Control as defined in Section 13 of this Agreement, shall be at the election of the Board: (1) by a majority vote of the Disinterested Directors, even though less than a quorum, (2) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, (3) if there are no Disinterested Directors or if the Disinterested Directors so direct, by Independent Counsel (as hereinafter defined) in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee or (4) in the event of a Change of Control, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected. Indemnitee may, within 10 days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "**Independent Counsel**" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the

court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including the Disinterested Directors, a committee of such directors or Independent Counsel) to have made a determination, prior to the commencement of any action pursuant to this Agreement, that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by the Disinterested Directors, a committee of such directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel or member of the Board shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such Proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such Proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

#### 7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of

competent jurisdiction, of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of Indemnitee's rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on Indemnitee's behalf, in advance, any and all expenses (of the types described in the definition of "Expenses" in Section 13 of this Agreement) actually and reasonably incurred by Indemnitee in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by applicable law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Subrogation; Primacy of Indemnification.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled (i) under applicable law, (ii) under the Certificate of Incorporation and the Bylaws, (iii) pursuant to a resolution of Board or (iv) otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Company Status prior to such amendment, alteration or repeal. To the extent that an amendment or modification of the Certificate of Incorporation or the Bylaws, whether by law, amendment or otherwise, or an amendment to Delaware law permits greater indemnification than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

(f) Any indemnification pursuant to this Agreement shall be made only out of the assets of the Company, including any insurance purchased and maintained by the Company for such purpose, it being agreed that the Company's stockholders shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate such indemnification.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or similar provisions of state statutory law or common law or (ii) any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, as amended (the "**Sarbanes-Oxley Act**"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act); or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any such part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

10. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue for so long as Indemnitee may have any liability or potential liability by virtue of serving as an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of Indemnitee's Company Status, whether or not Indemnitee is acting or serving in any such capacity

at the time any liability or Expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

11. Security. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

12. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

(c) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of Expenses under this Agreement.

13. Definitions. For purposes of this Agreement:

(a) "**Change of Control**" means the occurrence of any of the following events:

(i) any "person" or "group" within the meaning of those terms as used in Sections 13(d) and 14(d)(2) of the Exchange Act ((A) other than Diamondback Energy, Inc. ("**Diamondback**"), the Company or any of its subsidiaries or an affiliate of either Diamondback or the Company, (B) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its subsidiaries or (C) an underwriter temporarily holding securities pursuant to an offering of such securities) becomes the beneficial owner, directly or indirectly, by way of merger, consolidation, recapitalization, reorganization or otherwise, of 50% or more of the voting power of the voting securities of Diamondback or the Company;

- (ii) the stockholders of the Company approve, in one or a series of transactions, a plan of complete liquidation of the Company;
- (iii) the sale or other disposition by either Diamondback (so long as Diamondback is an affiliate of the Company) or the Company of all or substantially all of its assets in one or more transactions to any person other than an affiliate; or
- (iv) so long as Diamondback is an affiliate of the Company and
- (1) to the extent Indemnitee has entered into an indemnification agreement with Diamondback, a “Change of Control” as defined under such agreement occurs; or
- (2) to the extent Indemnitee has not entered into an indemnification agreement with Diamondback, any of the following events occurs:

(A) the acquisition after the date of this Agreement by any individual, entity or group (within the meaning of Sections 13(d)(3) or 14(d)(2) of the Exchange Act) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 15% or more of either the then-outstanding shares of common stock of Diamondback (the “**Outstanding Common Stock**”) or the combined voting power of the then-outstanding voting securities of Diamondback entitled to vote generally in the election of directors of Diamondback (the “**Outstanding Voting Securities**”); provided, however, that none of the following acquisitions will constitute a Change of Control: (v) any acquisition directly from Diamondback or any Controlled Affiliate of Diamondback; (w) any acquisition by Diamondback or any Controlled Affiliate of Diamondback; (x) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by Diamondback or any Controlled Affiliate of Diamondback; or (y) any acquisition by any entity or its security holders pursuant to a transaction that complies with clauses (i), (ii) and (iii) of Section 13(a)(iv)(2)(C);

(B) individuals who, as of the date of this Agreement, constitute the board of directors of Diamondback (the “**Incumbent Directors**”) cease for any reason to constitute at least a majority of the board of directors of Diamondback; provided, however, that any individual who becomes a director of Diamondback subsequent to the date of this Agreement and whose election or appointment by the board of directors of Diamondback or nomination for election by Diamondback’s stockholders was approved by a vote of at least a majority of the then Incumbent Directors will be considered as an Incumbent Director, unless such individual’s initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors of Diamondback or other actual or threatened solicitation of proxies or consents by or on behalf of a person or entity other than of Diamondback;

(C) the consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving Diamondback or any of its subsidiaries, a sale or other disposition of all or substantially all of the assets of Diamondback or an acquisition of assets or stock of another entity by Diamondback or any of its subsidiaries (each a “**Business Combination**”) unless, in each case, following such Business Combination (i) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including a corporation that, as a result of such Business Combination, owns Diamondback or all or substantially all of Diamondback’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Common Stock and the Outstanding Voting Securities, as the case may be, (ii) no person or entity (excluding (a) any entity resulting from such Business Combination or (b) any employee benefit plan (or related trust) of Diamondback or the corporation resulting from such Business Combination) beneficially owns, directly or indirectly 15% or more of either the then-outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such corporation, except to the extent that such ownership existed prior to such Business Combination, and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were Incumbent Directors at the time of the execution of the initial agreement, or of the action of the board of directors of Diamondback, providing for such Business Combination; or

(D) the approval by the stockholders of Diamondback of a complete liquidation or dissolution of Diamondback.

For the avoidance of doubt, Section 13(a)(iv)(2) shall be effective only to the extent Indemnitee has not entered into an indemnification agreement with Diamondback.

(b) “**Company Status**” describes the status of a person who is or was a director, officer, partner, trustee, member, employee, agent or fiduciary of the Company, Former Viper, the Partnership, as Former Viper’s predecessor, or the General Partner, or of any other corporation, partnership, joint venture, trust, limited liability company, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(c) “**Controlled Affiliate**” means any corporation, limited liability company, partnership, joint venture, trust or other Enterprise, whether or not for profit, that is directly or indirectly controlled by Diamondback. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of an Enterprise, whether through the ownership of voting securities, through other voting rights, by contract or otherwise. For the purposes of this definition, “Enterprise” shall mean Diamondback and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of Diamondback as a director, officer, partner, trustee, member, employee, agent or fiduciary.

(d) “**Disinterested Director**” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) “**Enterprise**” shall mean the Company (or, where the context requires, Diamondback) and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, manager, officer, partner, trustee, partner, member, employee, agent or fiduciary.

(f) “**Expenses**” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “**Former Viper**” means VNOM Sub, Inc. (f/k/a Viper Energy, Inc.), a Delaware corporation.

(h) “**General Partner**” means the former general partner of the Partnership.

(i) “**Independent Counsel**” means a law firm, or a member of a law firm, that is experienced in matters of public companies, fiduciary duties, indemnity matters and corporation, limited partnership and limited liability company law, and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “**Independent Counsel**” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(j) “**Partnership**” means Viper Energy Partners, LP, the predecessor to Former Viper prior to its conversion from a limited partnership to a corporation.

(k) “**Proceeding**” includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of Indemnitee’s Company Status, by reason of any action taken by him or of any inaction on his part while acting in Indemnitee’s Company Status; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

To Indemnitee at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Company at:

Viper Energy, Inc.  
500 West Texas  
Suite 100  
Midland, Texas 79701  
Email: MZmigrosky@diamondbackenergy.com  
Attention: P. Matt Zmigrosky, Executive Vice President, General Counsel and Secretary

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in

connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the “*Delaware Court*”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

***[SIGNATURE PAGE TO FOLLOW]***

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

**VIPER ENERGY, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**INDEMNITEE**

\_\_\_\_\_

[ ]

*Indemnification Agreement Signature Page*

**VIPER ENERGY, INC., A SUBSIDIARY OF DIAMONDBACK ENERGY, INC., HAS COMPLETED ITS ACQUISITION OF SITIO ROYALTIES CORP. IN ALL-EQUITY TRANSACTION**

MIDLAND, Texas, August 19, 2025 (GLOBE NEWSWIRE) – Viper Energy, Inc. (NASDAQ:VNOM) (“Viper” or the “Company”), a subsidiary of Diamondback Energy, Inc. (NASDAQ:FANG) (“Diamondback”), today announced that Viper has completed its acquisition of Sitio Royalties Corp. (“Sitio”) in an all-equity transaction. Additionally, the Company announced revised Q3 2025 production guidance to give effect to the closing of the merger.

**REVISED THIRD QUARTER 2025 GUIDANCE**

- Average oil production of 54,500 – 57,500 bo/d; represents an increase of 8,500 bo/d at the midpoint versus prior standalone guidance given 43 days of contribution from Sitio
- Average total production of 104,000 – 110,000 boe/d; represents an increase of 18,000 boe/d at the midpoint versus prior standalone guidance given 43 days of contribution from Sitio

“We are pleased to announce the closing of the merger of Viper and Sitio, the combination of which signifies an important moment for the mineral and royalty industry. This combination creates a leader in size, scale, float, liquidity and access to investment grade capital in the highly fragmented minerals market with Viper still maintaining its highly unique and symbiotic relationship with Diamondback as our parent company. Pro forma Viper will be uniquely positioned in North American shale to deliver sustained growth with no capex and only limited operating costs,” stated Kaes Van’t Hof, Chief Executive Officer of Viper.

### **About Viper Energy, Inc.**

Viper is a corporation formed by Diamondback to own, acquire and exploit oil and natural gas properties in North America, with a focus on owning and acquiring mineral and royalty interests in oil-weighted basins, primarily the Permian Basin. For more information, please visit [www.viperenergy.com](http://www.viperenergy.com).

### **About Diamondback Energy, Inc.**

Diamondback is an independent oil and natural gas company headquartered in Midland, Texas focused on the acquisition, development, exploration and exploitation of unconventional, onshore oil and natural gas reserves primarily in the Permian Basin in West Texas. For more information, please visit [www.diamondbackenergy.com](http://www.diamondbackenergy.com).

### **Forward-Looking Statements**

This communication includes forward-looking statements within the meaning of the federal securities laws, which involve certain risks, uncertainties and assumptions that could cause the results to differ materially from such statements. All statements, other than historical facts, that address activities that Viper assumes, plans, expects, believes, intends or anticipates (and other similar expressions) will, should or may occur in the future, the benefits of the merger between Viper and Sitio and Viper's future financial performance following the merger, Viper's strategy, future operations, financial position, estimated revenues, and losses, projected costs, prospects, plans and objectives of management, are forward-looking statements. When used herein, the words "may," "could," "believe," "anticipate," "intend," "estimate," "expect," "project" and similar expressions and the negative of such words and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. The forward-looking statements are based on Viper's management's current beliefs, based on currently available information, as to the outcome and timing of future events.

Factors that could cause the outcomes to differ materially include (but are not limited to) the following: Viper's ability to successfully integrate Sitio's and Viper's businesses and technologies; the risk that the expected benefits and synergies of the merger between Viper and Sitio may not be fully achieved in a timely manner, or at all; the risk that Viper will not be able to retain and hire key personnel; unanticipated difficulties or expenditures relating to the merger between Viper and Sitio, the response of business partners and retention as a result of the merger; Viper's ability to finance the combined company on acceptable terms or at all; uncertainty as to the long-term value of Viper's common stock; the diversion of Viper's management's time on transaction-related matters; and those risks described in Viper's periodic filings with the U.S. Securities and Exchange Commission ("SEC"), including in Item 1A of Viper's Annual Report on Form 10-K for the year ended December 31, 2024, filed with the SEC on February 26, 2025, subsequent Forms 10-Q and 8-K and other filings Viper makes with the SEC, which can be obtained free of charge on the SEC's website at <http://www.sec.gov> and Viper's website at [www.viperenergy.com/investors/overview](http://www.viperenergy.com/investors/overview).

In light of these factors, the events anticipated by Viper's forward-looking statements may not occur at the time anticipated or at all. Moreover, Viper conducts its business in a very competitive and rapidly changing environment and new risks emerge from time to time. Viper cannot predict all risks, nor can it assess the impact of all factors on its business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those anticipated by any forward-looking statements they may make. Accordingly, you should not place undue reliance on any forward-looking statements. All forward-looking statements speak only as of the date of this communication or, if earlier, as of the date they were made. Viper does not intend to, and disclaims any obligation to, update or revise any forward-looking statements unless required by applicable law.

### **Investor Contact**

Viper Energy:  
Chip Seale  
+1 432.247.6218  
[cseale@viperenergy.com](mailto:cseale@viperenergy.com)

Source: Viper Energy, Inc.; Diamondback Energy, Inc.