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): November 2, 2023

VIPER ENERGY PARTNERS LP
(Exact Name of Registrant as Specified in Charter)

DE	001-36505	46-5001985
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification Number)

500 West Texas Ave. Suite 100 Midland, TX	79701
(Address of principal executive offices)	(Zip code)

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

Not Applicable
(Former name or former address, if changed since last report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Units	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

On July 31, 2023, Viper Energy Partners LP (the “Partnership”) announced its intent to convert its legal status from a Delaware limited partnership into a Delaware corporation (the “Conversion”). The Partnership also announced its expectation that, upon Conversion, the common stockholders of the successor corporation will have the ability to vote on all matters on which stockholders of a corporation are generally entitled to vote under the Delaware General Corporation Law (the “DGCL”), including the election of the board of directors of the successor corporation. The Partnership previously elected to be treated as a corporation for federal income tax purposes, effective as of May 10, 2018.

Item 1.01 Entry into a Material Definitive Agreement

The information set forth below under Item 8.01 regarding the Services and Secondment Agreement is incorporated into this Item by reference.

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

On November 2, 2023, Kaes Van’t Hof, who currently serves as President of Viper Energy Partners GP LLC, the general partner of the Partnership (the “General Partner”), was appointed to the Board of Directors (the “Board”) of the General Partner, to fill the newly created directorship on the Board, effective as of November 3, 2023. Immediately following the appointment of Mr. Van’t Hof to the Board, the Board’s size will be set at eight (8) directors. Mr. Van’t Hof’s biography, including the positions he holds with the General Partner and Diamondback Energy, Inc., the Partnership’s parent entity (“Diamondback”), is included in the Partnership’s Annual Report on Form 10-K, filed with the Securities and Exchange Commission on February 23, 2023, and is incorporated into this Item by reference. See also the description of certain director designation and officer appointment rights discussed in Item 8.01 below under the heading “Rights of Stockholders,” which description is incorporated herein by reference. Mr. Van’t Hof is not currently contemplated to receive any additional compensation for his services as a Board member.

Item 5.03 Amendments to Articles of Incorporation or Bylaws;

On November 2, 2023, the General Partner entered into the Second Amendment (the “Amendment”) to the Second Amended and Restated Agreement of Limited Partnership, dated as of May 9, 2018, as amended by the First Amendment thereto dated as of May 10, 2018 (as so amended, the “LP Agreement”), acting upon the authority granted to the General Partner under the LP Agreement. The Amendment clarified, among other things, that that the General Partner may, without the approval of the limited partners, convert the Partnership into a new limited liability entity not only if the General Partner has determined that the governing instruments of the new entity provide such limited partners with substantially the same rights and obligations as are contained in the LP Agreement, but also if the governing instruments of the new entity will provide the limited partners of the Partnership with substantially the same or greater rights and substantially the same or less obligations as are contained in the LP Agreement. The Amendment was adopted to facilitate the Partnership’s intent to provide the common stockholders of the post-Conversion corporation greater corporate governance rights than those set forth for limited partners in the LP Agreement, including the ability to vote on all matters on which stockholders of a corporation are generally entitled to vote under the DGCL, including the election of the board of directors of the corporation. The Amendment also removed the requirement that the general partner interest have substantially the same rights and obligations post-Conversion, which will permit the cancellation of the general partner interest as part of the Conversion. The LP Agreement, as amended by the Amendment, is referred to herein as the Amended LP Agreement.

The foregoing description of the Amendment is subject to and qualified in its entirety by reference to the full text of the Amendment, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated by reference herein.

Item 8.01 Other Events.

On November 2, 2023, the Conversion and the transactions contemplated thereby were unanimously approved by the Board of the General Partner. Under the Amended LP Agreement, no vote of the limited partners is required or will be sought for the Conversion.

Certificate of Conversion and Plan of Conversion

On November 2, 2023, to implement the Conversion, the General Partner filed with the Secretary of the State of Delaware, in its capacity as the Partnership’s general partner, the Certificate of Conversion (the “Certificate of Conversion”) and, in its capacity as the sole incorporator of the successor corporation, the Certificate of Incorporation (the “Certificate of

Incorporation”). The Certificate of Conversion provides that the Conversion will become effective at 12:01 a.m. (Eastern Time) on November 13, 2023 (such date and time at which the Conversion becomes effective, the “Effective Time”).

At the Effective Time, the Partnership will convert to a corporation pursuant to a plan of conversion (the “Plan of Conversion”), and the Certificate of Incorporation and the Bylaws (the “Bylaws”) of the successor corporation will become effective. At the Effective Time, the Partnership will change its name from Viper Energy Partners LP to Viper Energy, Inc. (“Viper Inc.” or the “Corporation”).

The Plan of Conversion, the Certificate of Conversion, the Certificate of Incorporation and the Bylaws are filed herewith as Exhibits 99.1, 99.2, 99.3 and 99.4, respectively, and incorporated herein by reference.

Common Stock of the Corporation

At the Effective Time, (i) each Partnership common unit issued and outstanding immediately prior to the Effective Time will be converted into one issued and outstanding, fully paid and nonassessable share of Class A common stock, $0.000001 par value per share, of Viper Inc. (“Class A Common Stock”), (ii) each Partnership Class B unit issued and outstanding immediately prior to the Effective Time will be converted into one issued and outstanding, fully paid and nonassessable share of Class B common stock, $0.000001 par value per share, of Viper Inc. (“Class B Common Stock” and, together with Class A Common Stock, “Common Stock”) and (iii) the general partner interest in the Partnership issued and outstanding immediately prior to the Effective Time (100% owned by the General Partner) will be cancelled and no longer outstanding.

The outstanding units (each, an “OpCo Unit” and, collectively, the “OpCo Units”) of Viper Energy Partners LLC, the Partnership’s operating subsidiary (“OpCo”), will be unaffected by the Conversion, and each OpCo Unit together with one share of Class B Common Stock held by the holders of the Class B units immediately after the Effective Time will be exchangeable, at their discretion, into one share of Class A Common Stock, subject to adjustment pursuant to the existing exchange agreement, which will be amended at the Effective Time to reflect the effects of the Conversion.

At the Effective Time, as a result of the Conversion, holders of common units will become holders of Class A Common Stock and holders of Class B units will become holders of Class B Common Stock. The Certificate of Incorporation will provide that holders of Class B Common Stock will have the same preferred distribution and liquidation preference rights as those provided under the Amended LP Agreement.

At the Effective Time, Diamondback and its wholly owned subsidiary Diamondback E&P LLC will be the only holders of the Class B Common Stock and will collectively own approximately 56% of the outstanding shares of Common Stock (the same equity ownership percentage as immediately prior to the Conversion). As a result, Viper Inc. will be a “controlled company” within the meaning of the corporate governance standards of the Nasdaq Stock Market LLC (“Nasdaq”) and will thereby qualify for certain exemptions from the Nasdaq corporate governance rules.

The Partnership has requested that, as of the open of business on November 13, 2023, Nasdaq cease trading of the common units of the Partnership and commence trading of the Class A Common Stock on Nasdaq under the existing ticker symbol “VNOM.” No action by the current holders of common units of the Partnership is currently anticipated to be necessary. A new CUSIP number has been issued for the Class A Common Stock, which will become effective at the Effective Time.

Rights of Stockholders

Generally, the Certificate of Incorporation and the Bylaws will provide Viper Inc.’s stockholders at the Effective Time with substantially the same or greater rights, and substantially the same or less obligations, that limited partners currently have under the Amended LP Agreement. Currently, limited partners are not generally entitled to vote with respect to governance of the Partnership, except for those few matters set forth in the Amended LP Agreement.

At the Effective Time of the Conversion, except as otherwise expressly provided in the Certificate of Incorporation, the holders of Common Stock will be entitled to vote on all matters on which stockholders of a corporation are generally entitled to vote on under the DGCL, including the election of the board of directors of Viper Inc., provided, however, that in connection with any annual or special meeting of stockholders of Viper Inc. at which directors are elected (or any action by stockholder consent to elect directors in lieu of a stockholder meeting), for so long as Diamondback and any of its subsidiaries (“Diamondback Entities”), collectively beneficially own at least 25% of the outstanding Common Stock, Diamondback will have the right to designate up to three persons to serve as directors of Viper Inc. (any person so designated, a “Diamondback Designee”). Initially, there will be two Diamondback Designees—Travis Stice and Kaes Van't Hof. 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.

Further, the Certificate of Incorporation will provide that so long as Diamondback Entities collectively own at least 25% of the all outstanding shares of Common Stock, the board of directors of Viper Inc. will not appoint any person other than a Seconded Employee (as defined in the Services and Secondment Agreement described under the heading "Directors and Officers" below) as an executive officer of Viper Inc. 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 Viper Inc. entitled to vote thereon.

Holders of Class A Common Stock and Class B Common Stock shall vote together as a single class on all matters submitted to the vote of stockholders generally, unless otherwise expressly required in the Certificate of Incorporation, provided that the holders of Class A Common Stock and Class B Common Stock, respectively, shall be entitled to vote separately as a class on any amendments to the Certificate of Incorporation that would alter or change the powers, preferences or rights of such class so as to affect them adversely or disproportionately. The outstanding shares of Class B Common Stock are entitled to an aggregate quarterly cash dividend of $20,000, which provision is consistent with the distribution rights with respect to Class B units under the Amended LP Agreement in effect prior to the Effective Time. In the event of liquidation, after payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of any preferred stock then outstanding are entitled, the remaining assets of the Corporation available for distribution will first be distributed to the holders of Class B Common Stock, ratably in proportion to the number of shares of Class B Common Stock, until such holders have received $0.014 in respect of each outstanding share of Class B Common Stock, subject to adjustment for any stock splits or combinations, which provision is consistent with the liquidation preference required with respect to Class B Units under the Amended LP Agreement in effect prior to the Effective Time, and then the remaining assets will be distributed to the holders of the Class A Common Stock.

Directors and Officers

At the Effective Time, as a result of the Conversion, the business and affairs of Viper Inc. will be overseen by a board of directors of Viper Inc., rather than the General Partner, which currently oversees the business and affairs of the Partnership as its general partner. The directors and executive officers of the General Partner immediately prior to the Effective Time will become the directors and executive officers of Viper Inc. at the Effective Time. In addition, the audit committee of the Board of the General Partner, and the membership thereof, immediately prior to the Effective Time, will be replicated at Viper Inc. at the Effective Time. See also the description of director designation and officer appointment rights that Diamondback will have under the Certificate of Incorporation at the Effective Time discussed under the heading "Rights of Stockholders" above, which description is incorporated herein by reference.

Services and Secondment Agreement

In addition, in connection with the Conversion, the Partnership and the General Partner have entered into a Services and Secondment Agreement with Diamondback E&P, the Partnership and OpCo to be effective at the Effective Time, pursuant to which Diamondback will continue to provide personnel and general and administrative services to Viper Inc. and OpCo, including the services of the executive officers and other employees, in substantially the same manner after the Effective Time as Diamondback currently provides to the General Partner and the Partnership.

The Services and Secondment Agreement is filed herewith as Exhibit 10.1 and incorporated herein by reference.

Tax Treatment

Because the Partnership is already treated as a corporation tor U.S. federal income tax purposes, the Partnership expects that the Conversion will not affect the successor entity's status as a corporation for U.S. federal income tax purposes or materially impact the U.S. federal income tax treatment of the Partnership's current public common unitholders.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Number	Description
3.1*	Second Amendment to Second Amended and Restated Agreement of Limited Partnership of Viper Energy Partners LP, dated as of November 2, 2023 and effective as of the Effective Time.
10.1*	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 Energy Partners LLC.
99.1*	Plan of Conversion.
99.2*	Certificate of Conversion of Viper Energy Partners LP.
99.3*	Certificate of Incorporation of Viper Energy, Inc.
99.4*	Bylaws of Viper Energy, Inc.
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.

* Filed herewith.

SIGNATURE

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

VIPER ENERGY PARTNERS LP

By: Viper Energy Partners GP LLC,
its general partner

Date: November 2, 2023

By: /s/ Teresa L. Dick
Name: Teresa L. Dick
Title: Chief Financial Officer, Executive Vice President and Assistant Secretary

Exhibit 3.1

SECOND AMENDMENT TO
SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP OF
VIPER ENERGY PARTNERS LP

THIS SECOND AMENDMENT TO SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF VIPER ENERGY PARTNERS LP, dated as of November 2, 2023 (this "***Amendment***"), is entered into by VIPER ENERGY PARTNERS GP LLC (the "***General Partner***"), a Delaware limited liability company and the general partner of VIPER ENERGY PARTNERS LP (the "***Partnership***"), a Delaware limited partnership, pursuant to the authority granted to the General Partner in Section 13.1 of the Second Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of May 9, 2018, as amended by the First Amendment to the Second Amended and restated Agreement of Limited Partnership of the Partnership, dated as of May 10, 2018 (collectively, the "***Partnership Agreement***"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Partnership Agreement.

RECITALS

WHEREAS, Section 13.1(d)(i) of the Partnership Agreement provides that the General Partner may, without the approval of any other Partner, amend any provision of the Partnership Agreement to reflect a change that the General Partner determines does not adversely affect the Limited Partners (including any particular class of Partnership Interests as compared to other classes of Partnership Interests) in any material respect; and

WHEREAS, in connection with the Conversion, acting pursuant to the power and authority granted to it under Section 13.1(d) of the Partnership Agreement, the General Partner has determined that the amendments contemplated by this Amendment do not adversely affect the Limited Partners (including any particular class of Partnership Interests as compared to other classes of Partnership Interests) in any material respect.

NOW, THEREFORE, the Partnership Agreement is hereby amended as follows:

A. Amendment

Section 14.3(d) is hereby amended and restated in its entirety as follows:

"Notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without Limited Partner approval, to convert the Partnership or any Group Member into a new limited liability entity, to merge the Partnership or any Group Member into, or convey all of the Partnership's assets to, another limited liability entity that shall be newly formed and shall have no assets, liabilities or operations at the time of such merger or conveyance other than those it receives from the Partnership or other Group Member if (i) the General Partner has received an Opinion of Counsel that the merger or conveyance, as the case may be, would not result in the loss of the limited liability of any Limited Partner or any Group Member under the Delaware Act or cause the Partnership to lose, revoke or change its election to be classified as a corporation for U.S. federal tax purposes, (ii) the sole purpose of such merger or conveyance is to effect a mere change in the legal form of the Partnership into another limited liability entity and (iii) the General Partner determines that the governing instruments of the new entity provide the Limited Partners with substantially the same or greater rights and substantially the same or less obligations as are herein contained."

B. Applicable Law. This Amendment shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of laws.

C. Severability. Each clause or provision of this Amendment shall be considered severable and if for any reason any clause or provision herein is determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Amendment that are valid, enforceable and legal.

D. Ratification of Partnership Agreement. Except as expressly modified and amended herein, all of the terms and conditions of the Partnership Agreement shall remain in full force and effect.

E. Consent of General Partner. By executing and delivering this Amendment, the General Partner hereby expressly consents to the terms hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Amendment has been executed as of the date first written above.

GENERAL PARTNER

Viper Energy Partners GP LLC

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

Exhibit 10.1

SERVICES AND SECONDMENT AGREEMENT

DATED AS OF NOVEMBER 2, 2023

BY AND BETWEEN

DIAMONDBACK E&P LLC,

VIPER ENERGY PARTNERS GP LLC,

VIPER ENERGY PARTNERS LLC

AND

VIPER ENERGY PARTNERS LP

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS 2

1.1 Definitions 2
1.2 Construction and Interpretation 5

ARTICLE 2 INITIAL MATTERS; SECONDMENT AND SERVICES 5

2.1 Initial Matters 5
2.2 Services 5
2.3 Payment of Employee Expenses 6
2.4 Provision of Seconded Persons 6
2.5 Seconded Employees 6
2.6 Seconded Contractors 6
2.7 Matters Relating to Seconded Persons 6
2.8 Reporting 6
2.9 Supervisors 6
2.10 Workers' Compensation 7
2.11 Termination of Services 7
2.12 Benefit Plans 7
2.13 Executive Officers 7

ARTICLE 3 REIMBURSEMENT 7

3.1 Overall Effect 7
3.2 Services Reimbursement 7
3.3 Costs to be Reimbursed 7
3.4 Audit 9

ARTICLE 4 BUDGETS 10

4.1 Budgeting 10

ARTICLE 5 TERM AND TERMINATION 10

5.1 Term 10
5.2 Termination 11
5.3 Effect of Termination 11

ARTICLE 6 LIABILITY OF THE PARTIES 11

6.1 Standard of Care 11
6.2 Independent Contractor Relationship; No Joint Venture or Partnership 12
6.3 Limitation of Liability; Indemnification 12

ARTICLE 7 CONFIDENTIALITY AND FINANCIAL INFORMATION 14

7.1 Confidentiality 14

		Page
7.2	**Financial Information**	15
ARTICLE 8 GENERAL PROVISIONS		15
8.1	**Entire Agreement**	15
8.2	**Choice of Law; Venue; Waiver of Jury Trial**	15
8.3	**Amendment**	15
8.4	**Waiver**	16
8.5	**Partial Invalidity**	16
8.6	**Binding Effect**	16
8.7	**Third Party Beneficiaries**	16
8.8	**Notices**	17
8.9	**Relationship of the Parties**	17
8.10	**Assignment**	17
8.11	**Counterparts**	18
8.12	**Time of the Essence**	18

SERVICES AND SECONDMENT AGREEMENT

This Services and Secondment Agreement (this "**Agreement**"), is dated as of November 2, 2023, is entered into among Diamondback E&P LLC, a Delaware limited liability company ("**Diamondback**"), Viper Energy Partners LP, a Delaware limited partnership (the "**Partnership**"), Viper Energy Partners GP LLC, a Delaware limited liability company and the general partner of the Partnership (the "**General Partner**"), and Viper Energy Partners LLC, a Delaware limited liability company ("**OpCo**"). Diamondback, the General Partner, the Partnership and OpCo are sometimes herein referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS:

WHEREAS, the Partnership is a Delaware limited partnership, and OpCo is its operating subsidiary;

WHEREAS, the General Partner is the general partner of the Partnership and, accordingly, pursuant to the terms of the Partnership Agreement (defined herein), conducts, directs, and manages all activities of the Partnership;

WHEREAS, pursuant to the terms of the OpCo LLC Agreement (defined herein), the Partnership is the managing member of OpCo and in such capacity manages the business, property and affairs of OpCo;

WHEREAS, because the Partnership and OpCo have no employees, Diamondback Entities (defined herein), as affiliates of the General Partner, have provided and continue to provide personnel and services to the Partnership and OpCo, including the services of the General Partner's executive officers and other employees of those affiliates, which officers and other employees are currently employed and compensated by the Diamondback Entities, a portion of which compensation is reimbursed by the Partnership pursuant to the terms of the Partnership Agreement (for which the Partnership is in turn reimbursed by OpCo pursuant to the terms of the OpCo LLC Agreement);

WHEREAS, the General Partner has filed with the Secretary of State of the State of Delaware a Certificate of Conversion pursuant to which, at 12:01 a.m. on November 13, 2023 (the "**Effective Time**"), the Partnership will convert from a Delaware limited partnership to a Delaware corporation in a statutory conversion (the "**Conversion**");

WHEREAS, pursuant to the Conversion, the Partnership will become Viper Energy, Inc. ("**Viper Corp**") and Viper Corp will have the same, or substantially the same, assets and liabilities as the Partnership had immediately prior to the Effective Time; and

WHEREAS, the Parties desire to enter into this Agreement to ensure that at and after the Effective Time, the Diamondback Entities will continue to provide personnel and services to Viper Corp (as successor to the Partnership) and OpCo, and be reimbursed therefor, in substantially the same manner as were provided to the Partnership and OpCo before the Effective Time.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. Capitalized terms used and not otherwise defined in this Agreement shall have the following respective meanings, unless the context clearly requires otherwise:

"**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. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. For purposes of this Agreement, no Viper Entity shall be deemed to be an Affiliate of any of the Diamondback Entities nor shall any Diamondback Entity be deemed to be an Affiliate of any Viper Entity.

"**Agreement**" shall mean this Services and Secondment Agreement, together with any and all exhibits attached hereto.

"**Bankruptcy**" means, with respect to any Person: (a) the filing by such Person of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under the U.S. Bankruptcy Code (or corresponding provisions of future Laws) or any other insolvency Law, or a Person's filing an answer consenting to or acquiescing in any such petition; (b) the making by such Person of any assignment for the benefit of its creditors or the admission by a Person of its inability to pay its debts as they mature; or (c) the expiration of 60 days after the filing of an involuntary petition under the U.S. Bankruptcy Code (or corresponding provisions of future Laws) seeking an application for the appointment of a receiver for the assets of such Person, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other insolvency Law, unless the same shall have been vacated, set aside or stayed within such 60 day period. "**Bankrupt**" shall have its correlative meaning.

"**Benefit Plans**" means the following employee benefit plans: deferred compensation, profit sharing, retirement, retiree medical, 401(k), cafeteria, medical, and disability plans and any insurance programs that benefit the Seconded Employees or their dependents, including workers' compensation insurance, life insurance, accidental death and dismemberment insurance, long-term disability insurance, business travel and accident insurance, and EAP.

"**Business**" means the business of the Viper Entities.

"**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.

"**Diamondback**" has the meaning set forth in the introductory paragraph to this Agreement.

"**Diamondback Entities**" means Diamondback Energy Inc. and all of its direct and indirect Subsidiaries, other than any Viper Entity.

“**Diamondback Group**” means each Diamondback Entity and its respective members, managers, and subcontractors of every tier, and the respective, officers, directors, employees, agents and representatives of each of them.

“**EAP**” means Employee Assistance Program.

“**Effective Date**” has the meaning set forth in the Recitals to this Agreement.

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

“**ERISA Affiliate**” means any entity that would be treated as a single employer with Diamondback under Sections 414(b), (c) or (m) of the Code or Section 4001(b)(1) of ERISA.

“**Expense Allocation Percentage**” has the meaning set forth in Section 3.3.

“**General Partner**” has the meaning set forth in the introductory paragraph to this Agreement.

“**Governmental Authority**” means any federal, state, tribal, or local governmental entity, or any subdivisions thereof, and any of their respective agencies, branches, courts, commissions or other bodies or authorities, having jurisdiction or authority over the Parties or subject matter in question.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement or rule of law of any Governmental Authority.

“**Losses**” means losses, damages, claims, liabilities, obligations, deficiencies, taxes, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable fees and expenses of counsel, experts and other professionals, as well as the costs of enforcing any right to indemnification hereunder or pursuing any insurance providers.

“**OpCo**” has the meaning set forth in the introductory paragraph to this Agreement.

“**OpCo LLC Agreement**” means the Second Amended and Restated Limited Liability Company Agreement dated as of May 9, 2018 of OpCo.

“**Partnership**” has the meaning set forth in the introductory paragraph to this Agreement.

“**Partnership Agreement**” means the Second Amended and Restated Agreement of Limited Partnership dated as of May 9, 2018 of the Partnership.

“**Party**” has the meaning set forth in the introductory paragraph to this Agreement.

“**Period of Secondment**” means, with respect to any executive officer, employee, or contractor that is seconded to the Viper Entities under this Agreement, the period during which such executive officer, employee, or contractor is so seconded.

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

“**Seconded Contractors**” has the meaning set forth in Section 2.5.

“**Seconded Contractor Expenses**” has the meaning set forth in Section 3.2(b).

“**Seconded Employee Expenses**” has the meaning set forth in Section 3.2(a).

“**Seconded Employees**” has the meaning set forth in Section 2.4.

“**Seconded Person Expenses**” has the meaning set forth in Section 3.2(b).

“**Seconded Persons**” means, collectively, the Seconded Employees and the Seconded Contractors.

“**Secondment**” means each assignment of any Seconded Persons to the Viper Entities from Diamondback in accordance with the terms of this Agreement.

“**Secondment Allocation Percentage**” has the meaning set forth in Section 3.3.

“**Services**” has the meaning set forth in Section 2.1.

“**Services Reimbursement**” has the meaning set forth in Section 3.1.

“**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 or limited partner of such partnership, but only if more than 50% of the general partner interests of such partnership 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 or (c) any other Person (other than a corporation or a partnership) 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) at least 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. For purposes of this Agreement, no Viper Entity shall be deemed to be a Subsidiary of any Diamondback Entity.

“**Viper Board**” means the Board of Directors of Viper Corp.

“**Viper Common Stock**” means Class A common stock of Viper Corp and Class B common stock of Viper Corp.

“**Viper Corp**” has the meaning set forth in the Recitals to this Agreement.

“**Viper Entities**” means, collectively, (i) prior to the Effective Time, the Partnership and OpCo, and (ii) at and after the Effective Time, Viper Corp, OpCo and any of their existing and future Subsidiaries.

“**Viper Group**” means each Viper Entity and its respective members, managers, and subcontractors of every tier, and the respective officers, directors, employees, agents and representatives of each of them.

“**Viper Parties**” means Viper Corp (as successor to the Partnership) and OpCo.

1.2 Construction and Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "this Agreement," "herein," "hereof," "hereby," "hereto," "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited; (d) each use in this Agreement of the masculine, neuter or feminine gender is deemed to include the other genders; (e) all definitions set forth herein are deemed applicable whether the words defined are used herein in the singular or plural and correlative forms of defined terms have corresponding meanings; (f) all references to "days" are to calendar days; (g) the word "will" will be construed to have the same meaning and effect as the word "shall"; (h) the words "shall" and "will" are mandatory, and "may" is permissive; and (i) all references to "$" and dollars will be deemed to refer to United States currency. Unless the context otherwise requires, references herein: (i) to Articles, Sections, and Exhibits mean the Articles and Sections of, and the Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented or modified from time to time to the extent permitted by the provisions thereof, and, where applicable, the provisions hereof; and (iii) to any Law shall be construed as referring to such Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time and, where relevant, references to particular provisions of a Law include a reference to the corresponding provisions of any prior or succeeding Law. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein; provided, however, in the event of any inconsistency between an Exhibit and the terms of this Agreement, the terms of this Agreement shall control. Descriptive headings as to the contents of particular Sections or Articles are for convenience only and do not control or affect the meaning, construction or interpretation of this Agreement. The recitals set forth at the beginning of this Agreement are and shall be deemed material and operative provisions of this Agreement and are hereby incorporated and made part of this Agreement with the same force and effect as if fully repeated herein.

ARTICLE 2
INITIAL MATTERS; SECONDMENT AND SERVICES

2.1 Initial Matters.

(a) For the avoidance of doubt, the Viper Entities remain obligated to reimburse the Diamondback Entities for costs and expenses incurred by the General Partner and its Affiliates on behalf of the Partnership up to the Effective Time (including costs and expenses incurred in connection with the Conversion), and shall so reimburse the Diamondback Entities therefor in the same manner as such costs and expenses had been reimbursed with respect to the periods prior to the Effective Time.

(b) In addition, in partial consideration for entering into this Agreement and for the cancellation of the general partner interest in the Partnership in the Conversion for no additional Viper Common Stock, the Partnership shall pay to Diamondback before the Conversion $1,020,000, which amount shall be refunded if for any reason the Conversion does not occur.

2.2 Services. At and after the Effective Time, subject to the other terms of this Agreement, Diamondback shall continue to provide, or cause to be provided, to the Viper Entities (a) the Seconded Persons to (i) perform the day-to-day management of the Business, (ii) serve as executive officers of Viper Corp to provide executive management for Viper Corp, and (iii) perform such other services or activities as set forth in Exhibit A and (b) to the extent applicable, such other services or activities as set forth in Exhibit A ((a) and (b) collectively referred to herein as the "**Services**").

2.3 Payment of Employee Expenses. Subject to Diamondback's right to be reimbursed for such expenses in accordance with this Agreement, Diamondback shall pay (or cause to be paid) all expenses incurred by it in connection with the retention of the Seconded Persons, including Seconded Employee compensation, salaries, wages and overhead and administrative expenses, charged to or incurred by Diamondback Entities, and, if applicable, social security taxes, workers compensation insurance, retirement and insurance benefits and other such expenses. Any Seconded Employees retained by the Diamondback Entities may be union or non-union employees, and the Diamondback Entities shall have the sole right to negotiate the terms and provisions of any labor or other agreements with the unions to which such employees belong.

2.4 Provision of Seconded Persons. Diamondback shall provide, or cause to be provided, such suitably qualified and experienced Seconded Persons as Diamondback is able to make available to the Viper Entities, and the Viper Board shall have the right to approve such Seconded Persons.

2.5 Seconded Employees. Diamondback shall second (or cause to be seconded) to the Viper Entities the executive officers and other employees of the Diamondback Entities that provide the Services. Each person who is seconded to the Viper Entities under this Section 2.5 shall, during the applicable Period of Secondment, be referred to herein as a "**Seconded Employee**."

2.6 Seconded Contractors. Diamondback shall second (or cause to be seconded) to the Viper Entities any contractors of the Diamondback Entities that provide Services. Each such contractor shall, during the applicable Period of Secondment, be referred to herein as a "**Seconded Contractor**" and, together with the Seconded Employees, the "**Seconded Persons**."

2.7 Matters Relating to Seconded Persons. Each Seconded Employee will remain at all times an employee of the applicable Diamondback Entity. For the avoidance of doubt, the Parties acknowledge that any Seconded Person may, during the Period of Secondment, be called upon to perform services for both the Viper Entities and the Diamondback Entities. The Diamondback Entities retain the right to terminate the Secondment of any Seconded Person for any reason at any time or to discharge any Seconded Employee with respect to their employment with the Diamondback Entities. The Viper Board will also have the right to terminate the Secondment to the Viper Entities of any Seconded Person for any reason at any time, upon prior written notice to Diamondback, but no Viper Party shall have the right to terminate any Seconded Employee's employment by any Diamondback Entity or a Seconded Contractor's independent contractor relationship with any Diamondback Entity. Upon the termination of the Secondment of any Seconded Person, such Seconded Person will cease performing Services for the Viper Entities.

2.8 Reporting. In the course and scope of performing any job functions for the Viper Entities, each Seconded Employee will report into the Viper Entities' management structure, and will be under the direct management, supervision and control of the Viper Entities (and, accordingly, ultimately the Viper Board) with respect to such Seconded Employee's performance of the Services, with Seconded Contractors remaining at the direction of the respective contractor.

2.9 Supervisors. Those Seconded Employees who serve as supervisors or managers within the Viper Entities and who are called upon to oversee the work of other Seconded Employees providing or to otherwise provide management support on behalf of the Parties are designated by the Viper Entities as supervisors to act on the behalf of the Viper Entities in supervising the Seconded Employees pursuant to Section 2.8. Any such Seconded Employee will be acting on the behalf of the Viper Entities when supervising the work of other Seconded

Employees or when they are otherwise providing management or executive support on behalf of the Viper Entities.

2.10 Workers' Compensation. Diamondback shall use commercially reasonable efforts to include the Viper Entities as secondary employers or special employers, as applicable, under its workers' compensation insurance policies covering the Seconded Employees.

2.11 Benefit Plans. No Viper Entity shall be deemed to be a participating employer in any Benefit Plans sponsored by any Diamondback Entity during the Period of Secondment. Subject to the Viper Parties' reimbursement obligations hereunder, Diamondback (or another Diamondback Entity) shall remain solely responsible for all obligations and liabilities arising under the express terms of the Benefit Plans, and the Seconded Employees will be covered under the Benefit Plans subject to and in accordance with their respective terms and conditions, as they may be amended from time to time. Diamondback and its ERISA Affiliates may amend or terminate any Benefit Plans in whole or in part at any time in their sole discretion (subject to the applicable provisions of any collective bargaining agreement covering Seconded Employees, if any). During the Period of Secondment, no Viper Entity shall assume any Benefit Plans or have any obligations, liabilities or rights arising under the express terms of the Benefit Plans, in each case except for cost reimbursement pursuant to this Agreement.

2.12 Executive Officers. Diamondback shall promptly notify the Viper Board of any material change to such Seconded Employee's compensation for the current year to the extent that such material change would reasonably be expected to materially affect the total amount of such Seconded Employee's compensation that would be allocated to the Viper Parties under Article 3.

ARTICLE 3
REIMBURSEMENT

3.1 Overall Effect. The Parties intend that under this Article 3 the Diamondback Entities shall be reimbursed for the costs and expenses incurred by them in providing the Seconded Persons and the Services in the same manner as such reimbursement was made prior to the Effective Time.

3.2 Services Reimbursement. The Viper Parties shall reimburse Diamondback for all reimbursable expenses under Section 3.3 incurred by the Diamondback Entities with respect to Seconded Persons (including, where applicable, former Seconded Persons), in connection with the performance of the Services during the preceding period, as well as any other costs or expenses incurred by the Diamondback Entities in connection with the performance of the Services during such period (collectively, the "**Services Reimbursement**"). The Services Reimbursement shall be made on a monthly basis.

3.3 Costs to be Reimbursed.

(a) The Services Reimbursement with respect to Seconded Employees for each period during the Period of Secondment shall include all reasonable costs and expenses (including administrative costs) incurred for such period by Diamondback Entities for the Seconded Employees (including, where applicable, former Seconded Employees), including the following costs and expenses:

(i) salary, wages and cash bonuses (including payroll and withholding taxes associated therewith);

(ii) amounts paid with respect to any Seconded Employee's paid time off and/or paid leave of absence;

(iii) contributions made by any Diamondback Entity towards any Benefit Plans;

(iv) the value of equity-related compensation granted to Seconded Employees during the Period of Secondment;

(v) any other employee benefit or compensation arrangement customarily provided to all employees by Diamondback Entities for which any Diamondback Entity incurs costs with respect to Seconded Employees; and

(vi) business travel expenses and other business expenses reimbursed in the normal course by any Diamondback Entity, such as subscriptions to business- related periodicals and dues to professional business organizations.

The costs and expenses described in this Section 3.3(a) are referred to as "**Seconded Employee Expenses**." Where it is not reasonably practicable to determine the amount of any such cost or expense, Diamondback shall determine in good faith a reasonable method of determining or estimating such cost or expense, and shall provide to the Viper Board the details of such method as well as the amount determined or estimated thereby. If the actual amount of any cost or expense, once known, varies from the estimate used for billing purposes hereunder, the difference, once determined, shall be reflected as either a credit or additional charge in the next monthly invoice issued by Diamondback hereunder. Notwithstanding the foregoing, the Parties agree that to determine the value of a Second Employee's non-wage benefits described in subsections (iii) and (v) of this Section 3.3(a), Diamondback will apply in good faith a percentage benefit load based on the value of employee benefits provided to all employees of the Diamondback Entities.

(b) The Services Reimbursement with respect to any Seconded Contractor for each period during the Period of Secondment for such Seconded Contractor shall include, on a pass-through basis, all costs and expenses attributable to the performance of the Services incurred for such period by Diamondback Entities with respect to such Seconded Contractor. The costs and expenses described in this Section 3.3(b) are referred to as "**Seconded Contractor Expenses,**" and together with the Seconded Employee Expenses, the "**Seconded Person Expenses**."

(c) With respect to each Seconded Person who performs services for both the Diamondback Entities and the Viper Entities, Diamondback will determine, reasonably and in good faith, the percentage of such Seconded Person's time spent providing services to the Viper Entities (the "**Secondment Allocation Percentage**") and shall provide details of such determination to the Viper Board. For each month during the Period of Secondment, the amount of the Services Reimbursement payable by the Viper Parties with respect to each such Seconded Person shall be calculated by Diamondback by multiplying the Seconded Person Expenses for such Seconded Person times the Secondment Allocation Percentage for such Seconded Person; *provided*, *however*, that travel expenses and other expenses incurred with respect to and/or reimbursable to a Seconded Person shall be paid by the Party for whom the Seconded Person was working at the time such expenses were incurred, except that expenses related to activities that Diamondback determines, in good faith, benefit both the Viper Entities and Diamondback Entities (e.g. some types of training) shall be allocated using the applicable Secondment Allocation Percentage.

(d) The Viper Parties and Diamondback acknowledge and agree that Diamondback Entities shall be responsible for paying the Seconded Employee Expenses (or providing the employee benefits with respect thereto, as applicable) to or for the Seconded Employees and that the Diamondback Entities may be responsible for paying the Seconded Contractor Expenses to the respective contractor, but that the Viper Parties shall be responsible for reimbursing the Diamondback Entities for the Seconded Person Expenses (as part of the Services Reimbursement) to the extent provided under this Section 3.3.

(e) The Services Reimbursement shall also include reimbursement of all other direct and indirect expenses incurred, or payments made, by the Diamondback Entities in providing the Services, including all expenses allocable to the Viper Parties or otherwise incurred by the Diamondback Entities in connection with providing the Services. With respect to any costs or expenses incurred by Diamondback Entities that are for the benefit of both Diamondback Entities and the Viper Entities (e.g., information technology services or use of office space), Diamondback will determine, reasonably and in good faith, the percentage of such cost or expense that is properly allocable to the Viper Entities (the "**Expense Allocation Percentage**") and shall provide details of such determination to the Viper Board. For each month, the amount of the Services Reimbursement payable by the Viper Parties with respect to each such cost or expense shall be calculated by multiplying the amount of such cost or expense times the Expense Allocation Percentage therefor.

(f) Diamondback will use commercially reasonable efforts to document the basis for each Service Allocation Percentage and Expense Allocation Percentage and shall provide such documentation to the Viper Board upon the Viper Board's reasonable request.

3.4 Audit.

(a) Subject to the other provisions of this Section 3.4, Viper Corp, upon 30 days' written notice to Diamondback, shall have the right during normal business hours to audit or examine at its own expense (i) the books and records of Diamondback and its Affiliates to the extent they relate to the Services and (ii) the relevant books of account of Diamondback's contractors to the extent they relate to amounts billed to the Viper Parties under this Agreement.

(b) Subject to the other provisions of this Section 3.4, Viper Corp, upon 60 days' written notice to Diamondback, may engage a third party auditor to audit or examine (after such third party auditor agrees to reasonable confidentiality restrictions with Diamondback) at its own expense the books and records of Diamondback and its Affiliates to the extent they relate to the Services.

(c) Audits under this Section 3.4 shall not be commenced more often than once each calendar year, and any such audit shall not take place during the first quarter of any calendar year. Viper Corp shall have up until two years after the close of a calendar year in which to request an audit relating to such calendar year. In the absence of a claim for adjustment within the two year audit period, the bills and statements rendered for the calendar year prior to such two year audit period shall be conclusively established as correct. Diamondback agrees to (and to cause its Affiliates to) reasonably cooperate with Viper Corp and any auditors, make records available as reasonably required by such auditors, and make copies as reasonably requested by such auditors.

ARTICLE 4
BUDGETS

4.1 Budgeting.

(a) Prior to the end of each calendar year, Diamondback shall deliver a draft of the estimated annual budget for Services (which shall include specific line items for proposed compensation for each Seconded Person who would likely constitute a “named executive officer” under SEC rules for such year) for the following calendar year to the Viper Board. Within 60 days following the beginning of each calendar year, Diamondback shall deliver a revised draft of such budget for such calendar year to the Viper Board. The Viper Board shall review the draft budget and the proposed budget Diamondback will consider any comments or modifications proposed by the Viper Board.

(b) Diamondback will use commercially reasonable efforts to keep the costs and expenses incurred in connection with the provision of Services that are to be reimbursed under Article 3 within the budget approved (or deemed approved) by the Viper Board under this Section 4.1. To the extent that the Viper Entities acquire additional assets or businesses in any year that would, in the reasonable good faith determination of Diamondback, increase the costs associated with Services in such year, Diamondback will give reasonably prompt notice thereof to the Viper Board. In addition, Diamondback will give reasonably prompt notice to the Viper Board if Diamondback determines that the costs expected to be incurred in any year are expected to exceed the budget approved (or deemed approved) by the Viper Board under this Section 4.1 for such year.

ARTICLE 5
TERM AND TERMINATION

5.1 Term.

(a) Subject to the other provisions of this Article 5, the term of this Agreement will commence on the Effective Date and will continue for an initial period ending on December 31, 2028 (the “***Initial Term***”). Upon the expiration of the Initial Term, the term of this Agreement shall automatically extend for successive two-year extension terms, unless either Party provides at least 12 months’ prior written notice to the other Party prior to the expiration of the Initial Term or any extension term that the Party wishes for this Agreement to expire at the end of the Initial Term or the then-current extension term, as applicable. Upon proper notice by a Party to the other Party, in accordance with this Article 5, that the Party wishes for this Agreement to expire on the expiration of the applicable period, this Agreement shall not automatically extend, but shall instead expire upon the expiration of the applicable period and only those provisions that, by their terms, expressly survive this Agreement shall so survive.

(b) Notwithstanding anything to the contrary in this Agreement, Section 7.1 shall survive for one year past the termination date of this Agreement and Section 7.2 shall survive any termination of this Agreement and shall remain in effect until such time as the Diamondback Group is no longer required to consolidate or otherwise include the financial information of the Viper Group in its financial statements.

5.2 Termination. Notwithstanding Section 5.1(a):

(a) Viper Corp may terminate this Agreement on 12 months' notice to Diamondback at any time if at such time the Diamondback Group owns less than 25% of the combined voting power of all outstanding Viper Common Stock;

(b) Diamondback may terminate this Agreement on 12 months' notice to Viper Corp if any Viper Party defaults in the performance of any material term, condition, or obligation contained in this Agreement (including specifically the obligation to pay any amount to or for the benefit of any Diamondback Entity), as reasonably determined by Diamondback, and the Viper Parties shall have failed to correct such default in a manner reasonably acceptable to Diamondback within 60 days after receipt of written notice of such default from Diamondback; and

(c) Viper Corp may terminate this Agreement on 12 months' notice to Diamondback if:

(i) Diamondback becomes Bankrupt;

(ii) Any execution or attachment is issued against Diamondback pursuant to which all or a substantial part of the assets of Diamondback are seized or otherwise taken by a creditor or by any custodian, receiver, trustee, or other legal authority; or

(iii) Diamondback defaults in the performance of any material term, condition, or obligation contained in this Agreement, as reasonably determined by the Viper Board, and Diamondback shall have failed to correct or failed to diligently pursue correction of such default in a manner reasonably acceptable to the Viper Board within 60 days after receipt of written notice of such default from Viper Corp.

5.3 Effect of Termination. Termination of this Agreement shall not relieve any Party from any obligation accruing or accrued under this Agreement prior to the termination date (including any indemnity obligations set forth herein and any obligations, promises, or covenants set forth herein that are expressly made to extend beyond the term of this Agreement, which provisions shall survive the expiration or termination of this Agreement). Upon termination of this Agreement, the Parties will retain all other rights and remedies available at law or in equity.

ARTICLE 6
LIABILITY OF THE PARTIES

6.1 Standard of Care. All Services provided hereunder shall be provided in a good and workmanlike manner, consistent with the Diamondback Entities' internal standards and in compliance with all applicable Laws; *provided*, *however*, that no Diamondback Entity shall have any liability hereunder for losses sustained or liabilities incurred in the provision of Services except to the extent resulting or arising from a Diamondback Entity's gross negligence or willful misconduct. For the purposes of the foregoing, no act or omission of any Seconded Person in the provision of Services that constitutes gross negligence or willful misconduct shall be attributed to, or be deemed to constitute the gross negligence or willful misconduct of, any Diamondback Entity except to the extent such Diamondback Entity instructed such Seconded Person to take such act or make such omission.

6.2 Independent Contractor Relationship; No Joint Venture or Partnership. With respect to any performance of the Services by a Diamondback Entity, each such Diamondback Entity is an independent contractor, with the authority to control, oversee, and direct the performance of the details of such Services. This Agreement is not intended to create, and shall not be construed as creating, a joint venture, partnership, agency, or other association under the laws of any State.

6.3 Limitation of Liability; Indemnification.

(a) Notwithstanding (i) anything in this Agreement to the contrary (other than the express provisions of this Section 6.3) or (ii) Diamondback's agreement to perform, or to cause to be performed, the Services in accordance with the provisions hereof, each Viper Party acknowledges that performance by any of the Diamondback Entities or any other Person of Services pursuant to this Agreement will not subject such Diamondback Entity, its respective directors, officers, employees, attorneys, accountants, consultants, trustees, affiliates, financial advisors and other representatives (each, an "**Indemnified Party**") to any Losses whatsoever except for Losses arising as a result of the gross negligence or willful misconduct on the part of such Indemnified Party in connection with the provision of Services; *provided* that if any of such Losses are covered by any insurance policy of the Viper Entities, the aggregate liability of such Indemnified Party with respect to such Losses will be reduced by the amount recovered by the Viper Entities under such policy in respect of such Losses; *provided further* that neither this Section 4.4 nor anything else in this Agreement shall serve to limit any liability of any individual for that individual's personal gross negligence, willful misconduct or fraudulent conduct or limit any remedy any Viper Entity may have against any individual for that individual's personal gross negligence or willful misconduct.

(b) TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, DIAMONDBACK SHALL INDEMNIFY THE VIPER GROUP FROM AND AGAINST ANY AND ALL LOSSES INCURRED BY THE VIPER GROUP TO THE EXTENT ARISING OUT OF OR IN CONNECTION WITH, ATTRIBUTABLE TO, OR INCIDENTAL TO, ANY ACT OR OMISSION OF ANY DIAMONDBACK ENTITY IN PERFORMANCE OF THE SERVICES THAT CONSTITUTES THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH DIAMONDBACK ENTITY.

(c) TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, THE VIPER PARTIES (THEMSELVES AND ON BEHALF OF THE OTHER VIPER ENTITIES) HEREBY RELEASE THE DIAMONDBACK GROUP FROM, AND SHALL INDEMNIFY THE DIAMONDBACK GROUP FROM AND AGAINST, ANY AND ALL LOSSES INCURRED BY THE DIAMONDBACK GROUP OR THE VIPER GROUP ARISING OUT OF OR IN CONNECTION WITH, ATTRIBUTABLE TO, OR INCIDENTAL TO, THE PROVISION OF SERVICES, REGARDLESS IN EACH INSTANCE OF HOW CAUSED, EXCEPT TO THE EXTENT THAT DIAMONDBACK IS REQUIRED TO INDEMNIFY THE VIPER GROUP FROM AND AGAINST SUCH LOSSES UNDER SECTION 6.3(B). TO THE EXTENT THAT A SECONDED EMPLOYEE IS SUBJECT TO LIABILITY OF ANY KIND OR CHARACTER AS A RESULT OF PROVIDING SERVICES (INCLUDING AS AN OFFICER OF VIPER CORP), THE VIPER PARTIES SHALL BE THE INDEMNITOR OF FIRST RESORT WITH RESPECT TO SUCH LIABILITY.

(d) OTHER THAN AS SET FORTH IN SECTION 6.1, DIAMONDBACK DISCLAIMS (AND THE VIPER PARTIES HEREBY AGREE THAT THEY ARE NOT RELYING UPON) ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO SERVICES RENDERED OR PRODUCTS PROCURED FOR ANY VIPER ENTITY OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER ANY DIAMONDBACK ENTITY OR VIPER ENTITY KNOWS, HAS

REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING.

(e) DIAMONDBACK MAKES NO EXPRESS OR IMPLIED WARRANTY, GUARANTY, OR REPRESENTATION (INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, SUITABILITY, OR MERCHANTABILITY) REGARDING ANY EQUIPMENT, MATERIALS, SUPPLIES, OR SERVICES ACQUIRED FROM VENDORS, SUPPLIERS, OR SUBCONTRACTORS. THE VIPER PARTIES' EXCLUSIVE REMEDY WITH RESPECT TO EQUIPMENT, MATERIALS, SUPPLIES, OR SERVICES OBTAINED BY A DIAMONDBACK ENTITY OR FROM VENDORS, SUPPLIERS, OR SUBCONTRACTORS, WHETHER BY AND THROUGH SUCH DIAMONDBACK ENTITY OR ON BEHALF OF A VIPER ENTITY, WILL BE THOSE UNDER THE VENDOR, SUPPLIER, OR SUBCONTRACTOR WARRANTIES, IF ANY, AND DIAMONDBACK'S ONLY OBLIGATION ARISING OUT OF OR IN CONNECTION WITH ANY SUCH WARRANTY OR ANY BREACH THEREOF WILL BE TO USE DILIGENT EFFORTS TO ENFORCE SUCH WARRANTY ON BEHALF OF THE APPLICABLE VIPER ENTITY, AND NO VIPER ENTITY SHALL HAVE ANY OTHER REMEDY AGAINST THE DIAMONDBACK GROUP WITH RESPECT TO EQUIPMENT, MATERIALS, SUPPLIES, OR SERVICES OBTAINED BY ANY DIAMONDBACK ENTITY FROM ITS VENDORS, SUPPLIERS, AND SUBCONTRACTORS.

(f) THE PROVISIONS OF THIS SECTION 6.3 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT WITH RESPECT TO ANY INDEMNIFICATION OBLIGATION THAT ARISES FROM SERVICES PROVIDED HEREUNDER OR THE ACTIONS OR OMISSIONS OF THE PARTIES OCCURRING (IN ANY CASE) DURING THE TERM OF THIS AGREEMENT.

(g) THE RELEASE, INDEMNITY, AND WAIVER PROVISIONS PROVIDED FOR IN THIS SECTION 4.4 HAVE BEEN EXPRESSLY NEGOTIATED IN EVERY DETAIL, ARE INTENDED TO BE GIVEN FULL AND LITERAL EFFECT, AND SHALL BE APPLICABLE WHETHER OR NOT THE LOSSES IN QUESTION ARISE OR AROSE SOLELY OR IN PART FROM THE ACTIVE, PASSIVE, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANY INDEMNIFIED PARTY OR PERSON. EACH PARTY ACKNOWLEDGES THAT THIS STATEMENT COMPLIES WITH THE EXPRESS NEGLIGENCE RULE AND CONSTITUTES CONSPICUOUS NOTICE. THIS CONSPICUOUS NOTICE IS NOT INTENDED TO PROVIDE OR ALTER THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER.

(h) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO PARTY NOR ANY MEMBER OF ITS GROUP SHALL BE LIABLE OR RESPONSIBLE TO ANY OTHER PARTY OR ANY MEMBER OF ITS GROUP FOR, AND EACH PARTY EXPRESSLY WAIVES, ANY SPECIAL, INDIRECT, CONSEQUENTIAL (EXCEPT TO THE EXTENT CONSTITUTING DIRECT DAMAGES), EXEMPLARY, OR PUNITIVE DAMAGES OF ANY TYPE, OR, TO THE EXTENT CONSTITUTING ONE OF THE FOREGOING TYPES OF DAMAGES, FOR LOSS OF PROFITS, REVENUES, OR BUSINESS OPPORTUNITY INCURRED BY SUCH PARTY OR ANY MEMBER OF ITS GROUP THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIM ARISES UNDER OR RESULTS FROM CONTRACT, TORT, OR STRICT LIABILITY; EXCEPT THAT EACH PARTY EXPRESSLY ACKNOWLEDGES THAT A PARTY MAY BE LIABLE FOR ANY SUCH DAMAGES (BUT NOT PUNITIVE DAMAGES) IN THE EVENT THAT THE OTHER PARTY'S GROUP IS ENTITLED TO INDEMNIFICATION FROM SUCH PARTY AS TO ANY SUCH DAMAGES OWED TO A THIRD PARTY THAT ARISE OUT OF OR ARE ATTRIBUTABLE TO CLAIMS BY SUCH THIRD PARTY.

ARTICLE 7
CONFIDENTIALITY AND FINANCIAL INFORMATION

7.1 **Confidentiality**. Each Party acknowledges that it may receive information from or regarding one or more of the other Parties that constitutes confidential information. Each Party shall hold in strict confidence any such information it receives regarding any other Party, whether written, visual or oral ("**Confidential Information**"), and may not disclose any Confidential Information regarding any other Party to any Person, except for the following disclosures (and must notify the applicable other Party promptly of any request for such information before disclosing it, if allowed under Law):

(a) by a Party to its Affiliates or their respective employees, contractors or advisors (collectively, "**Information Recipients**"), subject to that Party taking customary precautions to ensure such information is kept confidential and to the extent such Information Recipients have a reasonable need to receive such Confidential Information and such disclosure is not prohibited by any Law, statute or regulation;

(b) compelled by Law (but such Party must notify the applicable other Party promptly of any request for that information, before disclosing it, if practicable and only to the extent such notification is not prohibited by applicable Law); or

(c) of information: (i) which is or becomes part of the public domain through no fault of or breach of this Agreement by such Party; (ii) which such Party can demonstrate by reasonably convincing written records then in existence was in its possession or that of its Information Recipient at the time of disclosure under or in connection with this Agreement and was not received directly or indirectly from any other Party under a then existing requirement of confidentiality; (iii) developed for such Party by its employees or contractors or those of its Affiliates, which employees or contractors do not have access to Confidential Information; or (iv) received by such Party or its Affiliates from a third party without obligation of confidentiality or restriction on use, provided that such Party, after reasonable inquiry, has no reason to believe that the third party obtained the information directly or indirectly under a then-existing requirement of confidentiality;

Any breach by a Party's Information Recipients of any of such Party's obligations pursuant to this Section 7.1 shall be, and be deemed to be, a breach thereof by such Party. Each Party acknowledges that any breach of the provisions of this Section 7.1 may cause irreparable injury to the applicable other Party for which monetary damages are inadequate, difficult to compute, or both. Accordingly, each Party agrees that the provisions of this Section 7.1 may be enforced, in addition to other available remedies, whether at law or equity, or by temporary or permanent injunction. The terms of this Section 7.1 shall remain in full force and effect for a period of one year from the date this Agreement is terminated, for whatever reason.

7.2 **Financial Information**.

(a) So long as any of the Diamondback Group is required to consolidate any of the Viper Group into its financial statements, or otherwise include the Viper Group's information in its financial statements, the Viper Group shall timely prepare and deliver, or cause to be timely prepared and delivered, to Diamondback all financial statements, notes thereto, and other additional financial information as may be required in order for the Diamondback Group to comply with any reporting requirements under the Securities Act of 1933 or the Securities Exchange Act of 1934 or any rules or regulations promulgated under any of them, as well as with any requirements of any national securities exchange or automated quotation system. Viper shall also promptly deliver to Diamondback any other reports, accounting and tax information,

financial data, forecasts, studies, budgets, and other information concerning the Viper Group as Diamondback may reasonably request.

(b) From time to time upon Diamondback's reasonable request in connection with a securities offering or otherwise, Viper shall use commercially reasonable efforts to cause (i) its counsel to furnish opinions of counsel for Viper in customary form and covering matters customarily covered in opinions of issuers' counsel and (ii) its independent public accountants to furnish "cold comfort" letters in customary form and covering matters customarily covered in accountants' letters delivered to underwriters.

ARTICLE 8
GENERAL PROVISIONS

8.1 <u>Entire Agreement</u>. This Agreement constitutes and expresses the entire agreement between the Parties with respect to the subject matter hereof. All previous discussions, promises, representations and understandings relative thereto are hereby merged in and superseded by this Agreement.

8.2 <u>Choice of Law; Venue; Waiver of Jury Trial</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to principles of conflict of laws. IN RESPECT OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, EACH OF THE PARTIES HERETO CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY FEDERAL OR STATE COURT LOCATED WITHIN MIDLAND COUNTY, TEXAS, AND WAIVES ANY MOTION TO TRANSFER VENUE FROM, ANY OF THE AFORESAID COURTS. EACH PARTY TO THIS AGREEMENT WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT.

8.3 <u>Amendment</u>. Any actions or agreement by the Parties to amend, modify or supplement this Agreement, in whole or in part, shall be binding upon the Parties, so long as such modification shall be in writing and shall be executed by all Parties with the same formality with which this Agreement was executed.

8.4 <u>Waiver</u>. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any Party, it is in writing signed by an authorized representative of such Party. The failure of any Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

8.5 <u>Partial Invalidity</u>. Wherever possible, each provision hereof shall be interpreted in such a manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

8.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. The successors and permitted assigns hereunder shall include any permitted assignee under Section 6.10 as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

8.7 Third Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the Diamondback Entities and the Viper Entities and their respective successors and permitted assigns and shall not confer upon any third party any remedy, claim, liability, reimbursement or other right. In furtherance but not in limitation of the foregoing: (i) nothing in this Agreement shall be deemed to provide any Seconded Employee or Seconded Contractor with a right to continued Secondment or employment; and (ii) nothing in this Agreement shall be deemed to constitute an amendment to any Benefit Plans or limit in any way the right of Diamondback and/or its ERISA Affiliates to amend, modify or terminate, in whole or in part, any Benefit Plans which may be in effect from time to time.

8.8 Notices. All notices, statements, invoices, reports or other items expressly provided for or required to be given under the terms of this Agreement shall be given in writing addressed to the applicable Party at the address or electronic address stated below, or such other address or electronic address as such Party may from time to time designate in writing addressed to the other Parties.

if to Diamondback:

Diamondback Energy, Inc.
500 West Texas, Suite 100
Midland, Texas 79701
Attention: Kaes Van’t Hof, President and Chief Financial Officer
email: kvanthof@diamonbackenergy.com

With a copy to (which shall not constitute notice):

500 West Texas, Suite 100
Midland, Texas 79701
Attention: Matt Zmigrosky, Executive Vice President, Chief Legal and Administrative Officer and Secretary
Email: mzmigrosky@diamondbackenergy.com

if to a Viper Party:

Viper Energy, Inc.
500 West Texas, Suite 100
Midland, Texas 79701
Attention: Chairman of Audit Committee

With a copy to (which shall not constitute notice):

Viper Energy, Inc.
500 West Texas, Suite 100
Midland, Texas 79701
Attention: General Counsel

Notices shall be deemed to have been given (a) upon actual receipt, (b) if by electronic mail, upon acknowledgment or receipt via a return electronic mail from the recipient, or (c) if earlier, and whether or not actually received, (i) one Business Day after deposit with a recognized overnight courier service (such as Federal Express, UPS or DHL) for next Business Day delivery, with charges prepaid by or billed to the sender, or (ii) three Business Days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid by the sender.

8.9 **Relationship of the Parties**. Nothing in this Agreement will constitute the Viper Entities or the Diamondback Entities as members of any partnership, joint venture, association, syndicate or other entity.

8.10 **Assignment**. No Party will, without the prior written consent of the other Parties (which consent shall not be unreasonably withheld), assign, mortgage, pledge or otherwise convey this Agreement or any of its rights or duties hereunder; *provided*, *however*, that any Party may assign or convey this Agreement without the prior written consent of any other Party to an Affiliate. Collateral assignment of this Agreement shall be an assignment for all purposes, requiring the consent of the other Parties. Diamondback hereby consents to the collateral assignment of this Agreement for the benefit of the lenders under OpCo's revolving credit facility.

8.11 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which together shall constitute one and the same Agreement. Each Party may execute this Agreement by signing any such counterpart.

8.12 **Time of the Essence**. Time is of the essence in the performance of this Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their authorized representatives as of the date first above written.

DIAMONDBACK E&P LLC

By: /s/ Travis D. Stice
Name: Travis D. Stice
Title: Chief Executive Officer

VIPER ENERGY PARTNERS GP LLC

By: /s/ M. Kaes Van't Hof
Name: M. Kaes Van't Hof
Title: President

VIPER ENERGY PARTNERS LP
By: Viper Energy Partners GP LLC, its general partner

By: /s/ M. Kaes Van't Hof
Name: M. Kaes Van't Hof
Title: President

VIPER ENERGY PARTNERS LLC
By: Viper Energy Partners LP, its managing member
By: Viper Energy Partners GP LLC, its general partner

By: /s/ M. Kaes Van't Hof
Name: M. Kaes Van't Hof
Title: President

Exhibit A
The Services

General and administrative materials and services, including office space

Services relating to Viper Corp's status as a public company and reporting, compliance, investor relations, capital markets, and other matters relating thereto

Geological, geophysical and reserve engineering services

Lease and land administration services

Accounting services

Tax

Information systems services

Legal and compliance services

Insurance services

Management and supervision of outside professionals, including accountants and attorneys

PLAN OF CONVERSION

This PLAN OF CONVERSION ("Plan of Conversion") sets forth certain terms of the conversion of Viper Energy Partners LP, a Delaware limited partnership (the "Partnership"), to a Delaware corporation to be named "Viper Energy, Inc." (the "Corporation"), pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act (the "Partnership Act") and the Delaware General Corporation Law (the "DGCL").

W I T N E S S E T H

WHEREAS, the Partnership was formed as a limited partnership in accordance with the Partnership Act and is currently governed by the Second Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of May 9, 2018, as amended by the First Amendment thereto dated May 10, 2018 and the Second Amendment thereto dated November 2, 2023 (collectively, the "Partnership Agreement");

WHEREAS, upon the terms and subject to the conditions of this Plan of Conversion and in accordance with the Partnership Act and the DGCL, the Partnership will be converted to a Delaware corporation pursuant to and in accordance with Section 17-219 of the Partnership Act and Section 265 of the DGCL (the "Conversion");

WHEREAS, pursuant to the Conversion, all of the outstanding Partnership Interests in the Partnership will be converted into shares of common stock of the Corporation or cancelled, as applicable, as provided in this Plan of Conversion; and

WHEREAS, capitalized terms used and not otherwise defined in this Plan of Conversion shall have the meanings given to them in the Partnership Agreement.

NOW, THEREFORE, upon the terms and subject to the conditions of this Plan of Conversion and in accordance with the Partnership Act and the DGCL, upon the filing and effectiveness of the Certificate of Conversion and the Certificate of Incorporation (each as defined below), the Partnership shall be converted to the Corporation.

ARTICLE I
THE CONVERSION AND POST-CONVERSION CORPORATE ACTIONS

SECTION 1.01 The Conversion. At the Effective Time (as defined below), the Partnership shall be converted to the Corporation and, for all purposes of the laws of the State of Delaware and otherwise, (a) the Corporation shall be deemed the same entity as the Partnership and the Conversion shall be deemed a continuation of the existence of the Partnership in the form of a Delaware corporation, (b) all of the rights, privileges and powers of the Partnership, all property, real, personal and mixed, all debts due to the Partnership, and all other things and causes of action belonging to the Partnership shall remain vested in, and be the property of, the Corporation, and (c) the title to real property vested by deed or otherwise in the Partnership shall not revert or be in any way impaired by reason of any provision of the Partnership Act, the DGCL or otherwise. The Conversion shall not (i) require the Partnership to wind up its affairs under Section 17-803 of the Partnership Act or to pay its liabilities and distribute its assets under Section 17-804 of the Partnership Act, or (ii) constitute a dissolution of the Partnership. Following the Conversion, all rights of creditors and all liens upon any property of the Partnership shall be preserved unimpaired, and all debts, liabilities and duties of the Partnership shall remain attached to the Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as

a Delaware corporation. Neither the rights, privileges, powers and interests in property of the Partnership, nor the debts, liabilities and duties of the Partnership, shall be deemed, as a consequence of the Conversion, to have been transferred to the Corporation for any purpose of the laws of the State of Delaware or otherwise.

SECTION 1.02 Effective Time. On November 2, 2023, the General Partner shall file or cause to be filed the Certificate of Conversion in the form attached hereto as Exhibit A (the "Certificate of Conversion") and the Certificate of Incorporation of the Corporation in the form attached hereto as Exhibit B (the "Certificate of Incorporation") with the Secretary of State of the State of Delaware pursuant to Section 265 of the DGCL. The Conversion shall become effective at the time specified in the Certificate of Conversion, as permitted by the Partnership Act and the DGCL (such time of effectiveness, the "Effective Time").

SECTION 1.03 Certificate of Incorporation and Bylaws. At and after the Effective Time, the Certificate of Incorporation and Bylaws (the "Bylaws") shall be in the forms attached hereto as Exhibit B and Exhibit C, respectively, until amended in accordance with their terms and the DGCL, and as such shall constitute the Certificate of Incorporation and Bylaws of the Corporation. The approval of this Plan of Conversion shall constitute the approval of the Certificate of Incorporation in accordance with Section 265(h) of the DGCL.

SECTION 1.04 Directors and Officers.

(a) At the Effective Time, the names of the persons who are to serve as the initial directors of the Corporation until the first annual meeting of stockholders of the Corporation and until his or her successor is duly elected and qualified are Travis D. Stice, Kaes Van't Hof, Steven E. West, W. Wesley Perry, Spencer D. Armour III, James L. Rubin, Frank C. Hu and Laurie H. Argo. The address of each of the initial directors of the Corporation is c/o Viper Energy, Inc., 500 West Texas, Suite 100, Midland, Texas 79701. Steven E. West shall be Chairman of the board of directors of the Corporation. Each director shall hold office for the term for which such director is elected and thereafter until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal.

(b) At the Effective Time, the officers of the Corporation shall be as listed on Exhibit D hereto. Each officer shall hold such office until such officer's successor is appointed or until such officer's earlier death, resignation, retirement, disqualification or removal.

SECTION 1.05 Post-Conversion Dividend.

(a) The General Partner of the Partnership has declared a cash distribution on the Common Units and fixed November 16, 2023 as the record date, and November 24, 2023 as the payment date, for such distribution, which dates shall each occur after the Effective Time. The Corporation shall, on the aforementioned payment date, pay to each holder of Class A Common Stock as of the aforementioned record date a cash amount per share equal to the cash amount declared as a distribution on a Common Unit, which shall be in satisfaction of the distribution declared by the General Partner of the Partnership with respect to Common Units.

(b) The General Partner of the Partnership has declared a preferred cash distribution on the Class B Units and fixed November 16, 2023 as the record date, and November 24, 2023 as the payment date, for such distribution, which dates shall each occur after the Effective Time. The Corporation shall, on the aforementioned payment date, pay, pro rata, to the holders of Class B Common Stock as of the aforementioned record date an aggregate cash amount equal to the aggregate cash amount declared as a distribution on Class B Units, which shall be in satisfaction of the preferred distribution declared by the General Partner of the Partnership with respect to Class B Units.

SECTION 1.06 Effect of Plan of Conversion. Pursuant to Section 265(k) of the DGCL, each action contemplated by Sections 1.03, 1.04 and 1.05 of this Article I (including, without limitation, the adoption of the Certificate of Incorporation and Bylaws of the Corporation, each election and appointment of a director or officer of the Corporation and the cash amounts payable to holders of Class A Common Stock and Class B Common Stock and the fixing of the record dates for such payments) shall be deemed approved, adopted and authorized (in the case of the aforementioned payment, in accordance with and on the terms approved by the General Partner of the Partnership) with like effect as if such actions were approved by all of the directors and stockholders of the Corporation and shall require no further action by the Corporation or its directors or stockholders following the Effective Time.

ARTICLE II
CONVERSION OF PARTNERSHIP INTERESTS; REGISTRATION OF SHARES

SECTION 2.01 Conversion of Partnership Interests. At the Effective Time, in each case without any action required on the part of the Partnership, the Corporation or any other Person:

(a) each Common Unit issued and outstanding immediately prior to the Effective Time shall be converted into one issued and outstanding, fully paid and nonassessable share of Class A common stock, $0.000001 par value per share, of the Corporation ("Class A Common Stock");

(b) each Class B Unit issued and outstanding immediately prior to the Conversion shall be converted into one issued and outstanding, fully paid and nonassessable share of Class B common stock, $0.000001 par value per share, of the Corporation ("Class B Common Stock" and, together with the Class A Common Stock, the "Common Stock"); and

(c) the General Partner Interest issued and outstanding immediately prior to the Conversion shall be cancelled and no equity interest in the Corporation shall be issued therefor.

All rights, powers, preferences, obligations, limitations, and qualifications of the Common Stock shall be as set out in the Certificate of Incorporation.

SECTION 2.02 Registration in Book-Entry. Shares of Common Stock shall not be represented by certificates but shall instead be uncertificated shares, unless the board of directors of the Corporation shall provide by resolution or resolutions otherwise. Promptly after the Effective Time, the Corporation shall register, or cause to be registered, in book-entry form the shares of Common Stock into which the outstanding Common Units and Class B Units shall have been converted as a result of the Conversion.

SECTION 2.03 No Further Rights in Partnership Interests. The shares of Class A Common Stock and Class B Common Stock, having all rights, powers, preferences, obligations, limitations, and qualifications as set forth in the Certificate of Incorporation, into which the Common Units and Class B Units, respectively, shall have been converted as a result of the Conversion shall be deemed to have been issued in full satisfaction of all rights pertaining to such Partnership Interests.

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IN WITNESS WHEREOF, the undersigned has executed this Plan of Conversion on November 2, 2023.

VIPER ENERGY PARTNERS LP

By: Viper Energy Partners GP LLC, its general partner

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

[Signature Page to Plan of Conversion]

EXHIBIT A

Certificate of Conversion

[Attached]

<u>EXHIBIT B</u>

Certificate of Incorporation

[Attached]

EXHIBIT C

Bylaws

[Attached]

<u>EXHIBIT D</u>

Initial Officers of the Corporation

Name	**Office**
Travis D. Stice	Chief Executive Officer
Kaes Van’t Hof	President
Teresa L. Dick	Chief Financial Officer, Executive Vice President and Assistant Secretary
Matt Zmigrosky	Executive Vice President, General Counsel and Secretary

CERTIFICATE OF CONVERSION
PURSUANT TO SECTION 265 OF
THE DELAWARE GENERAL CORPORATION LAW

This Certificate of Conversion is being duly executed and filed by Viper Energy Partners LP, a Delaware limited partnership (the "Limited Partnership"), to convert the Limited Partnership to Viper Energy, Inc., a Delaware corporation (the "Corporation"), under the Delaware Revised Uniform Limited Partnership Act (6 *Del. C.* § 17-101, et seq.) and the Delaware General Corporation Law (8 *Del. C.* § 101, et seq.) (the "DGCL").

The Limited Partnership was first formed on February 27, 2014 under the laws of the State of Delaware as a limited partnership.

The name and type of entity of the Limited Partnership immediately prior to filing this Certificate of Conversion is Viper Energy Partners LP, a Delaware limited partnership.

The name of the Corporation as set forth in the Certificate of Incorporation filed in accordance with Section 265(b)(2) of the DGCL is Viper Energy, Inc.

The Limited Partnership adopted a plan of conversion in accordance with Section 265(k) of the DGCL, and all provisions of such plan of conversion were approved prior to the effectiveness of this Certificate of Conversion in accordance with all law applicable to the Limited Partnership, including any approval required under such applicable law for the authorization of the type of corporate action specified in such plan of conversion.

This Certificate of Conversion (and the conversion of the Limited Partnership to the Corporation) shall be effective at 12:01 AM (Eastern Time) on November 13, 2023.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Conversion on November 2, 2023.

VIPER ENERGY PARTNERS LP
By: Viper Energy Partners GP LLC, its general partner

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

[Signature Page to Certificate of Conversion]

Exhibit 99.3

CERTIFICATE OF INCORPORATION
OF
VIPER ENERGY, INC.

ARTICLE I
NAME

The name of the corporation is Viper Energy, Inc. (the "***Corporation***").

ARTICLE II
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (as amended from time to time, 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 Conversion.

(a) The Corporation has been converted from the Partnership, which filed a Certificate of Conversion with the Office of the Secretary of State of the State of Delaware on November 2, 2023 in accordance with Section 265 of the DGCL, and pursuant to which the Partnership was converted into the Corporation effective at 12:01 a.m. (local time in Wilmington, Delaware) on November 13, 2023 (the "***Effective Time***").

(b) At the Effective Time, in each case without any action required on the part of the Partnership, the Corporation or any other Person:

(i) Each Common Unit outstanding immediately prior to the Effective Time was converted into one issued and outstanding, fully paid and nonassessable share of Class A Common Stock;

(ii) Each Class B Unit issued and outstanding immediately prior to the Effective Time was converted into one issued and outstanding, fully paid and nonassessable share of Class B Common Stock; and

(iii) The General Partner Interest issued and outstanding immediately prior to the Effective Time was cancelled and no equity interest in the Corporation was issued therefor.

Section 4.2 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 of directors of the Corporation (the "***Board***") with respect to any series thereof in the applicable preferred stock designation (the "***Preferred Stock***").

(b) Subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of this Certificate of Incorporation (this Certificate, including any Preferred Stock designations 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, the "***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 4.2(b)(ii) of this Certificate or pursuant to the rights of the holders of any series of Preferred Stock.

Section 4.3 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 4.4 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 4.5 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, which quarterly dividend is consistent with the quarterly distribution required under the Limited Partnership Agreement prior to the Effective Date; and (ii) as provided in Section 4.5(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 4.5(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 4.6 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"), which is consistent with the liquidation preference required with respect to Class B Units under the Limited Partnership Agreement prior to the Effective Date, 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 4.7 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 A 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 Class B Units shall be cancelled in connection with a transfer of an equal number of Class B Units and OpCo Units in accordance with Section 4.7(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 4.8 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 4.9 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 this 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, and the initial size of the Board shall equal the number of initial directors named in this Certificate. 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. 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 was converted from the Partnership.

(b) The Partnership engaged in, and the Corporation continues to engage in, a line of business to own and acquire mineral and royalty interests in oil and natural gas properties.

(c) The Partnership entered into, and the Corporation 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.

(d) The Partnership was initially formed to enter into leases and royalty arrangements with other persons and entities, including with one or more Diamondback Entities, and each limited partner purchased his, her or its limited partnership interest with notice thereof. A Diamondback Entity served as the General Partner of the Partnership. The Partnership Agreement modified the duties of the General Partner to facilitate the Partnership entering into Diamondback Agreements.

(e) The General Partner of the Partnership determined it would advance the best interests of the Partnership and the Limited Partners by converting the Partnership to the Corporation, to, among other things, enhance the liquidity of the capital stock from which limited partnership interests were converted, but approved this Article XIII in connection with the conversion.

(f) In connection with the adoption of Article V, prior to the conversion of the Partnership to the Corporation, the Partnership Agreement eliminated the doctrine of corporate opportunity with respect to Diamondback and its Affiliates.

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) "***Class B Unit***" has the meaning assigned to such term in the Partnership Agreement.

(b) "***Common Unit***" has the meaning assigned to such term in the Partnership Agreement.

(c) "***Diamondback***" means Diamondback Energy, Inc or its successor.

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

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

(f) "***General Partnership Interest***" has the meaning assigned to such term in the Partnership Agreement.

(g) "***OpCo Limited Liability Company Agreement***" means the Second Amended and Restated Limited Liability Company Agreement of the Operating Company, dated as of May 9, 2018, as amended by the First Amendment thereto dated March 30, 2020 and the Second Amendment thereto dated as of December 27, 2021, and as it may be further amended, supplemented, or restated from time to time.

(h) "***OpCo Unit***" means a limited liability company interest in the Operating Company having the rights and obligations specified with respect to a "Unit" in the OpCo Limited Liability Company Agreement.

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

(j) "***Partnership***" means Viper Energy Partners LP, a Delaware limited partnership and the predecessor to the Corporation.

(k) "***Partnership Agreement***" means that certain Second Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of May 9, 2018, as amended by the First Amendment thereto dated May 10, 2018.

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

(m) "***Services Agreement***" means that certain Services and Secondment Agreement among Viper Energy Partners GP LLC, the Partnership, Viper OpCo, and Diamondback E&P LLC, as such agreement may be further amended, supplemented or restated from time to time.

(n) “***Viper OpCo***” means Viper Energy Partners LLC or its successor.

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 Initial Directors. The names and addresses of the initial directors of the Corporation, who shall serve until the first annual meeting of the stockholders or until their successors are elected and qualified or their earlier death, disqualification or removal, are:

Travis D. Stice
Kaes Van’t Hof
Steven E. West
W. Wesley Perry
James L. Rubin
Frank C. Hu
Spencer D. Armour III
Laurie H. Argo

c/o Viper Energy, Inc.
500 West Texas
Suite 100
Midland, TX 79701

The powers of the incorporator shall terminate upon the filing of this Certificate.

Section 14.5. Incorporator. The name and address of the incorporator are as follows:

Matthew Zmigrosky
c/o Diamondback Energy, Inc.
500 West Texas
Suite 100
Midland, TX 79701

Section 14.6. Effective Time. This Certificate of Incorporation shall become effective at 12:01 a.m. (local time in Wilmington, Delaware) on November 13, 2023.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the incorporator of the Corporation has caused this Certificate of Incorporation to be executed as of November 2, 2023.

By:	/s/ Matthew Zmigrosky
Name:	Matthew Zmigrosky
Title:	Incorporator

Exhibit 99.4

BYLAWS

OF

VIPER ENERGY, INC.

A DELAWARE CORPORATION

(THE “CORPORATION”)

ADOPTED AS OF NOVEMBER 13, 2023

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 as set forth in the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "***Certificate of Incorporation***").

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

ARTICLE II
STOCKHOLDERS MEETINGS

Section 2.1 Annual Meetings. The annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.4(a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting.

Section 2.2 Special Meetings. Except as otherwise required by law or provided in 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, Chief Executive Officer, 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 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 (the "***Requisite Percent***"). 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 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.

(a) 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**.** The special meeting request(s) shall: (i) state the specific purpose or purposes of the special meeting which, in the case of a nomination, shall include all information required by Section 3.2 of the Bylaws to be included in a stockholder's

notice of nomination of persons for election to the Board, and, in the case of business other than nominations, all of the information required by Section 2.7 to be included in a stockholder's notice of business to be brought before an annual meeting and (ii) provide documentary evidence that the stockholder(s) requesting the special meeting together own, for their own account, the Requisite Percent is delivered to the Corporation and attach a notarized affidavit swearing to the position of such stockholder(s). 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 owners who are directing the stockholder of record to sign such special meeting request.

(b) Revocation of Special Meeting Requests. 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.

(c) 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.

(d) Improper or Overlapping Business. Notwithstanding anything to the contrary contained in this Section 2.2 or these Bylaws, 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 special stockholder meeting if: (i) the special meeting request relates to an item of business that is not a proper subject for stockholder action under applicable law; (ii) the same or a similar item was presented at any meeting of stockholders held within 120 calendar days prior to the receipt by the Corporation of the special meeting request; (iii) the same or a similar item is 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; or (iv) the special meeting request is received by the Corporation during the period commencing 90 calendar days prior to the first anniversary of the preceding year's annual meeting of stockholders. For purposes of clause (ii) of this Section 2.2(d), the removal of directors and the filling of the resulting vacancies shall be considered the same or similar to the election of directors at the preceding annual meeting of stockholders.

(e) 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, or that the information provided in a stockholder special meeting request not satisfy the information requirements of (or incorporated by reference in) this Section 2.2; and (ii) if any proposed nomination or business was not made or proposed in compliance with this Section 2.2 or the stated business to be brought before the special meeting is not a proper subject for stockholder action under 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 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.

(f) 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 9.4(a), provided further that, in the case of a stockholder requested special meeting: (i) the corporation must, within 60 days after the receipt of special meeting request(s) constituting the Requisite Percent that comply with the requirements of Section 2.2(a), or within such greater time as may be reasonably necessary for the Corporation to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a stockholder meeting or the solicitation of proxies for use at such meeting, give notice of the special meeting in accordance with Section 2.3 of these Bylaws.

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 accordance with Section 9.2 to each stockholder entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting. Unless otherwise required by law, 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 special meeting of stockholders, 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, whether before or after notice has been given, may be cancelled or postponed by the Board.

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.

Section 2.5 Voting of Shares.

(a) Voting Lists. The Corporation shall prepare, at no later than the tenth day before each meeting of stockholders, a complete list of the stockholders 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 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 for a period of at least 10 days ending on the day before the meeting date: (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 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, 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.

(d) Required Vote.

(i) Uncontested Election. Except as provided in Section 2.5(d)(ii) and subject to the rights of any holders of one or more series of Preferred Stock, 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 publicly disclose its decision to accept or reject such resignation and the rationale behind such decision within 90 days from the date of the certification of the director 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)(ii), a contested election means an election with respect to which, as of the last day for giving notice of a stockholder nominee, a stockholder has nominated a candidate for director in compliance with the requirements of Section 2.2 (with respect to stockholder-requested special meetings only), Section 3.2 or Section 3.4

(with respect to annual meetings only) of these Bylaws, and such nomination has not been withdrawn by such stockholder on or before the date the Corporation files its definitive proxy statement (regardless of whether or not thereafter revised or supplemented) with the Securities and Exchange Commission such that the number of nominees exceeds the number of directors to be elected.

(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 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 inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain 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; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election.

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 the adjourned meeting if the place (if any), date and time thereof, and the means of remote communications, 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 proxyholders 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), (ii) otherwise properly brought before the annual meeting by or at the direction of the Board or an authorized committee thereof 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 procedures and requirements set forth in this Section 2.7(a). Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended (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) 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 2.7(a). For purposes of this Section 2.7, the 2023 annual meeting of stockholders shall be deemed to have been held on November 1, 2023.

(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 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) 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). 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 Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act; "***Stockholder Associated Person***" shall mean for any stockholder (i) any beneficial owner of shares of stock of the Corporation on whose behalf any proposal or nomination is made by such stockholder; (ii) any affiliates or associates of such stockholder or any beneficial owner described in clause (i); and (iii) any affiliate who controls such stockholder or any beneficial owner described in clause (i); 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 this Section 2.7 and Sections 3.3 and 3.4 of these Bylaws, "***close of business***" shall mean 6:00 p.m. local time at the principal executive offices of the Corporation on any 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 any 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 or, in the absence (or inability or refusal to act) of the Chief Executive Officer, the President or, in the absence (or

inability or refusal to act) of the President, 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. 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 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 Delivery to the Corporation. 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 procedures and 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 authorized executive officer shall not have determined that the stockholder has failed to satisfy the requirements of this Section 3.2. To be timely, a stockholder's notice to the Secretary must (x) comply with the provisions of this Section 3.2 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 adjournment, rescheduling or postponement of a meeting (or the public announcement thereof) 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 Section3.2. For purposes of this Section 3.2, the 2023 annual meeting of stockholders shall be deemed to have been held on November 1, 2023. 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(a).

(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 paragraph (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, 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 on the one hand, and each proposed nominee and his or her respective affiliates and associates 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). 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 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 the Board determines, in good faith, are necessary for stockholders to make an informed decision on the director election proposal, 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(a), 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 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 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. If a stockholder or Stockholder Associated Person provides notice pursuant to Rule 14a-19(b) under the Exchange Act, such 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(a), Section 3.2(a)(ii) or Section 3.4 of these Bylaws, a stockholders 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 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 and (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.

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 Securities and Exchange Commission or other applicable law to be included in the proxy statement;

(iii) any written statement included by the Nominating Stockholder in the Nomination Notice 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 Securities and Exchange Commission by the Nominating Stockholder as applicable, in accordance with Securities and Exchange Commission 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 did not acquire, and is not 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 Securities and Exchange Commission, 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 and employees 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 or employees 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 Securities and Exchange Commission 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) Other than nominations submitted in accordance with Rule 14a-19 promulgated under the Exchange Act, 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 9.2, 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; (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 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. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

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.

(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.

(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 Board, 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 any two authorized officers thereof, including, without limitation, the Chief Executive Officer, the President, a Vice President, 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 Issuance of Shares. Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued in accordance with Sections 152 and 153 of the DGCL.

Section 7.5 Lost, Destroyed or Wrongfully Taken Certificates. The Corporation may issue a new share certificate or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or the owner’s legal representative to give the Corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares. The Board may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.6 Transfer of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary or a transfer agent for such stock, and if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer.

Section 7.7 Registered Stockholders. The Corporation may treat the registered owner as the person exclusively entitled to 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 and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7.8 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 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 9.1(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.

Section 9.2 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 in a manner permitted by, and shall be deemed given as provided by, Section 232 of the DGCL.

Section 9.3 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 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. 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 9.4 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 9.5 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 9.6 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 9.7 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 9.8 Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.9 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 9.10 Books and Records. The books and records of the Corporation may be kept or maintained in any manner permitted by Section 224 of the DGCL.

Section 9.11 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 9.12 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 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 9.13 Securities and Interests of Other Entities. Powers of attorney, proxies, waivers of notice of meeting, consents 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 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 9.14 Amendments. The Board shall have the power to adopt, amend, alter or repeal the Bylaws. The affirmative vote of a majority of the Whole Board shall be required to adopt, amend, alter or repeal the Bylaws. The Bylaws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by applicable law or the Certificate of Incorporation, the affirmative vote of the holders of at least 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.