

Viper Energy Partners LP  
Form PRE 14C  
March 30, 2018  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, DC 20549**

**SCHEDULE 14C INFORMATION**  
**Information Statement Pursuant to Section 14(c) of the**  
**Securities Exchange Act of 1934**

Check the appropriate box:

Preliminary Information Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))

Definitive Information Statement

**VIPER ENERGY PARTNERS LP**

**(Name of Registrant As Specified In Its Charter)**

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on the table below per Exchange Act Rules 14c-5(g) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
- (4) Proposed maximum aggregate value of transaction:
- (5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

- (1) Amount Previously Paid:
- (2) Form, Schedule or Registration Statement No.:
- (3) Filing Party:
- (4) Date Filed:

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**VIPER ENERGY PARTNERS LP**

**500 West Texas, Suite 1200**

**Midland, Texas 79701**

**NOTICE OF UNITHOLDER ACTION BY WRITTEN CONSENT**

To the Unitholders of Viper Energy Partners LP:

Viper Energy Partners LP (the Company, our or we ) is delivering this Notice and the accompanying Information Statement to inform our unitholders that on March 28, 2018, the holder of 64.2% of our outstanding common units representing limited partnership interests (the Common Units ) approved by written consent, in lieu of a meeting of unitholders, the amendment and restatement of our First Amended and Restated Agreement of Limited Partnership dated as of June 23, 2014 (the First Amended and Restated Partnership Agreement ) in connection with the Company's decision to change the Company's U.S. federal income tax status from a pass-through partnership to an entity taxable as a corporation by means of a check-the-box election.

The amendment and restatement of the First Amended and Restated Partnership Agreement, a copy of which is attached hereto as Annex A-1 (as so amended and restated, the Second Amended and Restated Partnership Agreement ), was approved by unitholder written consent pursuant to Section 13.2 and Section 13.11 of the First Amended and Restated Partnership Agreement. Pursuant to Section 13.2 of the First Amended and Restated Partnership Agreement, an amendment to the First Amended and Restated Partnership Agreement generally becomes effective upon its approval by the Company's general partner, Viper Energy Partners GP LLC (the General Partner ), and a majority of the outstanding Common Units. Subject to certain exceptions not applicable here, Section 13.11 permits any action that may be taken at a meeting of the unitholders to be taken without a meeting, without a vote and without prior notice, if an approval in writing setting forth the action so taken is signed by unitholders owning not less than the minimum percentage, by Percentage Interest (as defined the First Amended and Restated Partnership Agreement), of the Common Units that would be necessary to authorize or take such action at a meeting at which all the unitholders entitled to vote at such meeting were present and voted. All necessary approvals under the First Amended and Restated Partnership Agreement by the Board of Directors of the General Partner and the unitholders in connection with the adoption of the Second Amended and Restated Partnership Agreement have been obtained.

In connection with the Second Amended and Restated Partnership Agreement, we will also (i) amend and restate the First Amended and Restated Limited Liability Company Agreement of Viper Energy Partners LLC (the Operating Company ) (as so amended and restated, the Second Amended and Restated Limited Liability Company Agreement ), (ii) amend and restate our existing registration rights agreement with Diamondback Energy, Inc. ( Diamondback ) (as so amended and restated, the Amended and Restated Registration Rights Agreement ) and (iii) enter into an exchange agreement with Diamondback, the General Partner and the Operating Company (the Exchange Agreement and, together with the Second Amended and Restated Partnership Agreement, the Second Amended and Restated Limited Liability Company Agreement and the Amended and Restated Registration Rights Agreement, the Transaction Documents ). Simultaneously with the effectiveness of the Second Amended and Restated Partnership Agreement, the Second Amended and Restated Limited Liability Company Agreement, the Amended and Restated Registration Rights Agreement and the Exchange Agreement, Diamondback will deliver and assign to us the 73,150,000 Common Units it owns in exchange for (i) 73,150,000 newly-issued Class B Units of the Company and (ii) 73,150,000 newly-issued units of the Operating Company pursuant to the terms of a Recapitalization Agreement dated March 28, 2018.

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The Information Statement is being furnished to the holders of the Common Units pursuant to Section 14(c) of the Securities Exchange Act of 1934, as amended (the Exchange Act), the rules thereunder and Section 13.11 of the First Amended and Restated Partnership Agreement solely for the purpose of informing our unitholders of the approval of the Second Amended and Restated Partnership Agreement before it takes effect. In accordance with Rule 14c-2 under the Exchange Act, we plan to adopt the Second Amended and Restated

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Partnership Agreement, and enter into the other Transaction Documents, 20 calendar days following the date this Notice and the accompanying Information Statement are first mailed to our unitholders, or as soon thereafter as is reasonably practicable.

The Second Amended and Restated Partnership Agreement was approved and recommended by the Board of Directors of the General Partner prior to the unitholder action by written consent as described in the accompanying Information Statement.

We elected to utilize the written consent process to eliminate the costs and management time involved in holding a meeting and obtaining proxies and to effect the transaction described above as early as practicable in an effort to accomplish the purposes described in the accompanying Information Statement.

**IMPORTANT NOTICE:**

**THIS NOTICE AND THE COMPANY'S INFORMATION STATEMENT ARE AVAILABLE**

**ON THE INVESTOR RELATIONS SECTION OF THE COMPANY'S WEBSITE**

**(<http://ir.viperenergy.com>).**

**NO VOTE OR OTHER ACTION OF THE COMPANY'S UNITHOLDERS IS REQUIRED IN CONNECTION WITH THE INFORMATION STATEMENT.**

**WE ARE NOT ASKING YOU FOR A PROXY**

**AND YOU ARE REQUESTED NOT TO SEND US A PROXY**

You have the right to receive this Notice and the accompanying Information Statement if you were a unitholder of record of the Company at the close of business on April 2, 2018.

By Order of the Board of Directors of the General Partner

Randall J. Holder

Executive Vice President, General Counsel and Secretary

April , 2018

THE ACCOMPANYING INFORMATION STATEMENT IS BEING MAILED TO UNITHOLDERS ON

OR ABOUT APRIL , 2018.

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**VIPER ENERGY PARTNERS LP**

**500 West Texas, Suite 1200**

**Midland, Texas 79701**

**INFORMATION STATEMENT**

**NO VOTE OR OTHER ACTION OF THE COMPANY'S UNITHOLDERS IS REQUIRED IN CONNECTION WITH THIS INFORMATION STATEMENT.**

**WE ARE NOT ASKING YOU FOR A PROXY**

**AND YOU ARE REQUESTED NOT TO SEND US A PROXY**

**General**

Viper Energy Partners LP, a Delaware limited partnership (the "Company," "our" or "we"), is sending this Information Statement to inform our unitholders that we have obtained approval by written consent from the holder of a majority of our common units representing limited partnership interests (the "Common Units") to amend and restate our First Amended and Restated Agreement of Limited Partnership dated as of June 23, 2014 (the "First Amended and Restated Partnership Agreement") in connection with the Company's decision to change the Company's U.S. federal income tax status from a pass-through partnership to an entity taxable as a corporation by means of a "check-the-box" election.

This Information Statement includes a summary of the proposed amendment and restatement of the First Amended and Restated Partnership Agreement, a copy of which is attached hereto as Annex A-1 (as so amended and restated, the "Second Amended and Restated Partnership Agreement"), which was approved by unitholder written consent pursuant to Section 13.2 and Section 13.11 of the First Amended and Restated Partnership Agreement.

In connection with the Second Amended and Restated Partnership Agreement, we will also (i) amend and restate the First Amended and Restated Limited Liability Company Agreement of Viper Energy Partners LLC (the "Operating Company") (as so amended and restated, the "Second Amended and Restated Limited Liability Company Agreement"), (ii) amend and restate our existing registration rights agreement with Diamondback Energy, Inc. ("Diamondback") (as so amended and restated, the "Amended and Restated Registration Rights Agreement") and (iii) enter into an exchange agreement with Diamondback, Viper Energy Partners GP LLC (the "General Partner") and the Operating Company (the "Exchange Agreement"). Simultaneously with the effectiveness of the Second Amended and Restated Partnership Agreement, the Second Amended and Restated Limited Liability Company Agreement, the Amended and Restated Registration Rights Agreement and the Exchange Agreement, Diamondback will deliver and assign to us the 73,150,000 Common Units it owns in exchange for (i) 73,150,000 newly-issued Class B Units of the Company (the "Class B Units") and (ii) 73,150,000 newly-issued units of the Operating Company (the "OpCo Units") pursuant to the terms of a Recapitalization Agreement dated March 28, 2018 (such agreement, the "Recapitalization Agreement" and such exchange, the "Recapitalization Transaction"). Summaries of the terms of the Second Amended and Restated Partnership Agreement, the Second Amended and Restated Limited Liability Company Agreement, the Recapitalization Agreement, the Exchange Agreement and the Amended and Restated Registration Rights Agreement are provided below.

**Notice Pursuant to Section 13.11 of the First Amended and Restated Partnership Agreement**

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Pursuant to Section 13.11 of the First Amended and Restated Partnership Agreement, the Company is required to provide prompt notice of the taking of action without a meeting to the Company's unitholders who have not approved the action in writing. This Information Statement serves as the notice required by Section 13.11 of the First Amended and Restated Partnership Agreement.

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This Information Statement is being sent on or about April 2, 2018 to the Company's unitholders of record as of April 2, 2018 (the "Record Date").

We will pay the costs of preparing and sending out the enclosed Notice and this Information Statement.

**IMPORTANT NOTICE:**

**THE COMPANY'S INFORMATION STATEMENT IS AVAILABLE ON THE INVESTOR RELATIONS SECTION OF THE COMPANY'S WEBSITE (<http://ir.viperenergy.com>).**

**Dissenters' Rights of Appraisal**

The holders of the Company's outstanding Common Units are not entitled to dissenters' rights of appraisal under the First Amended and Restated Partnership Agreement or applicable Delaware law in connection with the matters discussed in this Information Statement.



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**THE TAX ELECTION AND THE RELATED TRANSACTIONS**

**Background of and Reasons for the Tax Election**

On March 29, 2018, we announced that the Board of Directors of the General Partner unanimously approved a proposal to change the Company's U.S. federal income tax status from a pass-through partnership to an entity taxable as a corporation by means of a "check-the-box" election (the "Tax Election"). We began evaluating the Tax Election in late 2017 as a result of changes in the United States federal tax code contained in the Tax Cuts and Jobs Act passed in December 2017. Based on this evaluation, the Company has decided to effect the Tax Election because it expects that the Tax Election will (i) significantly expand the potential investor base for the Common Units, both in the United States and internationally, (ii) lower the Company's cost of capital and distribution yield relative to its competitors, (iii) improve the Company's access to the capital markets and (iv) ease the administrative burden on the Company by simplifying tax reporting.

The Company does not expect that the Tax Election will be taxable to the Company or its current unitholders and the Company's business model will not change. We intend to continue to distribute all available cash to our unitholders on a quarterly basis and will seek to continue to grow these distributions through both organic growth and accretive mineral acquisitions in oil-weighted basins.

**Transactions Related to the Tax Election**

Prior to effecting the Tax Election, we will amend and restate the First Amended and Restated Partnership Agreement with the Second Amended and Restated Partnership Agreement in the form attached hereto as Annex A-1. The Second Amended and Restated Partnership Agreement was unanimously approved by the Board of Directors of the General Partner and, on March 28, 2018, it was approved by the written consent of the holder of a majority of our outstanding Common Units (the "Consenting Unitholder") pursuant to Section 13.2 and Section 13.11 of the First Amended and Restated Partnership Agreement.

The Common Units are currently registered under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as a result, we are subject to the periodic reporting and other requirements of the Exchange Act. The Tax Election and the adoption of the Second Amended and Restated Partnership Agreement will not affect the registration of the Common Units under the Exchange Act.

This Information Statement is being furnished to the holders of the Common Units pursuant to Section 14(c) of the Exchange Act, and the rules thereunder, and Section 13.11 of the First Amended and Restated Partnership Agreement solely for the purpose of informing our unitholders of the Second Amended and Restated Partnership Agreement before it takes effect. In accordance with Rule 14c-2 under the Exchange Act, we plan to enter into the Second Amended and Restated Partnership Agreement 20 calendar days following the date this Information Statement and the accompanying Notice are first mailed to our unitholders, or as soon thereafter as is reasonably practicable. We expect the effective date of the Second Amended and Restated Partnership Agreement will be April 1, 2018.

In connection with the Second Amended and Restated Partnership Agreement, we will also amend and restate the First Amended and Restated Limited Liability Company Agreement of the Operating Company in the form attached hereto as Annex B. Simultaneously with the effectiveness of the Second Amended and Restated Partnership Agreement and the Second Amended and Restated Limited Liability Company Agreement, Diamondback will deliver and assign to us the 73,150,000 Common Units it owns in exchange for (i) 73,150,000 newly-issued Class B Units and (ii) 73,150,000 newly-issued OpCo Units pursuant to the terms of the Recapitalization Agreement. The Class B Units will be identical to the Common Units, except that the Class B Units (i) will not have any rights to profits or losses or

any rights to receive distributions from operations or upon the liquidation or winding-up of the Company, (ii) will not be transferable (except to an affiliate of

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Diamondback, so long as Diamondback simultaneously transfers an equal number of OpCo Units to such affiliate in accordance with the Second Amended and Restated Limited Liability Company Agreement), (iii) will be exchangeable, together with OpCo Units, for Common Units, (iv) will not have the benefit of registration rights, and (v) if at any time Diamondback or any other record holder of one or more Class B Units does not hold an equal number of Class B Units and OpCo Units, the Company will issue additional Class B Units to such holder or cancel Class B Units held by such holder, as applicable, such that the number of Class B Units held by such holder is equal to the number of OpCo Units held by such holder. The OpCo Units issued to Diamondback will be identical to the OpCo Units owned by us (including the right to distributions from the Operating Company), however such OpCo Units will not be entitled to voting rights so long as they are owned by Diamondback or its affiliates.

As of the date of this Information Statement, there were no arrears in distributions or defaults in principal or interest in respect of the Common Units

Simultaneously with the effectiveness of the Second Amended and Restated Partnership Agreement and the Second Amended and Restated Limited Liability Company Agreement and the closing of the Recapitalization Transaction, we will also enter into (i) the Exchange Agreement with Diamondback, the General Partner and the Operating Company in the form attached hereto as Annex D and (ii) the Amended and Restated Registration Rights Agreement with Diamondback in the form attached hereto as Annex E.

Summaries of the terms of the Second Amended and Restated Partnership Agreement, the Second Amended and Restated Limited Liability Company Agreement, the Recapitalization Agreement, the Amended and Restated Registration Rights Agreement and the Exchange Agreement are included below.

## **Second Amended and Restated Partnership Agreement**

### ***Background***

The Board of Directors of the General Partner unanimously adopted a resolution pursuant to which it determined that it is in the best interests of the Company and our unitholders to approve the Second Amended and Restated Partnership Agreement and recommended that unitholders approve the Second Amended and Restated Partnership Agreement. On March 28, 2018, the Consenting Unitholder executed the written consent approving the Second Amended and Restated Partnership Agreement as described in this Information Statement.

### ***Summary of the Amendments***

The following is a brief summary of the amendments included in the Second Amended and Restated Partnership Agreement (capitalized terms used not defined herein have the meanings ascribed thereto in the Second Amended and Restated Partnership Agreement). The primary purpose of amending and restating the First Amended and Restated Partnership Agreement is to delete or amend those provisions of the First Amended and Restated Partnership Agreement to reflect the Company's U.S. federal income tax classification as an entity taxable as a corporation upon the effective date of the Tax Election (the "Tax Amendments"). In addition to the Tax Amendments, the Board of Directors of the General Partner also believes that it is in the best interests of the Company and our unitholders to make certain additional amendments to the First Amended and Restated Partnership Agreement (the "Additional Amendments"), which are principally focused on (i) deleting references to and amending provisions concerning certain agreements that existed and facts and definitions that were current at the time the First Amended and Restated Partnership Agreement was adopted, which agreements are no longer in existence and which facts and definitions are no longer current and (ii) the creation and rights of the Class B Units and their issuance. Under the terms of the Second Amended and Restated Partnership Agreement, the Company will remain a partnership for state law purposes.

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In addition to the amendments described below, the Second Amended and Restated Partnership Agreement also contains certain non-substantive amendments,

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including, but not limited to, updating section references and making other clerical changes. The following is not a complete list of the amendments and deletions included in the Second Amended and Restated Partnership Agreement. To view a complete marked copy of the Second Amended and Restated Partnership Agreement, which reflects all amendments to the First Amended and Restated Partnership Agreement, please see [Annex A-2](#) hereto.

***Tax Amendments***

*Deletion and Amendment of Provisions Not Relevant for Entities Taxable as Corporations.* Because we will be treated as an entity taxable as a corporation for U.S. federal income tax purposes as a result of the Tax Election, the provisions in the First Amendment and Restated Partnership Agreement applicable to entities taxable as a partnerships are no longer relevant and are deleted or amended, as applicable. The affected provisions for this purpose include, but are not limited to, the following:

*Transfer of the General Partner Interest (Section 4.6) and Restrictions on Transfers (Section 4.7).* These sections are amended to remove the restriction on a transfer of the General Partner Interests or Partnership Interest that would have prevented the Partnership from being taxed as a corporation for federal income tax purposes.

*Capital Account (Section 5.4).* This section is deleted to remove the requirement of maintaining a Capital Account for each Partner.

*Deemed Capital Contributions by Partners (Section 5.9).* This section is deleted to remove the tax characterization of transfer of property or cash by a Partner to any employee or other service provider.

*Allocations for Capital Account Purposes (Section 6.1).* This section is deleted to remove the provision of book allocations of the Company's income, gain, loss and deductions among the Partners.

*Allocation for Tax Purposes (Section 6.2).* This section is deleted to remove the provision of tax allocations of the Company's income, gain, loss and deductions among the Partners.

*Tax Matters (Article IX).* This article is amended to add a provision authorizing the Partnership to make the Tax Election (Section 9.1), and delete other sections governing tax returns and information requirements, tax elections and tax controversies, and revise the withholding section. (Section 9.2)

*Liquidation (Section 12.4).* This section is amended to provide that all property and cash distributed to the Partners upon liquidation of the Partnership shall be in accordance with the distribution provision.

*Capital Account Restoration (Section 12.8).* This section is deleted to remove the provision that no Partners shall have any obligation to restore any negative Capital Account balance upon liquidation, and is no longer necessary.

In addition, any definitions related to the provisions described above are deleted and/or amended.

***Additional Amendments***

*Restrictions on Transfers of Class B Units (Section 4.5(d)).* A holder of Class B Units may not transfer any of its Class B Units to any Person, except that any such holder may transfer one or more Class B Units to its Affiliate so long as such holder simultaneously transfers an equal number of OpCo Units to such Affiliate in accordance with the Second Amended and Restated Limited Liability Company Agreement.

*Capitalization (Section 5.1).* The Second Amended and Restated Partnership Agreement updates the historical and current capitalization of the Company to reflect, among other things, the 113,882,045 Common

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Units outstanding immediately prior to the exchange pursuant to the Recapitalization Agreement, and the 40,732,045 Common Units and 73,150,000 Class B Units outstanding immediately after the exchange pursuant to the Recapitalization Agreement.

*Issuance of Additional Partnership Interests (Section 5.5).* Upon issuance by the Company of additional Common Units, the Company must contribute the net cash proceeds or other consideration received from the issuance of such additional Common Units to the Operating Company in exchange for an equivalent number of OpCo Units. Notwithstanding the foregoing, the Company may issue Common Units without such contribution (a) pursuant to employee benefit plans or pursuant to the Exchange Agreement and Section 5.5(f) of the Second Amended and Restated Partnership Agreement or (b) pursuant to a distribution (including any split or combination) of Common Units to all of the holders of Common Units pursuant to Section 5.7 of the Second Amended and Restated Partnership Agreement. (Section 5.5(a))

If at any time Diamondback or any other Record Holder of one or more Class B Units does not hold an equal number of Class B Units and OpCo Units, the Company must issue additional Class B Units to such holder or cancel Class B Units held by such holder, as applicable, such that the number of Class B Units held by such holder is equal to the number of OpCo Units held by such holder; 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 to an Affiliate in accordance with Section 4.5(d) of the Second Amended and Restated Partnership Agreement and the Second Amended and Restated Limited Liability Company Agreement. Any determination as to the number of OpCo Units and/or Class B Units held by any Person will be made by the General Partner and shall be conclusive absent manifest error. (Section 5.5(e))

Upon any exchange of OpCo Units and Class B Units for Common Units pursuant to the Exchange Agreement, the Company must issue to the exchanging holder of such OpCo Units and Class B Units a number of Common Units equal to the number of OpCo Units delivered in connection with such exchange. The Class B Units involved in such exchange will automatically be cancelled and cease to be outstanding. (Section 5.5(f))

*Splits and Combinations (Section 5.7(a)).* The Company may not effect a subdivision or combination of Partnership Interests unless (i) the Operating Company also effects an equivalent subdivision or combination of OpCo Units pursuant to the Second Amended and Restated Limited Liability Company Agreement and (ii) any such distribution, subdivision or combination of the Common Units is accompanied by a simultaneous and proportionate distribution, subdivision or combination of the Class B Units pursuant to the Second Amended and Restated Partnership Agreement. This provision may not be amended unless corresponding changes are made to the Second Amended and Restated Limited Liability Company Agreement.

*Distributions to Record Holders (Section 6.1(b)).* Subject to certain exceptions, (i) the Company will make distributions, if any, to all Record Holders of Common Units, Pro Rata and (ii) no distributions will be made under any circumstances in respect of any Class B Units.

*Registration Rights of the General Partner and its Affiliates (Section 7.12).* Neither the General Partner nor any other Person has any registration rights or other rights under Section 7.12 of the Second Amended and Restated Partnership Agreement in respect of Class B Units. (Section 7.12(h))

*Class B Units (Section 13.13).* Each holder of Class B Units is entitled to receive notice of, be included in any requisite quora for, and participate in any and all approvals, votes or other actions of the Partners on a Pro Rata basis as, and treating such Persons for all purposes as if they are, Unitholders holding Common Units, including any and all notices, quora, approvals, votes and other actions that may be taken pursuant to the requirements of the Delaware Act or any other applicable law, rule or regulation, except as otherwise explicitly provided in the Second Amended and

Restated Partnership Agreement. The affirmative vote of the holders of a majority of the voting power of all Class B Units voting separately as a class is required to alter, amend or repeal this provision or to adopt any provision of the Second Amended and Restated Partnership Agreement inconsistent with this provision.



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**Second Amended and Restated Limited Liability Agreement of the Operating Company**

The following is a brief summary of the terms of the Second Amended and Restated Limited Liability Company Agreement to be entered into in connection with the Tax Election. This summary of the terms of the Second Amended and Restated Limited Liability Company Agreement is intended to provide you with basic information concerning the Second Amended and Restated Limited Liability Company Agreement. However, it is not a substitute for reviewing the Second Amended and Restated Limited Liability Company Agreement, a form of which is attached hereto as Annex B. You should read this summary in conjunction with that document.

The primary purpose of amending and restating the First Amended and Restated Limited Liability Company Agreement is to reflect the consummation of the Recapitalization Transaction and to implement provisions providing for a multi-member limited liability company. As a result of the Recapitalization Transaction and having two members, the Operating Company will be treated as a continuation of an existing partnership for U.S. federal income tax purposes. Pursuant to the Second Amended and Restated Limited Liability Company Agreement, the Company will be the managing member and Diamondback will be the non-managing member. The non-managing member will have no voting rights, but it will be entitled to distributions.

The Second Amended and Restated Limited Liability Company Agreement also reflects additional tax provisions to provide that the Operating Company will (i) maintain a capital account for each member, (ii) except for the special allocation described below, generally allocate income and losses of the Operating Company based on the members respective percentage interest in the Operating Company, (iii) provide the tax characterization of the Operating Company as a continuation of an existing partnership, (iv) require that the Operating Company file tax returns and provide certain information to its members and (v) upon liquidation, distribute cash or property to the members in accordance with their respective capital account balances. The Second Amended and Restated Limited Liability Company Agreement also reflects an agreement between Diamondback and us to specially allocate to Diamondback priority allocations of \$300 million of the Operating Company's income and gains over losses and deductions (but before depletion) over the next four taxable years.

At any time, the non-managing member may exchange its OpCo Units (together with its Class B Units) for Common Units pursuant to and in accordance with the Exchange Agreement and the Second Amended and Restated Partnership Agreement upon a good faith written determination by the Company, based on the most current practically available geological data, that there is sufficient net built-in gains or net built-in losses (or items thereof) attributable to the Company assets to make an allocation pursuant to the Second Amended and Restated Limited Liability Company Agreement to equalize the members' capital account equal to its percentage interests. The Second Amended and Restated Limited Liability Company Agreement also provides for additional transfer restrictions of OpCo Units.

In addition to the material amendments and terms described above, the Second Amended and Restated Limited Liability Company Agreement also contains certain non-substantive amendments, including, but not limited to, updating section references and making other clerical changes.

**Recapitalization Agreement**

*General.* The following is a brief summary of the terms of the Recapitalization Agreement. On March 28, 2018, the Company entered into the Recapitalization Agreement, pursuant to which Diamondback agreed to deliver and assign the 73,150,000 Common Units it owns (the "Transferor Common Units") to the Company in exchange for Class B Units and OpCo Units. The issuance of the Class B Units and OpCo Units pursuant to the Recapitalization Agreement is intended to be exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), and we expect to rely upon Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder for

an exemption from registration. This summary of the terms of the Recapitalization Agreement is intended to provide you with basic information concerning the Recapitalization Agreement. However, it is not a substitute for reviewing the Recapitalization Agreement, which is attached hereto as Annex C. You should read this summary in conjunction with that document.

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*Closing Conditions.* The Recapitalization Transaction shall occur upon the satisfaction or waiver of certain closing conditions (the "Closing"), including the accuracy of representations and warranties, compliance with covenants, and the passage of the applicable time periods following the initial mailing of the Information Statement, and simultaneously with the effectiveness of the Second Amended and Restated Partnership Agreement, the Second Amended and Restated Limited Liability Company Agreement, the Exchange Agreement and the Amended and Restated Registration Rights Agreement. At the Closing, Diamondback will receive, in consideration for its assignment of the Transferor Common Units, 73,150,000 Class B Units and 73,150,000 OpCo Units.

*Representations, Warranties, Covenants and Indemnification.* The Recapitalization Agreement contains customary representations and warranties by the parties thereto, which representations and warranties survive for a period of one year after the Closing. In addition, the Recapitalization Agreement contains certain covenants regarding, among other things, the transfer of the Transferor Common Units prior to the Recapitalization Transaction, Diamondback's obligation to vote the Transferor Common Units in favor of the approval of the Second Amended and Restated Partnership Agreement and the actions the Company is prohibited to take regarding dilutive effects on its Common Units. The Recapitalization Agreement also contains indemnification obligations for breach of representations, warranties and covenants contained in the Recapitalization Agreement.

*Termination.* The Recapitalization Agreement may be terminated by (i) the mutual written consent of the parties thereto, or (ii) by any party thereto upon written notice to each other party if the Closing does not occur by June 30, 2018.

## **Exchange Agreement**

The following is a brief summary of the terms of the Exchange Agreement. This summary of the terms of the Exchange Agreement is intended to provide you with basic information concerning the Exchange Agreement. However, it is not a substitute for reviewing the Exchange Agreement, a form of which is attached hereto as Annex D. You should read this summary in conjunction with that document.

Pursuant to the Exchange Agreement but subject to certain conditions described in the Second Amended and Restated Limited Liability Company Agreement described above, Diamondback may tender Class B Units, which must be accompanied by an equal number of OpCo Units (together, the "Tendered Units"), to the Company for redemption. Diamondback has the right to receive from the Company a number of Common Units equal to the number of Tendered Units in exchange for the Tendered Units. In addition, the Company may offer to purchase some or all of the Tendered Units from Diamondback for cash, subject to the approval of the conflicts committee of the General Partner.

Any exchange by Diamondback of Common Units for Tendered Units will be on a one-for-one basis, subject to adjustment in the event of splits or combinations of units, distributions of warrants or other unit purchase rights, specified extraordinary distributions and similar events.

## **Amended and Restated Registration Rights Agreement**

The following is a brief summary of the terms of the Amended and Restated Registration Rights Agreement. This summary of the terms of the Amended and Restated Registration Rights Agreement is intended to provide you with basic information concerning the Amended and Restated Registration Rights Agreement. However, it is not a substitute for reviewing the Amended and Restated Registration Rights Agreement, a form of which is attached hereto as Annex E. You should read this summary in conjunction with that document.

The Amended and Restated Registration Rights Agreement amends the definition of Registrable Securities to include Common Units acquired or that may be acquired by Diamondback in accordance with the Exchange Agreement. In addition, whenever a holder has requested that any Registrable Securities be registered

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under the Amended and Restated Registration Rights Agreement or has initiated an underwritten offering, the Amended and Restated Registration Rights Agreement requires such holder, if applicable, to cause such Registrable Securities to be exchanged into Common Units in accordance with the terms of the Exchange Agreement before or substantially concurrently with the sale of such Registrable Securities.

In addition to the material amendments and terms described above, the Amended and Restated Registration Rights Agreement also contains certain non-substantive amendments, such as clerical changes.

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**MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following is a discussion of the material U.S. federal income tax considerations of the Recapitalization Transaction and the Tax Election that may be relevant to our unitholders. This discussion is based upon current provisions of the Internal Revenue Code of 1986, as amended (the Code), existing and proposed regulations and current administrative rulings and court decisions, all of which are subject to change, possibly with retroactive effect. Changes in these authorities may cause the tax consequences to vary substantially from the consequences described below. For purposes of this discussion, unless otherwise indicated, references to unitholders refer to holders of Common Units and references to Common Units refer to our Common Units.

This discussion does not address all U.S. federal income tax consequences of the Recapitalization Transaction and the Tax Election. This discussion does not address any U.S. federal estate or gift tax laws or the tax considerations arising under the laws of any foreign, state, local or other jurisdiction. The discussion focuses on unitholders who are individual citizens or residents of the U.S. and has only limited application to corporations, estates, entities treated as partnerships for U.S. federal income tax purposes, trusts, nonresident aliens, U.S. expatriates and former citizens or long-term residents of the United States or other unitholders subject to specialized tax treatment, such as banks, insurance companies and other financial institutions, tax-exempt institutions, foreign persons (including, without limitation, controlled foreign corporations, passive foreign investment companies and non-U.S. persons eligible for the benefits of an applicable income tax treaty with the United States), IRAs, real estate investment trusts (REITs) or mutual funds, dealers in securities or currencies, traders in securities, U.S. persons whose functional currency is not the U.S. dollar, persons holding their units as part of a straddle, hedge, conversion transaction or other risk reduction transaction, and persons deemed to sell their units under the constructive sale provisions of the Code.

The Company has not sought and does not intend to seek a ruling from the Internal Revenue Service (the IRS) with respect to any of the tax consequences discussed below. As a result, no assurance can be given that the IRS will agree with the tax consequences described below. The U.S. federal income tax treatment of the Recapitalization Transaction and the Tax Election are not certain, and no assurance can be given that the discussion contained herein with respect to tax matters would be sustained by a court if contested by the IRS. Furthermore, the tax treatment of the Recapitalization transaction and the Tax Election may be significantly modified by future legislative or administrative changes or court decisions. Any modifications may or may not be retroactively applied.

**Accordingly, each unitholder should consult its own tax advisors as to its particular U.S. federal income tax consequences as a result of the Recapitalization Transaction and the Tax Election, as well as the applicability and effect of U.S. federal income and estate or gift, and state or local or foreign tax laws in light of its particular circumstances.**

**Consequences of the Recapitalization Transaction and the Tax Election**

We intend to take the position that, as a result of the Recapitalization Transaction, solely for U.S. federal income tax purposes, the Operating Company is a continuation of an existing partnership and the unitholders should be treated as contributing their Common Units in the Company to a new partnership in return for limited partnership interests of equal value in the new partnership. After the closing of the Recapitalization Transaction, the Company will promptly make the Tax Election to treat the Company as a corporation for U.S. federal income tax purposes. We anticipate that the IRS will make a determination on our Tax Election and we should generally receive such determination within 60 days after we have filed IRS Form 8832. Once the election is made, any further changes to our tax classification for U.S. federal income tax purposes will have additional tax consequences to the Company and the unitholders at such time.

## Edgar Filing: Viper Energy Partners LP - Form PRE 14C

As a result of the Tax Election, solely for U.S. federal income tax purposes, the following transactions are deemed to occur before the close of the day immediately before the effective date of the Tax Election: (i) the

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Company is deemed to transfer all of its assets and liabilities to a new entity taxable as a corporation solely in exchange for equity interests in such new entity, and (ii) immediately thereafter, the Company liquidates and distributes the equity interests of such new entity to the unitholders in exchange for their interests in the Company. The remainder of this discussion assumes that the Recapitalization Transaction and the Tax Election will be treated for U.S. federal income tax purposes in the manner described above.

We expect that (i) the Company and the unitholders should recognize no gain or loss upon the Recapitalization Transaction, (ii) the Company should recognize no gain or loss upon the Tax Election, and (iii) a unitholder should recognize no gain or loss on the Tax Election, except to the extent that the amount of liabilities allocated to such unitholder for U.S. federal income tax purposes prior to the Tax Election and assumed by the new entity taxed as a corporation after the Tax Election, exceed such unitholder's basis in the Common Units. For U.S. federal income tax purposes, a unitholder's relief from such share of our liabilities is treated as if such unitholder received a cash distribution from us in the amount of the liabilities deemed assumed by the new entity. If the amount of any such deemed distribution of cash to a unitholder exceeds such unitholder's tax basis in its Common Units, such unitholder will recognize taxable gain in an amount equal to the excess, if any, of the amount of any such deemed distribution of cash over such unitholder's remaining adjusted tax basis in its Common Units. While there can be no assurance, we expect that our unitholders will not recognize gain in this manner.

A unitholder should have the same basis in its Common Units after the Tax Election and its holding period should include the Company's holding period in the assets, which could potentially result in split-holding periods.

The U.S. federal income tax consequences of the Recapitalization Transaction and the Tax Election are complicated. Each unitholder should consult its own tax advisors as to its particular U.S. federal income tax consequences as a result of the Recapitalization Transaction and the Tax Election.

## **Differences in Taxation of Partnerships and Corporations and Their Owners**

The Company is currently treated as a partnership for U.S. federal income tax purposes and, therefore, generally is not liable for entity-level U.S. federal income taxes. Instead, each unitholder takes into account its respective share of the Company's items of income, gain, loss and deduction in computing its U.S. federal income tax liability as if the unitholder had earned such income directly, even if the Company makes no cash distributions to the unitholder. Because a partnership does not pay tax on income it earns (but rather its partners are subject to tax on such income), partners of a partnership are subject to only one level of U.S. federal income tax on income earned in the business of such partnership.

After the Tax Election, the Company will be treated as an entity treated as a corporation for U.S. federal income tax purposes and pay U.S. federal income tax (currently at a maximum rate of 21%) on its taxable income, if any. A shareholder of a corporation generally is not taxed on any income earned by a corporation until the corporation distributes either cash or property (other than its stock) to the shareholder or the shareholder sells or exchanges stock at a gain. A distribution in respect to shares of common stock is generally treated as a dividend to the extent it is paid from current and accumulated earnings and profits. If the distribution exceeds current and accumulated earnings and profits, the excess will be treated as a nontaxable return of capital reducing the shareholder's tax basis in the common stock to the extent of the shareholder's tax basis in that stock. Any remaining excess is treated as capital gain. Additionally, the dividends may be subject to the net investment income tax, which imposes an additional tax of 3.8% on dividends, or some portion thereof, paid to individual taxpayers with adjusted gross income in excess of \$250,000 (if the taxpayer is married and filing jointly or a surviving spouse), \$125,000 (if the taxpayer is married and filing separately) or \$200,000 (in any other case). The net investment income tax also applies to certain estates and trusts. If a U.S. shareholder is a U.S. corporation, it may be eligible to claim the deduction allowed to U.S. corporations in



respect of dividends received from other U.S. corporations equal to a portion of any dividends received, subject to generally applicable limitations on that

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deduction. Because corporations are taxed on their own taxable income, and because shareholders may be taxed again on that same income if it is distributed to them in the form of cash or property or realized through the sale or exchange of shares of stock at a gain, there are two levels of potential tax upon income earned by a corporation.

### **Post-election Treatment of the Ownership and Disposition of Common Units**

*Distributions on Common Units.* After the Tax Election, the Company will be treated as an entity taxable as a corporation for U.S. federal income tax purposes, and the income and losses attributable to the assets and liabilities of the Company will not be allocated to our unitholders. A unitholder will be taxed only on cash dividends and other distributions of property received from us, if any. Such distributions generally will be taxable as dividends to the extent of our current and accumulated earnings and profits, if any. Thereafter, any distributions will be treated as a nontaxable return of capital to the extent of the unitholder's basis in its Common Units and any distribution in excess of basis will be taxed as capital gain.

Subject to the withholding requirements under FATCA (as defined below), any distribution made to a non-U.S. unitholder on Common Units that are not effectively connected with such unitholder's conduct of a trade or business in the United States generally will be subject to U.S. withholding tax at a rate of 30% of the gross amount of the distribution unless an applicable income tax treaty provides for a lower rate. To receive the benefit of a reduced treaty rate, a non-U.S. unitholder must provide the applicable withholding agent with an IRS Form W-8BEN or IRS Form W-8BEN-E (or other applicable or successor form) certifying qualification for the reduced rate.

Dividends paid to a non-U.S. unitholder that are effectively connected with a trade or business conducted by the non-U.S. unitholder in the United States (and, if required by an applicable income tax treaty, are treated as attributable to a permanent establishment maintained by the non-U.S. unitholder in the United States) generally will be taxed on a net income basis at the rates and in the manner generally applicable to United States persons (as defined under the Code). Such effectively connected dividends will not be subject to U.S. withholding tax if the non-U.S. unitholder satisfies certain certification requirements by providing the applicable withholding agent with a properly executed IRS Form W-8ECI certifying eligibility for exemption. If the non-U.S. unitholder is a corporation for U.S. federal income tax purposes, it may also be subject to a branch profits tax (at a 30% rate or such lower rate as specified by an applicable income tax treaty) on its effectively connected earnings and profits (as adjusted for certain items), which will include effectively connected dividends.

*Sale or Disposition of Common Units.* A unitholder who subsequently sells Common Units will recognize gain or loss measured by the difference between the amount realized on such sale and the unitholder's tax basis in the Common Units sold.

Subject to the discussion below under **Backup Withholding and Information Reporting** and **Additional Withholding Requirements under FATCA**, a non-U.S. unitholder generally will not be subject to U.S. federal income tax or subject to withholding on any gain recognized on the sale or other disposition of Common Units unless:

the non-U.S. unitholder is a nonresident alien individual who holds our units as a capital asset and is present in the United States for 183 or more days in the taxable year of the sale or other disposition and other conditions are met, in which case, the non-U.S. unitholder will be subject to a flat 30% tax on the gain derived from the disposition (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses, provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses;

the gain is effectively connected with the conduct of a U.S. trade or business by the non-U.S. unitholder (and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment of that unitholder), in which case, the gain will be taxed on a net income basis at the U.S.

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federal income tax rates and in the manner applicable to U.S. persons, and if the non-U.S. unitholder is a foreign corporation, the branch profits tax described above may also apply; or

we are a United States real property holding corporation ( USRPHC ) for U.S. federal income tax purposes during the shorter of the five-year period ending on the date of the disposition or the non-U.S. unitholder's holding period for Common Units.

Generally, a corporation is a USRPHC if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business. We believe that we will be treated as a USRPHC for U.S. federal income tax purposes. A non-U.S. unitholder nonetheless will not be subject to U.S. federal income tax or withholding in respect of any gain realized on a sale or other disposition of Common Units so long as (i) the Common Units are regularly traded on an established securities market for U.S. federal income tax purposes and (ii) such non-U.S. unitholder does not actually or constructively own, at any time during the applicable period described in the third bullet point, above, more than 5% of our outstanding Common Units. In addition, each non-U.S. unitholder who is deemed to receive Common Units as a result of the Tax Election and who owns at least 5% (by vote or value) of the total outstanding Common Units immediately after the Tax Election may be required to file with the unitholder's U.S. federal income tax return for the year in which the Tax Election is completed a statement that provides details relating to the Common Units deemed received, and the unitholder's share of any liabilities assumed by the new entity taxed as a corporation as a result of the Tax Election.

Non-U.S. unitholders should consult their tax advisors with respect to the application of the foregoing rules to their ownership and disposition of Common Units.

*Backup Withholding and Information Reporting.* Any dividends paid to a non-U.S. unitholder must be reported annually to the IRS and to the non-U.S. unitholder. Copies of these information returns may be made available to the tax authorities in the country in which the non-U.S. unitholder resides or is established. Payments of dividends to a non-U.S. unitholder generally will not be subject to backup withholding if the non-U.S. unitholder establishes an exemption by properly certifying its non-U.S. status on an IRS Form W-8BEN, IRS Form W-8BEN-E or other applicable or successor form.

Payments of the proceeds from a sale or other disposition by a non-U.S. unitholder of Common Units effected by or through a U.S. office of a broker generally will be subject to information reporting and backup withholding (at the applicable rate) unless the non-U.S. unitholder establishes an exemption by properly certifying its non-U.S. status on an IRS Form W-8BEN, IRS Form W-8BEN-E or other applicable or successor form and certain other conditions are met. Information reporting and backup withholding generally will not apply to any payment of the proceeds from a sale or other disposition of Common Units effected outside the United States by a non-U.S. office of a broker. However, unless such broker has documentary evidence in its records that the non-U.S. unitholder is not a United States person and certain other conditions are met, or the non-U.S. unitholder otherwise establishes an exemption, information reporting will apply to a payment of the proceeds of the disposition of Common Units effected outside the United States by such a broker if it has certain relationships within the United States.

Backup withholding is not an additional tax. Rather, the U.S. federal income tax liability (if any) of persons subject to backup withholding will be reduced by the amount of tax withheld. If backup withholding results in an overpayment of taxes, a refund may be obtained, provided that the required information is timely furnished to the IRS.

*Additional Withholding Requirements under FATCA.* Sections 1471 through 1474 of the Code, and the U.S. Treasury regulations and administrative guidance issued thereunder ( FATCA ), impose a 30% withholding tax on any dividends

paid on Common Units and on the gross proceeds from a disposition of Common Units (if such disposition occurs after December 31, 2018), in each case if paid to a foreign financial institution or a

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non-financial foreign entity (each as defined in the Code) (including, in some cases, when such foreign financial institution or non-financial foreign entity is acting as an intermediary), unless (i) in the case of a foreign financial institution, such institution enters into an agreement with the U.S. government to withhold on certain payments, and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are non-U.S. entities with U.S. owners), (ii) in the case of a non-financial foreign entity, such entity certifies that it does not have any substantial United States owners (as defined in the Code) or provides the applicable withholding agent with a certification identifying the direct and indirect substantial United States owners of the entity (in either case, generally on an IRS Form W-8BEN-E), or (iii) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules and provides appropriate documentation (such as an IRS Form W-8BEN-E). Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing these rules may be subject to different rules. Under certain circumstances, a unitholder might be eligible for refunds or credits of such taxes. Non-U.S. unitholders are encouraged to consult their own tax advisors regarding the application of FATCA on an investment in Common Units.

THE FOREGOING DESCRIPTION ADDRESSES ONLY THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE RECAPITALIZATION TRANSACTION AND THE TAX ELECTION APPLICABLE TO UNITHOLDERS GENERALLY. EACH UNITHOLDER SHOULD CONSULT ITS OWN TAX ADVISOR CONCERNING THE PARTICULAR U.S. FEDERAL INCOME, U.S. FEDERAL ESTATE OR GIFT, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE RECAPITALIZATION TRANSACTION AND THE TAX ELECTION TO IT.

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**VOTING AND VOTE REQUIRED**

The Company is not seeking consents, authorizations or proxies from you. The Second Amended and Restated Partnership Agreement will become effective when executed by the General Partner following its approval by the General Partner and a majority of the outstanding Common Units pursuant to Section 13.2 of the First Amended and Restated Partnership Agreement. Subject to certain exceptions not applicable here, Section 13.11 of the First Amended and Restated Partnership Agreement provides that any action that may be taken at a meeting of the unitholders may be taken without a meeting, without a vote and without prior notice, if an approval in writing setting forth the action so taken is signed by unitholders owning not less than the minimum percentage, by Percentage Interest (as defined the First Amended and Restated Partnership Agreement), of the Common Units that would be necessary to authorize or take such action at a meeting at which all the unitholders entitled to vote at such meeting were present and voted. Approval of at least a majority of outstanding Common Units entitled to vote thereon was required to approve the Second Amended and Restated Partnership Agreement.

The written consent executed by the Consenting Unitholder represented 64.2% of the Company's outstanding Common Units. **Accordingly, the written consent executed by the Consenting Unitholder pursuant Section 13.11 of the First Amended and Restated Partnership Agreement is sufficient to approve the Second Amended and Restated Partnership Agreement and no further unitholder action is required for approval.**

**INTEREST OF CERTAIN PERSONS IN MATTERS TO BE ACTED UPON**

The General Partner and its affiliates have conflicts of interest with respect to the Second Amended and Restated Partnership Agreement. As of the Record Date, the Consenting Unitholder owned 100% of the interests in the General Partner and approximately 64.2% of the voting interest in the Company. As a result of its ownership interest in the General Partner, the Consenting Unitholder controls the General Partner and has the ability to appoint all of the General Partner's officers. All of the General Partner's executive officers are also officers of the Consenting Unitholder. Two of the General Partner's directors are also directors of the Consenting Unitholder. Conflicts of interest exist and may arise as a result of the relationships between the General Partner and its affiliates, including, without limitation, the Consenting Unitholder, on the one hand, and the Company and its limited partners, on the other hand. Although the General Partner has a duty to manage the Company in a manner beneficial to the Company and its limited partners, the General Partner's directors and officers have fiduciary duties to manage the General Partner in a manner beneficial to its owner, the Consenting Unitholder.

Other than as described above, except in their capacity as unitholders (which interest does not differ from that of the other holders of Common Units), none of our officers, directors, or any of their respective affiliates has any interest in the transactions related to the Recapitalization Transaction and the Tax Election.

**IMPORTANT NOTICE REGARDING THE INTERNET AVAILABILITY OF THE  
INFORMATION STATEMENT**

This Information Statement is available on the Investor Relations section of the Company's website (<http://ir.viperenergy.com>).

**Table of Contents****SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table presents information regarding the beneficial ownership of our Common Units as of January 25, 2018 by:

the General Partner;

each of the General Partner's directors and executive officers;

each unitholder known by us to beneficially hold 5% or more of our Common Units; and

all of the General Partner's directors and executive officers as a group.

<b>Name of Beneficial Owner</b>	<b>Common Units Beneficially Owned (1)</b>	<b>Percentage of Common Units Beneficially Owned</b>
Diamondback Energy, Inc. (2)	73,150,000	64%
Viper Energy Partners GP LLC		
Travis D. Stice (3)	68,311	*
Kaes Van t Hof (4)	16,026	*
Teresa L. Dick (5)	11,540	*
Russell Pantermuehl (5)	48,487	*
Thomas F. Hawkins		
Randall J. Holder (5)	14,622	*
Paul S. Molnar (5)	18,487	*
Steven E. West (6)	48,265	*
W. Wesley Perry (7)	34,220	*
Spencer D. Armour (8)		
Michael L. Hollis (9)	78,461	*
James L. Rubin (10)		
Rosalind Redfern Grover (7)	8,554	*
All directors and executive officers as a group (13 persons)	346,973	*

\* Less than 1%.

(1) Beneficial ownership is determined in accordance with the rules of the U.S. Securities and Exchange Commission (the "SEC"). In computing percentage ownership of each person, (i) Common Units subject to options held by that person that are exercisable as of January, 2018 and (ii) Common Units subject to options or phantom units held



by that person that are exercisable or vesting within 60 days of January 25, 2018 are all deemed to be beneficially owned. These Common Units, however, are not deemed outstanding for the purpose of computing the percentage ownership of each other person. The percentage of Common Units beneficially owned is based on 113,882,045 Common Units outstanding as of January 25, 2018. Unless otherwise indicated, all amounts exclude Common Units issuable upon the exercise of outstanding options and vesting of phantom units that are not exercisable and/or vested as of January 25, 2018 or within 60 days of January 25, 2018. Unless otherwise noted, the address for each beneficial owner listed below is 500 West Texas Avenue, Suite 1200, Midland, Texas 79701.

- (2) Diamondback Energy, Inc. is a publicly traded company. The directors of Diamondback are Travis D. Stice, Steven E. West, Michael P. Cross, David L. Houston and Mark L. Plaumann.
- (3) All of these Common Units or options, as applicable, are held by Stice Investments, Ltd., which is managed by Stice Management, LLC, its general partner. Mr. Stice and his spouse hold 100% of the membership interests in Stice Management, LLC, of which Mr. Stice is the manager. Excludes 1,250,000 unit options that expired as of December 31, 2017.
- (4) Includes (i) 7,600 unit options granted to Mr. Van t Hof, which vested on January 1, 2018, and will be automatically exercisable upon the earlier to occur of December 31, 2018 and the occurrence of a change in

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- control and (ii) 5,346 phantom units, which will vest on February 16, 2018. Excludes 10,692 phantom units, which will vest in two equal installments beginning on February 16, 2019.
- (5) Excludes 125,000, 250,000, 125,000 and 125,000 unit options held by Ms. Dick, Mr. Pantermuehl, Mr. Holder and Mr. Molnar, respectively, all of which expired as of December 31, 2017.
- (6) Excludes 1,808 unvested phantom units that will vest on June 17, 2018 and 6,414 unvested phantom units that will vest on July 1, 2018. Also excludes 11,766 Common Units (representing vested phantom units previously granted to Mr. West), all of which have been assigned by Mr. West to Wexford Capital LP ( Wexford ) under the terms of his previous employment with Wexford. Mr. West retired from Wexford as of December 31, 2016.
- (7) Excludes 1,808 unvested phantom units that will vest on June 17, 2018 and 6,414 unvested phantom units that will vest on July 1, 2018.
- (8) Excludes 6,414 unvested phantom units that will vest on July 1, 2018.
- (9) All of the Common Units or options, as applicable, are held by MBH Investments, Ltd., which is managed by MBH Financial, LLC, its general partner. Mr. Hollis, his spouse and the Hollis 2014 Irrevocable Trust hold 100% of the membership interests in MBH Financial, LLC, of which Mr. Hollis is the manager. Excludes 250,000 unit options that expired as of December 31, 2017.
- (10) Excludes 15,220 Common Units (representing vested phantom units previously granted to such Mr. Rubin), 1,808 unvested phantom units that will vest on June 17, 2018 and 6,414 unvested phantom units that will vest on July 1, 2018, all of which have been assigned by Mr. Rubin to Wexford under the terms of his employment with Wexford.

The following table sets forth, as of January 25, 2018, the number of shares of common stock of Diamondback beneficially owned by each of the directors and executive officers of the General Partner and all directors and executive officers of the General Partner as a group.

Name of Beneficial Owner	Shares of Diamondback Common Stock Beneficially Owned(1) Amount and Nature of Beneficial Ownership		Percentage of Class
Travis D. Stice(2)	189,932	*	
Kaes Van t Hof(3)	2,528	*	
Teresa L. Dick(4)	18,810	*	
Russell Pantermuehl(5)	55,066	*	
Thomas F. Hawkins(6)	2,600	*	
Randall J. Holder(7)	4,955	*	
Paul S. Molnar(8)	28,663	*	
Steven E. West(9)	3,379	*	
W. Wesley Perry			
Spencer D. Armour			
Michael L. Hollis(10)	56,470	*	
James L. Rubin			
Rosalind Redfern Grover			
All directors and executive officers as a group (13 persons)	362,403	*	

\* Less than 1%.

- (1) Beneficial ownership is determined in accordance with SEC rules. In computing percentage ownership of each person, (i) shares of common stock subject to options held by that person that are exercisable as of January 25, 2018 and (ii) shares of common stock subject to options or restricted stock units held by that person that are exercisable or vesting within 60 days of March January 25, 2018, are all deemed to be

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beneficially owned. These shares, however, are not deemed outstanding for the purpose of computing the percentage ownership of each other person. The percentage of shares beneficially owned is based on 98,167,289 shares of common stock outstanding as of January 25, 2018. Unless otherwise indicated, all amounts exclude shares issuable upon the exercise of outstanding options and vesting of restricted stock units that are not exercisable and/or vested as of January 25, 2018 or within 60 days of January 25, 2018.

- (2) All of these shares are held by Stice Investments, Ltd., which is managed by Stice Management, LLC, its general partner. Mr. Stice and his spouse hold 100% of the membership interests in Stice Management, LLC, of which Mr. Stice is the manager. Excludes 7,410 restricted stock units, which will vest on February 16, 2019. Also excludes (i) 180,338 performance-based restricted stock units awarded to Mr. Stice on January 19, 2016, which vested on December 31, 2017 (representing 200% vesting of the originally reported amount) subject to final determination upon certification of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ended on December 31, 2017 by Diamondback's compensation committee, and (ii) 45,084 performance-based restricted stock units awarded to Mr. Stice on January 19, 2016, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending December 31, 2018. Also excludes (i) 11,115 performance-based restricted stock units awarded to Mr. Stice on February 16, 2017, which are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ending on December 31, 2018, and (ii) 22,230 performance-based restricted stock units awarded to Mr. Stice on February 16, 2017, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending December 31, 2019.
- (3) Excludes 567 restricted stock units, which will vest on September 1, 2018 and 1,300 restricted stock units, which will vest on February 16, 2019.
- (4) Excludes 1,950 restricted stock units, which will vest on February 16, 2019. Also excludes (i) 12,022 performance-based restricted stock units awarded to Ms. Dick on January 19, 2016, which vested on December 31, 2017 (representing 200% vesting of the originally reported amount) subject to final determination upon certification of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ended on December 31, 2017 by Diamondback's compensation committee, and (ii) 3,006 performance-based restricted stock units awarded to Ms. Dick on January 19, 2016, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending December 31, 2018. Also excludes (i) 2,925 performance-based restricted stock units awarded to Ms. Dick on February 16, 2017, which are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ending on December 31, 2018, and (ii) 5,850 performance-based restricted stock units awarded to Ms. Dick on February 16, 2017, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending December 31, 2019.
- (5) Excludes 3,900 restricted stock units, which will vest on February 16, 2019. Also excludes (i) 48,090 performance-based restricted stock units awarded to Mr. Pantermuehl on January 19, 2016, which vested on December 31, 2017 (representing 200% vesting of the originally reported amount) subject to final determination upon certification of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ended on December 31, 2017 by Diamondback's compensation committee, and (ii) 12,022 performance-based restricted stock units awarded to Mr. Pantermuehl on January 19, 2016, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending on December 31, 2018. Also excludes 5,850 performance-based restricted stock units awarded to Mr. Pantermuehl on February 16, 2017, which are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ending on December 31, 2018, and (ii) 11,700

performance-based restricted stock units awarded to Mr. Pantermuehl on February 16, 2017, which awards are subject to the satisfaction of certain

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stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending December 31, 2019.

- (6) Excludes 1,300 restricted stock units, which will vest on February 16, 2019.
- (7) Excludes 1,950 restricted stock units, which will vest on February 16, 2019. Also excludes 12,022 performance-based restricted stock units awarded to Mr. Holder on January 19, 2016, which vested on December 31, 2017 (representing 200% vesting of the originally reported amount) subject to final determination upon certification of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ended on December 31, 2017 by Diamondback's compensation committee, and (ii) 3,006 performance-based restricted stock units awarded to Mr. Holder on January 19, 2016, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending on December 31, 2018. Also excludes (i) 2,925 performance-based restricted stock units awarded to Mr. Holder on February 16, 2017, which are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ending on December 31, 2018, and (ii) 5,850 performance-based restricted stock units awarded to Mr. Holder on February 16, 2017, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending December 31, 2019.
- (8) Excludes 3,900 restricted stock units, which will vest on February 16, 2019. Also excludes 12,022 performance-based restricted stock units awarded to Mr. Molnar on January 19, 2016, which vested on December 31, 2017 (representing 200% vesting of the originally reported amount) subject to final determination upon certification of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ended on December 31, 2017 by Diamondback's compensation committee, and (ii) 6,011 performance-based restricted stock units awarded to Mr. Molnar on January 19, 2016, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending on December 31, 2018. Also excludes (i) 5,850 performance-based restricted stock units awarded to Mr. Molnar on February 16, 2017, which are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ending on December 31, 2018, and (ii) 11,700 performance-based restricted stock units awarded to Mr. Molnar on February 16, 2017, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending December 31, 2019.
- (9) Excludes 453 restricted stock units, which will vest on July 1, 2018, and 2,055 shares of Diamondback common stock, which will vest on the earlier of the one-year anniversary of the date of grant and the date of the 2018 annual meeting of stockholders of Diamondback.
- (10) All of these shares are held by MBH Investments, Ltd., which is managed by MBH Financial, LLC, its general partner. Mr. Hollis, his spouse and the Hollis 2014 Irrevocable Trust hold 100% of the membership interests in MBH Financial, LLC, of which Mr. Hollis is the manager. Excludes 4,550 restricted stock units, which will vest on February 16, 2019. Also excludes 60,112 performance-based restricted stock units awarded to Mr. Hollis on January 19, 2016, which vested on December 31, 2017 (representing 200% vesting of the originally reported amount) subject to final determination upon certification of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance periods ending on December 31, 2017 by Diamondback's compensation committee, and (ii) 15,028 performance-based restricted stock units awarded to Mr. Hollis on January 19, 2016, which awards are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending on December 31, 2018. Also excludes (i) 6,825 performance-based restricted stock units awarded to Mr. Hollis on February 16, 2017, which are subject to the satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the two-year performance period ending on December 31, 2018, and (ii) 13,650 performance-based restricted stock units awarded to Mr. Hollis on February 16, 2017, which awards

are subject to the

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satisfaction of certain stockholder return performance conditions relative to Diamondback's peer group during the three-year performance period ending December 31, 2019.

**Change in Control**

To the knowledge of the Company, there are no present arrangements or pledges of securities of the Company, which may result in a change in control of the Company.



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**CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Various statements contained in this Information Statement that express a belief, expectation, or intention, or that are not statements of historical fact, are forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. These forward-looking statements are subject to a number of risks and uncertainties, many of which are beyond our control. All statements, other than statements of historical fact, regarding our strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects, plans and objectives of management are forward-looking statements. When used in this Information Statement, the words "could," "believe," "anticipate," "intend," "estimate," "expect," "may," "continue," "predict," "potential," "project," and similar words are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words.

Forward-looking statements may include statements about:

our ability to execute our business strategies;

the volatility of realized oil and natural gas prices;

the level of production on our properties;

regional supply and demand factors, delays or interruptions of production;

our ability to replace our oil and natural gas reserves;

our ability to identify, complete and integrate acquisitions of properties or businesses;

general economic, business or industry conditions;

competition in the oil and natural gas industry;

the ability of our operators to obtain capital or financing needed for development and exploration operations;

title defects in the properties in which we invest;

uncertainties with respect to identified drilling locations and estimates of reserves;

the availability or cost of rigs, equipment, raw materials, supplies, oilfield services or personnel;

restrictions on the use of water;

the availability of transportation facilities;

the ability of our operators to comply with applicable governmental laws and regulations and to obtain permits and governmental approvals;

federal and state legislative and regulatory initiatives relating to hydraulic fracturing;

future operating results;

exploration and development drilling prospects, inventories, projects and programs;

operating hazards faced by our operators; and

the ability of our operators to keep pace with technological advancements.

You should refer to our periodic and current reports filed with the SEC and the risk factors in our Annual Report on Form 10-K for the year ended December 31, 2017 for specific risks which would cause actual results to be significantly different from those expressed or implied by any of our forward-looking statements. All forward-looking statements speak only as of the date of this Information Statement or, if earlier, as of the date they were made. We do not intend to, and disclaim any obligation to, update or revise any forward-looking statements unless required by securities laws. You should not place undue reliance on these forward-looking

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statements. These forward-looking statements are subject to a number of risks, uncertainties and assumptions. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. Although we believe that our plans, intentions and expectations reflected in or suggested by the forward-looking statements we make in this Information Statement are reasonable, we can give no assurance that these plans, intentions or expectations will be achieved or occur, and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

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**INCORPORATION BY REFERENCE OF CERTAIN DOCUMENTS**

The SEC allows us to incorporate by reference into this Information Statement the information we have filed with the SEC, which means that we can disclose important information to you without actually including the specific information in this Information Statement by referring you to those documents. The information incorporated by reference is an important part of this Information Statement, and information that we file later with the SEC will automatically update and supersede this information. Therefore, you should check for reports that we may have filed with the SEC after the date of this Information Statement.

We incorporate by reference into this Information Statement the documents listed below:

Our Annual Report on Form 10-K for the year ended December 31, 2017, as amended by Amendment No. 1 to our Annual Report on Form 10-K/A filed with the SEC on February 16, 2018; and

Our Current Report on Form 8-K (excluding information furnished on Items 2.02 and 7.01 and related exhibits unless otherwise specified) filed on January 4, 2018.

Any statement contained in this Information Statement or in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Information Statement to the extent that a statement contained in any subsequently filed document which is incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Information Statement.

You may request a copy of any document incorporated by reference in this Information Statement and any exhibit specifically incorporated by reference in those documents, at no cost, by writing or telephoning us at the following address or phone number:

Viper Energy Partners LP

500 West Texas, Suite 1200

Midland, Texas 79701

Attention: Randall J. Holder

Telephone: (432) 221-7400

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**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports and other information (File No. 001-36505) with the SEC pursuant to the Exchange Act. For further information regarding us, please see our filings with the SEC, including our annual, quarterly and current reports, which you may read and copy at the Public Reference Room maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Our public filings with the SEC are also available to the public on the SEC's website at [www.sec.gov](http://www.sec.gov).

We maintain a website at [www.viperenergy.com](http://www.viperenergy.com). The information on our website or on any other website is not, and you must not consider such information to be, a part of this Information Statement. You should rely only on the information contained in this Information Statement and in the documents incorporated by reference.

By Order of the Board of Directors of the  
General Partner

Randall J. Holder  
Executive Vice President, General Counsel  
and Secretary  
April 10, 2018

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**Annex A-1**

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

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

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF VIPER ENERGY PARTNERS LP, dated as of [ ], 2018 (the **Second A&R Date** ), is executed by VIPER ENERGY PARTNERS GP LLC, a Delaware limited liability company, as the General Partner, as provided herein.

**RECITALS:**

WHEREAS, the General Partner and the Organizational Limited Partner previously organized the Partnership as a Delaware limited partnership pursuant to an Agreement of Limited Partnership dated as of February 27, 2014 (the **Original Agreement** );

WHEREAS, the General Partner and the Organizational Limited Partner amended and restated the Original Agreement pursuant to an agreement dated as of June 23, 2014 (the **First Amended and Restated Agreement** );

WHEREAS, the Partnership has elected to be classified as an association taxable as a corporation for federal income tax purposes pursuant to Treasury Regulations Section 301.7701-3(c) (the **Tax Election** ), effective immediately after the closing of the transactions contemplated by the Recapitalization Agreement;

WHEREAS, in order to effect the Tax Election, it is necessary to amend the First Amended and Restated Agreement as provided herein; and

WHEREAS, the Tax Election and this amendment of the First Amended and Restated Agreement has been proposed and approved by the General Partner, and approved by the written consent of a Unit Majority pursuant to Sections 13.2 and 13.11 of the First Amended and Restated Agreement.

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

**ARTICLE I**

**DEFINITIONS**

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

**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.

**Agreement** means this Second Amended and Restated Agreement of Limited Partnership of Viper Energy Partners LP, as it may be amended, supplemented or restated from time to time.

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

(c) any relative or spouse of such Person, or any relative of such spouse, who has the same principal residence as such Person.

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

***Board of Directors*** means the board of directors of the General Partner.

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

***Capital Contribution*** means any cash, cash equivalents or the fair market value of any property a Partner contributed to the Partnership.

***Cause*** means a court of competent jurisdiction has entered a final, non-appealable judgment finding the General Partner liable to the Partnership or any Limited Partner for actual fraud or willful misconduct in its capacity as a general partner of the Partnership.

***Certificate*** means a certificate in such form (including global form if permitted by applicable rules and regulations) as may be adopted by the General Partner, issued by the Partnership evidencing ownership of one or more Partnership Interests. The initial form of certificate approved by the General Partner for Common Units is attached as Exhibit A to this Agreement.

***Certificate of Limited Partnership*** means the Certificate of Limited Partnership of the Partnership filed with the Secretary of State of the State of Delaware as referenced in Section 7.3, as such Certificate of Limited Partnership may be amended, supplemented or restated from time to time.

***Citizenship Eligibility Trigger*** has the meaning assigned to such term in Section 4.8(a)(ii).

***claim*** (as used in Section 7.12(c)) has the meaning assigned to such term in Section 7.12(c).

***Class B Unit*** means a Unit representing, when outstanding, a fractional part of the Partnership Interests of all Limited Partners, and having the rights and obligations specified with respect to Class B Units in this Agreement. For the avoidance of doubt, holders of Class B Units, in their capacity as such, shall not have any rights to profits or losses or any rights to receive distributions from operations or upon the liquidation or winding-up of the Partnership.

***Closing Price*** means, in respect of any class of Limited Partner Interests, as of the date of determination, the last sale price on such day, regular way, or in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the principal National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading or, if such Limited Partner Interests are not listed or admitted to trading on any National Securities Exchange, the last quoted price on such day or, if not so quoted, the average of the high bid and low asked prices on such day in the over-the-counter market, as reported by the primary reporting system then in use in relation to such Limited Partner Interests of such class, or, if on any such day such Limited Partner Interests of such class are not quoted by any such organization, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in such Limited Partner Interests of such class selected by the General Partner, or if on any such day no market maker is making a market in such Limited Partner Interests of such class, the fair value of such Limited Partner Interests on such day as determined by the General Partner.



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

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***Combined Interest*** has the meaning assigned to such term in Section 11.3(a).

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

***Common Unit*** means a Unit representing, when outstanding, a fractional part of the Partnership Interests of all Limited Partners, and having the rights and obligations specified with respect to Common Units in this Agreement. For the avoidance of doubt, a Class B Unit is not a Common Unit.

***Conflicts Committee*** means a committee of the Board of Directors composed entirely of one or more directors, each of whom is determined by the Board of Directors, after reasonable inquiry, (a) to not be an officer or employee of the General Partner (b) to not be an officer or employee of any Affiliate of the General Partner or a director of any Affiliate of the General Partner (other than any Group Member), (c) to not be a holder of any ownership interest in the General Partner or any of its Affiliates, including any Group Member, that would be likely to have an adverse impact on the ability of such director to act in an independent manner with respect to the matter submitted to the Conflicts Committee, other than Common Units and awards that are granted to such director under the Long-Term Incentive Plan, and (d) to be independent under the independence standards for directors who serve on an audit committee of a board of directors established by the Securities Exchange Act and the rules and regulations of the Commission thereunder and by the National Securities Exchange on which any class of Partnership Interests is listed or admitted to trading.

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

***Current Market Price*** means, in respect of any class of Partnership Interests, as of the date of determination, the average of the daily Closing Prices per Partnership Interest of such class for the 20 consecutive Trading Days immediately prior to such date.

***Delaware Act*** means the Delaware Revised Uniform Limited Partnership Act, 6 Del C. Section 17-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

***Departing General Partner*** means a former General Partner from and after the effective date of any withdrawal or removal of such former General Partner pursuant to Section 11.1 or Section 11.2.

***Derivative Instruments*** means options, rights, warrants, appreciation rights, tracking, profit and phantom interests and other derivative instruments (other than equity interests in the Partnership) relating to, convertible into or exchangeable for Partnership Interests.

***Diamondback*** means Diamondback Energy, Inc., a Delaware corporation.

***Eligibility Certificate*** has the meaning assigned to such term in Section 4.8(b).

***Eligible Holder*** means a Person that satisfies the eligibility requirements established by the General Partner for Partners pursuant to Section 4.8.

***Event of Withdrawal*** has the meaning assigned to such term in Section 11.1(a).

***Exchange Agreement*** means the Exchange Agreement, dated as of [ ], 2018, among the Partnership, the General Partner, Diamondback and the Operating Company.

***First Amended and Restated Agreement*** has the meaning assigned to such term in the recitals to this Agreement.

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**General Partner** means Viper Energy Partners GP LLC, a Delaware limited liability company, and its successors and permitted assigns that are admitted to the Partnership as the general partner of the Partnership, in their capacity as the general partner of the Partnership.

**General Partner Interest** means the non-economic management interest of the General Partner in the Partnership (in its capacity as general partner and without reference to any Limited Partner Interest held by it), which includes any and all rights, powers and benefits to which the General Partner is entitled as provided in this Agreement, together with all obligations of the General Partner to comply with the terms and provisions of this Agreement. The General Partner Interest does not include any rights to profits or losses or any rights to receive distributions from operations or upon the liquidation or winding-up of the Partnership.

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

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

**Group Member** means a member of the Partnership Group.

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

**Holder** as used in Section 7.12, has the meaning assigned to such term in Section 7.12(a).

**Initial Contribution Date** means the date on which the Organizational Limited Partner contributed all of its equity interests in the Operating Company to the Partnership.

**Indemnified Persons** has the meaning assigned to such term in Section 7.12(c).

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

***Ineligible Holder*** has the meaning assigned to such term in Section 4.8(c).

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

***Limited Partner*** means, unless the context otherwise requires, each Unitholder, each additional Person that becomes a Limited Partner pursuant to the terms of this Agreement and any Departing General Partner upon the change of its status from General Partner to Limited Partner pursuant to Section 11.3, in each case in such Person's capacity as a limited partner of the Partnership.

***Limited Partner Interest*** means the ownership interest of a Limited Partner in the Partnership, which may be evidenced by Common Units, Class B Units or other Partnership Interests or a combination thereof or interest therein (but excluding Derivative Instruments), and includes any and all benefits to which such Limited Partner is entitled as provided in this Agreement, together with all obligations of such Limited Partner hereunder.

***Liquidator*** means one or more Persons selected by the General Partner to perform the functions described in Section 12.4 as liquidating trustee of the Partnership within the meaning of the Delaware Act.

***Long-Term Incentive Plan*** means the Viper Energy Partners LP Long-Term Incentive Plan, as it may be amended, restated or modified from time to time, or any equity compensation plan successor thereto.

***Merger Agreement*** has the meaning assigned to such term in Section 14.1.

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

***Notice of Election to Purchase*** has the meaning assigned to such term in Section 15.1(b).

***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.

***OpCo Limited Liability Company Agreement*** means the Second Amended and Restated Limited Liability Company Agreement of the Operating Company, dated as of [ ], 2018, as it may be amended, supplemented or restated from time to time.

***Operating Company*** means Viper Energy Partners LLC, a Delaware limited liability company.

***Opinion of Counsel*** means a written opinion of counsel (who may be regular counsel to the Partnership or the General Partner or any of its Affiliates) acceptable to the General Partner.

***Organizational Limited Partner*** means Diamondback, in its previous capacity as the organizational limited partner of the Partnership.

***Original Agreement*** has the meaning assigned to such term in the recitals to this Agreement.

***Outstanding*** means, with respect to Partnership Interests, all Partnership Interests that are issued by the Partnership and reflected as outstanding on the Partnership's books and records as of the date of determination; *provided, however*, that if at any time any Person or Group (other than the General Partner or its Affiliates) beneficially owns 20% or more of the Partnership Interests of any class, none of the Partnership Interests owned by such Person or Group shall

be entitled to be voted on any matter or be considered to be Outstanding when sending notices of a meeting of Limited Partners to vote on any matter (unless otherwise required by law), calculating required votes, determining the presence of a quorum or for other similar purposes under this

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Agreement, except that Partnership Interests so owned shall be considered to be Outstanding for purposes of Section 11.1(b)(iv) (such Partnership Interests shall not, however, be treated as a separate class of Partnership Interests for purposes of this Agreement or the Delaware Act); provided, further, that the foregoing limitation shall not apply to (i) any Person or Group who acquired 20% or more of the Partnership Interests of any class directly from the General Partner or its Affiliates (other than the Partnership), (ii) any Person or Group who acquired 20% or more of the Partnership Interests of any class directly or indirectly from a Person or Group described in clause (i) provided that the General Partner shall have notified such Person or Group in writing that such limitation shall not apply, or (iii) any Person or Group who acquired 20% or more of any Partnership Interests issued by the Partnership provided that the General Partner shall have notified such Person or Group in writing that such limitation shall not apply.

**Partners** means the General Partner and the Limited Partners.

**Partnership** means Viper Energy Partners LP, a Delaware limited partnership.

**Partnership Group** means the Partnership and its Subsidiaries.

**Partnership Interest** means any class or series of equity interest (or, in the case of the General Partner, management interest) in the Partnership, which shall include any General Partner Interest and Limited Partner Interests but shall exclude Derivative Instruments.

**Percentage Interest** means as of any date of determination, as to any Unitholder with respect to Units, the quotient obtained by dividing (i) the number of Units held by such Unitholder by (ii) the total number of Outstanding Units. The Percentage Interest with respect to the General Partner Interest shall at all times be zero.

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

**Privately Placed Units** means any Common Units issued for cash or property other than pursuant to a public offering.

**Pro Rata** means when used with respect to (a) Units or any class thereof, apportioned equally among all designated Units in accordance with their relative Percentage Interests, (b) all Partners or Record Holders, apportioned among all Partners or Record Holders in accordance with their relative Percentage Interests, and (c) some but not all Partners or Record Holders, apportioned among such Partners or Record Holders in accordance with their relative Percentage Interests.

**Purchase Date** means the date determined by the General Partner as the date for purchase of all Outstanding Limited Partner Interests of a certain class (other than Limited Partner Interests owned by the General Partner and its Affiliates) pursuant to Article XV.

**Quarter** means, unless the context requires otherwise, a fiscal quarter of the Partnership.

**Rate Eligibility Trigger** has the meaning assigned to such term in Section 4.8(a)(i).

**Recapitalization Agreement** means the Recapitalization Agreement, dated as of March 28, 2018, among the Partnership, the General Partner, the Operating Company and Diamondback.

**Record Date** means the date established by the General Partner or otherwise in accordance with this Agreement for determining (a) the identity of the Record Holders entitled to notice of, or to vote at, any meeting of Limited Partners



or entitled to vote by ballot or give approval of Partnership action in writing without a meeting or entitled to exercise rights in respect of any lawful action of Limited Partners or (b) the identity of Record Holders entitled to receive any report or distribution or to participate in any offer.

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***Record Holder*** means (a) with respect to Partnership Interests of any class for which a Transfer Agent has been appointed, the Person in whose name a Partnership Interest of such class is registered on the books of the Transfer Agent as of the opening of business on a particular Business Day, or (b) with respect to other classes of Partnership Interests, the Person in whose name any such other Partnership Interest is registered on the books that the General Partner has caused to be kept as of the opening of business on such Business Day.

***Redeemable Interests*** means any Partnership Interests for which a redemption notice has been given, and has not been withdrawn, pursuant to Section 4.9.

***Registration Rights Agreement*** means that certain Amended and Restated Registration Rights Agreement, dated as of [ ], 2018, between Diamondback and the Partnership.

***Second A&R Date*** has the meaning assigned to such term in the introductory paragraph to this Agreement.

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

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

***Special Approval*** means approval by a majority of the members of the Conflicts Committee, whether in the form of approval or approval and recommendation to the Board of Directors.

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

***Surviving Business Entity*** has the meaning assigned to such term in Section 14.2(b)(ii).

***Tax Election*** has the meaning assigned to such term in the recitals to this Agreement.

***Trading Day*** means a day on which the principal National Securities Exchange on which the referenced Partnership Interests of any class are listed or admitted to trading is open for the transaction of business or, if such Partnership Interests are not listed or admitted to trading on any National Securities Exchange, a day on which banking institutions in New York City generally are open.

***transfer*** has the meaning assigned to such term in Section 4.4(a).

***Transfer Agent*** means such bank, trust company or other Person (including the General Partner or one of its Affiliates) as may be appointed from time to time by the Partnership to act as registrar and transfer agent for any class

of Partnership Interests; provided that if no Transfer Agent is specifically designated for any class of Partnership Interests, the General Partner shall act in such capacity.

***Treasury Regulations*** means the United States Treasury regulations promulgated under the Code.

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**Unit** means a Partnership Interest that is designated as a Unit and shall include Common Units and Class B Units.

**Unit Majority** means a majority of the Outstanding Units, voting together as a single class.

**Unitholders** means the holders of Units.

**Unrestricted Person** means each Indemnitee, each Partner and each Person who is or was a member, partner, director, officer, employee or agent of any Group Member, the General Partner or any Departing General Partner or any Affiliate of any Group Member, the General Partner or any Departing General Partner and any Person the General Partner designates as an Unrestricted Person for purposes of this Agreement.

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

**Withdrawal Opinion of Counsel** has the meaning assigned to such term in Section 11.1(b).

Section 1.2 *Construction*. Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; (c) the terms include, includes, including and words of like import shall be deemed to be followed by the words without limitation; and (d) the terms hereof, herein and hereunder refer to this Agreement as whole and not to any particular provision of this Agreement. The table of contents and headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement. The General Partner has the power to construe and interpret this Agreement and to act upon any such construction or interpretation. Any construction or interpretation of this Agreement by the General Partner and any action taken pursuant thereto and any determination made by the General Partner in good faith shall, in each case, be conclusive and binding on all Record Holders and all other Persons for all purposes.

## ARTICLE II

### ORGANIZATION

Section 2.1 *Formation*. The General Partner and the Organizational Limited Partner previously formed the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. The General Partner hereby amends and restates the First Amended and Restated Agreement of Limited Partnership of the Partnership in its entirety pursuant to Article XIII thereof. This amendment and restatement shall become effective on the date of this Agreement. Except as expressly provided to the contrary in this Agreement, the rights, duties (including fiduciary duties), liabilities and obligations of the Partners and the administration, dissolution and termination of the Partnership shall be governed by the Delaware Act.

Section 2.2 *Name*. The name of the Partnership shall be Viper Energy Partners LP. The Partnership's business may be conducted under any other name or names as determined by the General Partner, including the name of the General Partner. The words Limited Partnership, the letters LP, or Ltd. or similar words or letters shall be included in the Partnership's name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The General Partner may change the name of the Partnership at any time and from time to time and shall notify the Partners of such change in the next regular communication to the Partners.

Section 2.3 *Registered Office; Registered Agent; Principal Office; Other Offices*. Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at 2711 Centerville

Road, Suite 400, Wilmington, Delaware 19808, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be Corporation Service Company. The

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principal office of the Partnership shall be located at 500 West Texas Avenue, Suite 1200, Midland, Texas 79701 or such other place as the General Partner may from time to time designate by notice to the Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner determines to be necessary or appropriate. The address of the General Partner shall be 500 West Texas Avenue, Suite 1200, Midland, Texas 79701 or such other place as the General Partner may from time to time designate by notice to the Partners.

**Section 2.4 *Purpose and Business.*** The purpose and nature of the business to be conducted by the Partnership shall be to (a) engage directly in, or enter into or form, hold and dispose of any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the General Partner, in its sole discretion, and that lawfully may be conducted by a limited partnership organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Partnership pursuant to the agreements relating to such business activity, and (b) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to a Group Member. To the fullest extent permitted by law, the General Partner shall have no duty or obligation to propose or approve, and may, in its sole discretion, decline to propose or approve, the conduct by the Partnership Group of any business.

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

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

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

## **ARTICLE III**

### **RIGHTS OF LIMITED PARTNERS**

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

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Section 3.2 *Management of Business*. No Limited Partner, in its capacity as such, shall participate in the operation, management or control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. No action taken by any Affiliate of the General Partner or any officer, director, employee, manager, member, general partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, director, employee, manager, member, general partner, agent or trustee of a Group Member, in its capacity as such, shall be considered participating in the control of the business of the Partnership by a limited partner of the Partnership (within the meaning of Section 17-303(a) of the Delaware Act) nor shall any such action affect, impair or eliminate the limitations on the liability of the Limited Partners under this Agreement.

Section 3.3 *Outside Activities of the Limited Partners*. Subject to the provisions of Section 7.6, which shall continue to be applicable to the Persons referred to therein, regardless of whether such Persons shall also be Limited Partners, each Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities in direct competition with the Partnership Group. Neither the Partnership nor any of the other Partners shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner.

Section 3.4 *Rights of Limited Partners*.

(a) Each Limited Partner shall have the right, for a purpose that is reasonably related, as determined by the General Partner, to such Limited Partner's interest as a Limited Partner in the Partnership, upon reasonable written demand stating the purpose of such demand and at such Limited Partner's own expense to obtain:

(i) true and full information regarding the status of the business and financial condition of the Partnership (provided that the requirements of this Section 3.4(a)(i) shall be satisfied to the extent the Limited Partner is furnished the Partnership's most recent annual report and any subsequent quarterly or periodic reports required to be filed (or which would be required to be filed) with the Commission pursuant to Section 13 of the Securities Exchange Act);

(ii) a current list of the name and last known business, residence or mailing address of each Record Holder;

(iii) a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto, together with copies of the executed copies of all powers of attorney pursuant to which this Agreement, the Certificate of Limited Partnership and all amendments thereto have been executed; and

(iv) such other information regarding the affairs of the Partnership as the General Partner determines is just and reasonable.

(b) The rights pursuant to Section 3.4(a) replace in their entirety any rights to information provided for in Section 17-305(a) of the Delaware Act and each of the Partners, each other Person who acquires an interest in a Partnership Interest and each other Person bound by this Agreement hereby agrees to the fullest extent permitted by law that they do not have any rights as Partners to receive any information either pursuant to Section 17-305(a) of the Delaware Act or otherwise except for the information identified in Section 3.4(a).

(c) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, (i) any information that the General Partner reasonably believes to be in the nature of trade secrets or (ii) other information the disclosure of which the General Partner believes (A) is not in the best interests of the Partnership Group, (B) could damage the Partnership Group or its business or (C) that any Group Member is required by law or by agreement with any third party to keep confidential.



(d) Notwithstanding any other provision of this Agreement or Section 17-305 of the Delaware Act, each of the Partners, each other Person who acquires an interest in a Partnership Interest and each other Person

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bound by this Agreement hereby agrees to the fullest extent permitted by law that they do not have rights to receive information from the Partnership or any Indemnitee for the purpose of determining whether to pursue litigation or assist in pending litigation against the Partnership or any Indemnitee relating to the affairs of the Partnership except pursuant to the applicable rules of discovery relating to litigation commenced by such Person.

## **ARTICLE IV**

### **CERTIFICATES; RECORD HOLDERS; TRANSFER OF PARTNERSHIP INTERESTS; REDEMPTION OF PARTNERSHIP INTERESTS**

Section 4.1 *Certificates*. Notwithstanding anything to the contrary herein, unless the General Partner shall determine otherwise in respect of some or all of any or all classes of Partnership Interests, Partnership Interests shall not be evidenced by certificates. Certificates that are issued shall be executed on behalf of the Partnership by the Chairman of the Board, President, Chief Executive Officer or any Executive Vice President or Vice President and the Chief Financial Officer or the Secretary or any Assistant Secretary of the General Partner. No Certificate for a class of Partnership Interests shall be valid for any purpose until it has been countersigned by the Transfer Agent for such class of Partnership Interests; provided, however, that if the General Partner elects to cause the Partnership to issue Partnership Interests of such class in global form, the Certificate shall be valid upon receipt of a certificate from the Transfer Agent certifying that the Partnership Interests have been duly registered in accordance with the directions of the Partnership.

Section 4.2 *Mutilated, Destroyed, Lost or Stolen Certificates*.

(a) If any mutilated Certificate is surrendered to the Transfer Agent, the appropriate officers of the General Partner on behalf of the Partnership shall execute, and the Transfer Agent shall countersign and deliver in exchange therefor, a new Certificate evidencing the same number and type of Partnership Interests as the Certificate so surrendered.

(b) The appropriate officers of the General Partner on behalf of the Partnership shall execute and deliver, and the Transfer Agent shall countersign, a new Certificate in place of any Certificate previously issued if the Record Holder of the Certificate:

(i) makes proof by affidavit, in form and substance satisfactory to the General Partner, that a previously issued Certificate has been lost, destroyed or stolen;

(ii) requests the issuance of a new Certificate before the General Partner has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(iii) if requested by the General Partner, delivers to the General Partner a bond, in form and substance satisfactory to the General Partner, with surety or sureties and with fixed or open penalty as the General Partner may direct, to indemnify the Partnership, the Partners, the General Partner and the Transfer Agent against any claim that may be made on account of the alleged loss, destruction or theft of the Certificate; and

(iv) satisfies any other reasonable requirements imposed by the General Partner or the Transfer Agent.

If a Limited Partner fails to notify the General Partner within a reasonable period of time after such Limited Partner has notice of the loss, destruction or theft of a Certificate, and a transfer of the Limited Partner Interests represented by the Certificate is registered before the Partnership, the General Partner or the Transfer Agent receives such notification, the Limited Partner shall be precluded from making any claim against the Partnership, the General

Partner or the Transfer Agent for such transfer or for a new Certificate.

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(c) As a condition to the issuance of any new Certificate under this Section 4.2, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Transfer Agent) reasonably connected therewith.

**Section 4.3 *Record Holders.*** The Partnership and the General Partner shall be entitled to recognize the Record Holder as the Partner with respect to any Partnership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in, such Partnership Interest on the part of any other Person, regardless of whether the Partnership shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which such Partnership Interests are listed or admitted to trading. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing) is acting as nominee, agent or in some other representative capacity for another Person in acquiring and/or holding Partnership Interests, as between the Partnership on the one hand, and such other Persons on the other, such representative Person shall be (a) the Record Holder of such Partnership Interest and (b) bound by this Agreement and shall have the rights and obligations of a Partner hereunder as, and to the extent, provided herein.

## **Section 4.4 *Transfer Generally.***

(a) The term ***transfer***, when used in this Agreement with respect to a Partnership Interest, shall mean a transaction (i) by which the General Partner assigns its General Partner Interest to another Person, and includes a sale, assignment, gift, pledge, grant of security interest, encumbrance, hypothecation, mortgage, exchange or any other disposition by law or otherwise, or (ii) by which the holder of a Limited Partner Interest assigns such Limited Partner Interest to another Person who is or becomes a Limited Partner, and includes a sale, assignment, gift, exchange or any other disposition by law or otherwise (but not the pledge, grant of security interest, encumbrance, hypothecation or mortgage), including any transfer upon foreclosure or other exercise of remedies of any pledge, security interest, encumbrance, hypothecation or mortgage.

(b) No Partnership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article IV. Any transfer or purported transfer of a Partnership Interest not made in accordance with this Article IV shall be, to the fullest extent permitted by law, null and void.

(c) Nothing contained in this Agreement shall be construed to prevent a disposition by any stockholder, member, partner or other owner of any Partner of any or all of the shares of stock, membership interests, partnership interests or other ownership interests in such Partner and the term ***transfer*** shall not mean any such disposition.

## **Section 4.5 *Registration and Transfer of Limited Partner Interests.***

(a) The General Partner shall keep or cause to be kept on behalf of the Partnership a register in which, subject to such reasonable regulations as it may prescribe and subject to the provisions of Section 4.5(b), the Partnership will provide for the registration and transfer of Limited Partner Interests.

(b) The Partnership shall not recognize any transfer of Limited Partner Interests evidenced by Certificates until the Certificates evidencing such Limited Partner Interests are surrendered for registration of transfer. No charge shall be imposed by the General Partner for such transfer; provided, that as a condition to the issuance of any new Certificate under this Section 4.5, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto. Upon surrender of a Certificate for registration of transfer of any Limited Partner Interests evidenced by a Certificate, and subject to the provisions hereof, the appropriate officers of the General Partner on behalf of the Partnership shall execute and deliver, and in the case of

Certificates evidencing Limited Partner Interests, the Transfer Agent shall countersign and deliver, in the name of the holder or the designated transferee or transferees, as required

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pursuant to the holder's instructions, one or more new Certificates evidencing the same aggregate number and type of Limited Partner Interests as was evidenced by the Certificate so surrendered.

(c) Subject to (i) the foregoing provisions of this Section 4.5, (ii) Section 4.3, (iii) Section 4.7, (iv) with respect to any class or series of Limited Partner Interests, the provisions of any statement of designations or amendment of this Agreement establishing such class or series, (v) any contractual provisions binding on any Limited Partner and (vi) provisions of applicable law including the Securities Act, Limited Partner Interests shall be freely transferable.

(d) Notwithstanding anything to the contrary herein, any holder of Class B Units shall not transfer any of its Class B Units to any Person, except that any such holder may transfer one or more Class B Units to its Affiliate so long as such holder simultaneously transfers an equal number of OpCo Units to such Affiliate in accordance with the OpCo Limited Liability Company Agreement. For the avoidance of doubt, this Section 4.5 does not restrict in any way the right of the General Partner and its Affiliates to transfer one or more Common Units to any Person or Persons (including Common Units acquired pursuant to the Exchange Agreement).

### *Section 4.6 Transfer of the General Partner Interest.*

(a) The General Partner may at its option transfer all or any part of its General Partner Interest without approval from any other Partner.

(b) Notwithstanding anything herein to the contrary, no transfer by the General Partner of all or any part of its General Partner Interest to another Person shall be permitted unless (i) the transferee agrees to assume the rights and duties of the General Partner under this Agreement and to be bound by the provisions of this Agreement, (ii) the Partnership receives an Opinion of Counsel that such transfer would not result in the loss of limited liability under the Delaware Act of any Limited Partner, and (iii) such transferee also agrees to purchase all (or the appropriate portion thereof, if applicable) of the partnership or membership interest held by the General Partner as the general partner or managing member, if any, of each other Group Member. In the case of a transfer pursuant to and in compliance with this Section 4.6, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 10.2, be admitted to the Partnership as the General Partner effective immediately prior to the transfer of the General Partner Interest, and the business of the Partnership shall continue without dissolution.

### *Section 4.7 Restrictions on Transfers.*

(a) Notwithstanding the other provisions of this Article IV, no transfer of any Partnership Interests shall be made if such transfer would (i) violate the then applicable U.S. federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer or (ii) terminate the existence or qualification of the Partnership under the laws of the jurisdiction of its formation.

(b) The General Partner may impose restrictions on the transfer of Partnership Interests if the General Partner determines, with the advice of counsel, that such restrictions are necessary or advisable to preserve the uniformity of Limited Partner Interests (or any class or classes thereof). The General Partner may impose such restrictions by amending this Agreement; *provided, however*, that any amendment that would result in the delisting or suspension of trading of any class of Limited Partner Interests on the principal National Securities Exchange on which such class of Limited Partner Interests is then listed or admitted to trading must be approved, prior to such amendment being effected, by the holders of a majority of the Outstanding Limited Partner Interests of such class.

(c) Nothing contained in this Agreement, other than Section 4.7(a), shall preclude the settlement of any transactions involving Partnership Interests entered into through the facilities of any National Securities Exchange on which such

Partnership Interests are listed or admitted to trading.

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### Section 4.8 *Eligibility Certificates; Ineligible Holders.*

(a) If at any time the General Partner determines, with the advice of counsel, that:

(i) the U.S. federal income tax status (or lack of proof of the U.S. federal income tax status) of one or more Limited Partners or their owners has or is reasonably likely to have a material adverse effect on the rates that can be charged to customers by any Group Member with respect to assets that are subject to regulation by the Federal Energy Regulatory Commission or similar regulatory body (a ***Rate Eligibility Trigger***); or

(ii) any Group Member is subject to any federal, state or local law or regulation that would create a substantial risk of cancellation or forfeiture of any property in which the Group Member has an interest based on the nationality, citizenship or other related status of a Limited Partner or its owner(s) (a ***Citizenship Eligibility Trigger***);

then, the General Partner may adopt such amendments to this Agreement as it determines to be necessary or appropriate to (x) in the case of a Rate Eligibility Trigger, obtain such proof of the U.S. federal income tax status of the Limited Partners and, to the extent relevant, their owners, as the General Partner determines to be necessary or appropriate to reduce the risk of occurrence of a material adverse effect on the rates that can be charged to customers by any Group Member or (y) in the case of a Citizenship Eligibility Trigger, obtain such proof of the nationality, citizenship or other related status of the Limited Partners and, to the extent relevant, their owners as the General Partner determines to be necessary or appropriate to eliminate or mitigate the risk of cancellation or forfeiture of any properties or interests therein.

(b) Such amendments may include provisions requiring all Partners to certify as to their (and their beneficial owners') status as Eligible Holders upon demand and on a regular basis, as determined by the General Partner, and may require transferees of Units to so certify prior to being admitted to the Partnership as a Partner (any such required certificate, an ***Eligibility Certificate***).

(c) Such amendments may provide that any Partner who fails to furnish to the General Partner within a reasonable period requested proof of its (and its owners') status as an Eligible Holder or if upon receipt of such Eligibility Certificate or other requested information the General Partner determines that a Limited Partner (or its owner) is not an Eligible Holder (an ***Ineligible Holder***), the Partnership Interests owned by such Limited Partner shall be subject to redemption in accordance with the provisions of Section 4.9. In addition, the General Partner shall be substituted and treated as the owner of all Partnership Interests owned by an Ineligible Holder.

(d) The General Partner shall, in exercising voting rights in respect of Partnership Interests held by it on behalf of Ineligible Holders, cast such votes in the same manner and in the same ratios as the votes of Partners (including the General Partner and its Affiliates) in respect of Partnership Interests other than those of Ineligible Holders are cast.

(e) Upon dissolution of the Partnership, an Ineligible Holder shall have no right to receive a distribution in kind pursuant to Section 12.4 but shall be entitled to the cash equivalent thereof, and the Partnership shall provide cash in exchange for an assignment of the Ineligible Holder's share of any distribution in kind. Such payment and assignment shall be treated for purposes hereof as a purchase by the Partnership from the Ineligible Holder of the portion of his Partnership Interest representing his right to receive his share of such distribution in kind.

(f) At any time after he can and does certify that he has become an Eligible Holder, an Ineligible Holder may, upon application to the General Partner, request that with respect to any Partnership Interests of such Ineligible Holder not redeemed pursuant to Section 4.9, such Ineligible Holder be admitted as a Partner, and upon approval of the General Partner, such Ineligible Holder shall be admitted as a Partner and shall no longer constitute an Ineligible Holder and



the General Partner shall cease to be deemed to be the owner in respect of such Ineligible Holder's Partnership Interests.

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*Section 4.9 Redemption of Partnership Interests of Ineligible Holders.*

(a) If at any time a Partner fails to furnish an Eligibility Certificate or other information requested within the period of time specified in amendments adopted pursuant to Section 4.8 or if upon receipt of such Eligibility Certificate, the General Partner determines, with the advice of counsel, that a Partner is an Ineligible Holder, the Partnership may, unless the Partner establishes to the satisfaction of the General Partner that such Partner is an Eligible Holder or has transferred his Limited Partner Interests to a Person who is an Eligible Holder and who furnishes an Eligibility Certificate to the General Partner prior to the date fixed for redemption as provided below, redeem the Partnership Interest of such Partner as follows:

(i) The General Partner shall, not later than the 30th day before the date fixed for redemption, give notice of redemption to the Partner, at his last address designated on the records of the Partnership or the Transfer Agent, as applicable, by registered or certified mail, postage prepaid. The notice shall be deemed to have been given when so mailed. The notice shall specify the Redeemable Interests, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon redemption of the Redeemable Interests (or, if later in the case of Redeemable Interests evidenced by Certificates, upon surrender of the Certificate evidencing the Redeemable Interests) and that on and after the date fixed for redemption no further allocations or distributions to which the Partner would otherwise be entitled in respect of the Redeemable Interests will accrue or be made.

(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Current Market Price (the date of determination of which shall be the date fixed for redemption) of Partnership Interests of the class to be so redeemed multiplied by the number of Partnership Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, as determined by the General Partner, in cash or by delivery of a promissory note of the Partnership in the principal amount of the redemption price, bearing interest at the rate of 8% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

(iii) The Partner or his duly authorized representative shall be entitled to receive the payment for the Redeemable Interests at the place of payment specified in the notice of redemption on the redemption date (or, if later in the case of Redeemable Interests evidenced by Certificates, upon surrender by or on behalf of the Partner at the place specified in the notice of redemption, of the Certificate evidencing the Redeemable Interests, duly endorsed in blank or accompanied by an assignment duly executed in blank).

(iv) After the redemption date, Redeemable Interests shall no longer constitute issued and Outstanding Limited Partner Interests.

(b) The provisions of this Section 4.9 shall also be applicable to Partnership Interests held by a Partner as nominee of a Person determined to be an Ineligible Holder.

(c) Nothing in this Section 4.9 shall prevent the recipient of a notice of redemption from transferring his Partnership Interest before the redemption date if such transfer is otherwise permitted under this Agreement. Upon receipt of notice of such a transfer, the General Partner shall withdraw the notice of redemption, provided the transferee of such Partnership Interest certifies to the satisfaction of the General Partner that he is an Eligible Holder. If the transferee fails to make such certification, such redemption will be effected from the transferee on the original redemption date.

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**ARTICLE V**

**CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS**

Section 5.1 Capitalization.

(a) In connection with the formation of the Partnership under the Delaware Act, the General Partner was admitted as the sole general partner of the Partnership and the Organizational Limited Partner made an initial Capital Contribution to the Partnership and was admitted as the organizational limited partner of the Partnership. As of the Initial Contribution Date, the initial Limited Partner Interest held by the Organizational Limited Partner was redeemed and its initial Capital Contribution was refunded.

(b) As of the Initial Contribution Date, (i) the Organizational Limited Partner contributed, as a Capital Contribution, 100% of the equity interests in the Operating Company to the Partnership, in exchange for 70,450,000 Common Units and (ii) the Partnership issued 5,750,000 Common Units in its initial public offering (including 750,000 issued pursuant to an over-allotment option).

(c) As of the Second A&R Date, immediately before the redemption of Common Units described in Section 5.1(d), there were 113,882,045 Common Units outstanding.

(d) On the Second A&R Date and pursuant to the Recapitalization Agreement, the Partnership exchanged the 73,150,000 Common Units held by Diamondback for (i) 73,150,000 Class B Units, and (ii) 73,150,000 OpCo Units; accordingly; immediately following such exchange, there were 40,732,045 Common Units outstanding and 73,150,000 Class B Units outstanding.

Section 5.2 *Additional Contributions.* No Limited Partner will be required to make any additional Capital Contribution to the Partnership pursuant to this Agreement.

Section 5.3 *Interest and Withdrawal.* No interest on Capital Contributions shall be paid by the Partnership. No Partner shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent, if any, that distributions made pursuant to this Agreement or upon dissolution of the Partnership may be considered as the withdrawal or return of its Capital Contribution by law and then only to the extent provided for in this Agreement. Except to the extent expressly provided in this Agreement, no Partner shall have priority over any other Partner either as to the return of Capital Contributions or as to profits, losses or distributions. Any such return shall be a compromise to which all Partners agree within the meaning of Section 17-502(b) of the Delaware Act.

Section 5.4 *[Reserved.]*

Section 5.5 *Issuances of Additional Partnership Interests and Derivative Instruments.*

(a) The Partnership may issue additional Partnership Interests and Derivative Instruments for any Partnership purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the General Partner shall determine, all without the approval of any Partners; *provided, however*, that the Partnership shall not issue any additional Common Units unless the Partnership contributes the net cash proceeds or other consideration received from the issuance of such additional Common Units to the Operating Company in exchange for an equivalent number of OpCo Units. Notwithstanding the foregoing, the Partnership may issue Common Units without such contribution (a) pursuant to employee benefit plans or pursuant to the Exchange Agreement and Section 5.5(f) or (b) pursuant to a distribution (including any split or combination) of Common Units to all of the holders of Common

Units pursuant to Section 5.7.

(b) Each additional Partnership Interest authorized to be issued by the Partnership pursuant to Section 5.5(a) may be issued in one or more classes, or one or more series of any such classes, with such

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designations, preferences, rights, powers and duties (which may be senior or junior to existing classes and series of Partnership Interests), as shall be fixed by the General Partner, including (i) the right to share in Partnership profits and losses or items thereof; (ii) the right to share in Partnership distributions; (iii) the rights upon dissolution and liquidation of the Partnership; (iv) whether, and the terms and conditions upon which, the Partnership may, or shall be required to, redeem the Partnership Interest (including sinking fund provisions); (v) whether such Partnership Interest is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Partnership Interest will be issued, evidenced by certificates and assigned or transferred; (vii) the method for determining the Percentage Interest as to such Partnership Interest; and (viii) the right, if any, of each such Partnership Interest to vote on Partnership matters, including matters relating to the relative rights, preferences and privileges of such Partnership Interest.

(c) The General Partner shall take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Partnership Interests and Derivative Instruments pursuant to this Section 5.5, (ii) the conversion of the General Partner's (and its Affiliates') Combined Interest into Common Units pursuant to the terms of this Agreement, (iii) reflecting the admission of such additional Partners in the books and records of the Partnership as the Record Holder of such Partnership Interests, and (iv) all additional issuances of Partnership Interests. The General Partner shall determine the relative rights, powers and duties of the holders of the Units or other Partnership Interests being so issued. The General Partner shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things that it determines to be necessary or appropriate in connection with any future issuance of Partnership Interests or in connection with the conversion of the General Partner's (and its Affiliates') Combined Interest into Common Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Interests are listed or admitted to trading.

(d) No fractional Units shall be issued by the Partnership.

(e) If at any time Diamondback or any other Record Holder of one or more Class B Units does not hold an equal number of Class B Units and OpCo Units, the Partnership shall issue additional Class B Units to such holder or cancel Class B Units held by such holder, as applicable, such that the number of Class B Units held by such holder is equal to the number of OpCo Units held by such holder; *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 to an Affiliate in accordance with Section 4.5(d) and the OpCo Limited Liability Company Agreement. Any determination as to the number of OpCo Units and/or Class B Units held by any Person shall be made by the General Partner and shall be conclusive absent manifest error.

(f) Upon any exchange of OpCo Units and Class B Units for Common Units pursuant to the Exchange Agreement, the Partnership shall issue to the exchanging holder of such OpCo Units and Class B Units a number of Common Units equal to the number of OpCo Units delivered in connection with such exchange. The Class B Units involved in such exchange shall automatically be cancelled and shall cease to be outstanding.

**Section 5.6 Preemptive Right.** Except as provided in this Section 5.6 or as otherwise provided in a separate agreement by the Partnership, no Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Partnership Interest, whether unissued, held in the treasury or hereafter created. The General Partner shall have the right, which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Partnership Interests from the Partnership whenever, and on the same terms that, the Partnership issues Partnership Interests to Persons other than the General Partner and its Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Partnership Interests.



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### *Section 5.7 Splits and Combinations.*

(a) Subject to Section 5.7(d), the Partnership may make a Pro Rata distribution of Partnership Interests to all Record Holders or may effect a subdivision or combination of Partnership Interests so long as, after any such event, each Partner shall have the same Percentage Interest in the Partnership as before such event, and any amounts calculated on a per Unit basis or stated as a number of Units are proportionately adjusted retroactively to the beginning of the Partnership; *provided, however*, that the Partnership may not effect a subdivision or combination of Partnership Interests described in this Section 5.7(a) unless (i) the Operating Company also effects an equivalent subdivision or combination of OpCo Units pursuant to the OpCo Limited Liability Company Agreement and (ii) any such distribution, subdivision or combination of the Common Units shall be accompanied by a simultaneous and proportionate distribution, subdivision or combination of the Class B Units pursuant to this Agreement. This provision shall not be amended unless corresponding changes are made to the OpCo Limited Liability Company Agreement.

(b) Whenever such a distribution, subdivision or combination of Partnership Interests is declared, the General Partner shall select a Record Date as of which the distribution, subdivision or combination shall be effective and shall send notice thereof at least 20 days prior to such Record Date to each Record Holder as of a date not less than 10 days prior to the date of such notice. The General Partner also may cause a firm of independent public accountants selected by it to calculate the number of Partnership Interests to be held by each Record Holder after giving effect to such distribution, subdivision, combination or reorganization. The General Partner shall be entitled to rely on any certificate provided by such firm as conclusive evidence of the accuracy of such calculation.

(c) Promptly following any such distribution, subdivision, or combination, the Partnership may issue Certificates or uncertificated Partnership Interests to the Record Holders of Partnership Interests as of the applicable Record Date representing the new number of Partnership Interests held by such Record Holders, or the General Partner may adopt such other procedures that it determines to be necessary or appropriate to reflect such changes. If any such combination results in a smaller total number of Partnership Interests Outstanding, the Partnership shall require, as a condition to the delivery to a Record Holder of Partnership Interests represented by Certificates, the surrender of any Certificate held by such Record Holder immediately prior to such Record Date.

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Partnership Interests. If a distribution, subdivision, combination or reorganization of Partnership Interests would result in the issuance of fractional Units but for the provisions of Section 5.5(d) and this Section 5.7(d), each fractional Unit shall be rounded to the nearest whole Unit (and a 0.5 Unit shall be rounded to the next higher Unit).

*Section 5.8 Fully Paid and Non-Assessable Nature of Limited Partner Interests.* All Limited Partner Interests issued pursuant to, and in accordance with the requirements of, this Article V shall be fully paid and non-assessable Limited Partner Interests in the Partnership, except as such non-assessability may be affected by Sections 17-607 or 17-804 of the Delaware Act.

## **ARTICLE VI**

### **DISTRIBUTIONS**

#### *Section 6.1 Distributions to Record Holders.*

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





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(b) Except as contemplated by Section 5.7, (a) the Partnership will make distributions, if any, to all Record Holders of Common Units, Pro Rata and (b) no distributions shall be made under any circumstances in respect of any Class B Units.

(c) All distributions required to be made under this Agreement shall be made subject to Sections 17-607 and 17-804 of the Delaware Act.

(d) Notwithstanding Section 6.1(b), in the event of the dissolution and liquidation of the Partnership, cash shall be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.4.

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

## **ARTICLE VII**

### **MANAGEMENT AND OPERATION OF BUSINESS**

#### *Section 7.1 Management.*

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, but without limitation on the ability of the General Partner to delegate its rights and power to other Persons, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no other Partner shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 7.4, shall have full power and authority to do all things and on such terms as it determines to be necessary or appropriate to conduct the business of the Partnership, to exercise all powers set forth in Section 2.5 and to effectuate the purposes set forth in Section 2.4, including the following:

(i) the making of any expenditures, the lending or borrowing of money, the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness, including indebtedness that is convertible or exchangeable into Partnership Interests, and the incurring of any other obligations;

(ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;

(iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership or the merger or other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 7.4 or Article XIV);

(iv) the use of the assets of the Partnership (including cash on hand) for any purpose consistent with the terms of this Agreement, including the financing of the conduct of the operations of the Partnership Group; the lending of funds to other Persons (including other Group Members); the repayment or guarantee of obligations of any Group Member; and the making of capital contributions to any Group Member;



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- (v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including instruments that limit the liability of the Partnership under contractual arrangements to all or particular assets of the Partnership, with the other party to the contract to have no recourse against the General Partner or its assets other than its interest in the Partnership, even if the same results in the terms of the transaction being less favorable to the Partnership than would otherwise be the case);
  - (vi) the distribution of cash or cash equivalents by the Partnership;
  - (vii) the selection, employment, retention and dismissal of employees (including employees having titles such as chief executive officer, president, chief financial officer, chief operating officer, general counsel, vice president, and treasurer ) and agents, outside attorneys, accountants, consultants and contractors of the General Partner or the Partnership Group and the determination of their compensation and other terms of employment or hiring;
  - (viii) the maintenance of insurance for the benefit of the Partnership Group, the Partners and Indemnitees;
  - (ix) the formation of, or acquisition of an interest in, and the contribution of property and the making of loans to, any limited or general partnerships, joint ventures, corporations, limited liability companies or other Persons (including the acquisition of interests in, and the contributions of property to, any Group Member from time to time);
  - (x) the control of any matters affecting the rights and obligations of the Partnership, including the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation, arbitration or mediation and the incurring of legal expense and the settlement of claims and litigation;
  - (xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law;
  - (xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Partnership Interests from, or requesting that trading be suspended on, any such exchange;
  - (xiii) the purchase, sale or other acquisition or disposition of Partnership Interests, or the issuance of Derivative Instruments;
  - (xiv) the undertaking of any action in connection with the Partnership's participation in the management of any Group Member;
  - (xv) subject to Section 7.4, the undertaking of any action in connection with the Partnership's participation and management of the Operating Company as the Operating Company's managing member or a unitholder in the Operating Company; and
  - (xvi) the entering into of agreements with any of its Affiliates, including any agreements to render services to a Group Member or to itself in the discharge of its duties as General Partner of the Partnership.
- (b) Notwithstanding any other provision of this Agreement, any Group Member Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners, each other Person who acquires an interest in a Partnership Interest and each other Person bound by this Agreement hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of this Agreement and (ii) agrees that the execution, delivery or performance by the General Partner, any Group Member or any Affiliate of any of them of this Agreement or any agreement authorized or permitted under this Agreement (including the exercise by the General Partner or any Affiliate of the General Partner of the rights accorded pursuant to Article XV) shall not



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constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Partners or any other Persons under this Agreement (or any other agreements) or of any duty existing at law, in equity or otherwise.

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

**Section 7.3 *Certificate of Limited Partnership.*** The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents that the General Partner determines to be necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware or any other state in which the Partnership may elect to do business or own property. To the extent the General Partner determines such action to be necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate of Limited Partnership and do all things to maintain the Partnership as a limited partnership (or a partnership or other entity in which the limited partners have limited liability) under the laws of the State of Delaware or of any other state in which the Partnership may elect to do business or own property. Subject to the terms of Section 3.4(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Partner.

**Section 7.4 *Restrictions on the General Partner's Authority.*** Except as provided in Articles XII and XIV, the General Partner may not sell, exchange or otherwise dispose of all or substantially all of the assets of the Partnership Group, taken as a whole, in a single transaction or a series of related transactions without the approval of a Unit Majority; *provided, however*, that this provision shall not preclude or limit the General Partner's ability to mortgage, pledge, hypothecate or grant a security interest in all or substantially all of the assets of the Partnership Group and shall not apply to any sale of any or all of the assets of the Partnership Group pursuant to the foreclosure of, or other realization upon, any such encumbrance.

**Section 7.5 *Reimbursement of the General Partner.***

(a) The General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership Group (including salary, bonus, incentive compensation and other amounts paid to any Person (including Affiliates of the General Partner) to perform services for the Partnership Group or for the General Partner in the discharge of its duties to the Partnership Group), and (ii) all other expenses allocable to the Partnership Group or otherwise incurred by the General Partner in connection with operating the Partnership Group's business (including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to the Partnership Group. Reimbursements pursuant to this Section 7.5(a) shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.7.

(b) The General Partner and its Affiliates may charge any member of the Partnership Group a management fee to the extent necessary to allow the Partnership Group to reduce the amount of any state franchise or income tax or any tax

based upon the revenues or gross margin of any member of the Partnership Group if the tax benefit produced by the payment for such management fee of such management fee or fees exceeds the amount of such fee or fees.

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(c) The General Partner, without the approval of the Limited Partners (who shall have no right to vote in respect thereof), may propose and adopt on behalf of the Partnership benefit plans, programs and practices (including plans, programs and practices involving the issuance of Partnership Interests), or cause the Partnership to issue Partnership Interests in connection with, or pursuant to, any benefit plan, program or practice maintained or sponsored by the General Partner or any of its Affiliates, any Group Member or their Affiliates, or any of them, in each case for the benefit of employees, officers, consultants and directors of the General Partner or its Affiliates, in respect of services performed, directly or indirectly, for the benefit of the Partnership Group. The Partnership agrees to issue and sell to the General Partner or any of its Affiliates any Partnership Interests that the General Partner or such Affiliates are obligated to provide to any employees, officers, consultants and directors pursuant to any such benefit plans, programs or practices. Expenses incurred by the General Partner in connection with any such plans, programs and practices (including the net cost to the General Partner or such Affiliates of Partnership Interests purchased by the General Partner or such Affiliates, from the Partnership or otherwise, to fulfill awards under such plans, programs and practices) shall be reimbursed in accordance with Section 7.5(a). Any and all obligations of the General Partner under any benefit plans, programs or practices adopted by the General Partner as permitted by this Section 7.5(c) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the General Partner's General Partner Interest pursuant to Section 4.6.

### *Section 7.6 Outside Activities.*

(a) The General Partner, for so long as it is the General Partner of the Partnership, shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (i) its performance as general partner or managing member, if any, of one or more Group Members, (ii) the acquiring, owning or disposing of debt securities or equity interests in any Group Member or (iii) the direct or indirect provision of management, advisory, and administrative services to its Affiliates or to other Persons.

(b) Each Unrestricted Person (other than the General Partner) shall have the right to engage in businesses of every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by any Group Member, independently or with others, including business interests and activities in direct competition with the business and activities of any Group Member. No such business interest or activity shall constitute a breach of this Agreement, any fiduciary or other duty existing at law, in equity or otherwise, or obligation of any type whatsoever to the Partnership or other Group Member, to another Partner, to any Person who acquires an interest in a Partnership Interest or to any other Person bound by this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any Unrestricted Person (including the General Partner). No Unrestricted Person (including the General Partner) who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Partnership, shall have any duty to communicate or offer such opportunity to any Group Member, and such Unrestricted Person (including the General Partner) shall not be liable to the Partnership or other Group Member, to another Partner, to any Person who acquires an interest in a Partnership Interest or to any other Person bound by this Agreement for breach of any fiduciary or other duty existing at law, in equity or otherwise by reason of the fact that such Unrestricted Person (including the General Partner) pursues or acquires such opportunity for itself, directs such opportunity to another Person or does not communicate such opportunity or information to any Group Member.

(d) Subject to the terms of Section 7.6(a), Section 7.6(b) and Section 7.6(c), but otherwise notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any Unrestricted Person (other than the

General Partner) in accordance with the provisions of this Section 7.6 is hereby approved by the Partnership and all Partners, and (ii) it shall be deemed not to be a breach of any fiduciary duty or any other duty or obligation of any type whatsoever of the General Partner or of any other



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Unrestricted Person for the Unrestricted Person (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership; provided such Unrestricted Person does not engage in such business or activity as a result of or using confidential or proprietary information provided by or on behalf of the Partnership to such Unrestricted Person.

(e) The General Partner and each of its Affiliates may acquire Units or other Partnership Interests in addition to those acquired on and/or prior to the Second A&R Date and, except as otherwise expressly provided in Sections 4.5, 5.5 and 7.11, shall be entitled to exercise, at their option, all rights relating to all Units or other Partnership Interests acquired by them.

### *Section 7.7 Indemnification.*

(a) To the fullest extent permitted by law, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities (joint or several), expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all threatened, pending or completed claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, and whether formal or informal and including appeals, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee and acting (or refraining to act) in such capacity; provided, that the Indemnitee shall not be indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Agreement, the Indemnitee acted in Bad Faith or engaged in willful misconduct or fraud or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 7.7(a) in appearing at, participating in or defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 7.7, the Indemnitee is not entitled to be indemnified upon receipt by the Partnership of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall be ultimately determined that the Indemnitee is not entitled to be indemnified as authorized by this Section 7.7.

(c) The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the holders of Outstanding Limited Partner Interests, as a matter of law, in equity or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

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

(e) For purposes of this Section 7.7, the Partnership shall be deemed to have requested an Indemnatee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership

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also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute fines within the meaning of Section 7.7(a); and action taken or omitted by an Indemnitee with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interests of the Partnership.

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

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 7.7 are for the benefit of the Indemnitees and their heirs, successors, assigns, executors and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 7.7 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Partnership, nor the obligations of the Partnership to indemnify any such Indemnitee under and in accordance with the provisions of this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

### *Section 7.8 Limitation of Liability of Indemnitees.*

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

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

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

this Agreement.

(d) Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this

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Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

*Section 7.9 Resolution of Conflicts of Interest; Standards of Conduct and Modification of Duties.*

(a) Whenever the General Partner, acting in its capacity as the general partner of the Partnership, or the Board of Directors or any committee of the Board of Directors (including the Conflicts Committee) or any Affiliates of the General Partner cause the General Partner to make a determination or take or omit to take any action in such capacity, whether or not under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, then, unless another lesser standard is provided for in this Agreement, the General Partner, the Board of Directors, such committee or such Affiliates, shall make such determination, or take or omit to take such action, in Good Faith. The foregoing and other lesser standards provided for in this Agreement are the sole and exclusive standards governing any such determinations, actions and omissions of the General Partner, the Board of Directors, any committee of the Board of Directors (including the Conflicts Committee) and any Affiliate of the General Partner and no such Person shall be subject to any fiduciary duty or other duty or obligation, or any other, different or higher standard (all of which duties, obligations and standards are hereby waived and disclaimed), under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, or under the Delaware Act or any other law, rule or regulation or at equity. Any such determination, action or omission by the General Partner, the Board of Directors of the General Partner or any committee thereof (including the Conflicts Committee) or of any Affiliates of the General Partner, will for all purposes be presumed to have been in Good Faith. In any proceeding brought by or on behalf of the Partnership, any Limited Partner, or any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement, challenging such determination, act or omission, the Person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or omission was not in Good Faith.

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

(c) For purposes of Section 7.9(a) and Section 7.9(b) of this Agreement, acting in its capacity as the general partner of the Partnership means and is solely limited to, the General Partner exercising its authority as a general partner under this Agreement, other than when it is acting in its individual capacity. For purposes of this Agreement, acting in its individual capacity means: (i) any action by the General Partner or its Affiliates other than through the exercise of the General Partner of its authority as a general partner under this Agreement; and (ii) any action or inaction by the General Partner by the exercise (or failure to exercise) of its rights, powers or authority under this Agreement that are modified by: (A) the phrase at the option of the General Partner, (B) the phrase in its sole discretion or in its discretion or (iii) some variation of the phrases set forth in clauses (i) and (ii). For the avoidance of doubt, whenever the General Partner votes, acquires Partnership Interests or transfers its Partnership Interests, or refrains from voting or transferring its Partnership Interests, it shall be and be deemed to be acting in its individual capacity.

(d) The General Partner may in its discretion submit any determination, action or omission that would otherwise be decided by the General Partner pursuant to Section 7.9(a) (i) for Special Approval or (ii) for

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approval by the vote of a majority of the Units (excluding Units owned by the General Partner or its Affiliates, if any). If the General Partner does not submit the determination, action or omission as provided in either clauses (i) or (ii) in the preceding sentence, then any such determination, action or omission shall be governed by Section 7.9(a) above. If any determination, action or omission: (A) receives Special Approval; or (B) receives approval of a majority of the Units (excluding Units owned by the General Partner or its Affiliates, if any), then such determination, action or omission shall be conclusively deemed to be approved by the Partnership, all the Partners, each Person who acquires an interest in a Partnership Interest and each other Person who is bound by this Agreement, and shall not constitute a breach of this Agreement, of any Group Member Agreement, of any agreement contemplated herein or therein, or of any fiduciary or other duty or obligation existing at law, in equity or otherwise or obligation of any type whatsoever.

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

(f) The Partners, and each Person who acquires an interest in a Partnership Interest or is otherwise bound by this Agreement hereby authorize the General Partner, on behalf of the Partnership as a partner or member of a Group Member, to approve actions by the general partner or managing member of such Group Member similar to those actions permitted to be taken by the General Partner pursuant to this Section 7.9.

(g) For the avoidance of doubt, whenever the Board of Directors, any committee of the Board of Directors (including the Conflicts Committee), the officers of the General Partner or any Affiliates of the General Partner make a determination on behalf of the General Partner, or cause the General Partner to take or omit to take any action, whether in the General Partner's capacity as the General Partner or in its individual capacity, the standards of care applicable to the General Partner shall apply to such Persons, and such Persons shall be entitled to all benefits and rights of the General Partner hereunder, including waivers and modifications of duties, protections and presumptions, as if such Persons were the General Partner hereunder.

### *Section 7.10 Other Matters Concerning the General Partner.*

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

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

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

*Section 7.11 Purchase or Sale of Partnership Interests.* The General Partner may cause the Partnership to purchase or otherwise acquire Partnership Interests. As long as any Partnership Interests are held by any Group Member, such Partnership Interests shall not be entitled to any vote and shall not be considered to be Outstanding.





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### Section 7.12 *Registration Rights of the General Partner and its Affiliates.*

(a) If (i) the General Partner or any of its Affiliates (including for purposes of this Section 7.12, any Person that is an Affiliate of the General Partner at the date hereof notwithstanding that it may later cease to be an Affiliate of the General Partner) holds Partnership Interests (including Common Units acquired pursuant to the Exchange Agreement) that it desires to sell and (ii) Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such holder of Partnership Interests (the **Holder**) to dispose of the number of Partnership Interests it desires to sell at the time it desires to do so without registration under the Securities Act, then at the option and upon the request of the Holder, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all commercially reasonable efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Partnership Interests covered by such registration statement have been sold, a registration statement under the Securities Act registering the offering and sale of the number of Partnership Interests specified by the Holder; *provided, however*, that the aggregate offering price of any such offering and sale of Partnership Interests covered by such registration statement as provided for in this Section 7.12(a) shall not be less than \$5.0 million; provided further, that the Partnership shall not be required to effect more than two registrations pursuant to this Section 7.12(a) in any twelve-month period; and provided further, however that if the General Partner determines that a postponement of the requested registration would be in the best interests of the Partnership and its Partners due to a pending transaction, investigation or other event, the filing of such registration statement or the effectiveness thereof may be deferred for up to six months, but not thereafter. In connection with any registration pursuant to the immediately preceding sentence, the Partnership shall (i) promptly prepare and file (A) such documents as may be necessary to register or qualify the securities subject to such registration under the securities laws of such states as the Holder shall reasonably request; *provided, however*, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction solely as a result of such registration, and (B) such documents as may be necessary to apply for listing or to list the Partnership Interests subject to such registration on such National Securities Exchange as the Holder shall reasonably request, and (ii) do any and all other acts and things that may be necessary or appropriate to enable the Holder to consummate a public sale of such Partnership Interests in such states. Except as set forth in Section 7.12(c), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(b) If the Partnership shall at any time propose to file a registration statement under the Securities Act for an offering of Partnership Interests for cash (other than an offering relating solely to a benefit plan), the Partnership shall use all commercially reasonable efforts to include such number or amount of Partnership Interests held by any Holder (including Common Units acquired pursuant to the Exchange Agreement) in such registration statement as the Holder shall request; *provided*, that the Partnership is not required to make any effort or take any action to so include the Partnership Interests of the Holder once the registration statement becomes or is declared effective by the Commission, including any registration statement providing for the offering from time to time of Partnership Interests pursuant to Rule 415 of the Securities Act. If the proposed offering pursuant to this Section 7.12(b) shall be an underwritten offering, then, in the event that the managing underwriter or managing underwriters of such offering advise the Partnership and the Holder that in their opinion the inclusion of all or some of the Holder's Partnership Interests would adversely and materially affect the timing or success of the offering, the Partnership shall include in such offering only that number or amount, if any, of Partnership Interests held by the Holder that, in the opinion of the managing underwriter or managing underwriters, will not so adversely and materially affect the offering. Except as set forth in Section 7.12(c), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(c) If underwriters are engaged in connection with any registration referred to in this Section 7.12, the Partnership shall provide indemnification, representations, covenants, opinions and other assurance to the

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underwriters in form and substance reasonably satisfactory to such underwriters. Further, in addition to and not in limitation of the Partnership's obligation under Section 7.7 the Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless the Holder, its officers, directors and each Person who controls the Holder (within the meaning of the Securities Act) and any agent thereof (collectively, ***Indemnified Persons***) against any losses, claims, demands, actions, causes of action, assessments, damages, liabilities (joint or several), costs and expenses (including interest, penalties and reasonable attorneys' fees and disbursements), resulting to, imposed upon, or incurred by the Indemnified Persons, directly or indirectly, under the Securities Act or otherwise (hereinafter referred to in this Section 7.12(c) as a ***claim*** and in the plural as ***claims***) based upon, arising out of or resulting from any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which any Partnership Interests were registered under the Securities Act or any state securities or Blue Sky laws, in any preliminary prospectus or issuer free writing prospectus as defined in Rule 433 of the Securities Act (if used prior to the effective date of such registration statement), or in any summary or final prospectus or in any amendment or supplement thereto (if used during the period the Partnership is required to keep the registration statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein not misleading; *provided, however*, that the Partnership shall not be liable to any Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, such preliminary, summary or final prospectus or free writing prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Partnership by or on behalf of such Indemnified Person specifically for use in the preparation thereof.

(d) The provisions of Section 7.12(a) and Section 7.12(b) shall continue to be applicable with respect to the General Partner (and any of the General Partner's Affiliates) after it ceases to be the General Partner, during a period of two years subsequent to the effective date of such cessation and for so long thereafter as is required for the Holder to sell all of the Partnership Interests with respect to which it has requested during such two-year period inclusion in a registration statement otherwise filed or that a registration statement be filed; *provided, however*, that the Partnership shall not be required to file successive registration statements covering the same Partnership Interests for which registration was demanded during such two-year period. The provisions of Section 7.12(c) shall continue in effect thereafter.

(e) The rights to cause the Partnership to register Partnership Interests pursuant to this Section 7.12 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such Partnership Interests, provided (i) the Partnership is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the Partnership Interests with respect to which such registration rights are being assigned; and (ii) such transferee or assignee agrees in writing to be bound by and subject to the terms set forth in this Section 7.12.

(f) Any request to register Partnership Interests pursuant to this Section 7.12 shall (i) specify the Partnership Interests intended to be offered and sold by the Person making the request, (ii) express such Person's present intent to offer such Partnership Interests for distribution, (iii) describe the nature or method of the proposed offer and sale of Partnership Interests, and (iv) contain the undertaking of such Person to provide all such information and materials and take all action as may be required in order to permit the Partnership to comply with all applicable requirements in connection with the registration of such Partnership Interests.

(g) The Partnership may enter into separate registration rights agreements with the General Partner or any of its Affiliates.

(h) Notwithstanding anything to the contrary herein, neither the General Partner nor any other Person shall have any registration rights or other rights under this Section 7.12 in respect of Class B Units.

Section 7.13 *Reliance by Third Parties*. Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner and any officer of the

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General Partner authorized by the General Partner to act on behalf of and in the name of the Partnership has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any authorized contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer as if it were the Partnership's sole party in interest, both legally and beneficially. Each Partner hereby waives, to the fullest extent permitted by law, any and all defenses or other remedies that may be available to such Partner to contest, negate or disaffirm any action of the General Partner or any such officer in connection with any such dealing. In no event shall any Person dealing with the General Partner or any such officer or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

## **ARTICLE VIII**

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

Section 8.1 *Records and Accounting*. The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Partners any information required to be provided pursuant to Section 3.4(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders of Units or other Partnership Interests, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, magnetic tape, photographs, micrographics or any other information storage device; provided, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP.

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

Section 8.3 *Reports*.

(a) Whether or not the Partnership is subject to the requirement to file reports with the Commission, as soon as practicable, but in no event later than 105 days after the close of each fiscal year of the Partnership (or such shorter period as required by the Commission), the General Partner shall cause to be mailed or made available, by any reasonable means, to each Record Holder of a Unit or other Partnership Interest as of a date selected by the General Partner, an annual report containing financial statements of the Partnership for such fiscal year of the Partnership, presented in accordance with U.S. GAAP, including a balance sheet and statements of operations, Partnership equity and cash flows, such statements to be audited by a firm of independent public accountants selected by the General Partner, and such other information as may be required by applicable law, regulation or rule of the Commission or of any National Securities Exchange on which the Units are listed or admitted to trading, or as the General Partner determines to be necessary or appropriate.

(b) Whether or not the Partnership is subject to the requirement to file reports with the Commission, as soon as practicable, but in no event later than 50 days after the close of each Quarter (or such shorter period as required by the

Commission), except the last Quarter of each fiscal year, the General Partner shall cause to be mailed or made available, by any reasonable means to each Record Holder of a Unit or other Partnership Interest, as of a date selected by the General Partner, a report containing unaudited financial statements of the Partnership

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and such other information as may be required by applicable law, regulation or rule of the Commission or of any National Securities Exchange on which the Units are listed or admitted to trading, or as the General Partner determines to be necessary or appropriate.

(c) The General Partner shall be deemed to have made a report available to each Record Holder as required by this Section 8.3 if it has either (i) filed such report with the Commission via its Electronic Data Gathering, Analysis and Retrieval system and such report is publicly available on such system or (ii) made such report available on any publicly available website maintained by the Partnership.

## **ARTICLE IX**

### **TAX MATTERS**

Section 9.1 *Tax Characterizations and Elections*. The Partnership is authorized and will promptly elect to be treated as an association taxable as a corporation for U.S. federal income tax purposes pursuant to Treasury Regulations Section 301.7701-3(c).

Section 9.2 *Withholding*. Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that may be required to cause the Partnership and other Group Members to comply with any withholding requirements established under the Code or any other U.S. federal, state or local law, including pursuant to Sections 1441, 1442, 1445, 1471 and 1472 of the Code, or established under any foreign law. To the extent that the Partnership is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner, the General Partner may treat the amount withheld as a distribution of cash pursuant to Section 6.1 in the amount of such withholding from such Partner.

## **ARTICLE X**

### **ADMISSION OF PARTNERS**

Section 10.1 *Admission of Limited Partners*.

(a) By acceptance of the transfer of any Limited Partner Interests or the issuance of any Limited Partner Interests in accordance herewith, and except as provided in Section 4.8, each transferee or other recipient of a Limited Partner Interest (including any nominee holder or an agent or representative acquiring such Limited Partner Interests for the account of another Person) (i) shall be admitted to the Partnership as a Limited Partner with respect to the Limited Partner Interests so transferred or issued to such Person when any such transfer or issuance is reflected in the books and records of the Partnership, (ii) shall become bound by the terms of, and shall be deemed to have agreed to be bound by, this Agreement, (iii) shall become the Record Holder of the Limited Partner Interests so transferred or issued, (iv) represents that the transferee or other recipient has the capacity, power and authority to enter into this Agreement, and (v) makes the consents, acknowledgments and waivers contained in this Agreement, all with or without execution of this Agreement. The transfer of any Limited Partner Interests and/or the admission of any new Limited Partner shall not constitute an amendment to this Agreement. A Person may become a Record Holder without the consent or approval of any of the Partners. A Person may not become a Limited Partner without acquiring a Limited Partner Interest. The rights and obligations of a Person who is an Ineligible Holder shall be determined in accordance with Section 4.8.

(b) The name and mailing address of each Record Holder shall be listed on the books and records of the Partnership maintained for such purpose by the General Partner or the Transfer Agent. The General Partner shall update its books

and records from time to time as necessary to reflect accurately the information therein (or shall cause the Transfer Agent to do so, as applicable). A Limited Partner Interest may be represented by a Certificate, as provided in Section 4.1.



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(c) Any transfer of a Limited Partner Interest shall not entitle the transferee to share in the profits and losses, to receive distributions, to receive allocations of income, gain, loss, deduction or credit or any similar item or to any other rights to which the transferor was entitled until the transferee becomes a Limited Partner pursuant to Section 10.1(a).

*Section 10.2 Admission of Successor General Partner.* A successor General Partner approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the General Partner Interest pursuant to Section 4.6 who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately prior to the withdrawal or removal of the predecessor or transferring General Partner, pursuant to Section 11.1 or Section 11.2 or the transfer of the General Partner Interest pursuant to Section 4.6, *provided, however*, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.6 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to the terms hereof, carry on the business of the members of the Partnership Group without dissolution.

*Section 10.3 Amendment of Agreement and Certificate of Limited Partnership.* To effect the admission to the Partnership of any Partner, the General Partner shall take all steps necessary under the Delaware Act to amend the records of the Partnership to reflect such admission and, if necessary, to prepare as soon as practicable an amendment to this Agreement and, if required by law, the General Partner shall prepare and file an amendment to the Certificate of Limited Partnership.

## **ARTICLE XI**

### **WITHDRAWAL OR REMOVAL OF PARTNERS**

*Section 11.1 Withdrawal of the General Partner.*

(a) The General Partner shall be deemed to have withdrawn from the Partnership upon the occurrence of any one of the following events (each such event herein referred to as an ***Event of Withdrawal***):

(i) The General Partner voluntarily withdraws from the Partnership by giving written notice to the other Partners;

(ii) The General Partner transfers all of its rights as General Partner pursuant to Section 4.6;

(iii) The General Partner is removed pursuant to Section 11.2;

(iv) The General Partner (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (A) through (C) of this Section 11.1(a)(iv); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor-in-possession), receiver or liquidator of the General Partner or of all or any substantial part of its properties;

(v) A final and non-appealable order of relief under Chapter 7 of the United States Bankruptcy Code is entered by a court with appropriate jurisdiction pursuant to a voluntary or involuntary petition by or against the General Partner; or

(vi) (A) in the event the General Partner is a corporation, a certificate of dissolution or its equivalent is filed for the General Partner, or 90 days expire after the date of notice to the General Partner of revocation of its



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charter without a reinstatement of its charter, under the laws of its state of incorporation; (B) in the event the General Partner is a limited liability company or a partnership, the dissolution and commencement of winding up of the General Partner; (C) in the event the General Partner is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; (D) in the event the General Partner is a natural person, his death or adjudication of incompetency; and (E) otherwise in the event of the termination of the General Partner.

If an Event of Withdrawal specified in Sections 11.1(a)(iv), 11.1(a)(v), 11.1(a)(vi)(A), 11.1(a)(vi)(B), 11.1(a)(vi)(C) or 11.1(a)(vi)(E) occurs, the withdrawing General Partner shall give notice to the Partners within 30 days after such occurrence. The Partners hereby agree that only the Events of Withdrawal described in this Section 11.1 shall result in the withdrawal of the General Partner from the Partnership.

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at any time during the period beginning on June 23, 2014 and ending at 11:59 pm, prevailing Central Time, on June 30, 2024, the General Partner voluntarily withdraws by giving at least 90 days advance notice of its intention to withdraw to the Partners; provided, that prior to the effective date of such withdrawal, the withdrawal is approved by Unitholders holding a majority of the Outstanding Units (excluding Units held by the General Partner and its Affiliates, if any) and the General Partner delivers to the Partnership an Opinion of Counsel ( ***Withdrawal Opinion of Counsel*** ) that such withdrawal (following the selection of the successor General Partner) would not result in the loss of the limited liability of any Limited Partner under the Delaware Act; (ii) at any time after 11:59 pm, prevailing Central Time, on June 30, 2024, the General Partner voluntarily withdraws by giving at least 90 days advance notice to the Partners, such withdrawal to take effect on the date specified in such notice; (iii) at any time that the General Partner ceases to be the General Partner pursuant to Section 11.1(a)(ii) or is removed pursuant to Section 11.2; or (iv) notwithstanding clause (i) of this sentence, at any time that the General Partner voluntarily withdraws by giving at least 90 days advance notice of its intention to withdraw to the other Partners, such withdrawal to take effect on the date specified in the notice, if at the time such notice is given one Person and its Affiliates (other than the General Partner and its Affiliates) own beneficially or of record or control at least 50% of the Outstanding Units. The withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall also constitute the withdrawal of the General Partner as general partner or managing member, if any, to the extent applicable, of the other Group Members. If the General Partner gives notice of withdrawal pursuant to Section 11.1(a)(ii), the holders of a Unit Majority may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner shall automatically become the successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Partners as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with Section 12.1, unless the business of the Partnership is continued pursuant to Section 12.2. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.2.

Section 11.2 Removal of the General Partner. The General Partner may be removed if such removal is approved by the Partners holding at least 66 2/3% of the Outstanding Units (including Units held by the General Partner and its Affiliates) voting as a single class. Any such action by such holders for removal of the General Partner must also provide for the election of a successor General Partner by the holders of a Unit Majority. Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Section 10.2. The removal of the General Partner shall also automatically constitute the removal of the General Partner as general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If a Person is elected as a successor General Partner in accordance with the terms of this Section 11.2, such Person shall, upon admission pursuant to Section 10.2, automatically become a successor general partner or managing member, to the extent applicable, of the other Group Members of which the General

Partner is a general partner or a managing member. The right of the Partners to remove the General Partner shall not exist or be exercised unless the Partnership has received an

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opinion opining as to the matters covered by a Withdrawal Opinion of Counsel. Any successor General Partner elected in accordance with the terms of this Section 11.2 shall be subject to the provisions of Section 10.2.

### *Section 11.3 Interest of Departing General Partner and Successor General Partner.*

(a) In the event of (i) withdrawal of the General Partner under circumstances where such withdrawal does not violate this Agreement or (ii) removal of the General Partner by the Partners under circumstances where Cause does not exist, if the successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2, the Departing General Partner shall have the option, exercisable prior to the effective date of the withdrawal or removal of such Departing General Partner, to require its successor to purchase its General Partner Interest and its or its Affiliates general partner interest (or equivalent interest), if any, in the other Group Members (collectively, the **Combined Interest**) in exchange for an amount in cash equal to the fair market value of such Combined Interest, such amount to be determined and payable as of the effective date of its withdrawal or removal. If the General Partner is removed by the Partners under circumstances where Cause exists or if the General Partner withdraws under circumstances where such withdrawal violates this Agreement, and if a successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2 (or if the business of the Partnership is continued pursuant to Section 12.2 and the successor General Partner is not the former General Partner), such successor shall have the option, exercisable prior to the effective date of the departure of such Departing General Partner (or, in the event the business of the Partnership is continued, prior to the date the business of the Partnership is continued), to purchase the Combined Interest for such fair market value of such Combined Interest. In either event, the Departing General Partner shall be entitled to receive all reimbursements due such Departing General Partner pursuant to Section 7.5, including any employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by the Departing General Partner or its Affiliates (other than any Group Member) for the benefit of the Partnership or the other Group Members.

For purposes of this Section 11.3(a), the fair market value of the Combined Interest shall be determined by agreement between the Departing General Partner and its successor or, failing agreement within 30 days after the effective date of such Departing General Partner's withdrawal or removal, by an independent investment banking firm or other independent expert selected by the Departing General Partner and its successor, which, in turn, may rely on other experts, and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such withdrawal or removal, then the Departing General Partner shall designate an independent investment banking firm or other independent expert, the Departing General Partner's successor shall designate an independent investment banking firm or other independent expert, and such firms or experts shall mutually select a third independent investment banking firm or independent expert, which third independent investment banking firm or other independent expert shall determine the fair market value of the Combined Interest. In making its determination, such third independent investment banking firm or other independent expert may consider the then current trading price of Units on any National Securities Exchange on which Units are then listed or admitted to trading, the value of the Partnership's assets, the rights and obligations of the Departing General Partner and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 11.3(a), the Departing General Partner (or its transferee) shall become a Limited Partner and the Combined Interest shall be converted into Common Units pursuant to a valuation made by an investment banking firm or other independent expert selected pursuant to Section 11.3(a), without reduction in such Partnership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor General Partner shall indemnify the Departing General Partner (or its transferee) as to all debts and liabilities of the Partnership arising on or after the date on which the Departing General Partner (or its transferee) becomes a Limited Partner. For purposes of this Agreement, conversion of the Combined Interest to Common Units will be characterized as if the Departing General Partner (or its Affiliates) contributed the

Combined Interest to the Partnership in exchange for the newly issued Common Units.

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Section 11.4 *Withdrawal of Limited Partners*. No Limited Partner shall have any right to withdraw from the Partnership; *provided, however*, that when a transferee of a Limited Partner's Partnership Interest becomes a Record Holder of the Partnership Interest so transferred, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Partnership Interest so transferred.

## **ARTICLE XII**

### **DISSOLUTION AND LIQUIDATION**

Section 12.1 *Dissolution*. The Partnership shall not be dissolved by the admission of additional Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the removal or withdrawal of the General Partner, if a successor General Partner is elected pursuant to Section 11.1, Section 11.2 or Section 12.2, to the fullest extent permitted by law, the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

- (a) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and such successor is admitted to the Partnership pursuant to Section 10.2;
- (b) an election to dissolve the Partnership by the General Partner that is approved by the holders of a Unit Majority;
- (c) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or
- (d) at any time there are no Limited Partners, unless the Partnership is continued without dissolution in accordance with the Delaware Act.

Section 12.2 *Continuation of the Business of the Partnership After Dissolution*. Upon (a) an Event of Withdrawal caused by the withdrawal or removal of the General Partner as provided in Section 11.1(a)(i) or Section 11.1(a)(iii) and the failure of the Partners to select a successor to such Departing General Partner pursuant to Section 11.1 or Section 11.2, then within 90 days thereafter, or (b) an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), 11.1(a)(v) or 11.1(a)(iv), then, to the maximum extent permitted by law, within 180 days thereafter, a Unit Majority may elect to continue the business of the Partnership on the same terms and conditions set forth in this Agreement by appointing as the successor General Partner a Person approved by a Unit Majority. Unless such an election is made within the applicable time period as set forth above, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

- (i) the Partnership shall continue without dissolution unless earlier dissolved in accordance with this Article XII;
- (ii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be treated in the manner provided in Section 11.3; and
- (iii) the successor General Partner shall be admitted to the Partnership as General Partner, effective as of the Event of Withdrawal, by agreeing in writing to be bound by this Agreement;

provided, that the right of a Unit Majority to approve a successor General Partner and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an Opinion of Counsel that the exercise of the right would not result in the loss of the limited liability of any Limited Partner under the Delaware Act.





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**Section 12.3 Liquidator.** Upon dissolution of the Partnership, unless the business of the Partnership is continued pursuant to Section 12.2, the General Partner shall select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of a Unit Majority. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of a Unit Majority. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by a Unit Majority. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.4) necessary or appropriate to carry out the duties and functions of the Liquidator hereunder for and during the period of time required to complete the winding up and liquidation of the Partnership as provided for herein.

**Section 12.4 Liquidation.** The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as determined by the Liquidator, subject to Section 17-804 of the Delaware Act and the following:

(a) The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 12.4(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. The Liquidator may defer liquidation or distribution of the Partnership's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Partnership's assets would be impractical or would cause undue loss to the Partners. The Liquidator may distribute the Partnership's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) Liabilities of the Partnership include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 12.3) and amounts to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) All property and all cash in excess of that required to satisfy or discharge liabilities as provided in Section 12.4(b) shall be distributed to the Partners in accordance with the priorities for distributions set forth in Section 6.1(b) and such distribution shall be made by the end of such taxable period (or, if later, within 90 days after said date of such occurrence).

**Section 12.5 Cancellation of Certificate of Limited Partnership.** Upon the completion of the distribution of Partnership cash and property as provided in Section 12.4 in connection with the liquidation of the Partnership, the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

Section 12.6 *Return of Contributions*. The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Partners or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

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Section 12.7 *Waiver of Partition*. To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

## **ARTICLE XIII**

### **AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS; RECORD DATE**

Section 13.1 *Amendments to be Adopted Solely by the General Partner*. Each Partner agrees that the General Partner, without the approval of any other Partner, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

- (a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;
- (b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;
- (c) a change that the General Partner determines to be necessary or appropriate to qualify or continue the qualification of the Partnership as a limited partnership or a partnership in which the Limited Partners have limited liability under the laws of any state;
- (d) a change that the General Partner determines (i) 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, (ii) to be necessary or appropriate to (A) satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Units (including the division of any class or classes of Outstanding Units into different classes to facilitate uniformity of tax consequences within such classes of Units) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which any class of Partnership Interests are or will be listed or admitted to trading, (iii) to be necessary or appropriate in connection with action taken by the General Partner pursuant to Section 5.7 or (iv) is required to effect the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement;
- (e) a change in the fiscal year or taxable period of the Partnership and any other changes that the General Partner determines to be necessary or appropriate as a result of a change in the fiscal year or taxable period of the Partnership including, if the General Partner shall so determine, a change in the definition of Quarter and the dates on which distributions are to be made by the Partnership;
- (f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Partnership, or the General Partner or Diamondback or their respective directors, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or plan asset regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;
- (g) an amendment that the General Partner determines to be necessary or appropriate in connection with the creation, authorization or issuance of any class or series of Partnership Interests or any Derivative Instruments pursuant to Section 5.5;
- (h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;



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(i) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 14.3;

(j) an amendment that the General Partner determines to be necessary or appropriate to reflect and account for the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity, in connection with the conduct by the Partnership of activities permitted by the terms of Section 2.4 or Section 7.1(a);

(k) a merger or conveyance pursuant to Section 14.3(d) or Section 14.3(e); or

(l) any other amendments substantially similar to the foregoing.

**Section 13.2 *Amendment Procedures.*** Amendments to this Agreement may be proposed only by the General Partner. To the fullest extent permitted by law, the General Partner shall have no duty or obligation to propose or approve any amendment to this Agreement and may decline to do so in its sole discretion. An amendment shall be effective upon its approval by the General Partner and, except as otherwise provided by Section 13.1 or Section 13.3, a Unit Majority, unless a greater or different percentage is required under this Agreement or by Delaware law. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of Outstanding Units or call a meeting of the Unitholders to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any amendments. The General Partner shall be deemed to have notified all Record Holders as required by this Section 13.2 if it has either (a) filed such amendment with the Commission via its Electronic Data Gathering, Analysis and Retrieval system and such amendment is publicly available on such system or (b) made such amendment available on any publicly available website maintained by the Partnership.

## **Section 13.3 *Amendment Requirements.***

(a) Notwithstanding the provisions of Section 13.1 (other than Section 13.1(d)(iv)) and Section 13.2, no provision of this Agreement (other than Section 11.2 or Section 13.4) that establishes a percentage of Outstanding Units (including Units deemed owned by the General Partner) or requires a vote or approval of Partners (or a subset of Partners) holding a specified Percentage Interest to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of reducing or increasing such percentage, unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute not less than the voting requirement sought to be reduced or increased, as applicable, or the affirmative vote of Partners whose aggregate Percentage Interests constitute not less than the voting requirement sought to be reduced or increased, as applicable.

(b) Notwithstanding the provisions of Section 13.1 (other than Section 13.1(d)(iv)) and Section 13.2, no amendment to this Agreement may (i) enlarge the obligations of (including requiring any holder of a class of Partnership Interests to make additional Capital Contributions to the Partnership) any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3(c), or (ii) enlarge the obligations of, restrict, change or modify in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner or any of its Affiliates without its consent, which consent may be given or withheld at its option.

(c) Except as provided in Section 14.3 or Section 13.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Partnership Interests in relation to other classes of Partnership Interests must

be approved by the holders of not less than a majority of the Outstanding Partnership Interests of the class affected. If the General Partner determines an amendment does not satisfy the requirements of Section 13.1(d)(i) because it adversely affects one or more classes of Partnership Interests, as compared to

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other classes of Partnership Interests, in any material respect, such amendment shall only be required to be approved by the adversely affected class or classes.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 13.1 and except as otherwise provided by Section 14.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Percentage Interests of all Limited Partners voting as a single class unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner under applicable partnership law of the state under whose laws the Partnership is organized.

(e) Except as provided in Section 13.1, this Section 13.3 shall only be amended with the approval of Partners (including the General Partner and its Affiliates) holding at least 90% of the Percentage Interests of all Limited Partners.

**Section 13.4 *Special Meetings*.** All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the Outstanding Units of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the specific purposes for which the special meeting is to be called and the class or classes of Units for which the meeting is proposed. No business may be brought by any Limited Partner before such special meeting except the business listed in the related request. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the time notice of the meeting is given as provided in Section 16.1. Limited Partners shall not vote on matters that would cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

**Section 13.5 *Notice of a Meeting*.** Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Units for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 16.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

**Section 13.6 *Record Date*.** For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11 the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed or admitted to trading or U.S. federal securities laws, in which case the rule, regulation, guideline or requirement of such National Securities Exchange or U.S. federal securities laws shall govern) or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the General Partner to give such approvals. If the General Partner does not set a Record Date, then (a) the Record Date for determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners shall be the close of business on the day next preceding the day on which notice is given, and (b) the Record Date for determining the Limited Partners entitled to give approvals without a meeting shall be the date the first written approval is deposited with the Partnership in care of the General Partner in accordance with Section 13.11.

Section 13.7 *Adjournment*. Prior to the date upon which any meeting of Limited Partners is to be held, the General Partner may postpone such meeting one or more times for any reason by giving notice to each Limited



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Partner entitled to vote at the meeting so postponed of the place, date and hour at which such meeting would be held. Such notice shall be given not fewer than two days before the date of such meeting and otherwise in accordance with this Article XIII. When a meeting is postponed, a new Record Date need not be fixed unless such postponement shall be for more than 45 days. Any meeting of Limited Partners may be adjourned by the General Partner one or more times for any reason, including the failure of a quorum to be present at the meeting with respect to any proposal or the failure of any proposal to receive sufficient votes for approval. No Limited Partner vote shall be required for any adjournment. A meeting of Limited Partners may be adjourned by the General Partner as to one or more proposals regardless of whether action has been taken on other matters. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

Section 13.8 *Waiver of Notice; Approval of Meeting; Approval of Minutes*. The transaction of business at any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Limited Partner attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.

Section 13.9 *Quorum and Voting*. The holders of a majority, by Percentage Interest, of Partnership Interests of the class or classes for which a meeting has been called (including Partnership Interests deemed owned by the General Partner) represented in person or by proxy shall constitute a quorum at a meeting of Partners of such class or classes unless any such action by the Partners requires approval by holders of a greater Percentage Interest, in which case the quorum shall be such greater Percentage Interest. At any meeting of the Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of holders of Partnership Interests that, in the aggregate, represent a majority of the Percentage Interest of those present in person or by proxy at such meeting shall be deemed to constitute the act of all Partners, unless a greater or different percentage is required with respect to such action under the provisions of this Agreement, in which case the act of the holders of Partnership Interests that in the aggregate represent at least such greater or different percentage shall be required; provided, however, that if, as a matter of law or provision of this Agreement, approval by plurality vote of Partners (or any class thereof) is required to approve any action, no minimum quorum shall be required. The Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by holders of the required Percentage Interest specified in this Agreement.

Section 13.10 *Conduct of a Meeting*. The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the

appointment of proxies, the

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appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

**Section 13.11 *Action Without a Meeting.*** If authorized by the General Partner, any action that may be taken at a meeting of the Limited Partners may be taken without a meeting, without a vote and without prior notice, if an approval in writing setting forth the action so taken is signed by Limited Partners owning not less than the minimum percentage, by Percentage Interest, of the Partnership Interests of the class or classes for which a meeting has been called (including Partnership Interests deemed owned by the General Partner), as the case may be, that would be necessary to authorize or take such action at a meeting at which all the Limited Partners entitled to vote at such meeting were present and voted (unless such provision conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed or admitted to trading, in which case the rule, regulation, guideline or requirement of such National Securities Exchange shall govern). Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The General Partner may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Units held by the Limited Partners, the Partnership shall be deemed to have failed to receive a ballot for the Units that were not voted. If approval of the taking of any action by the Limited Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner and (b) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners. Nothing contained in this **Section 13.11** shall be deemed to require the General Partner to solicit all Limited Partners in connection with a matter approved by the holders of the requisite percentage of Units acting by written consent without a meeting.

**Section 13.12 *Right to Vote and Related Matters.***

(a) Only those Record Holders of the Outstanding Units on the Record Date set pursuant to **Section 13.6** shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the Outstanding Units have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Outstanding Units shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Units.

(b) With respect to Units that are held for a Person's account by another Person (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), in whose name such Units are registered, such other Person shall, in exercising the voting rights in respect of such Units on any matter, and unless the arrangement between such Persons provides otherwise, vote such Units in favor of, and at the direction of, the Person who is the beneficial owner, and the Partnership shall be entitled to assume it is so acting without further inquiry. The provisions of this **Section 13.12(b)** (as well as all other provisions of this Agreement) are subject to the provisions of **Section 4.3**.

**Section 13.13 *Class B Units.*** For the avoidance of doubt and notwithstanding anything to the contrary herein, each holder of Class B Units shall be entitled to receive notice of, be included in any requisite quora for, and participate in any and all approvals, votes or other actions of the Partners on a Pro Rata basis as, and treating such Persons for all purposes as if they are, Unitholders holding Common Units, including any and all notices, quora, approvals, votes and other actions that may be taken pursuant to the requirements of the Delaware Act or any other applicable law, rule or

regulation, except as otherwise explicitly provided herein. The affirmative vote of the holders of a majority of the voting power of all Class B Units voting separately as a class shall be required to alter, amend or repeal this Section 13.13 or to adopt any provision of this Agreement inconsistent with this Section 13.13.

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**ARTICLE XIV**

**MERGER**

Section 14.1 *Authority*. The Partnership may merge or consolidate with or into one or more corporations, limited liability companies, business trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a general partnership or limited partnership, formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written agreement of merger or consolidation ( ***Merger Agreement*** ) in accordance with this Article XIV.

Section 14.2 *Procedure for Merger or Consolidation*.

(a) Merger or consolidation of the Partnership pursuant to this Article XIV requires the prior consent of the General Partner, *provided, however*, that, to the fullest extent permitted by law, the General Partner, in declining to consent to a merger or consolidation, may act in its sole discretion.

(b) If the General Partner shall determine to consent to the merger or consolidation, the General Partner shall approve the Merger Agreement, which shall set forth:

(i) the name and jurisdiction of formation or organization of each of the business entities proposing to merge or consolidate;

(ii) the name and jurisdiction of formation or organization of the business entity that is to survive the proposed merger or consolidation (the *Surviving Business Entity* );

(iii) the terms and conditions of the proposed merger or consolidation;

(iv) the manner and basis of exchanging or converting the equity interests of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the *Surviving Business Entity*; and (i) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the *Surviving Business Entity*, the cash, property or general or limited partner interests, rights, securities or obligations of any limited partnership, corporation, trust or other entity (other than the *Surviving Business Entity*) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their general or limited partner interests, securities or rights, and (ii) in the case of equity interests represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the *Surviving Business Entity* or any general or limited partnership, corporation, trust or other entity (other than the *Surviving Business Entity*), or evidences thereof, are to be delivered;

(v) a statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership or other similar charter or governing document) of the *Surviving Business Entity* to be effected by such merger or consolidation;

(vi) the effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of the certificate of merger, the effective time shall be fixed no later than the time of the filing of the certificate of merger and stated therein); and

(vii) such other provisions with respect to the proposed merger or consolidation that the General Partner determines to be necessary or appropriate.

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### *Section 14.3 Approval by Partners of Merger or Consolidation.*

(a) Except as provided in Section 14.3(d) and Section 14.3(e), the General Partner, upon its approval of the Merger Agreement, shall direct that the Merger Agreement be submitted to a vote of Partners, whether at a special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement shall be included in or enclosed with the notice of a special meeting or the written consent.

(b) Except as provided in Section 14.3(d) and Section 14.3(e), the Merger Agreement shall be approved upon receiving the affirmative vote or consent of the holders of a Unit Majority unless the Merger Agreement contains any provision that, if contained in an amendment to this Agreement, the provisions of this Agreement or the Delaware Act would require for its approval the vote or consent of a greater percentage of the Outstanding Units or of any class of Limited Partners, in which case such greater percentage vote or consent shall be required for approval of the Merger Agreement.

(c) Except as provided in Section 14.3(d) and Section 14.3(e), after such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger pursuant to Section 14.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement.

(d) 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 and the General Partner with substantially the same rights and obligations as are herein contained.

(e) Additionally, notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without Limited Partner approval, to merge or consolidate the Partnership with or into another entity if (A) the General Partner has received an Opinion of Counsel that the merger or consolidation, as the case may be, would not result in the loss of the limited liability under the Delaware Act of any Limited Partner, (B) the merger or consolidation would not result in an amendment to this Agreement, other than any amendments that could be adopted pursuant to Section 13.1, (C) the Partnership is the Surviving Business Entity in such merger or consolidation, (D) each Partnership Interest outstanding immediately prior to the effective date of the merger or consolidation is to be an identical Partnership Interest of the Partnership after the effective date of the merger or consolidation, and (E) the number of Partnership Interests to be issued by the Partnership in such merger or consolidation does not exceed 20% of the Partnership Interests Outstanding immediately prior to the effective date of such merger or consolidation.

*Section 14.4 Certificate of Merger.* Upon the required approval by the General Partner and the Unitholders of a Merger Agreement, a certificate of merger shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

Section 14.5 *Amendment of Partnership Agreement*. Pursuant to Section 17-211(g) of the Delaware Act, an agreement of merger or consolidation approved in accordance with this Article XIV may (a) effect any amendment to this Agreement or (b) effect the adoption of a new partnership agreement for the Partnership if it is



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the Surviving Business Entity. Any such amendment or adoption made pursuant to this Section 14.5 shall be effective at the effective time or date of the merger or consolidation.

### ***Section 14.6 Effect of Merger or Consolidation.***

(a) At the effective time of the certificate of merger:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities, shall be vested in the Surviving Business Entity and after the merger or consolidation shall be the property of the Surviving Business Entity to the extent they were of each constituent business entity;

(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and is not in any way impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interests in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(b) A merger or consolidation effected pursuant to this Article shall not be deemed to result in a transfer or assignment of assets or liabilities from one entity to another.

## **ARTICLE XV**

### **RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS**

#### ***Section 15.1 Right to Acquire Limited Partner Interests.***

(a) Notwithstanding any other provision of this Agreement, if at any time the General Partner and its Affiliates hold more than 97% of the total Limited Partner Interests of any class, the General Partner shall then have the right, which right it may assign and transfer in whole or in part to the Partnership or any Affiliate of the General Partner, exercisable in its sole discretion, to purchase all, but not less than all, of such Limited Partner Interests of such class then Outstanding held by Persons other than the General Partner and its Affiliates, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 15.1(b) is mailed and (y) the highest price paid by the General Partner or any of its Affiliates for any such Limited Partner Interest of such class purchased during the 90-day period preceding the date that the notice described in Section 15.1(b) is mailed. Notwithstanding the foregoing, if, at any time, the General Partner and its Affiliates hold less than 75% of the total Limited Partner Interests of any class then Outstanding, from and after that time, the General Partner's right set forth in this Section 15.1(a) shall be exercisable if the General Partner and its Affiliates subsequently hold more than 80% of the total Limited Partner Interests of such class. Notwithstanding anything to the contrary herein, for the purposes of this Section 15.1(a) Common Units and Class B Units shall be considered Limited Partner Interests of a single class.

(b) If the General Partner, any Affiliate of the General Partner or the Partnership elects to exercise the right to purchase Limited Partner Interests granted pursuant to Section 15.1(a), the General Partner shall deliver to the

Transfer Agent notice of such election to purchase (the ***Notice of Election to Purchase*** ) and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of Limited

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Partner Interests of such class (as of a Record Date selected by the General Partner) at least 10, but not more than 60, days prior to the Purchase Date. Such Notice of Election to Purchase shall also be filed and distributed as may be required by the Commission or any National Securities Exchange on which such Limited Partner Interests are listed. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 15.1(a)) at which Limited Partner Interests will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Limited Partner Interests, upon surrender of Certificates representing such Limited Partner Interests in exchange for payment (in the case of Limited Partner Interests evidenced by Certificates), at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading. Any such Notice of Election to Purchase mailed to a Record Holder of Limited Partner Interests at his address as reflected in the records of the Transfer Agent shall be conclusively presumed to have been given regardless of whether the owner receives such notice. On or prior to the Purchase Date, the General Partner, its Affiliate or the Partnership, as the case may be, shall deposit with the Transfer Agent cash in an amount sufficient to pay the aggregate purchase price of all of such Limited Partner Interests to be purchased in accordance with this Section 15.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Limited Partner Interests subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any Certificate shall not have been surrendered for purchase, all rights of the holders of such Limited Partner Interests (including any rights pursuant to Articles IV, V, VI, and VII) shall thereupon cease, except the right to receive the purchase price (determined in accordance with Section 15.1(a)) for Limited Partner Interests therefor, without interest, upon surrender to the Transfer Agent of the Certificates representing such Limited Partner Interests (in the case of Limited Partner Interests evidenced by Certificates), and such Limited Partner Interests shall thereupon be deemed to be transferred to the General Partner, its Affiliate or the Partnership, as the case may be, on the record books of the Transfer Agent and the Partnership, and the General Partner or any Affiliate of the General Partner, or the Partnership, as the case may be, shall be deemed to be the owner of all such Limited Partner Interests from and after the Purchase Date and shall have all rights as the owner of such Limited Partner Interests (including all rights as owner of such Limited Partner Interests pursuant to Articles IV, V, VI, and VII).

(c) In the case of Limited Partner Interests evidenced by Certificates, at any time from and after the Purchase Date, a holder of an Outstanding Limited Partner Interest subject to purchase as provided in this Section 15.1 may surrender his Certificate evidencing such Limited Partner Interest to the Transfer Agent in exchange for payment of the amount described in Section 15.1(a), therefor, without interest thereon.

## **ARTICLE XVI**

### **GENERAL PROVISIONS**

#### *Section 16.1 Addresses and Notices; Written Communications.*

(a) Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner at the address described below. Any notice, payment or report to be given or made to a Partner hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Partnership Interests at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Partnership Interests by reason of any assignment or otherwise. Notwithstanding the foregoing, if (i) a Partner shall consent to

receiving notices, demands, requests, reports or proxy materials via

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electronic mail or by the Internet or (ii) the rules of the Commission shall permit any report or proxy materials to be delivered electronically or made available via the Internet, any such notice, demand, request, report or proxy materials shall be deemed given or made when delivered or made available via such mode of delivery. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 16.1(a) executed by the General Partner, the Transfer Agent or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report given or made in accordance with the provisions of this Section 16.1(a) is returned marked to indicate that such notice, payment or report was unable to be delivered, such notice, payment or report and, in the case of notices, payments or reports returned by the United States Postal Service (or other physical mail delivery mail service outside the United States of America), any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) or other delivery if they are available for the Partner at the principal office of the Partnership for a period of one year from the date of the giving or making of such notice, payment or report to the other Partners. Any notice to the Partnership shall be deemed given if received by the General Partner at the principal office of the Partnership designated pursuant to Section 16.1(a). The General Partner may rely and shall be protected in relying on any notice or other document from a Partner or other Person if believed by it to be genuine.

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

**Section 16.2 *Further Action.*** The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

**Section 16.3 *Binding Effect.*** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

**Section 16.4 *Integration.*** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

**Section 16.5 *Creditors.*** None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

**Section 16.6 *Waiver.*** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

**Section 16.7 *Counterparts.*** This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a Partnership Interest, pursuant to Section 10.1(a) without execution hereof.

**Section 16.8 *Applicable Law; Forum, Venue and Jurisdiction; Waiver of Trial by Jury; Attorney Fees.***

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



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

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

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

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

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

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

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

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

**Section 16.9 *Invalidity of Provisions.*** If any provision or part of a provision of this Agreement is or becomes, for any reason, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions and part thereof contained herein shall not be affected thereby, and this Agreement shall, to the fullest extent permitted by law, be reformed and construed as if such invalid, illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

Section 16.10 *Consent of Partners*. Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the



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Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

Section 16.11 *Facsimile and Email Signatures*. The use of facsimile signatures and signatures delivered by email in portable document format (.pdf) or similar format affixed in the name and on behalf of the transfer agent and registrar of the Partnership on Certificates representing Units is expressly permitted by this Agreement.

Section 16.12 *Third Party Beneficiaries*. Each Partner agrees that (a) any Indemnatee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Indemnatee, and (b) any Unrestricted Person shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Unrestricted Person.

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IN WITNESS WHEREOF, the General Partner executed this Agreement as of the Second A&R Date.

GENERAL PARTNER:

**VIPER ENERGY PARTNERS GP LLC**

By:

Name: Randall J. Holder

Title: Vice President, General Counsel and  
Secretary

**SECOND AMENDED AND RESTATED PARTNERSHIP AGREEMENT OF VIPER ENERGY PARTNERS LP**

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**EXHIBIT A to the Second Amended and Restated Agreement of Limited Partnership of Viper Energy Partners LP**

**Certificate Evidencing Common Units Representing Limited Partner Interests in Viper Energy Partners LP**

No. \_\_\_\_\_ Common Units  
In accordance with Section 4.1 of the Second Amended and Restated Agreement of Limited Partnership of Viper Energy Partners LP, as amended, supplemented or restated from time to time (the **Partnership Agreement**), Viper Energy Partners LP, a Delaware limited partnership (the **Partnership**), hereby certifies that \_\_\_\_\_ (the **Holder**) is the registered owner of \_\_\_\_\_ Common Units representing limited partner interests in the Partnership (the **Common Units**) transferable on the books of the Partnership, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. The rights, preferences and limitations of the Common Units are set forth in, and this Certificate and the Common Units represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Partnership Agreement. Copies of the Partnership Agreement are on file at, and will be furnished without charge on delivery of written request to the Partnership at, the principal office of the Partnership located at 2277 Plaza Drive, Suite 500, Sugar Land, Texas 77479. Capitalized terms used herein but not defined shall have the meanings given them in the Partnership Agreement.

THE HOLDER OF THIS SECURITY ACKNOWLEDGES FOR THE BENEFIT OF VIPER ENERGY PARTNERS LP THAT THIS SECURITY MAY NOT BE SOLD, OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED IF SUCH TRANSFER WOULD (A) VIOLATE THE THEN APPLICABLE FEDERAL OR STATE SECURITIES LAWS OR RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER GOVERNMENTAL AUTHORITY WITH JURISDICTION OVER SUCH TRANSFER OR (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF VIPER ENERGY PARTNERS LP UNDER THE LAWS OF THE STATE OF DELAWARE. THE RESTRICTIONS SET FORTH ABOVE SHALL NOT PRECLUDE THE SETTLEMENT OF ANY TRANSACTIONS INVOLVING THIS SECURITY ENTERED INTO THROUGH THE FACILITIES OF ANY NATIONAL SECURITIES EXCHANGE ON WHICH THIS SECURITY IS LISTED OR ADMITTED TO TRADING.

The Holder, by accepting this Certificate, is deemed to have (i) requested admission as, and agreed to become, a Limited Partner and to have agreed to comply with and be bound by and to have executed the Partnership Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement and (iii) made the waivers and given the consents and approvals contained in the Partnership Agreement.

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This Certificate shall not be valid for any purpose unless it has been countersigned and registered by the Transfer Agent and Registrar. This Certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

Dated: \_\_\_\_\_  
\_\_\_\_\_

VIPER ENERGY PARTNERS LP

Countersigned and Registered by: \_\_\_\_\_  
\_\_\_\_\_

By: VIPER ENERGY PARTNERS GP LLC

Computershare Trust Company, N.A., \_\_\_\_\_

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

As Transfer Agent and Registrar

Title: \_\_\_\_\_  
\_\_\_\_\_

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

Name: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

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[Reverse of Certificate]

**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as follows according to applicable laws or regulations:

TEN COM as tenants in common

TEN ENT as tenants by the entireties

JT TEN as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT/TRANSFERS MIN ACT

\_\_\_\_\_Custodian\_\_\_\_\_

(Cust)

(Minor)

Under Uniform Gifts/Transfers to CD Minors Act  
(State)

Additional abbreviations, though not in the above list, may also be used.

**ASSIGNMENT OF COMMON UNITS OF VIPER ENERGY PARTNERS LP**

FOR VALUE RECEIVED, \_\_\_\_\_ hereby assigns, conveys, sells and transfers unto

(Please print or typewrite name and address of assignee)

(Please insert Social Security or other identifying number of assignee)

\_\_\_\_\_Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint \_\_\_\_\_as its attorney-in-fact with full power of substitution to transfer the same on the books of Viper Energy Partners LP.

Date: \_\_\_\_\_

NOTE: The signature to any endorsement hereon must correspond with the name as written upon the face of this Certificate in every particular. without alteration, enlargement or change.

**THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15**

(Signature)

(Signature)

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer.

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Annex A-2

~~FIRST~~**SECOND** AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
VIPER ENERGY PARTNERS LP

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**~~FIRST~~SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF VIPER ENERGY PARTNERS LP**

THIS ~~FIRST~~SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF VIPER ENERGY PARTNERS LP, dated as of ~~June 23, 2014, is entered into by and among~~ 1, 2018 (the *Second A&R Date* ), ~~is executed by~~ VIPER ENERGY PARTNERS GP LLC, a Delaware limited liability company, as the General Partner, ~~and DIAMONDBACK ENERGY, INC., a Delaware corporation, as the Organizational Limited Partner, together with any other Persons who become Partners in the Partnership or parties hereto~~ as provided herein. ~~In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:~~

**RECITALS:**

WHEREAS, the General Partner and the Organizational Limited Partner previously organized the Partnership as a Delaware limited partnership pursuant to an Agreement of Limited Partnership dated as of February 27, 2014 (the *Original Agreement* );

WHEREAS, the General Partner and the Organizational Limited Partner amended and restated the Original Agreement pursuant to an agreement dated as of June 23, 2014 (the *First Amended and Restated Agreement* );

WHEREAS, the Partnership has elected to be classified as an association taxable as a corporation for federal income tax purposes pursuant to Treasury Regulations Section 301.7701-3(c) (the *Tax Election* ), effective immediately after the closing of the transactions contemplated by the Recapitalization Agreement;

WHEREAS, in order to effect the Tax Election, it is necessary to amend the First Amended and Restated Agreement as provided herein; and

WHEREAS, the Tax Election and this amendment of the First Amended and Restated Agreement has been proposed and approved by the General Partner, and approved by the written consent of a Unit Majority pursuant to Sections 13.2 and 13.11 of the First Amended and Restated Agreement.

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

**ARTICLE I**

**DEFINITIONS**

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

~~—Adjusted Capital Account—means, with respect to any Partner, the balance in such Partner's Capital Account at the end of each taxable period of the Partnership, after giving effect to the following adjustments:~~

~~(a) Credit to such Capital Account any amounts which such Partner is (x) obligated to restore under the standards set by Treasury Regulation Section 1.704-1(b)(2)(ii)(c) or (y) deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and~~

~~(b) Debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6).~~



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~~The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith. The **Adjusted Capital Account** of a Partner in respect of any Partnership Interest shall be the amount that such Adjusted Capital Account would be if such Partnership Interest were the only interest in the Partnership held by such Partner from and after the date on which such Partnership Interest was first issued.~~

~~**Adjusted Property** means any property the Carrying Value of which has been adjusted pursuant to Sections 5.4(d)(i) or 5.4(d)(ii).~~

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

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

~~**Agreed Value** of (a) a Contributed Property means the fair market value of such property at the time of contribution and (b) an Adjusted Property means the fair market value of such Adjusted Property on the date of the Revaluation Event as described in Section 5.4(d), in each case as determined by the General Partner.~~

**Agreement** means this ~~First~~Second Amended and Restated Agreement of Limited Partnership of Viper Energy Partners LP, as it may be amended, supplemented or restated from time to time.

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

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

**Board of Directors** means the board of directors of the General Partner.

~~**Book-Tax Disparity** means with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for U.S. federal income tax purposes as of such date. A Partner's share of the Partnership's Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Partner's Capital Account balance as maintained pursuant to Section 5.4 and the hypothetical balance of such Partner's Capital Account computed as if it had been maintained strictly in accordance with U.S. federal income tax accounting principles.~~

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

~~—**Capital Account**—~~ means the capital account maintained for a Partner pursuant to Section 5.4. The ~~Capital Account~~ of a Partner in respect of any Partnership Interest shall be the amount that such Capital Account would be if such Partnership Interest were the only interest in the Partnership held by such Partner from and after the date on which such Partnership Interest was first issued.

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~~—Capital Account Difference—~~ has the meaning assigned to such term in Section 6.1(b)(xii).

**Capital Contribution** means any cash, cash equivalents or the ~~Net Agreed Value of Contributed Property that~~ fair market value of any property a Partner contributes to the Partnership or that is contributed to the Partnership on behalf of a Partner (including, in the case of an underwritten offering of Units, the amount of any underwriting discounts or commissions).

~~—Carrying Value—~~ means (a) with respect to a Contributed Property or an Adjusted Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, Simulated Depletion, amortization and other cost recovery deductions charged to the Partners' Capital Accounts in respect of such property, and (b) with respect to any other Partnership property, the adjusted basis of such property for U.S. federal income tax purposes, all as of the time of determination. In the case of any oil and gas property (as defined in Section 614 of the Code), adjusted basis shall be determined pursuant to Treasury Regulation Section 1.613A-3(e)(3)(iii)(C). The Carrying Value of any property shall be adjusted from time to time in accordance with Section 5.4(d) and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Partnership properties, as deemed appropriate by the General Partner.

**Cause** means a court of competent jurisdiction has entered a final, non-appealable judgment finding the General Partner liable to the Partnership or any Limited Partner for actual fraud or willful misconduct in its capacity as a general partner of the Partnership.

**Certificate** means a certificate in such form (including global form if permitted by applicable rules and regulations) as may be adopted by the General Partner, issued by the Partnership evidencing ownership of one or more Partnership Interests. The initial form of certificate approved by the General Partner for Common Units is attached as Exhibit A to this Agreement.

**Certificate of Limited Partnership** means the Certificate of Limited Partnership of the Partnership filed with the Secretary of State of the State of Delaware as referenced in Section 7.3, as such Certificate of Limited Partnership may be amended, supplemented or restated from time to time.

**Citizenship Eligibility Trigger** has the meaning assigned to such term in Section 4.8(a)(ii).

**claim** (as used in Section 7.12(c)) has the meaning assigned to such term in Section 7.12(c).

~~—Closing Date—~~ means the first date on which Common Units are issued and delivered by the Partnership to the Underwriters pursuant to the provisions of the Underwriting Agreement.

**Class B Unit** means a Unit representing, when outstanding, a fractional part of the Partnership Interests of all Limited Partners, and having the rights and obligations specified with respect to Class B Units in this Agreement. For the avoidance of doubt, holders of Class B Units, in their capacity as such, shall not have any rights to profits or losses or any rights to receive distributions from operations or upon the liquidation or winding-up of the Partnership.

**Closing Price** means, in respect of any class of Limited Partner Interests, as of the date of determination, the last sale price on such day, regular way, or in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the principal National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading or, if such Limited Partner Interests are not listed or admitted to trading on any National Securities Exchange, the last quoted price on such day or, if not so quoted, the

average of the high bid and low asked prices on such day in the over-the-counter market, as reported by the primary reporting system then in use in relation to such Limited Partner Interests of such class, or, if on any such day such Limited Partner Interests of such class are not quoted

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by any such organization, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in such Limited Partner Interests of such class selected by the General Partner, or if on any such day no market maker is making a market in such Limited Partner Interests of such class, the fair value of such Limited Partner Interests on such day as determined by the General Partner.

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

**Combined Interest** has the meaning assigned to such term in Section 11.3(a).

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

**Common Unit** means a Unit representing, when outstanding, a fractional part of the Partnership Interests of all Limited Partners, and having the rights and obligations specified with respect to Common Units in this Agreement. For the avoidance of doubt, a Class B Unit is not a Common Unit.

**Conflicts Committee** means a committee of the Board of Directors composed entirely of one or more directors, each of whom is determined by the Board of Directors, after reasonable inquiry, (a) to not be an officer or employee of the General Partner (b) to not be an officer or employee of any Affiliate of the General Partner or a director of any Affiliate of the General Partner (other than any Group Member), (c) to not be a holder of any ownership interest in the General Partner or any of its Affiliates, including any Group Member, that would be likely to have an adverse impact on the ability of such director to act in an independent manner with respect to the matter submitted to the Conflicts Committee, other than Common Units and awards that are granted to such director under the Long-Term Incentive Plan, and (d) to be independent under the independence standards for directors who serve on an audit committee of a board of directors established by the Securities Exchange Act and the rules and regulations of the Commission thereunder and by the National Securities Exchange on which any class of Partnership Interests is listed or admitted to trading.

~~**Contributed Property** means each property, in such form as may be permitted by the Delaware Act, but excluding cash, contributed to the Partnership. Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 5.4(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.~~

~~**Contribution Agreement** means that certain Contribution Agreement, dated as of June 17, 2014, among Viper Energy Partners LLC, the General Partner, the Organizational Limited Partner, and the Partnership, together with the additional conveyance documents and instruments contemplated or referenced thereunder.~~

~~**Contribution Date** means the date on which the Organizational Limited Partner contributed all of its equity interests in Viper Energy Partners LLC to the Partnership.~~

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

~~**Curative Allocation** means any allocation of an item of income, gain, deduction, loss or credit pursuant to the provisions of Section 6.1(b)(xi).~~

***Current Market Price*** means, in respect of any class of Partnership Interests, as of the date of determination, the average of the daily Closing Prices per Partnership Interest of such class for the 20 consecutive Trading Days immediately prior to such date.

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~~**Deferred Issuance and Distribution** means both (a) the issuance by the Partnership of a number of additional Common Units that is equal to the excess, if any, of (x) 750,000 over (y) the aggregate number, if any, of Common Units actually purchased by and issued to the Underwriters pursuant to the Over Allotment Option on the Option Closing Date(s), and (b) a distribution of cash in an amount equal to the total amount of cash contributed by the Underwriters to the Partnership on or in connection with any Option Closing Date with respect to Common Units issued by the Partnership upon the applicable exercise of the Over Allotment Option, if any.~~

**Delaware Act** means the Delaware Revised Uniform Limited Partnership Act, 6 Del C. Section 17-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

**Departing General Partner** means a former General Partner from and after the effective date of any withdrawal or removal of such former General Partner pursuant to Section 11.1 or Section 11.2.

**Derivative Instruments** means options, rights, warrants, appreciation rights, tracking, profit and phantom interests and other derivative instruments (other than equity interests in the Partnership) relating to, convertible into or exchangeable for Partnership Interests.

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

**Diamondback** means Diamondback Energy, Inc., a Delaware corporation.

**Eligibility Certificate** has the meaning assigned to such term in Section 4.8(b).

~~**Eligibility Certification** means a properly completed certificate in such form as may be specified by the General Partner by which a Partner certifies that he (and if he is a nominee holding for the account of another Person, that to the best of his knowledge such other Person) is an Eligible Holder.~~

**Eligible Holder** means a Person that satisfies the eligibility requirements established by the General Partner for Partners pursuant to Section 4.8.

~~**Event Issue Value** means, with respect to any Common Unit as of any date of determination, (i) in the case of a Revaluation Event that includes the issuance of Common Units pursuant to a public offering and solely for cash, the price paid for such Common Units, or (ii) in the case of any other Revaluation Event, the Closing Price of the Common Units on the date of such Revaluation Event or, if the General Partner determines that a value for the Common Unit other than such Closing Price more accurately reflects the Event Issue Value, the value determined by the General Partner.~~

**Event of Withdrawal** has the meaning assigned to such term in Section 11.1(a).

**Exchange Agreement** means the Exchange Agreement, dated as of [ ], 2018, among the Partnership, the General Partner, Diamondback and the Operating Company.

~~**Event of Withdrawal**~~**First Amended and Restated Agreement** has the meaning assigned to such term in Section 11.1(a) the recitals to this Agreement.

**General Partner** means Viper Energy Partners GP LLC, a Delaware limited liability company, and its successors and permitted assigns that are admitted to the Partnership as the general partner of the Partnership, in their capacity as the general partner of the Partnership.

***General Partner Interest*** means the non-economic management interest of the General Partner in the Partnership (in its capacity as general partner and without reference to any Limited Partner Interest held by it), which includes any and all rights, powers and benefits to which the General Partner is entitled as provided in this



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Agreement, together with all obligations of the General Partner to comply with the terms and provisions of this Agreement. The General Partner Interest does not include any rights to profits or losses or any rights to receive distributions from operations or upon the liquidation or winding-up of the Partnership.

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

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

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

**Group Member** means a member of the Partnership Group.

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

**Holder** as used in Section 7.12, has the meaning assigned to such term in Section 7.12(a).

**Initial Contribution Date** means the date on which the Organizational Limited Partner contributed all of its equity interests in the Operating Company to the Partnership.

**Indemnified Persons** has the meaning assigned to such term in Section 7.12(c).

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

**Ineligible Holder** has the meaning assigned to such term in Section 4.8(c).

~~**Initial Offering** means the initial offering and sale of Common Units to the public, as described in the Registration Statement, including any offer and sale of Common Units pursuant to an exercise of the Over Allotment Option.~~

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

**Limited Partner** means, unless the context otherwise requires, ~~the Organizational Limited Partner~~, each Unitholder, each additional Person that becomes a Limited Partner pursuant to the terms of this Agreement and any Departing General Partner upon the change of its status from General Partner to Limited Partner pursuant to Section 11.3, in each case in such Person's capacity as a limited partner of the Partnership.

**Limited Partner Interest** means the ownership interest of a Limited Partner in the Partnership, which may be evidenced by Common Units, Class B Units or other Partnership Interests or a combination thereof or interest therein (but excluding Derivative Instruments), and includes any and all benefits to which such Limited Partner is entitled as provided in this Agreement, together with all obligations of such Limited Partner hereunder.

~~**Liquidation Date** means (a) in the case of an event giving rise to the dissolution of the Partnership of the type described in clauses (a) and (b) of the first sentence of Section 12.2, the date on which the applicable time period during which the Partners have the right to elect to continue the business of the Partnership has expired without such an election being made, and (b) in the case of any other event giving rise to the dissolution of the Partnership, the date on which such event occurs.~~

**Liquidator** means one or more Persons selected by the General Partner to perform the functions described in Section 12.4 as liquidating trustee of the Partnership within the meaning of the Delaware Act.

**Long-Term Incentive Plan** means the Viper Energy Partners LP Long-Term Incentive Plan, as it may be amended, restated or modified from time to time, or any equity compensation plan successor thereto.

**Merger Agreement** has the meaning assigned to such term in Section 14.1.

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

~~**Net Agreed Value** means, (a) in the case of any Contributed Property, the Agreed Value of such property reduced by any Liabilities either assumed by the Partnership upon such contribution or to which such property is subject when contributed and (b) in the case of any property distributed to a Partner by the Partnership, the Partnership's Carrying Value of such property (as adjusted pursuant to Section 5.4(d)(ii)) at the time such property is distributed, reduced by any Liabilities either assumed by such Partner upon such distribution or to which such property is subject at the time of distribution.~~

~~**Net Income** means, for any taxable period, the excess, if any, of the Partnership's items of income and gain for such taxable period over the Partnership's items of loss and deduction for such taxable period. The items included in the calculation of Net Income shall be determined in accordance with Section 5.4(b) and shall include Simulated Gain (as provided in Section 6.1(e)(iii)), but shall not include Simulated Depletion, Simulated Loss, or items specially allocated under Section 6.1(b).~~

~~**Net Loss** means, for any taxable period, the excess, if any, of the Partnership's items of loss and deduction for such taxable period over the Partnership's items of income and gain for such taxable period. The items included in the calculation of Net Loss shall be determined in accordance with Section 5.4(b) and shall include Simulated Gain (as provided in Section 6.1(e)(iii)), but shall not include Simulated Depletion, Simulated Loss, or any items specially~~

~~allocated under Section 6.1(b).~~

~~—Noncompensatory Option— has the meaning set forth in Treasury Regulation Section 1.721-2(f).~~

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

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

~~**Nonrecourse Liability** has the meaning set forth in Treasury Regulation Section 752-1(a)(2).~~

**Notice of Election to Purchase** has the meaning assigned to such term in Section 15.1(b).

**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.

**OpCo Limited Liability Company Agreement** means the Second Amended and Restated Limited Liability Company Agreement of the Operating Company, dated as of [ ], 2018, as it may be amended, supplemented or restated from time to time.

**Operating Company** means Viper Energy Partners LLC, a Delaware limited liability company.

**Opinion of Counsel** means a written opinion of counsel (who may be regular counsel to the Partnership or the General Partner or any of its Affiliates) acceptable to the General Partner.

~~**Option Closing Date** means the date or dates on which any Common Units are sold by the Partnership to the Underwriters upon exercise of the Over-Allotment Option.~~

**Organizational Limited Partner** means Diamondback Energy, Inc., in its previous capacity as the organizational limited partner of the Partnership ~~pursuant to this Agreement.~~

**Original Agreement** has the meaning assigned to such term in the recitals to this Agreement.

**Outstanding** means, with respect to Partnership Interests, all Partnership Interests that are issued by the Partnership and reflected as outstanding on the Partnership's books and records as of the date of determination; *provided, however*, that if at any time any Person or Group (other than the General Partner or its Affiliates) beneficially owns 20% or more of the Partnership Interests of any class, none of the Partnership Interests owned by such Person or Group shall be entitled to be voted on any matter or be considered to be Outstanding when sending notices of a meeting of Limited Partners to vote on any matter (unless otherwise required by law), calculating required votes, determining the presence of a quorum or for other similar purposes under this Agreement, except that Partnership Interests so owned shall be considered to be Outstanding for purposes of Section 11.1(b)(iv) (such Partnership Interests shall not, however, be treated as a separate class of Partnership Interests for purposes of this Agreement or the Delaware Act); provided, further, that the foregoing limitation shall not apply to (i) any Person or Group who acquired 20% or more of the Partnership Interests of any class directly from the General Partner or its Affiliates (other than the Partnership), (ii) any Person or Group who acquired 20% or more of the Partnership Interests of any class directly or indirectly from a Person or Group described in clause (i) provided that the General Partner shall have notified such Person or Group in writing that such limitation shall not apply, or (iii) any Person or Group who acquired 20% or more of any Partnership Interests issued by the Partnership provided that the General Partner shall have notified such Person or

Group in writing that such limitation shall not apply.

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~~—Over Allotment Option—~~ means ~~the over allotment option granted to the Underwriters by the Partnership pursuant to the Underwriting Agreement.~~

~~—Partner Nonrecourse Debt—~~ has the meaning given to such term in Treasury Regulation ~~Section 1.704-2(b)(4).~~

~~—Partner Nonrecourse Debt Minimum Gain—~~ has the meaning given to such term in Treasury Regulation Section ~~1.704-2(i)(2).~~

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

**Partners** means the General Partner and the Limited Partners.

**Partnership** means Viper Energy Partners LP, a Delaware limited partnership.

**Partnership Group** means the Partnership and its Subsidiaries.

**Partnership Interest** means any class or series of equity interest (or, in the case of the General Partner, management interest) in the Partnership, which shall include any General Partner Interest and Limited Partner Interests but shall exclude Derivative Instruments.

~~—Partnership Minimum Gain—~~ means ~~that amount determined in accordance with the principles of Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).~~

**Percentage Interest** means as of any date of determination, as to any Unitholder with respect to Units, the quotient obtained by dividing (i) the number of Units held by such Unitholder by (ii) the total number of Outstanding Units. The Percentage Interest with respect to the General Partner Interest shall at all times be zero.

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

**Privately Placed Units** means any Common Units issued for cash or property other than pursuant to a public offering.

**Pro Rata** means when used with respect to (a) Units or any class thereof, apportioned equally among all designated Units in accordance with their relative Percentage Interests, (b) all Partners or Record Holders, apportioned among all Partners or Record Holders in accordance with their relative Percentage Interests, and (c) some but not all Partners or Record Holders, apportioned among such Partners or Record Holders in accordance with their relative Percentage Interests.

**Purchase Date** means the date determined by the General Partner as the date for purchase of all Outstanding Limited Partner Interests of a certain class (other than Limited Partner Interests owned by the General Partner and its Affiliates) pursuant to Article XV.

**Quarter** means, unless the context requires otherwise, a fiscal quarter of the Partnership, ~~or, with respect to the fiscal quarter of the Partnership in which the Closing Date occurs, the portion of such fiscal quarter after the Closing Date.~~

***Rate Eligibility Trigger*** has the meaning assigned to such term in Section 4.8(a)(i).



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

**Recapitalization Agreement** means the Recapitalization Agreement, dated as of March 28, 2018, among the Partnership, the General Partner, the Operating Company and Diamondback.

**Record Date** means the date established by the General Partner or otherwise in accordance with this Agreement for determining (a) the identity of the Record Holders entitled to notice of, or to vote at, any meeting of Limited Partners or entitled to vote by ballot or give approval of Partnership action in writing without a meeting or entitled to exercise rights in respect of any lawful action of Limited Partners or (b) the identity of Record Holders entitled to receive any report or distribution or to participate in any offer.

**Record Holder** means (a) with respect to Partnership Interests of any class for which a Transfer Agent has been appointed, the Person in whose name a Partnership Interest of such class is registered on the books of the Transfer Agent as of the opening of business on a particular Business Day, or (b) with respect to other classes of Partnership Interests, the Person in whose name any such other Partnership Interest is registered on the books that the General Partner has caused to be kept as of the opening of business on such Business Day.

**Redeemable Interests** means any Partnership Interests for which a redemption notice has been given, and has not been withdrawn, pursuant to Section 4.9.

**Registration Rights Agreement** means that certain Amended and Restated Registration Rights Agreement, dated as of ~~June 23, 2014, among the Organizational Limited Partner~~ [ ], 2018, between Diamondback and the Partnership.

**Second A&R Date** has the meaning assigned to such term in the introductory paragraph to this Agreement.

~~**Registration Statement** means the Registration Statement on Form S-1 (File No. 333-195769) as it has been or as it may be amended or supplemented from time to time, filed by the Partnership with the Commission under the Securities Act to register the offering and sale of the Common Units in the Initial Offering, including any related registration statement filed pursuant to Rule 462(b) under the Securities Act.~~

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

~~**Revaluation Event** means an event that results in an adjustment of the Carrying Value of each Partnership property pursuant to Section 5.4(d).~~

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

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

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

~~—**Simulated Depletion**—~~ means, with respect to an oil and gas property (as defined in Section 614 of the Code), a depletion allowance computed in accordance with federal income tax principles set forth in Treasury

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~~Regulation Section 1.611-2(a)(1) (as if the Simulated Basis of the property was its adjusted tax basis) and in the manner specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(k)(2), applying the cost depletion method. For purposes of computing Simulated Depletion with respect to any oil and gas property (as defined in Section 614 of the Code), the Simulated Basis of such property shall be deemed to be the Carrying Value of such property, and in no event shall such allowance for Simulated Depletion, in the aggregate, exceed such Simulated Basis. If the Carrying Value of an oil and gas property is adjusted pursuant to Section 5.4(d) during a taxable period, following such adjustment Simulated Depletion shall thereafter be calculated under the foregoing provisions based upon such adjusted Carrying Value.~~

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

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

**Special Approval** means approval by a majority of the members of the Conflicts Committee, whether in the form of approval or approval and recommendation to the Board of Directors.

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

**Surviving Business Entity** has the meaning assigned to such term in Section 14.2(b)(ii).

**Tax Election** has the meaning assigned to such term in the recitals to this Agreement.

**Trading Day** means a day on which the principal National Securities Exchange on which the referenced Partnership Interests of any class are listed or admitted to trading is open for the transaction of business or, if such Partnership Interests are not listed or admitted to trading on any National Securities Exchange, a day on which banking institutions in New York City generally are open.

**transfer** has the meaning assigned to such term in Section 4.4(a).

**Transfer Agent** means such bank, trust company or other Person (including the General Partner or one of its Affiliates) as may be appointed from time to time by the Partnership to act as registrar and transfer agent for any class of Partnership Interests; provided that if no Transfer Agent is specifically designated for any class of Partnership Interests, the General Partner shall act in such capacity.

**Treasury**~~Regulation~~**Regulations** means the United States Treasury regulations promulgated under the Code.

~~**Underwriter** means each Person named as an underwriter in the Underwriting Agreement who purchases Common Units pursuant thereto.~~

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~~—Underwriting Agreement—~~ means that certain Underwriting Agreement dated June 17, 2014, by and among the representatives of the Underwriters, the Partnership, the General Partner and the other parties thereto, providing for the purchase of Common Units by the Underwriters.

**Unit** means a Partnership Interest that is designated as a Unit and shall include Common Units and Class B Units.

**Unit Majority** means a majority of the Outstanding ~~Common~~ Units, voting together as a single class.

**Unitholders** means the holders of Units.

~~—Unrealized Gain—~~ attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the fair market value of such property as of such date (as determined under Section 5.4(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.4(d) as of such date).

~~—Unrealized Loss—~~ attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.4(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 5.4(d)).

**Unrestricted Person** means each Indemnitee, each Partner and each Person who is or was a member, partner, director, officer, employee or agent of any Group Member, the General Partner or any Departing General Partner or any Affiliate of any Group Member, the General Partner or any Departing General Partner and any Person the General Partner designates as an Unrestricted Person for purposes of this Agreement.

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

**Withdrawal Opinion of Counsel** has the meaning assigned to such term in Section 11.1(b).

Section 1.2 *Construction.* Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; (c) the terms include, includes, including and words of like import shall be deemed to be followed by the words without limitation; and (d) the terms hereof, herein and hereunder refer to this Agreement as whole and not to any particular provision of this Agreement. The table of contents and headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement. The General Partner has the power to construe and interpret this Agreement and to act upon any such construction or interpretation. Any construction or interpretation of this Agreement by the General Partner and any action taken pursuant thereto and any determination made by the General Partner in good faith shall, in each case, be conclusive and binding on all Record Holders and all other Persons for all purposes.

## ARTICLE II

### ORGANIZATION

Section 2.1 *Formation.* The General Partner and the Organizational Limited Partner previously formed the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. The General Partner ~~and the Organizational Limited Partner hereby amend and restate the original~~ hereby amends and restates the First Amended and Restated

Agreement of Limited Partnership of the Partnership in its entirety [pursuant to](#)

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Article XIII thereof. This amendment and restatement shall become effective on the date of this Agreement. Except as expressly provided to the contrary in this Agreement, the rights, duties (including fiduciary duties), liabilities and obligations of the Partners and the administration, dissolution and termination of the Partnership shall be governed by the Delaware Act.

**Section 2.2 Name.** The name of the Partnership shall be Viper Energy Partners LP. The Partnership's business may be conducted under any other name or names as determined by the General Partner, including the name of the General Partner. The words Limited Partnership, the letters LP, or Ltd. or similar words or letters shall be included in the Partnership's name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The General Partner may change the name of the Partnership at any time and from time to time and shall notify the Partners of such change in the next regular communication to the Partners.

**Section 2.3 Registered Office; Registered Agent; Principal Office; Other Offices.** Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be Corporation Service Company. The principal office of the Partnership shall be located at 500 West Texas Avenue, Suite 1200, Midland, Texas 79701 or such other place as the General Partner may from time to time designate by notice to the Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner determines to be necessary or appropriate. The address of the General Partner shall be 500 West Texas Avenue, Suite 1200, Midland, Texas 79701 or such other place as the General Partner may from time to time designate by notice to the Partners.

**Section 2.4 Purpose and Business.** The purpose and nature of the business to be conducted by the Partnership shall be to (a) ~~to~~ engage directly in, or enter into or form, hold and dispose of any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the General Partner, in its sole discretion, and that lawfully may be conducted by a limited partnership organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Partnership pursuant to the agreements relating to such business activity, and (b) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to a Group Member; ~~provided, however, that the General Partner shall not cause the Partnership to engage, directly or indirectly, in any business activity that the General Partner determines would be reasonably likely to cause the Partnership to be treated as an association taxable as a corporation or otherwise taxable as an entity for U.S. federal income tax purposes.~~ To the fullest extent permitted by law, the General Partner shall have no duty or obligation to propose or approve, and may, in its sole discretion, decline to propose or approve, the conduct by the Partnership Group of any business.

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

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

**Section 2.7 Title to Partnership Assets.** Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner, one or more of its Affiliates or

one or more nominees, as the General Partner may determine. The General Partner



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hereby declares and warrants that any Partnership assets for which record title is held in the name of the General Partner or one or more of its Affiliates or one or more nominees shall be held by the General Partner or such Affiliate or nominee for the use and benefit of the Partnership in accordance with the provisions of this Agreement; *provided, however*, that the General Partner shall use reasonable efforts to cause record title to such assets (other than those assets in respect of which the General Partner determines that the expense and difficulty of conveyancing makes transfer of record title to the Partnership impracticable) to be vested in the Partnership or one or more of the ~~Partner~~ sPartnership s designated Affiliates as soon as reasonably practicable; provided, further, that, prior to the withdrawal or removal of the General Partner or as soon thereafter as practicable, the General Partner shall use reasonable efforts to effect the transfer of record title to the Partnership and, prior to any such transfer, will provide for the use of such assets in a manner satisfactory to the General Partner. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which record title to such Partnership assets is held.

## **ARTICLE III**

### **RIGHTS OF LIMITED PARTNERS**

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

**Section 3.2 *Management of Business.*** No Limited Partner, in its capacity as such, shall participate in the operation, management or control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. No action taken by any Affiliate of the General Partner or any officer, director, employee, manager, member, general partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, director, employee, manager, member, general partner, agent or trustee of a Group Member, in its capacity as such, shall be considered participating in the control of the business of the Partnership by a limited partner of the Partnership (within the meaning of Section 17-303(a) of the Delaware Act) nor shall any such action affect, impair or eliminate the limitations on the liability of the Limited Partners under this Agreement.

**Section 3.3 *Outside Activities of the Limited Partners.*** Subject to the provisions of Section 7.6, which shall continue to be applicable to the Persons referred to therein, regardless of whether such Persons shall also be Limited Partners, each Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities in direct competition with the Partnership Group. Neither the Partnership nor any of the other Partners shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner.

**Section 3.4 *Rights of Limited Partners.***

(a) Each Limited Partner shall have the right, for a purpose that is reasonably related, as determined by the General Partner, to such Limited Partner's interest as a Limited Partner in the Partnership, upon reasonable written demand stating the purpose of such demand and at such Limited Partner's own expense to obtain:

(i) true and full information regarding the status of the business and financial condition of the Partnership (provided that the requirements of this Section 3.4(a)(i) shall be satisfied to the extent the Limited Partner is furnished the Partnership's most recent annual report and any subsequent quarterly or periodic reports required to be filed (or which would be required to be filed) with the Commission pursuant to Section 13 of the Securities Exchange Act);

(ii) a current list of the name and last known business, residence or mailing address of each Record Holder;

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(iii) a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto, together with copies of the executed copies of all powers of attorney pursuant to which this Agreement, the Certificate of Limited Partnership and all amendments thereto have been executed; and

(iv) such other information regarding the affairs of the Partnership as the General Partner determines is just and reasonable.

(b) The rights pursuant to Section 3.4(a) replace in their entirety any rights to information provided for in Section 17-305(a) of the Delaware Act and each of the Partners, each other Person who acquires an interest in a Partnership Interest and each other Person bound by this Agreement hereby agrees to the fullest extent permitted by law that they do not have any rights as Partners to receive any information either pursuant to ~~Sections~~Section 17-305(a) of the Delaware Act or otherwise except for the information identified in Section 3.4(a).

(c) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, (i) any information that the General Partner reasonably believes to be in the nature of trade secrets or (ii) other information the disclosure of which the General Partner believes (A) is not in the best interests of the Partnership Group, (B) could damage the Partnership Group or its business or (C) that any Group Member is required by law or by agreement with any third party to keep confidential.

(d) Notwithstanding any other provision of this Agreement or Section 17-305 of the Delaware Act, each of the Partners, each other Person who acquires an interest in a Partnership Interest and each other Person bound by this Agreement hereby agrees to the fullest extent permitted by law that they do not have rights to receive information from the Partnership or any Indemnitee for the purpose of determining whether to pursue litigation or assist in pending litigation against the Partnership or any Indemnitee relating to the affairs of the Partnership except pursuant to the applicable rules of discovery relating to litigation commenced by such Person.

## **ARTICLE IV**

### **CERTIFICATES; RECORD HOLDERS; TRANSFER OF PARTNERSHIP INTERESTS; REDEMPTION OF PARTNERSHIP INTERESTS**

Section 4.1 *Certificates*. Notwithstanding anything to the contrary herein, unless the General Partner shall determine otherwise in respect of some or all of any or all classes of Partnership Interests, Partnership Interests shall not be evidenced by certificates. Certificates that are issued shall be executed on behalf of the Partnership by the Chairman of the Board, President, Chief Executive Officer or any Executive Vice President or Vice President and the Chief Financial Officer or the Secretary or any Assistant Secretary of the General Partner. No Certificate for a class of Partnership Interests shall be valid for any purpose until it has been countersigned by the Transfer Agent for such class of Partnership Interests; *provided, however*, that if the General Partner elects to cause the Partnership to issue Partnership Interests of such class in global form, the Certificate shall be valid upon receipt of a certificate from the Transfer Agent certifying that the Partnership Interests have been duly registered in accordance with the directions of the Partnership.

Section 4.2 *Mutilated, Destroyed, Lost or Stolen Certificates*.

(a) If any mutilated Certificate is surrendered to the Transfer Agent, the appropriate officers of the General Partner on behalf of the Partnership shall execute, and the Transfer Agent shall countersign and deliver in exchange therefor, a new Certificate evidencing the same number and type of Partnership Interests as the Certificate so surrendered.



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(b) The appropriate officers of the General Partner on behalf of the Partnership shall execute and deliver, and the Transfer Agent shall countersign, a new Certificate in place of any Certificate previously issued if the Record Holder of the Certificate:

(i) makes proof by affidavit, in form and substance satisfactory to the General Partner, that a previously issued Certificate has been lost, destroyed or stolen;

(ii) requests the issuance of a new Certificate before the General Partner has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(iii) if requested by the General Partner, delivers to the General Partner a bond, in form and substance satisfactory to the General Partner, with surety or sureties and with fixed or open penalty as the General Partner may direct, to indemnify the Partnership, the Partners, the General Partner and the Transfer Agent against any claim that may be made on account of the alleged loss, destruction or theft of the Certificate; and

(iv) satisfies any other reasonable requirements imposed by the General Partner or the Transfer Agent.

If a Limited Partner fails to notify the General Partner within a reasonable period of time after such Limited Partner has notice of the loss, destruction or theft of a Certificate, and a transfer of the Limited Partner Interests represented by the Certificate is registered before the Partnership, the General Partner or the Transfer Agent receives such notification, the Limited Partner shall be precluded from making any claim against the Partnership, the General Partner or the Transfer Agent for such transfer or for a new Certificate.

(c) As a condition to the issuance of any new Certificate under this Section 4.2, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Transfer Agent) reasonably connected therewith.

**Section 4.3 *Record Holders.*** The Partnership and the General Partner shall be entitled to recognize the Record Holder as the Partner with respect to any Partnership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in, such Partnership Interest on the part of any other Person, regardless of whether the Partnership shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which such Partnership Interests are listed or admitted to trading. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing) is acting as nominee, agent or in some other representative capacity for another Person in acquiring and/or holding Partnership Interests, as between the Partnership on the one hand, and such other Persons on the other, such representative Person shall be (a) the Record Holder of such Partnership Interest and (b) bound by this Agreement and shall have the rights and obligations of a Partner hereunder as, and to the extent, provided herein.

**Section 4.4 *Transfer Generally.***

(a) The term ***transfer***, when used in this Agreement with respect to a Partnership Interest, shall mean a transaction (i) by which the General Partner assigns its General Partner Interest to another Person, and includes a sale, assignment, gift, pledge, grant of security interest, encumbrance, hypothecation, mortgage, exchange or any other disposition by law or otherwise, or (ii) by which the holder of a Limited Partner Interest assigns such Limited Partner Interest to another Person who is or becomes a Limited Partner, and includes a sale, assignment, gift, exchange or any other disposition by law or otherwise (but not the pledge, grant of security interest, encumbrance, hypothecation or mortgage), including any transfer upon foreclosure or other exercise of remedies of any pledge, security interest,

encumbrance, hypothecation or mortgage.

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(b) No Partnership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article IV. Any transfer or purported transfer of a Partnership Interest not made in accordance with this Article IV shall be, to the fullest extent permitted by law, null and void.

(c) Nothing contained in this Agreement shall be construed to prevent a disposition by any stockholder, member, partner or other owner of any Partner of any or all of the shares of stock, membership interests, partnership interests or other ownership interests in such Partner and the term "transfer" shall not mean any such disposition.

### *Section 4.5 Registration and Transfer of Limited Partner Interests.*

(a) The General Partner shall keep or cause to be kept on behalf of the Partnership a register in which, subject to such reasonable regulations as it may prescribe and subject to the provisions of Section 4.5(b), the Partnership will provide for the registration and transfer of Limited Partner Interests.

(b) The Partnership shall not recognize any transfer of Limited Partner Interests evidenced by Certificates until the Certificates evidencing such Limited Partner Interests are surrendered for registration of transfer. No charge shall be imposed by the General Partner for such transfer; provided, that as a condition to the issuance of any new Certificate under this Section 4.5, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto. Upon surrender of a Certificate for registration of transfer of any Limited Partner Interests evidenced by a Certificate, and subject to the provisions hereof, the appropriate officers of the General Partner on behalf of the Partnership shall execute and deliver, and in the case of Certificates evidencing Limited Partner Interests, the Transfer Agent shall countersign and deliver, in the name of the holder or the designated transferee or transferees, as required pursuant to the holder's instructions, one or more new Certificates evidencing the same aggregate number and type of Limited Partner Interests as was evidenced by the Certificate so surrendered.

(c) Subject to (i) the foregoing provisions of this Section 4.5, (ii) Section 4.3, ~~(\*)~~iii Section 4.7, (iv) with respect to any class or series of Limited Partner Interests, the provisions of any statement of designations or amendment of this Agreement establishing such class or series, (v) any contractual provisions binding on any Limited Partner and (vi) provisions of applicable law including the Securities Act, Limited Partner Interests shall be freely transferable.

(d) Notwithstanding anything to the contrary herein, any holder of Class B Units shall not transfer any of its Class B Units to any Person, except that any such holder may transfer one or more Class B Units to its Affiliate so long as such holder simultaneously transfers an equal number of OpCo Units to such Affiliate in accordance with the OpCo Limited Liability Company Agreement. For the avoidance of doubt, this Section 4.5 does not restrict in any way the right of the General Partner and its Affiliates to transfer one or more Common Units to any Person or Persons (including Common Units acquired pursuant to the Exchange Agreement).

### *Section 4.6 Transfer of the General Partner Interest.*

(a) The General Partner may at its option transfer all or any part of its General Partner Interest without approval from any other Partner.

(b) Notwithstanding anything herein to the contrary, no transfer by the General Partner of all or any part of its General Partner Interest to another Person shall be permitted unless (i) the transferee agrees to assume the rights and duties of the General Partner under this Agreement and to be bound by the provisions of this Agreement, (ii) the Partnership receives an Opinion of Counsel that such transfer would not result in the loss of limited liability under the Delaware Act of any Limited Partner ~~or cause the Partnership to be treated as an association taxable as a corporation or~~

~~otherwise to be taxed as an entity for U.S. federal income tax purposes (to the extent not already so treated or taxed).~~  
and (iii) such transferee also agrees to purchase all (or the appropriate



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portion thereof, if applicable) of the partnership or membership interest held by the General Partner as the general partner or managing member, if any, of each other Group Member. In the case of a transfer pursuant to and in compliance with this Section 4.6, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 10.2, be admitted to the Partnership as the General Partner effective immediately prior to the transfer of the General Partner Interest, and the business of the Partnership shall continue without dissolution.

### *Section 4.7 Restrictions on Transfers.*

(a) Notwithstanding the other provisions of this Article IV, no transfer of any Partnership Interests shall be made if such transfer would (i) violate the then applicable U.S. federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer;

~~or (ii) terminate the existence or qualification of the Partnership under the laws of the jurisdiction of its formation, or (iii) cause the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for U.S. federal income tax purposes (to the extent not already so treated or taxed).~~

(b) The General Partner may impose restrictions on the transfer of Partnership Interests if the General Partner determines, with the advice of counsel, that such restrictions are necessary or advisable to:

~~(i) avoid a significant risk of the Partnership becoming taxable as a corporation or otherwise becoming taxable as an entity for U.S. federal income tax purposes or~~

~~(ii) preserve the uniformity of Limited Partner Interests (or any class or classes thereof). The General Partner may impose such restrictions by amending this Agreement; provided, however, that any amendment that would result in the delisting or suspension of trading of any class of Limited Partner Interests on the principal National Securities Exchange on which such class of Limited Partner Interests is then listed or admitted to trading must be approved, prior to such amendment being effected, by the holders of a majority of the Outstanding Limited Partner Interests of such class.~~

(c) Nothing contained in this Agreement, other than Section 4.7(a), shall preclude the settlement of any transactions involving Partnership Interests entered into through the facilities of any National Securities Exchange on which such Partnership Interests are listed or admitted to trading.

### *Section 4.8 Eligibility Certificates; Ineligible Holders.*

(a) If at any time the General Partner determines, with the advice of counsel, that:

(i) the U.S. federal income tax status (or lack of proof of the U.S. federal income tax status) of one or more Limited Partners or their owners has or is reasonably likely to have a material adverse effect on the rates that can be charged to customers by any Group Member with respect to assets that are subject to regulation by the Federal Energy Regulatory Commission or similar regulatory body (a **Rate Eligibility Trigger** ); or

(ii) any Group Member is subject to any federal, state or local law or regulation that would create a substantial risk of cancellation or forfeiture of any property in which the Group Member has an interest based on the nationality, citizenship or other related status of a Limited Partner or its owner(s) (a **Citizenship Eligibility Trigger** );

then, the General Partner may adopt such amendments to this Agreement as it determines to be necessary or appropriate to (x) in the case of a Rate Eligibility Trigger, obtain such proof of the U.S. federal income tax status of

the Limited Partners and, to the extent relevant, their owners, as the General Partner determines to be

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necessary or appropriate to reduce the risk of occurrence of a material adverse effect on the rates that can be charged to customers by any Group Member or (y) in the case of a Citizenship Eligibility Trigger, obtain such proof of the nationality, citizenship or other related status of the Limited Partners and, to the extent relevant, their owners as the General Partner determines to be necessary or appropriate to eliminate or mitigate the risk of cancellation or forfeiture of any properties or interests therein.

(b) Such amendments may include provisions requiring all Partners to certify as to their (and their beneficial owners ) status as Eligible Holders upon demand and on a regular basis, as determined by the General Partner, and may require transferees of Units to so certify prior to being admitted to the Partnership as a Partner (any such required certificate, an *Eligibility Certificate* ).

(c) Such amendments may provide that any Partner who fails to furnish to the General Partner within a reasonable period requested proof of its (and its owners ) status as an Eligible Holder or if upon receipt of such Eligibility Certificate or other requested information the General Partner determines that a Limited Partner (or its owner) is not an Eligible Holder (an *Ineligible Holder* ), the Partnership Interests owned by such Limited Partner shall be subject to redemption in accordance with the provisions of Section 4.9. In addition, the General Partner shall be substituted and treated as the owner of all Partnership Interests owned by an Ineligible Holder.

(d) The General Partner shall, in exercising voting rights in respect of Partnership Interests held by it on behalf of Ineligible Holders, cast such votes in the same manner and in the same ratios as the votes of Partners (including the General Partner and its Affiliates) in respect of Partnership Interests other than those of Ineligible Holders are cast.

(e) Upon dissolution of the Partnership, an Ineligible Holder shall have no right to receive a distribution in kind pursuant to Section 12.4 but shall be entitled to the cash equivalent thereof, and the Partnership shall provide cash in exchange for an assignment of the Ineligible Holder's share of any distribution in kind. Such payment and assignment shall be treated for purposes hereof as a purchase by the Partnership from the Ineligible Holder of the portion of his Partnership Interest representing his right to receive his share of such distribution in kind.

(f) At any time after he can and does certify that he has become an Eligible Holder, an Ineligible Holder may, upon application to the General Partner, request that with respect to any Partnership Interests of such Ineligible Holder not redeemed pursuant to Section 4.9, such Ineligible Holder be admitted as a Partner, and upon approval of the General Partner, such Ineligible Holder shall be admitted as a Partner and shall no longer constitute an Ineligible Holder and the General Partner shall cease to be deemed to be the owner in respect of such Ineligible Holder's Partnership Interests.

### *Section 4.9 Redemption of Partnership Interests of Ineligible Holders.*

(a) If at any time a Partner fails to furnish an Eligibility Certificate or other information requested within the period of time specified in amendments adopted pursuant to Section 4.8 or if upon receipt of such Eligibility Certificate, the General Partner determines, with the advice of counsel, that a Partner is an Ineligible Holder, the Partnership may, unless the Partner establishes to the satisfaction of the General Partner that such Partner is an Eligible Holder or has transferred his Limited Partner Interests to a Person who is an Eligible Holder and who furnishes an Eligibility Certificate to the General Partner prior to the date fixed for redemption as provided below, redeem the Partnership Interest of such Partner as follows:

(i) The General Partner shall, not later than the 30th day before the date fixed for redemption, give notice of redemption to the Partner, at his last address designated on the records of the Partnership or the Transfer Agent, as applicable, by registered or certified mail, postage prepaid. The notice shall be deemed to have been given when so

mailed. The notice shall specify the Redeemable Interests, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon redemption of the Redeemable Interests (or,

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if later in the case of Redeemable Interests evidenced by Certificates, upon surrender of the Certificate evidencing the Redeemable Interests) and that on and after the date fixed for redemption no further allocations or distributions to which the Partner would otherwise be entitled in respect of the Redeemable Interests will accrue or be made.

(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Current Market Price (the date of determination of which shall be the date fixed for redemption) of Partnership Interests of the class to be so redeemed multiplied by the number of Partnership Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, as determined by the General Partner, in cash or by delivery of a promissory note of the Partnership in the principal amount of the redemption price, bearing interest at the rate of 8% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

(iii) The Partner or his duly authorized representative shall be entitled to receive the payment for the Redeemable Interests at the place of payment specified in the notice of redemption on the redemption date (or, if later in the case of Redeemable Interests evidenced by Certificates, upon surrender by or on behalf of the Partner at the place specified in the notice of redemption, of the Certificate evidencing the Redeemable Interests, duly endorsed in blank or accompanied by an assignment duly executed in blank).

(iv) After the redemption date, Redeemable Interests shall no longer constitute issued and Outstanding Limited Partner Interests.

(b) The provisions of this Section 4.9 shall also be applicable to Partnership Interests held by a Partner as nominee of a Person determined to be an Ineligible Holder.

(c) Nothing in this Section 4.9 shall prevent the recipient of a notice of redemption from transferring his Partnership Interest before the redemption date if such transfer is otherwise permitted under this Agreement. Upon receipt of notice of such a transfer, the General Partner shall withdraw the notice of redemption, provided the transferee of such Partnership Interest certifies to the satisfaction of the General Partner that he is an Eligible Holder. If the transferee fails to make such certification, such redemption will be effected from the transferee on the original redemption date.

## ARTICLE V

### CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS

#### Section 5.1 ~~Contributions by the General Partner and its Affiliates~~ Capitalization.

(a) In connection with the formation of the Partnership under the Delaware Act, the General Partner was admitted as the sole ~~General Partner~~ general partner of the Partnership and the Organizational Limited Partner ~~agreed to make~~ made an initial Capital Contribution to the Partnership ~~in the amount of \$100 in exchange for an initial Limited Partner Interest equal to a 100% Percentage Interest~~ and was admitted as the ~~Organizational Limited Partner~~ organizational limited partner of the Partnership. As of the Initial Contribution Date, the initial Limited Partner Interest held by the Organizational Limited Partner ~~will be~~ was redeemed ~~as provided for in the Contribution Agreement and the~~ and its initial Capital Contribution ~~of the Organizational Limited Partner will be~~ was refunded.

(b) ~~On~~ As of the Initial Contribution Date ~~and pursuant to the Contribution Agreement,~~ (i) the Organizational Limited Partner contributed ~~to Viper Energy Partners LLC a subordinated note from Viper Energy Partners LLC for the principal sum of \$440 million and contributed,~~ as a Capital Contribution, 100% of the equity interests in ~~Viper Energy Partners LLC~~ the Operating Company to the Partnership, in exchange for ~~the~~



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~~71,200,000~~70,450,000 Common Units and (ii) the ~~right to receive the Deferred Issuance and Distribution~~Partnership issued 5,750,000 Common Units in its initial public offering (including 750,000 issued pursuant to an over-allotment option).

(c) As of the Second A&R Date, immediately before the redemption of Common Units described in Section 5.1(d), there were 113,882,045 Common Units outstanding.

(d) On the Second A&R Date and pursuant to the Recapitalization Agreement, the Partnership exchanged the 73,150,000 Common Units held by Diamondback for (i) 73,150,000 Class B Units, and (ii) 73,150,000 OpCo Units; accordingly, immediately following such exchange, there were 40,732,045 Common Units outstanding and 73,150,000 Class B Units outstanding.

### ~~Section 5.2 Contributions by Initial Limited Partners.~~

~~(a) On the Closing Date and pursuant to the Underwriting Agreement, each Underwriter shall contribute cash to the Partnership in exchange for the issuance by the Partnership of Common Units to each Underwriter, all as set forth in the Underwriting Agreement.~~

~~(b) Upon the exercise, if any, of the Over Allotment Option, each Underwriter shall contribute cash to the Partnership in exchange for the issuance by the Partnership of Common Units to each Underwriter, all as set forth in the Underwriting Agreement.~~

~~(e)~~ Section 5.2 Additional Contributions. No Limited Partner will be required to make any additional Capital Contribution to the Partnership pursuant to this Agreement.

Section 5.3 *Interest and Withdrawal.* No interest on Capital Contributions shall be paid by the Partnership. No Partner shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent, if any, that distributions made pursuant to this Agreement or upon dissolution of the Partnership may be considered as the withdrawal or return of its Capital Contribution by law and then only to the extent provided for in this Agreement. Except to the extent expressly provided in this Agreement, no Partner shall have priority over any other Partner either as to the return of Capital Contributions or as to profits, losses or distributions. Any such return shall be a compromise to which all Partners agree within the meaning of Section 17-502(b) of the Delaware Act.

### Section 5.4 ~~Capital Accounts.~~[Reserved.]

~~(a) The Partnership shall maintain for each Partner (or a beneficial owner of Partnership Interests held by a nominee in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(e) of the Code or any other method acceptable to the General Partner) owning a Partnership Interest a separate Capital Account with respect to such Partnership Interest in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions made by the Partner with respect to such Partnership Interest, (ii) all items of Partnership income and gain computed in accordance with Section 5.4(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1, and (iii) the portion of any amount realized from the disposition of an oil and gas property that constitutes Simulated Gain allocated with respect to such Partnership Interest in accordance with Section 6.1(c)(iii) and decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions to the Partner of cash or property made with respect to such Partnership Interest, (y) all items of Partnership deduction and loss computed in accordance with Section 5.4(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1, and (z) Simulated Depletion and Simulated Loss in accordance with Section 6.1(c)(ii).~~

~~(b) For purposes of computing the amount of any item of income, gain, loss, deduction, Simulated Depletion, Simulated Gain or Simulated Loss that is to be allocated pursuant to Article VI and is to be reflected~~



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~~in the Partners—Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for U.S. federal income tax purposes (including any method of depreciation, cost recovery or amortization used for that purpose), provided, that:~~

~~(i) Solely for purposes of this Section 5.4, the Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner based upon the provisions of the applicable Group Member Agreement) of all property owned by (x) any other Group Member that is classified as a partnership for U.S. federal income tax purposes and (y) any other partnership, limited liability company, unincorporated business or other entity classified as a partnership for U.S. federal income tax purposes of which a Group Member is, directly or indirectly, a partner, member or other equity holder.~~

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

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

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

~~(v) In the event the Carrying Value of Partnership property is adjusted pursuant to Section 5.4(d), any Unrealized Gain resulting from such adjustment shall be treated as an item of gain and any Unrealized Loss resulting from such adjustment shall be treated as an item of loss.~~

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

~~(vii) Any deductions for depreciation, amortization or other cost recovery attributable to any Contributed Property or Adjusted Property shall be determined under the rules prescribed by Treasury Regulation Section 1.704-3(d)(2) as if the adjusted basis of such property were equal to the Carrying Value of such property immediately following such adjustment. Simulated Depletion will be computed in accordance with the provisions of the definition of Simulated Depletion.~~

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

~~(c) A transferee of a Partnership Interest shall succeed to a pro-rata portion of the Capital Account of the transferor relating to the Partnership Interest so transferred.~~

~~(d) (i) Consistent with Treasury Regulation Section 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(h)(2), on an issuance of additional Partnership Interests for cash or Contributed Property, the issuance of a~~

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~~Nonecompensatory Option, the issuance of Partnership Interests as consideration for the provision of services or the conversion of the Combined Interest to Common Units pursuant to Section 11.3(b), the Carrying Value of each Partnership property immediately prior to such issuance shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property; *provided, however,* that in the event of the issuance of a Partnership Interest pursuant to the exercise of a Nonecompensatory Option where the right to share in Partnership capital represented by such Partnership Interest differs from the consideration paid to acquire and exercise such option, the Carrying Value of each Partnership property immediately after the issuance of such Partnership Interest shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property and the Capital Accounts of the Partners shall be adjusted in a manner consistent with Treasury Regulation Section 1.704-1(b)(2)(iv)(s); *provided further, however,* that in the event of an issuance of Partnership Interests for a *de minimis* amount of cash or Contributed Property, in the event of an issuance of a Noncompensatory Option to acquire a *de minimis* Partnership Interest, or in the event of an issuance of a *de minimis* amount of Partnership Interests as consideration for the provision of services, the General Partner may determine that such adjustments are unnecessary for the proper administration of the Partnership. In determining such Unrealized Gain or Unrealized Loss, the aggregate fair market value of all Partnership property (including cash or cash equivalents) immediately prior to the issuance of additional Partnership Interests (or, in the case of a Revaluation Event resulting from the exercise of a Nonecompensatory Option, immediately after the issuance of the Partnership Interest acquired pursuant to the exercise of such Nonecompensatory Option) shall be determined by the General Partner using such method of valuation as it may adopt. In making its determination of the fair market values of individual properties, the General Partner may first determine an aggregate value for the assets of the Partnership that takes into account the current trading price of the Common Units, the fair market value of all other Partnership Interests at such time, and the amount of Partnership Liabilities. The General Partner may allocate such aggregate value among the individual properties of the Partnership (in such manner as it determines appropriate). Absent a contrary determination by the General Partner, the aggregate fair market value of all Partnership assets (including, without limitation, cash or cash equivalents) immediately prior to a Revaluation Event shall be the value that would result in the Capital Account for each Common Unit that is Outstanding prior to such Revaluation Event being equal to the Event Issue Value.~~

~~(ii) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), immediately prior to any distribution to a Partner of any Partnership property (other than a distribution of cash that is not in redemption or retirement of a Partnership Interest), the Carrying Value of all Partnership property shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property. In determining such Unrealized Gain or Unrealized Loss the aggregate fair market value of all Partnership property (including cash or cash equivalents) immediately prior to a distribution shall (A) in the case of a distribution other than one made pursuant to Section 12.4 be determined in the same manner as that provided in Section 5.4(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 12.4, be determined by the Liquidator using such method of valuation as it may adopt.~~

#### Section 5.5 *Issuances of Additional Partnership Interests and Derivative Instruments.*

(a) The Partnership may issue additional Partnership Interests and Derivative Instruments for any Partnership purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the General Partner shall determine, all without the approval of any Partners; *provided, however, that the Partnership shall not issue any additional Common Units unless the Partnership contributes the net cash proceeds or other consideration received from the issuance of such additional Common Units to the Operating Company in exchange for an equivalent number of OpCo Units. Notwithstanding the foregoing, the Partnership may issue Common Units without such contribution (a) pursuant to employee benefit plans or pursuant to the Exchange Agreement and Section 5.5(f) or (b) pursuant to a distribution (including any split or combination) of Common Units to all of the holders of Common Units pursuant to Section 5.7.*

(b) Each additional Partnership Interest authorized to be issued by the Partnership pursuant to Section 5.5(a) may be issued in one or more classes, or one or more series of any such classes, with such

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designations, preferences, rights, powers and duties (which may be senior or junior to existing classes and series of Partnership Interests), as shall be fixed by the General Partner, including (i) the right to share in Partnership profits and losses or items thereof; (ii) the right to share in Partnership distributions; (iii) the rights upon dissolution and liquidation of the Partnership; (iv) whether, and the terms and conditions upon which, the Partnership may, or shall be required to, redeem the Partnership Interest (including sinking fund provisions); (v) whether such Partnership Interest is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Partnership Interest will be issued, evidenced by certificates and assigned or transferred; (vii) the method for determining the Percentage Interest as to such Partnership Interest; and (viii) the right, if any, of each such Partnership Interest to vote on Partnership matters, including matters relating to the relative rights, preferences and privileges of such Partnership Interest.

(c) The General Partner shall take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Partnership Interests and Derivative Instruments pursuant to this Section 5.5, (ii) the conversion of the General Partner's (and its Affiliates') Combined Interest ~~into~~ into Common Units pursuant to the terms of this Agreement, (iii) reflecting the admission of such additional Partners in the books and records of the Partnership as the Record Holder of such Partnership Interests, and (iv) all additional issuances of Partnership Interests. The General Partner shall determine the relative rights, powers and duties of the holders of the Units or other Partnership Interests being so issued. The General Partner shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things that it determines to be necessary or appropriate in connection with any future issuance of Partnership Interests or in connection with the conversion of the General Partner's (and its Affiliates') Combined Interest into Common Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Interests are listed or admitted to trading.

(d) No fractional Units shall be issued by the Partnership.

(e) If at any time Diamondback or any other Record Holder of one or more Class B Units does not hold an equal number of Class B Units and OpCo Units, the Partnership shall issue additional Class B Units to such holder or cancel Class B Units held by such holder, as applicable, such that the number of Class B Units held by such holder is equal to the number of OpCo Units held by such holder; 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 to an Affiliate in accordance with Section 4.5(d) and the OpCo Limited Liability Company Agreement. Any determination as to the number of OpCo Units and/or Class B Units held by any Person shall be made by the General Partner and shall be conclusive absent manifest error.

(f) Upon any exchange of OpCo Units and Class B Units for Common Units pursuant to the Exchange Agreement, the Partnership shall issue to the exchanging holder of such OpCo Units and Class B Units a number of Common Units equal to the number of OpCo Units delivered in connection with such exchange. The Class B Units involved in such exchange shall automatically be cancelled and shall cease to be outstanding.

*Section 5.6 Preemptive Right.* Except as provided in this Section 5.6 or as otherwise provided in a separate agreement by the Partnership, no Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Partnership Interest, whether unissued, held in the treasury or hereafter created. The General Partner shall have the right, which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Partnership Interests from the Partnership whenever, and on the same terms that, the Partnership issues Partnership Interests to Persons other than the General Partner and its Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Partnership Interests.



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### Section 5.7 *Splits and Combinations.*

(a) Subject to Section 5.7(d), the Partnership may make a Pro Rata distribution of Partnership Interests to all Record Holders or may effect a subdivision or combination of Partnership Interests so long as, after any such event, each Partner shall have the same Percentage Interest in the Partnership as before such event, and any amounts calculated on a per Unit basis or stated as a number of Units are proportionately adjusted retroactively to the beginning of the Partnership; provided, however, that the Partnership may not effect a subdivision or combination of Partnership Interests described in this Section 5.7(a) unless (i) the Operating Company also effects an equivalent subdivision or combination of OpCo Units pursuant to the OpCo Limited Liability Company Agreement and (ii) any such distribution, subdivision or combination of the Common Units shall be accompanied by a simultaneous and proportionate distribution, subdivision or combination of the Class B Units pursuant to this Agreement. This provision shall not be amended unless corresponding changes are made to the OpCo Limited Liability Company Agreement.

(b) Whenever such a distribution, subdivision or combination of Partnership Interests is declared, the General Partner shall select a Record Date as of which the distribution, subdivision or combination shall be effective and shall send notice thereof at least 20 days prior to such Record Date to each Record Holder as of a date not less than 10 days prior to the date of such notice. The General Partner also may cause a firm of independent public accountants selected by it to calculate the number of Partnership Interests to be held by each Record Holder after giving effect to such distribution, subdivision, combination or reorganization. The General Partner shall be entitled to rely on any certificate provided by such firm as conclusive evidence of the accuracy of such calculation.

(c) Promptly following any such distribution, subdivision, or combination, the Partnership may issue Certificates or uncertificated Partnership Interests to the Record Holders of Partnership Interests as of the applicable Record Date representing the new number of Partnership Interests held by such Record Holders, or the General Partner may adopt such other procedures that it determines to be necessary or appropriate to reflect such changes. If any such combination results in a smaller total number of Partnership Interests Outstanding, the Partnership shall require, as a condition to the delivery to a Record Holder of ~~any such new Certificate~~ Partnership Interests represented by Certificates, the surrender of any Certificate held by such Record Holder immediately prior to such Record Date.

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Partnership Interests. If a distribution, subdivision, combination or reorganization of Partnership Interests would result in the issuance of fractional Units but for the provisions of Section 5.5(d) and this Section 5.7(d), each fractional Unit shall be rounded to the nearest whole Unit (and a 0.5 Unit shall be rounded to the next higher Unit).

Section 5.8 *Fully Paid and Non-Assessable Nature of Limited Partner Interests.* All Limited Partner Interests issued pursuant to, and in accordance with the requirements of, this Article V shall be fully paid and non-assessable Limited Partner Interests in the Partnership, except as such non-assessability may be affected by Sections 17-607 or 17-804 of the Delaware Act.

~~Section 5.9 *Deemed Capital Contributions by Partners.* Consistent with the provisions of Treasury Regulation Section 1.83-6(d), if any Partner (or its successor) transfers property (including cash) to any employee or other service provider of the Partnership Group and such Partner is not entitled to be reimbursed by (or otherwise elects not to seek reimbursement from) the Partnership for the value of such property, then (x) such property shall be treated as having been contributed to the Partnership by such Partner and (y) immediately thereafter the Partnership shall be treated as having transferred such property to the employee or other service provider.~~





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**ARTICLE VI**

**~~ALLOCATIONS AND DISTRIBUTIONS~~**

~~Section 6.1 Allocations for Capital Account Purposes. For purposes of maintaining the Capital Accounts and in determining the rights of the Partners among themselves, the Partnership's items of income, gain, loss, deduction, amount realized and Simulated Gain (computed in accordance with Section 5.4(b)) for each taxable period shall be allocated among the Partners, and the Capital Accounts of the Partners shall be adjusted for Simulated Depletion and Simulated Loss, as provided herein below.~~

~~(a) Net Income and Net Loss. After giving effect to the special allocations set forth in Section 6.1(b) and Capital Account adjustments pursuant to Section 6.1(e)(ii), Net Income and Net Loss for each taxable period and all items of income, gain, loss, deduction and, to the extent provided in Section 6.1(e)(iii), Simulated Gain taken into account in computing Net Income and Net Loss for such taxable period shall be allocated 100% to all Unitholders, Pro Rata.~~

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

~~(i) Partnership Minimum Gain Chargeback. Notwithstanding any other provision of this Section 6.1, if there is a net decrease in Partnership Minimum Gain during any Partnership taxable period, each Partner shall be allocated items of Partnership income, gain and Simulated Gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. For purposes of this Section 6.1(b), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income, gain and Simulated Gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(b) with respect to such taxable period (other than an allocation pursuant to Section 6.1(b)(vi) and 6.1(b)(vii)). This Section 6.1(b)(i) is intended to comply with the Partnership Minimum Gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.~~

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

~~(iii) Priority Allocations. (A) If the amount of cash or the Net Agreed Value of any property distributed (except cash or property distributed pursuant to Section 12.4) with respect to a Unit exceeds the amount of cash or the Net Agreed Value of property distributed with respect to another Unit, each Unitholder receiving such greater cash or property distribution shall be allocated gross income in an amount equal to the product of (aa) the amount by which the distribution (on a per Unit basis) to such Unitholder exceeds the distribution with respect to the Unit receiving the smallest distribution and (bb) the number of Units owned by the Unitholder receiving the greater distribution.~~

~~(iv) *Qualified Income Offset*. In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4);~~

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~~1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership gross income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under Section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible; provided, that an allocation pursuant to this Section 6.1(b)(iv) shall be made only if and to the extent that such Partner would have a deficit balance in its Adjusted Capital Account after all other allocations provided for in this Section 6.1 have been tentatively made as if this Section 6.1(b)(iv) were not in this Agreement.~~

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

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

~~(vii) *Partner Nonrecourse Deductions.* Partner Nonrecourse Deductions for any taxable period shall be allocated 100% to the Partner that bears the Economic Risk of Loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i). If more than one Partner bears the Economic Risk of Loss with respect to a Partner Nonrecourse Debt, such Partner Nonrecourse Deductions attributable thereto shall be allocated between or among such Partners in accordance with the ratios in which they share such Economic Risk of Loss. This Section 6.1(b)(vii) is intended to comply with Treasury Regulations Section 1.704-2(i)(1) and shall be interpreted consistently therewith.~~

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

~~(ix) *Code Section 754 Adjustments.* To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code (including pursuant to Treasury Regulation Section 1.734-2(b)(1)) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts as a result of a distribution to a Partner in complete liquidation of such Partner's interest in the Partnership, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain or Simulated Gain (if the adjustment increases the basis of the asset) or loss or Simulated Loss (if the adjustment decreases such basis) taken into account pursuant to Section 5.4, and such item of gain, loss, Simulated Gain or Simulated Loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.~~

~~(x) *Economic Uniformity; Changes in Law.* For the proper administration of the Partnership and for the preservation of uniformity of the Limited Partner Interests (or any class or classes thereof), the General Partner shall (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization~~



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and cost recovery deductions; (ii) make special allocations of income, gain, loss, deduction, Unrealized Gain or Unrealized Loss; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code or (y) otherwise to preserve or achieve uniformity of the Limited Partner Interests (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.1(b)(x) only if such conventions, allocations or amendments would not have a material adverse effect on the Partners, the holders of any class or classes of Outstanding Limited Partner Interests or the Partnership.

### *(xi) Curative Allocation.*

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

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

*(xii) Equalization of Capital Accounts With Respect to Privately Placed Units.* Unrealized Gain or Unrealized Loss deemed recognized as a result of a Revaluation Event shall first be allocated to the (A) Unitholders holding Privately Placed Units, Pro Rata, or (B) Unitholders holding Common Units (other than Privately Placed Units), Pro Rata, as applicable, to the extent necessary to cause the Capital Account in respect of each Privately Placed Unit then Outstanding to equal the Capital Account in respect of each Common Unit (other than Privately Placed Units) then Outstanding.

*(xiii) Allocations Regarding Certain Payments Made to Employees and Other Service Providers.* Consistent with the provisions of Treasury Regulation Section 1.83-6(d), if any Partner (or its successor) transfers property (including cash) to any employee or other service provider of the Partnership Group and such Partner is not entitled to be reimbursed by (or otherwise elects not to seek reimbursement from) the Partnership for the value of such property, then any items of deduction or loss resulting from or attributable to such transfer shall be allocated to the Partner (or its successor) that made such transfer and was deemed to have contributed such property to the Partnership pursuant to Section 5.9.

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

*(i) Simulated Basis.* For purposes of determining and maintaining the Partners' Capital Accounts, (i) the initial Simulated Basis of each oil and gas property (as defined in Section 614 of the Code) of the Partnership shall be allocated among the Partners, Pro Rata and (ii) if the Carrying Value of an oil and gas property (as defined in

~~Section 614 of the Code) is adjusted pursuant to Section 5.4(d), the Simulated Basis of such property (as adjusted to reflect the adjustment to the Carrying Value of such property), shall be allocated to the Partners, Pro Rata.~~

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~~(ii) *Simulated Depletion and Simulated Loss.* For purposes of applying clause (z) of the second sentence of Section 5.4(a), Simulated Depletion and Simulated Loss with respect to each oil and gas property (as defined in Section 614 of the Code) of the Partnership shall reduce each Partner's Capital Account in proportion to the manner in which the Simulated Basis of such property is allocated among the Partners pursuant to Section 6.1(c)(i).~~

~~(iii) *Simulated Gain.* For purposes of applying clause (iii) of the second sentence of Section 5.4(a), Simulated Gain for any taxable period will be treated as included in either Net Income or Net Loss and allocated pursuant to Section 6.1(a).~~

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

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

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

~~(b) The deduction for depletion with respect to each separate oil and gas property (as defined in Section 614 of the Code) shall be computed for federal income tax purposes separately by the Partners rather than by the Partnership in accordance with Section 613A(c)(7)(D) of the Code. Except as provided in Section 6.2(e), for purposes of such computation (before taking into account any adjustments resulting from an election made by the Partnership under Section 754 of the Code), the adjusted tax basis of each oil and gas property (as defined in Section 614 of the Code) that is (i) a Contributed Property shall initially be allocated among the non-contributing Partners, Pro Rata, but not in excess of any such Partner's share of Simulated Basis as determined pursuant to Section 6.1(c)(i), and (ii) not a Contributed Property or an Adjusted Property shall initially be allocated to the Partners in proportion to each such Partner's share of Simulated Basis as determined pursuant to Section 6.1(c)(i). If there is an event described in Section 5.4(d), the General Partner shall reallocate the adjusted tax basis of each oil and gas property in a manner (i) consistent with the principles of Section 704(e) of the Code and (ii) that maintains the federal income tax fungibility of the Units.~~

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

~~(c) In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation, amortization and cost recovery deductions shall be allocated for U.S. federal income tax purposes among the Partners in the manner provided under Section 704(e) of the Code, and the Treasury Regulations promulgated under Section 704(b) and 704(e) of the Code, as determined appropriate by the General Partner (taking into account the General Partner's discretion under Section 6.1(b)(x)); *provided* that, in all events, the General Partner shall apply the remedial allocation method in accordance with the principles of Treasury Regulation Section 1.704-3(d). For purposes of applying the remedial allocation method to oil and gas properties (i) the amount by which any Partner's Capital Account is adjusted for Simulated Depletion shall be treated as an amount of book~~

~~depletion allocated to such Partner and (ii) the amount of cost depletion computed by such Partner under Section 613A(e)(7)(D) of the Code shall be treated as an amount of tax depletion allocated to such Partner.~~



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~~(d) The General Partner may determine to depreciate or amortize the portion of an adjustment under Section 743(b) of the Code attributable to unrealized appreciation in any Adjusted Property (to the extent of the unamortized Book Tax Disparity) using a predetermined rate derived from the depreciation or amortization method and useful life applied to the unamortized Book Tax Disparity of such property, despite any inconsistency of such approach with Treasury Regulation Section 1.167(e)-1(a)(6) or any successor regulations thereto. If the General Partner determines that such reporting position cannot reasonably be taken, the General Partner may adopt depreciation and amortization conventions under which all purchasers acquiring Limited Partner Interests in the same month would receive depreciation and amortization deductions, based upon the same applicable rate as if they had purchased a direct interest in the Partnership's property. If the General Partner chooses not to utilize such aggregate method, the General Partner may use any other depreciation and amortization conventions to preserve the uniformity of the intrinsic tax characteristics of any Units, so long as such conventions would not have a material adverse effect on the Limited Partners or Record Holders of any class or classes of Limited Partner Interests.~~

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

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

~~(g) Each item of Partnership income, gain, loss and deduction shall, for U.S. federal income tax purposes, be determined for each Quarter and prorated on a monthly basis and shall be allocated to the Partners as of the opening of the National Securities Exchange on which the Partnership's Units are listed or admitted to trading on the first Business Day of each month; *provided, however*, such items for the period beginning on the Closing Date and ending on the last day of the month in which the Closing Date occurs shall be allocated to the Partners who are issued Units as a result of the transactions contemplated by the Contribution Agreement and the Underwriting Agreement; and *provided, further*, that each item of Partnership income, gain, loss and deduction for the period beginning on the Contribution Date and ending the date immediately before the Closing Date shall be allocated to the Partners holding Units on the date immediately before the Closing Date; and *provided, further*, that gain or loss on a sale or other disposition of any assets of the Partnership or any other extraordinary item of income, gain, loss or deduction, as determined by the General Partner, shall be allocated to the Partners as of the opening of the National Securities Exchange on which the Partnership's Units are listed or admitted to trading on the first Business Day of the month in which such item is recognized for U.S. federal income tax purposes. The General Partner may revise, alter or otherwise modify such methods of allocation to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.~~

~~(h) Allocations that would otherwise be made to a Partner under the provisions of this Article VI shall instead be made to the beneficial owner of Partnership Interests held by a nominee in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(c) of the Code or any other method determined by the General Partner.~~

~~(i) If, as a result of an exercise of a Noncompensatory Option, a Capital Account reallocation is required under Treasury Regulation Section 1.704-1(b)(2)(iv)(s)(3), the General Partner shall make corrective allocations pursuant to~~

~~Treasury Regulation Section 1.704-1(b)(4)(x).~~

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Section ~~6.3~~6.1 *Distributions to Record Holders.*

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

(b) ~~The~~Except as contemplated by Section 5.7, (a) the Partnership will make distributions, if any, to ~~Unitholders~~all Record Holders of Common Units, Pro Rata and (b) no distributions shall be made under any circumstances in respect of any Class B Units.

(c) All distributions required to be made under this Agreement shall be made subject to Sections 17-607 and 17-804 of the Delaware Act.

(d) Notwithstanding Section ~~6.3~~6.1(b), in the event of the dissolution and liquidation of the Partnership, cash shall be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.4.

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

## **ARTICLE VII**

### **MANAGEMENT AND OPERATION OF BUSINESS**

Section 7.1 *Management.*

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, but without limitation on the ability of the General Partner to delegate its rights and power to other Persons, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no other Partner shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 7.4, shall have full power and authority to do all things and on such terms as it determines to be necessary or appropriate to conduct the business of the Partnership, to exercise all powers set forth in Section 2.5 and to effectuate the purposes set forth in Section 2.4, including the following:

(i) the making of any expenditures, the lending or borrowing of money, the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness, including indebtedness that is convertible or exchangeable into Partnership Interests, and the incurring of any other obligations;

(ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;

(iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership or the merger or other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 7.4 or Article XIV);



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(iv) the use of the assets of the Partnership (including cash on hand) for any purpose consistent with the terms of this Agreement, including the financing of the conduct of the operations of the Partnership Group; the lending of funds to other Persons (including other Group Members); the repayment or guarantee of obligations of any Group Member; and the making of capital contributions to any Group Member;

(v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including instruments that limit the liability of the Partnership under contractual arrangements to all or particular assets of the Partnership, with the other party to the contract to have no recourse against the General Partner or its assets other than its interest in the Partnership, even if the same results in the terms of the transaction being less favorable to the Partnership than would otherwise be the case);

(vi) the distribution of cash or cash equivalents by the Partnership;

(vii) the selection, employment, retention and dismissal of employees (including employees having titles such as chief executive officer, president, chief financial officer, chief operating officer, general counsel, vice president, and treasurer ) and agents, outside attorneys, accountants, consultants and contractors of the General Partner or the Partnership Group and the determination of their compensation and other terms of employment or hiring;

(viii) the maintenance of insurance for the benefit of the Partnership Group, the Partners and Indemnitees;

(ix) the formation of, or acquisition of an interest in, and the contribution of property and the making of loans to, any limited or general partnerships, joint ventures, corporations, limited liability companies or other Persons (including the acquisition of interests in, and the contributions of property to, any Group Member from time to time);

(x) the control of any matters affecting the rights and obligations of the Partnership, including the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation, arbitration or mediation and the incurring of legal expense and the settlement of claims and litigation;

(xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Partnership Interests from, or requesting that trading be suspended on, any such exchange;

(xiii) the purchase, sale or other acquisition or disposition of Partnership Interests, or the issuance of Derivative Instruments;

(xiv) the undertaking of any action in connection with the Partnership's participation in the management of any Group Member; ~~and~~

(xv) subject to Section 7.4, the undertaking of any action in connection with the Partnership's participation and management of the Operating Company as the Operating Company's managing member or a unitholder in the Operating Company; and

~~(xvi)~~ the entering into of agreements with any of its Affiliates, including any agreements to render services to a Group Member or to itself in the discharge of its duties as General Partner of the Partnership.

(b) Notwithstanding any other provision of this Agreement, any Group Member Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners, each other Person who acquires an



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interest in a Partnership Interest and each other Person bound by this Agreement hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of this Agreement, ~~the Underwriting Agreement, the Contribution Agreement, the Registration Rights Agreement and the other agreements described in or filed as exhibits to the Registration Statement that are related to the transactions contemplated by the Registration Statement (in the case of each agreement other than this Agreement, without giving effect to any amendments, supplements or restatements after the date hereof); (ii) agrees that the General Partner (on its own behalf or on behalf of the Partnership) is authorized to execute, deliver and perform the agreements referred to in clause (i) of this sentence and the other agreements, acts, transactions and matters described in or contemplated by the Registration Statement on behalf of the Partnership without any further act, approval or vote of the Partners, the other Persons who may acquire an interest in Partnership Interests or are otherwise bound by this Agreement; and (iii) and (ii)~~ agrees that the execution, delivery or performance by the General Partner, any Group Member or any Affiliate of any of them of this Agreement or any agreement authorized or permitted under this Agreement (including the exercise by the General Partner or any Affiliate of the General Partner of the rights accorded pursuant to Article XV) shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Partners or any other Persons under this Agreement (or any other agreements) or of any duty existing at law, in equity or otherwise.

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

*Section 7.3 Certificate of Limited Partnership.* The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents that the General Partner determines to be necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware or any other state in which the Partnership may elect to do business or own property. To the extent the General Partner determines such action to be necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate of Limited Partnership and do all things to maintain the Partnership as a limited partnership (or a partnership or other entity in which the limited partners have limited liability) under the laws of the State of Delaware or of any other state in which the Partnership may elect to do business or own property. Subject to the terms of Section 3.4(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Partner.

*Section 7.4 Restrictions on the General Partner's Authority.* Except as provided in Articles XII and XIV, the General Partner may not sell, exchange or otherwise dispose of all or substantially all of the assets of the Partnership Group, taken as a whole, in a single transaction or a series of related transactions without the approval of a Unit Majority; *provided, however*, that this provision shall not preclude or limit the General Partner's ability to mortgage, pledge, hypothecate or grant a security interest in all or substantially all of the assets of the Partnership Group and shall not apply to any sale of any or all of the assets of the Partnership Group pursuant to the foreclosure of, or other realization upon, any such encumbrance.

*Section 7.5 Reimbursement of the General Partner.*

(a) The General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the



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Partnership Group (including salary, bonus, incentive compensation and other amounts paid to any Person (including Affiliates of the General Partner) to perform services for the Partnership Group or for the General Partner in the discharge of its duties to the Partnership Group), and (ii) all other expenses allocable to the Partnership Group or otherwise incurred by the General Partner in connection with operating the Partnership Group's business (including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to the Partnership Group. Reimbursements pursuant to this [Section 7.5\(a\)](#) shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to [Section 7.7](#).

(b) The General Partner and its Affiliates may charge any member of the Partnership Group a management fee to the extent necessary to allow the Partnership Group to reduce the amount of any state franchise or income tax or any tax based upon the revenues or gross margin of any member of the Partnership Group if the tax benefit produced by the payment for such management fee of such management fee or fees exceeds the amount of such fee or fees.

(c) The General Partner, without the approval of the Limited Partners (who shall have no right to vote in respect thereof), may propose and adopt on behalf of the Partnership benefit plans, programs and practices (including plans, programs and practices involving the issuance of Partnership Interests), or cause the Partnership to issue Partnership Interests in connection with, or pursuant to, any benefit plan, program or practice maintained or sponsored by the General Partner or any of its Affiliates, any Group Member or their Affiliates, or any of them, in each case for the benefit of employees, officers, consultants and directors of the General Partner or its Affiliates, in respect of services performed, directly or indirectly, for the benefit of the Partnership Group. The Partnership agrees to issue and sell to the General Partner or any of its Affiliates any Partnership Interests that the General Partner or such Affiliates are obligated to provide to any employees, officers, consultants and directors pursuant to any such benefit plans, programs or practices. Expenses incurred by the General Partner in connection with any such plans, programs and practices (including the net cost to the General Partner or such Affiliates of Partnership Interests purchased by the General Partner or such Affiliates, from the Partnership or otherwise, to fulfill awards under such plans, programs and practices) shall be reimbursed in accordance with [Section 7.5\(a\)](#). Any and all obligations of the General Partner under any benefit plans, programs or practices adopted by the General Partner as permitted by this [Section 7.5\(c\)](#) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to [Section 11.1](#) or [Section 11.2](#) or the transferee of or successor to all of the General Partner's General Partner Interest pursuant to [Section 4.6](#).

### *Section 7.6 Outside Activities.*

(a) The General Partner, for so long as it is the General Partner of the Partnership, shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (i) its performance as general partner or managing member, if any, of one or more Group Members ~~or as described in or contemplated by the Registration Statement~~, (ii) the acquiring, owning or disposing of debt securities or equity interests in any Group Member or (iii) the direct or indirect provision of management, advisory, and administrative services to its Affiliates or to other Persons.

(b) Each Unrestricted Person (other than the General Partner) shall have the right to engage in businesses of every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by any Group Member, independently or with others, including business interests and activities in direct competition with the business and activities of any Group Member. No such business interest or activity shall constitute a breach of this Agreement, any fiduciary or other duty existing at law, in equity or otherwise, or obligation of any type whatsoever to the Partnership or other Group Member, to another Partner, to any Person who acquires an interest in a Partnership Interest or to any other Person bound by this Agreement.



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(c) Notwithstanding anything to the contrary in this Agreement, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any Unrestricted Person (including the General Partner). No Unrestricted Person (including the General Partner) who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Partnership, shall have any duty to communicate or offer such opportunity to any Group Member, and such Unrestricted Person (including the General Partner) shall not be liable to the Partnership or other Group Member, to another Partner, to any Person who acquires an interest in a Partnership Interest or to any other Person bound by this Agreement for breach of any fiduciary or other duty existing at law, in equity or otherwise by reason of the fact that such Unrestricted Person (including the General Partner) pursues or acquires such opportunity for itself, directs such opportunity to another Person or does not communicate such opportunity or information to any Group Member.

(d) Subject to the terms of Section 7.6(a), Section 7.6(b) and Section 7.6(c), but otherwise notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any Unrestricted Person (other than the General Partner) in accordance with the provisions of this Section 7.6 is hereby approved by the Partnership and all Partners, and (ii) it shall be deemed not to be a breach of any fiduciary duty or any other duty or obligation of any type whatsoever of the General Partner or of any other Unrestricted Person for the Unrestricted Person (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership; provided such Unrestricted Person does not engage in such business or activity as a result of or using confidential or proprietary information provided by or on behalf of the Partnership to such Unrestricted Person.

(e) The General Partner and each of its Affiliates may acquire Units or other Partnership Interests in addition to those acquired on and/or prior to the ~~Closing~~Second A&R Date and, except as otherwise expressly provided in ~~Section~~Sections 4.5, 5.5 and 7.11, shall be entitled to exercise, at their option, all rights relating to all Units or other Partnership Interests acquired by them.

### *Section 7.7 Indemnification.*

(a) To the fullest extent permitted by law, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities (joint or several), expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all threatened, pending or completed claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, and whether formal or informal and including appeals, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee and acting (or refraining to act) in such capacity; provided, that the Indemnitee shall not be indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Agreement, the Indemnitee acted in Bad Faith or engaged in willful misconduct or fraud or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 7.7(a) in appearing at, participating in or defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 7.7, the Indemnitee is not entitled to be indemnified upon receipt by the Partnership of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall

be ultimately determined that the Indemnatee is not entitled to be indemnified as authorized by this Section 7.7.

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(c) The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the holders of Outstanding Limited Partner Interests, as a matter of law, in equity or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

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

(e) For purposes of this Section 7.7, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute fines within the meaning of Section 7.7(a); and action taken or omitted by an Indemnitee with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interests of the Partnership.

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

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 7.7 are for the benefit of the Indemnitees and their heirs, successors, assigns, executors and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 7.7 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Partnership, nor the obligations of the Partnership to indemnify any such Indemnitee under and in accordance with the provisions of this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

### *Section 7.8 Limitation of Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, any Group Member Agreement, or under the Delaware Act or any other law, rule or regulation or at equity, no Indemnitee shall be liable for monetary damages or otherwise to the Partnership, to another Partner, to any other Person who acquires an interest in a Partnership Interest or to any other Person bound by this Agreement, for losses sustained or liabilities incurred, of any kind or character, as a result of its or any of any other Indemnitee's determinations, act(s) or omission(s) in their capacities as Indemnitees; *provided, however*, that an Indemnitee shall be liable for losses or liabilities sustained or incurred by the Partnership, the other Partners, any other Persons who acquire an interest in a Partnership Interest or any other Person bound by

this Agreement, if it is determined by a final and non-appealable judgment entered by a court of competent jurisdiction that such losses or liabilities were the

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result of the conduct of that Indemnitee engaged in by it in Bad Faith or engaged in willful misconduct or fraud or, with respect to any criminal conduct, with the knowledge that its conduct was unlawful.

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

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

(d) Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

### *Section 7.9 Resolution of Conflicts of Interest; Standards of Conduct and Modification of Duties.*

(a) Whenever the General Partner, acting in its capacity as the general partner of the Partnership, or the Board of Directors or any committee of the Board of Directors (including the Conflicts Committee) or any Affiliates of the General Partner cause the General Partner to make a determination or take or omit to take any action in such capacity, whether or not under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, then, unless another lesser standard is provided for in this Agreement, the General Partner, the Board of Directors, such committee or such Affiliates, shall make such determination, or take or omit to take such action, in Good Faith. The foregoing and other lesser standards provided for in this Agreement are the sole and exclusive standards governing any such determinations, actions and omissions of the General Partner, the Board of Directors, any committee of the Board of Directors (including the Conflicts Committee) and any Affiliate of the General Partner and no such Person shall be subject to any fiduciary duty or other duty or obligation, or any other, different or higher standard (all of which duties, obligations and standards are hereby waived and disclaimed), under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, or under the Delaware Act or any other law, rule or regulation or at equity. Any such determination, action or omission by the General Partner, the Board of Directors of the General Partner or any committee thereof (including the Conflicts Committee) or of any Affiliates of the General Partner, will for all purposes be presumed to have been in Good Faith. In any proceeding brought by or on behalf of the Partnership, any Limited Partner, or any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement, challenging such determination, act or omission, the Person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or omission was not in Good Faith.

(b) Whenever the General Partner makes a determination or takes or omits to take any action, or any of its Affiliates causes it to do so, not acting in its capacity as the general partner of the Partnership, whether or not under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, then the General Partner, or such Affiliates causing it to do so, are entitled, to the fullest extent permitted by law, to make such determination or to take or omit to take such action free of any fiduciary duty or duty of Good Faith, or other duty or obligation existing at

law, in equity or otherwise whatsoever to the Partnership, to another Partner, to any Person who acquires an interest in a Partnership Interest or to any other Person bound by this Agreement, and the General Partner, or such Affiliates causing it to do so, shall not, to the fullest extent permitted by law, be



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required to act in Good Faith or pursuant to any fiduciary or other duty or standard imposed by this Agreement, any Group Member Agreement or any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity.

(c) For purposes of Section 7.9(a) and Section 7.9(b) of this Agreement, acting in its capacity as the general partner of the Partnership means and is solely limited to, the General Partner exercising its authority as a general partner under this Agreement, other than when it is acting in its individual capacity. For purposes of this Agreement, acting in its individual capacity means: (i) any action by the General Partner or its Affiliates other than through the exercise of the General Partner of its authority as a general partner under this Agreement; and (ii) any action or inaction by the General Partner by the exercise (or failure to exercise) of its rights, powers or authority under this Agreement that are modified by: (A) the phrase at the option of the General Partner, (B) the phrase in its sole discretion or in its discretion or (iii) some variation of the phrases set forth in clauses (i) and (ii). For the avoidance of doubt, whenever the General Partner votes, acquires Partnership Interests or transfers its Partnership Interests, or refrains from voting or transferring its Partnership Interests, it shall be and be deemed to be acting in its individual capacity.

(d) The General Partner may in its discretion submit any determination, action or omission that would otherwise be decided by the General Partner pursuant to Section 7.9(a) (i) for Special Approval or (ii) for approval by the vote of a majority of the ~~Common~~ Units (excluding ~~Common~~ Units owned by the General Partner or its Affiliates, if any). If the General Partner does not submit the determination, action or omission as provided in either clauses (i) or (ii) in the preceding sentence, then any such determination, action or omission shall be governed by Section 7.9(a) above. If any determination, action or omission: (A) receives Special Approval; or (B) receives approval of a majority of the ~~Common~~ Units (excluding ~~Common~~ Units owned by the General Partner or its Affiliates, if any), then such determination, action or omission shall be conclusively deemed to be approved by the Partnership, all the Partners, each Person who acquires an interest in a Partnership Interest and each other Person who is bound by this Agreement, and shall not constitute a breach of this Agreement, of any Group Member Agreement, of any agreement contemplated herein or therein, or of any fiduciary or other duty or obligation existing at law, in equity or otherwise or obligation of any type whatsoever.

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

(f) The Partners, and each Person who acquires an interest in a Partnership Interest or is otherwise bound by this Agreement hereby authorize the General Partner, on behalf of the Partnership as a partner or member of a Group Member, to approve actions by the general partner or managing member of such Group Member similar to those actions permitted to be taken by the General Partner pursuant to this Section 7.9.

(g) For the avoidance of doubt, whenever the Board of Directors, any committee of the Board of Directors (including the Conflicts Committee), the officers of the General Partner or any Affiliates of the General Partner make a determination on behalf of the General Partner, or cause the General Partner to take or omit to take any action, whether in the General Partner's capacity as the General Partner or in its individual capacity, the standards of care applicable to the General Partner shall apply to such Persons, and such Persons shall be entitled to all benefits and rights of the General Partner hereunder, including waivers and modifications of duties, protections and presumptions, as if such Persons were the General Partner hereunder.

Section 7.10 *Other Matters Concerning the General Partner.*

(a) The General Partner may rely, and shall be protected in acting or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or

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other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

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

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

**Section 7.11 *Purchase or Sale of Partnership Interests.*** The General Partner may cause the Partnership to purchase or otherwise acquire Partnership Interests. As long as any Partnership Interests are held by any Group Member, such Partnership Interests shall not be entitled to any vote and shall not be considered to be Outstanding.

**Section 7.12 *Registration Rights of the General Partner and its Affiliates.***

(a) If (i) the General Partner or any of its Affiliates (including for purposes of this Section 7.12, any Person that is an Affiliate of the General Partner at the date hereof notwithstanding that it may later cease to be an Affiliate of the General Partner) holds Partnership Interests (including Common Units acquired pursuant to the Exchange Agreement) that it desires to sell and (ii) Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such holder of Partnership Interests (the **Holder**) to dispose of the number of Partnership Interests it desires to sell at the time it desires to do so without registration under the Securities Act, then at the option and upon the request of the Holder, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all commercially reasonable efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Partnership Interests covered by such registration statement have been sold, a registration statement under the Securities Act registering the offering and sale of the number of Partnership Interests specified by the Holder; *provided, however*, that the aggregate offering price of any such offering and sale of Partnership Interests covered by such registration statement as provided for in this Section 7.12(a) shall not be less than \$5.0 million; *provided further*, that the Partnership shall not be required to effect more than two registrations pursuant to this Section 7.12(a) in any twelve-month period; and *provided further*, however that if the General Partner determines that a postponement of the requested registration would be in the best interests of the Partnership and its Partners due to a pending transaction, investigation or other event, the filing of such registration statement or the effectiveness thereof may be deferred for up to six months, but not thereafter. In connection with any registration pursuant to the immediately preceding sentence, the Partnership shall (i) promptly prepare and file (A) such documents as may be necessary to register or qualify the securities subject to such registration under the securities laws of such states as the Holder shall reasonably request; *provided, however*, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction solely as a result of such registration, and (B) such documents as may be necessary to apply for listing or to list the Partnership Interests subject to such registration on such National Securities Exchange as the Holder shall reasonably request, and (ii) do any and all other acts and things that may be necessary or appropriate to enable the Holder to consummate a public sale of such Partnership Interests in such states. Except as set forth in Section 7.12(c), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(b) If the Partnership shall at any time propose to file a registration statement under the Securities Act for an offering of Partnership Interests for cash (other than an offering relating solely to a benefit plan), the

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Partnership shall use all commercially reasonable efforts to include such number or amount of Partnership Interests held by any Holder ([including Common Units acquired pursuant to the Exchange Agreement](#)) in such registration statement as the Holder shall request; *provided*, that the Partnership is not required to make any effort or take any action to so include the Partnership Interests of the Holder once the registration statement becomes or is declared effective by the Commission, including any registration statement providing for the offering from time to time of Partnership Interests pursuant to Rule 415 of the Securities Act. If the proposed offering pursuant to this [Section 7.12\(b\)](#) shall be an underwritten offering, then, in the event that the managing underwriter or managing underwriters of such offering advise the Partnership and the Holder that in their opinion the inclusion of all or some of the Holder's Partnership Interests would adversely and materially affect the timing or success of the offering, the Partnership shall include in such offering only that number or amount, if any, of Partnership Interests held by the Holder that, in the opinion of the managing underwriter or managing underwriters, will not so adversely and materially affect the offering. Except as set forth in [Section 7.12\(c\)](#), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(c) If underwriters are engaged in connection with any registration referred to in this [Section 7.12](#), the Partnership shall provide indemnification, representations, covenants, opinions and other assurance to the underwriters in form and substance reasonably satisfactory to such underwriters. Further, in addition to and not in limitation of the Partnership's obligation under [Section 7.7](#) the Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless the Holder, its officers, directors and each Person who controls the Holder (within the meaning of the Securities Act) and any agent thereof (collectively, ***Indemnified Persons***) against any losses, claims, demands, actions, causes of action, assessments, damages, liabilities (joint or several), costs and expenses (including interest, penalties and reasonable attorneys' fees and disbursements), resulting to, imposed upon, or incurred by the Indemnified Persons, directly or indirectly, under the Securities Act or otherwise (hereinafter referred to in this [Section 7.12\(c\)](#) as a ***claim*** and in the plural as ***claims***) based upon, arising out of or resulting from any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which any Partnership Interests were registered under the Securities Act or any state securities or Blue Sky laws, in any preliminary prospectus or issuer free writing prospectus as defined in Rule 433 of the Securities Act (if used prior to the effective date of such registration statement), or in any summary or final prospectus or in any amendment or supplement thereto (if used during the period the Partnership is required to keep the registration statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein not misleading; *provided, however*, that the Partnership shall not be liable to any Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, such preliminary, summary or final prospectus or free writing prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Partnership by or on behalf of such Indemnified Person specifically for use in the preparation thereof.

(d) The provisions of [Section 7.12\(a\)](#) and [Section 7.12\(b\)](#) shall continue to be applicable with respect to the General Partner (and any of the General Partner's Affiliates) after it ceases to be the General Partner, during a period of two years subsequent to the effective date of such cessation and for so long thereafter as is required for the Holder to sell all of the Partnership Interests with respect to which it has requested during such two-year period inclusion in a registration statement otherwise filed or that a registration statement be filed; *provided, however*, that the Partnership shall not be required to file successive registration statements covering the same Partnership Interests for which registration was demanded during such two-year period. The provisions of [Section 7.12\(c\)](#) shall continue in effect thereafter.

(e) The rights to cause the Partnership to register Partnership Interests pursuant to this Section 7.12 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such Partnership Interests, provided (i) the Partnership is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the Partnership Interests with respect to which

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such registration rights are being assigned; and (ii) such transferee or assignee agrees in writing to be bound by and subject to the terms set forth in this [Section 7.12](#).

(f) Any request to register Partnership Interests pursuant to this [Section 7.12](#) shall (i) specify the Partnership Interests intended to be offered and sold by the Person making the request, (ii) express such Person's present intent to offer such Partnership Interests for distribution, (iii) describe the nature or method of the proposed offer and sale of Partnership Interests, and (iv) contain the undertaking of such Person to provide all such information and materials and take all action as may be required in order to permit the Partnership to comply with all applicable requirements in connection with the registration of such Partnership Interests.

(g) The Partnership may enter into separate registration rights agreements with the General Partner or any of its Affiliates.

[\(h\) Notwithstanding anything to the contrary herein, neither the General Partner nor any other Person shall have any registration rights or other rights under this Section 7.12 in respect of Class B Units.](#)

**Section 7.13 *Reliance by Third Parties.*** Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner and any officer of the General Partner authorized by the General Partner to act on behalf of and in the name of the Partnership has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any authorized contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer as if it were the Partnership's sole party in interest, both legally and beneficially. Each Partner hereby waives, to the fullest extent permitted by law, any and all defenses or other remedies that may be available to such Partner to contest, negate or disaffirm any action of the General Partner or any such officer in connection with any such dealing. In no event shall any Person dealing with the General Partner or any such officer or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

## **ARTICLE VIII**

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

**Section 8.1 *Records and Accounting.*** The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Partners any information required to be provided pursuant to [Section 3.4\(a\)](#). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders of Units or other Partnership Interests, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, magnetic tape, photographs, micrographics or any other information storage device; provided, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP.





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

Section 8.3 *Reports*.

(a) ~~As~~ Whether or not the Partnership is subject to the requirement to file reports with the Commission, as soon as practicable, but in no event later than 105 days after the close of each fiscal year of the Partnership (or such shorter period as required by the Commission), the General Partner shall cause to be mailed or made available, by any reasonable means, to each Record Holder of a Unit or other Partnership Interest as of a date selected by the General Partner, an annual report containing financial statements of the Partnership for such fiscal year of the Partnership, presented in accordance with U.S. GAAP, including a balance sheet and statements of operations, Partnership equity and cash flows, such statements to be audited by a firm of independent public accountants selected by the General Partner, and such other information as may be required by applicable law, regulation or rule of the Commission or of any National Securities Exchange on which the Units are listed or admitted to trading, or as the General Partner determines to be necessary or appropriate.

(b) ~~As~~ Whether or not the Partnership is subject to the requirement to file reports with the Commission, as soon as practicable, but in no event later than 50 days after the close of each Quarter (or such shorter period as required by the Commission), except the last Quarter of each fiscal year, the General Partner shall cause to be mailed or made available, by any reasonable means to each Record Holder of a Unit or other Partnership Interest, as of a date selected by the General Partner, a report containing unaudited financial statements of the Partnership and such other information as may be required by applicable law, regulation or rule of the Commission or of any National Securities Exchange on which the Units are listed or admitted to trading, or as the General Partner determines to be necessary or appropriate.

(c) The General Partner shall be deemed to have made a report available to each Record Holder as required by this Section 8.3 if it has either (i) filed such report with the Commission via its Electronic Data Gathering, Analysis and Retrieval system and such report is publicly available on such system or (ii) made such report available on any publicly available website maintained by the Partnership.

## **ARTICLE IX**

### **TAX MATTERS**

Section 9.1 *Tax Characterizations and Elections*. The Partnership is authorized and will promptly elect to be treated as an association taxable as a corporation for U.S. federal income tax purposes pursuant to Treasury Regulations Section 301.7701-3(c).

~~Section 9.1 *Tax Returns and Information* . The Partnership shall timely file all returns of the Partnership that are required for U.S. federal, state and local income tax purposes on the basis of the accrual method and the taxable period or years that it is required by law to adopt, from time to time, as determined by the General Partner. In the event the Partnership is required to use a taxable period other than a year ending on December 31, the General Partner shall use reasonable efforts to change the taxable period of the Partnership to a year ending on December 31. The tax information reasonably required by Record Holders for federal, state and local income tax reporting purposes with respect to a taxable period shall be furnished to them within 90 days of the close of the calendar year in which the Partnership's taxable period ends. The classification, realization and recognition of income, gain, losses and deductions and other items shall be on the accrual method of accounting for U.S. federal income tax purposes.~~



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### ~~Section 9.2 Tax Elections.~~

~~(a) The Partnership shall make the election under Section 754 of the Code in accordance with applicable regulations thereunder, subject to the reservation of the right to seek to revoke any such election upon the General Partner's determination that such revocation is in the best interests of the Partners. Notwithstanding any other provision herein contained, for the purposes of computing the adjustments under Section 743(b) of the Code, the General Partner shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of a Partnership Interest will be deemed to be the lowest quoted closing price of the Partnership Interests on any National Securities Exchange on which such Partnership Interests are listed or admitted to trading during the calendar month in which such transfer is deemed to occur pursuant to Section 6.2(g) without regard to the actual price paid by such transferee.~~

~~(b) Except as otherwise provided herein, the General Partner shall determine whether the Partnership should make any other elections permitted by the Code.~~

~~Section 9.3 Tax Controversies. Subject to the provisions hereof, the General Partner shall designate the Organizational Limited Partner, or such other Partner as the General Partner shall designate, as the Tax Matters Partner (as defined in the Code) and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the Tax Matters Partner and to do or refrain from doing any or all things reasonably required by the Tax Matters Partner to conduct such proceedings. Each Partner agrees that notice of or updates regarding tax controversies shall be deemed conclusively to have been given or made by the Tax Matters Partner if the Partnership has either (i) filed the information for which notice is required with the Commission via its Electronic Data Gathering, Analysis and Retrieval system and such information is publicly available on such system or (ii) made the information for which notice is required available on any publicly available website maintained by the Partnership, whether or not such Partner remains a Partner in the Partnership at the time such information is made publicly available.~~

Section ~~9.4~~9.2 *Withholding*. Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that may be required to cause the Partnership and other Group Members to comply with any withholding requirements established under the Code or any other U.S. federal, state or local law, including pursuant to Sections 1441, 1442, 1445, 1471 and ~~1446~~1472 of the Code, or established under any foreign law. To the extent that the Partnership is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner ~~(including by reason of Section 1446 of the Code)~~, the General Partner may treat the amount withheld as a distribution of cash pursuant to Section 6.36.1 in the amount of such withholding from such Partner.

## ARTICLE X

### ADMISSION OF PARTNERS

#### Section 10.1 *Admission of Limited Partners.*

(a) By acceptance of the transfer of any Limited Partner Interests or the issuance of any Limited Partner Interests in accordance herewith, and except as provided in Section 4.8, each transferee or other recipient of a Limited Partner Interest (including any nominee holder or an agent or representative acquiring such Limited Partner Interests for the account of another Person) (i) shall be admitted to the Partnership as a Limited Partner with respect to the Limited Partner Interests so transferred or issued to such Person when any such transfer or issuance is reflected in the books and records of the Partnership, (ii) shall become bound by the terms of, and shall be deemed to have agreed to be

bound by, this Agreement, (iii) shall become the Record Holder of the Limited Partner Interests so transferred or issued, (iv) represents that the transferee or other recipient has the

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capacity, power and authority to enter into this Agreement, and (v) makes the consents, acknowledgments and waivers contained in this Agreement, all with or without execution of this Agreement. The transfer of any Limited Partner Interests and/or the admission of any new Limited Partner shall not constitute an amendment to this Agreement. A Person may become a Record Holder without the consent or approval of any of the Partners. A Person may not become a Limited Partner without acquiring a Limited Partner Interest. The rights and obligations of a Person who is an Ineligible Holder shall be determined in accordance with Section 4.8.

(b) The name and mailing address of each Record Holder shall be listed on the books and records of the Partnership maintained for such purpose by the General Partner or the Transfer Agent. The General Partner shall update its books and records from time to time as necessary to reflect accurately the information therein (or shall cause the Transfer Agent to do so, as applicable). A Limited Partner Interest may be represented by a Certificate, as provided in Section 4.1.

(c) Any transfer of a Limited Partner Interest shall not entitle the transferee to share in the profits and losses, to receive distributions, to receive allocations of income, gain, loss, deduction or credit or any similar item or to any other rights to which the transferor was entitled until the transferee becomes a Limited Partner pursuant to Section 10.1(a).

*Section 10.2 Admission of Successor General Partner.* A successor General Partner approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the General Partner Interest pursuant to Section 4.6 who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately prior to the withdrawal or removal of the predecessor or transferring General Partner, pursuant to Section 11.1 or Section 11.2 or the transfer of the General Partner Interest pursuant to Section 4.6, *provided, however*, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.6 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to the terms hereof, carry on the business of the members of the Partnership Group without dissolution.

*Section 10.3 Amendment of Agreement and Certificate of Limited Partnership.* To effect the admission to the Partnership of any Partner, the General Partner shall take all steps necessary under the Delaware Act to amend the records of the Partnership to reflect such admission and, if necessary, to prepare as soon as practicable an amendment to this Agreement and, if required by law, the General Partner shall prepare and file an amendment to the Certificate of Limited Partnership.

## **ARTICLE XI**

### **WITHDRAWAL OR REMOVAL OF PARTNERS**

*Section 11.1 Withdrawal of the General Partner.*

(a) The General Partner shall be deemed to have withdrawn from the Partnership upon the occurrence of any one of the following events (each such event herein referred to as an *Event of Withdrawal*):

- (i) The General Partner voluntarily withdraws from the Partnership by giving written notice to the other Partners;
- (ii) The General Partner transfers all of its rights as General Partner pursuant to Section 4.6;
- (iii) The General Partner is removed pursuant to Section 11.2;

(iv) The General Partner (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a

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petition or answer seeking for itself a liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (A) through (C) of this Section 11.1(ba)(iv); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor-in-possession), receiver or liquidator of the General Partner or of all or any substantial part of its properties;

(v) A final and non-appealable order of relief under Chapter 7 of the United States Bankruptcy Code is entered by a court with appropriate jurisdiction pursuant to a voluntary or involuntary petition by or against the General Partner; or

(vi)(A) in the event the General Partner is a corporation, a certificate of dissolution or its equivalent is filed for the General Partner, or 90 days expire after the date of notice to the General Partner of revocation of its charter without a reinstatement of its charter, under the laws of its state of incorporation; (B) in the event the General Partner is a limited liability company or a partnership, the dissolution and commencement of winding up of the General Partner; (C) in the event the General Partner is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; (D) in the event the General Partner is a natural person, his death or adjudication of incompetency; and (E) otherwise in the event of the termination of the General Partner.

If an Event of Withdrawal specified in Sections 11.1(a)(iv), 11.1(a)(v), 11.1(a)(vi)(A), 11.1(a)(vi)(B), 11.1(a)(vi)(C) or 11.1(a)(vi)(E) occurs, the withdrawing General Partner shall give notice to the Partners within 30 days after such occurrence. The Partners hereby agree that only the Events of Withdrawal described in this Section 11.1 shall result in the withdrawal of the General Partner from the Partnership.

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at any time during the period beginning on ~~the Closing Date June 23, 2014~~ and ending at 11:59 pm, prevailing Central Time, on June 30, 2024, the General Partner voluntarily withdraws by giving at least 90 days advance notice of its intention to withdraw to the Partners; provided, that prior to the effective date of such withdrawal, the withdrawal is approved by Unitholders holding a majority of the Outstanding ~~Common~~ Units (excluding ~~Common~~ Units held by the General Partner and its Affiliates, if any) and the General Partner delivers to the Partnership an Opinion of Counsel ( ***Withdrawal Opinion of Counsel*** ) that such withdrawal (following the selection of the successor General Partner) would not result in the loss of the limited liability of any Limited Partner under the Delaware Act ~~or cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for U.S. federal income tax purposes (to the extent not previously so treated or taxed)~~; (ii) at any time after 11:59 pm, prevailing Central Time, on June 30, 2024, the General Partner voluntarily withdraws by giving at least 90 days advance notice to the Partners, such withdrawal to take effect on the date specified in such notice; (iii) at any time that the General Partner ceases to be the General Partner pursuant to Section 11.1(a)(ii) or is removed pursuant to Section 11.2; or (iv) notwithstanding clause (i) of this sentence, at any time that the General Partner voluntarily withdraws by giving at least 90 days advance notice of its intention to withdraw to the other Partners, such withdrawal to take effect on the date specified in the notice, if at the time such notice is given one Person and its Affiliates (other than the General Partner and its Affiliates) own beneficially or of record or control at least 50% of the Outstanding Units. The withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall also constitute the withdrawal of the General Partner as general partner or managing member, if any, to the extent applicable, of the other Group Members. If the General Partner gives notice of withdrawal pursuant to Section 11.1(a)(ii), the holders of a Unit Majority may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner shall automatically become the successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Partners as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with

Section 12.1, unless the business of the Partnership is continued pursuant to



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Section 12.2. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.2.

Section 11.2 Removal of the General Partner. The General Partner may be removed if such removal is approved by the Partners holding at least 66 2/3% of the Outstanding Units (including Units held by the General Partner and its Affiliates) voting as a single class. Any such action by such holders for removal of the General Partner must also provide for the election of a successor General Partner by the ~~Partners holding a majority of the outstanding Common Units (including Common Units held by the General Partner and its Affiliates)~~holders of a Unit Majority. Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Section 10.2. The removal of the General Partner shall also automatically constitute the removal of the General Partner as general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If a Person is elected as a successor General Partner in accordance with the terms of this Section 11.2, such Person shall, upon admission pursuant to Section 10.2, automatically become a successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. The right of the Partners to remove the General Partner shall not exist or be exercised unless the Partnership has received an opinion opining as to the matters covered by a Withdrawal Opinion of Counsel. Any successor General Partner elected in accordance with the terms of this Section 11.2 shall be subject to the provisions of Section 10.2.

Section 11.3 Interest of Departing General Partner and Successor General Partner.

(a) In the event of (i) withdrawal of the General Partner under circumstances where such withdrawal does not violate this Agreement or (ii) removal of the General Partner by the Partners under circumstances where Cause does not exist, if the successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2, the Departing General Partner shall have the option, exercisable prior to the effective date of the withdrawal or removal of such Departing General Partner, to require its successor to purchase its General Partner Interest and its or its Affiliates general partner interest (or equivalent interest), if any, in the other Group Members (collectively, the **Combined Interest** ) in exchange for an amount in cash equal to the fair market value of such Combined Interest, such amount to be determined and payable as of the effective date of its withdrawal or removal. If the General Partner is removed by the Partners under circumstances where Cause exists or if the General Partner withdraws under circumstances where such withdrawal violates this Agreement, and if a successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2 (or if the business of the Partnership is continued pursuant to Section 12.2 and the successor General Partner is not the former General Partner), such successor shall have the option, exercisable prior to the effective date of the departure of such Departing General Partner (or, in the event the business of the Partnership is continued, prior to the date the business of the Partnership is continued), to purchase the Combined Interest for such fair market value of such Combined Interest. In either event, the Departing General Partner shall be entitled to receive all reimbursements due such Departing General Partner pursuant to Section 7.5, including any ~~employee related~~employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by the Departing General Partner or its Affiliates (other than any Group Member) for the benefit of the Partnership or the other Group Members.

For purposes of this Section 11.3(a), the fair market value of the Combined Interest shall be determined by agreement between the Departing General Partner and its successor or, failing agreement within 30 days after the effective date of such Departing General Partner's withdrawal or removal, by an independent investment banking firm or other independent expert selected by the Departing General Partner and its successor, which, in turn, may rely on other experts, and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such withdrawal or removal, then the Departing General Partner shall designate an independent investment banking firm or

other independent expert, the Departing General Partner's successor shall designate an independent investment banking firm or other independent expert, and such firms or experts shall mutually

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select a third independent investment banking firm or independent expert, which third independent investment banking firm or other independent expert shall determine the fair market value of the Combined Interest. In making its determination, such third independent investment banking firm or other independent expert may consider the then current trading price of Units on any National Securities Exchange on which Units are then listed or admitted to trading, the value of the Partnership's assets, the rights and obligations of the Departing General Partner and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 11.3(a), the Departing General Partner (or its transferee) shall become a Limited Partner and the Combined Interest shall be converted into Common Units pursuant to a valuation made by an investment banking firm or other independent expert selected pursuant to Section 11.3(a), without reduction in such Partnership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor General Partner shall indemnify the Departing General Partner (or its transferee) as to all debts and liabilities of the Partnership arising on or after the date on which the Departing General Partner (or its transferee) becomes a Limited Partner. For purposes of this Agreement, conversion of the Combined Interest to Common Units will be characterized as if the Departing General Partner (or its Affiliates) contributed the Combined Interest to the Partnership in exchange for the newly issued Common Units.

*Section 11.4 Withdrawal of Limited Partners.* No Limited Partner shall have any right to withdraw from the Partnership; *provided, however*, that when a transferee of a Limited Partner's Partnership Interest becomes a Record Holder of the Partnership Interest so transferred, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Partnership Interest so transferred.

## **ARTICLE XII**

### **DISSOLUTION AND LIQUIDATION**

*Section 12.1 Dissolution.* The Partnership shall not be dissolved by the admission of additional Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the removal or withdrawal of the General Partner, if a successor General Partner is elected pursuant to Section 11.1-~~or~~, Section 11.2 or Section 12.2, to the fullest extent permitted by law, the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

- (a) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and such successor is admitted to the Partnership pursuant to Section 10.2;
- (b) an election to dissolve the Partnership by the General Partner that is approved by the holders of a Unit Majority;
- (c) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or
- (d) at any time there are no Limited Partners, unless the Partnership is continued without dissolution in accordance with the Delaware Act.

*Section 12.2 Continuation of the Business of the Partnership After Dissolution.* Upon (a) an Event of Withdrawal caused by the withdrawal or removal of the General Partner as provided in Section 11.1(a)(i) or Section 11.1(a)(iii) and the failure of the Partners to select a successor to such Departing General Partner pursuant to Section 11.1 or Section 11.2, then within 90 days thereafter, or (i) an event constituting an Event of



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Withdrawal as defined in Section 11.1(a)(iv), 11.1(a)(v) or 11.1(a)(iv), then, to the maximum extent permitted by law, within 180 days thereafter, a Unit Majority may elect to continue the business of the Partnership on the same terms and conditions set forth in this Agreement by appointing as the successor General Partner a Person approved by a Unit Majority. Unless such an election is made within the applicable time period as set forth above, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

(ii) the Partnership shall continue without dissolution unless earlier dissolved in accordance with this Article XII;

(iii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be treated in the manner provided in Section 11.3; and

(iv) the successor General Partner shall be admitted to the Partnership as General Partner, effective as of the Event of Withdrawal, by agreeing in writing to be bound by this Agreement;

provided, that the right of a Unit Majority to approve a successor General Partner and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an Opinion of Counsel that ~~(x) the exercise of the right would not result in the loss of the limited liability of any Limited Partner under the Delaware Act and (y) neither the Partnership nor any successor limited partnership would be treated as an association taxable as a corporation or otherwise be taxable as an entity for U.S. federal income tax purposes upon the exercise of such right to continue (to the extent not already so treated or taxed).~~

Section 12.3 Liquidator. Upon dissolution of the Partnership, unless the business of the Partnership is continued pursuant to Section 12.2, the General Partner shall select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of a Unit Majority. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of a Unit Majority. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by ~~holders of a majority of the Outstanding Common Units~~ a Unit Majority. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.4) necessary or appropriate to carry out the duties and functions of the Liquidator hereunder for and during the period of time required to complete the winding up and liquidation of the Partnership as provided for herein.

Section 12.4 Liquidation. The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as determined by the Liquidator, subject to Section 17-804 of the Delaware Act and the following:

(a) The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 12.4(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. The Liquidator may defer liquidation or distribution of the Partnership's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Partnership's assets would be impractical or would cause undue

loss to the Partners. The Liquidator may distribute the Partnership's

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assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) Liabilities of the Partnership include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 12.3) and amounts to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) All property and all cash in excess of that required to satisfy or discharge liabilities as provided in Section 12.4(b) shall be distributed to the Partners in accordance with ~~and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.4(e)) for the taxable period of the Partnership during which the liquidation of the Partnership occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1~~ the priorities for distributions set forth in Section 6.1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable period (or, if later, within 90 days after said date of such occurrence).

**Section 12.5 Cancellation of Certificate of Limited Partnership.** Upon the completion of the distribution of Partnership cash and property as provided in Section 12.4 in connection with the liquidation of the Partnership, the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

**Section 12.6 Return of Contributions.** The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Partners or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

**Section 12.7 Waiver of Partition.** To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

~~**Section 12.8 Capital Account Restoration.** No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership.~~

## ARTICLE XIII

### AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS; RECORD DATE

**Section 13.1 Amendments to be Adopted Solely by the General Partner.** Each Partner agrees that the General Partner, without the approval of any other Partner, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;





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(c) a change that the General Partner determines to be necessary or appropriate to qualify or continue the qualification of the Partnership as a limited partnership or a partnership in which the Limited Partners have limited liability under the laws of any state ~~or to ensure that the Group Members will not be treated as associations taxable as corporations or otherwise taxed as entities for U.S. federal income tax purposes;~~

(d) a change that the General Partner determines (i) 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, (ii) to be necessary or appropriate to (A) satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Units (including the division of any class or classes of Outstanding Units into different classes to facilitate uniformity of tax consequences within such classes of Units) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which any class of Partnership Interests are or will be listed or admitted to trading, (iii) to be necessary or appropriate in connection with action taken by the General Partner pursuant to Section 5.7 or (iv) is required to effect the intent ~~expressed in the Registration Statement or the intent~~ of the provisions of this Agreement or is otherwise contemplated by this Agreement;

(e) a change in the fiscal year or taxable period of the Partnership and any other changes that the General Partner determines to be necessary or appropriate as a result of a change in the fiscal year or taxable period of the Partnership including, if the General Partner shall so determine, a change in the definition of Quarter and the dates on which distributions are to be made by the Partnership;

(f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Partnership, or the General Partner or Diamondback ~~Energy, Inc.~~ or their respective directors, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or plan asset regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) an amendment that the General Partner determines to be necessary or appropriate in connection with the creation, authorization or issuance of any class or series of Partnership Interests or any Derivative Instruments pursuant to Section 5.5;

(h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(i) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 14.3;

(j) an amendment that the General Partner determines to be necessary or appropriate to reflect and account for the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity, in connection with the conduct by the Partnership of activities permitted by the terms of Section 2.4 or Section 7.1(a);

(k) a merger or conveyance pursuant to Section 14.3(d) or Section 14.3(e); or

(l) any other amendments substantially similar to the foregoing.

Section 13.2 *Amendment Procedures*. Amendments to this Agreement may be proposed only by the General Partner. To the fullest extent permitted by law, the General Partner shall have no duty or obligation to propose or approve any amendment to this Agreement and may decline to do so in its sole discretion. An amendment shall be effective upon its approval by the General Partner and, except as otherwise provided by Section 13.1 or

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Section 13.3, a Unit Majority, unless a greater or different percentage is required under this Agreement or by Delaware law. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of Outstanding Units or call a meeting of the Unitholders to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any amendments. The General Partner shall be deemed to have notified all Record Holders as required by this Section 13.2 if it has either (a) filed such amendment with the Commission via its Electronic Data Gathering, Analysis and Retrieval system and such amendment is publicly available on such system or (b) made such amendment available on any publicly available website maintained by the Partnership.

### *Section 13.3 Amendment Requirements.*

(a) Notwithstanding the provisions of Section 13.1 (other than Section 13.1(d)(iv)) and Section 13.2, no provision of this Agreement (other than Section 11.2 or Section 13.4) that establishes a percentage of Outstanding Units (including Units deemed owned by the General Partner) or requires a vote or approval of Partners (or a subset of Partners) holding a specified Percentage Interest to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of reducing or increasing such percentage, unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute not less than the voting requirement sought to be reduced or increased, as applicable, or the affirmative vote of Partners whose aggregate Percentage Interests constitute not less than the voting requirement sought to be reduced or increased, as applicable.

(b) Notwithstanding the provisions of Section 13.1 (other than Section 13.1(d)(iv)) and Section 13.2, no amendment to this Agreement may (i) enlarge the obligations of (including requiring any holder of a class of Partnership Interests to make additional Capital Contributions to the Partnership) any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3(c), or (ii) enlarge the obligations of, restrict, change or modify in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner or any of its Affiliates without its consent, which consent may be given or withheld at its option.

(c) Except as provided in Section 14.3 or Section 13.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Partnership Interests in relation to other classes of Partnership Interests must be approved by the holders of not less than a majority of the Outstanding Partnership Interests of the class affected. If the General Partner determines an amendment does not satisfy the requirements of Section 13.1(d)(i) because it adversely affects one or more classes of Partnership Interests, as compared to other classes of Partnership Interests, in any material respect, such amendment shall only be required to be approved by the adversely affected class or classes.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 13.1 and except as otherwise provided by Section 14.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Percentage Interests of all Limited Partners voting as a single class unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner under applicable partnership law of the state under whose laws the Partnership is organized.

(e) Except as provided in Section 13.1, this Section 13.3 shall only be amended with the approval of Partners (including the General Partner and its Affiliates) holding at least 90% of the Percentage Interests of all Limited Partners.

Section 13.4 *Special Meetings*. All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Limited Partners may be called by the

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General Partner or by Limited Partners owning 20% or more of the Outstanding Units of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the specific purposes for which the special meeting is to be called and the class or classes of Units for which the meeting is proposed. No business may be brought by any Limited Partner before such special meeting except the business listed in the related request. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the time notice of the meeting is given as provided in Section 16.1. Limited Partners shall not vote on matters that would cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

Section 13.5 Notice of a Meeting. Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Units for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 16.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

Section 13.6 Record Date. For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11 the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed or admitted to trading or U.S. federal securities laws, in which case the rule, regulation, guideline or requirement of such National Securities Exchange or U.S. federal securities laws shall govern) or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the General Partner to give such approvals. If the General Partner does not set a Record Date, then (a) the Record Date for determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners shall be the close of business on the day next preceding the day on which notice is given, and (b) the Record Date for determining the Limited Partners entitled to give approvals without a meeting shall be the date the first written approval is deposited with the Partnership in care of the General Partner in accordance with Section 13.11.

Section 13.7 Adjournment. Prior to the date upon which any meeting of Limited Partners is to be held, the General Partner may postpone such meeting one or more times for any reason by giving notice to each Limited Partner entitled to vote at the meeting so postponed of the place, date and hour at which such meeting would be held. Such notice shall be given not fewer than two days before the date of such meeting and otherwise in accordance with this Article XIII. When a meeting is postponed, a new Record Date need not be fixed unless such postponement shall be for more than 45 days. Any meeting of Limited Partners may be adjourned by the General Partner one or more times for any reason, including the failure of a quorum to be present at the meeting with respect to any proposal or the failure of any proposal to receive sufficient votes for approval. No Limited Partner vote shall be required for any adjournment. A meeting of Limited Partners may be adjourned by the General Partner as to one or more proposals regardless of whether action has been taken on other matters. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a

notice of the adjourned meeting shall be given in accordance with this Article XIII.

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Section 13.8 *Waiver of Notice; Approval of Meeting; Approval of Minutes.* The transaction of business at any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Limited Partner attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.

Section 13.9 *Quorum and Voting.* The holders of a majority, by Percentage Interest, of Partnership Interests of the class or classes for which a meeting has been called (including Partnership Interests deemed owned by the General Partner) represented in person or by proxy shall constitute a quorum at a meeting of Partners of such class or classes unless any such action by the Partners requires approval by holders of a greater Percentage Interest, in which case the quorum shall be such greater Percentage Interest. At any meeting of the Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of holders of Partnership Interests that, in the aggregate, represent a majority of the Percentage Interest of those present in person or by proxy at such meeting shall be deemed to constitute the act of all Partners, unless a greater or different percentage is required with respect to such action under the provisions of this Agreement, in which case the act of the holders of Partnership Interests that in the aggregate represent at least such greater or different percentage shall be required; *provided, however*, that if, as a matter of law or provision of this Agreement, approval by plurality vote of Partners (or any class thereof) is required to approve any action, no minimum quorum shall be required. The Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by holders of the required Percentage Interest specified in this Agreement.

Section 13.10 *Conduct of a Meeting.* The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

Section 13.11 *Action Without a Meeting.* If authorized by the General Partner, any action that may be taken at a meeting of the Limited Partners may be taken without a meeting, without a vote and without prior notice, if an approval in writing setting forth the action so taken is signed by Limited Partners owning not less than the minimum percentage, by Percentage Interest, of the Partnership Interests of the class or classes for which a meeting has been called (including Partnership Interests deemed owned by the General Partner), as the case may be, that would be necessary to authorize or take such action at a meeting at which all the Limited Partners entitled to vote at such meeting were present and voted (unless such provision conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed or admitted to trading, in which case the rule, regulation, guideline or requirement of such National Securities Exchange shall govern). Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The General Partner may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without

a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the General Partner. If a ballot returned to the Partnership does



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not vote all of the Units held by the Limited Partners, the Partnership shall be deemed to have failed to receive a ballot for the Units that were not voted. If approval of the taking of any action by the Limited Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner and (b) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners. Nothing contained in this [Section 13.11](#) shall be deemed to require the General Partner to solicit all Limited Partners in connection with a matter approved by the holders of the requisite percentage of Units acting by written consent without a meeting.

### *Section 13.12 Right to Vote and Related Matters.*

(a) Only those Record Holders of the Outstanding Units on the Record Date set pursuant to [Section 13.6](#) shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the Outstanding Units have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Outstanding Units shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Units.

(b) With respect to Units that are held for a Person's account by another Person (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), in whose name such Units are registered, such other Person shall, in exercising the voting rights in respect of such Units on any matter, and unless the arrangement between such Persons provides otherwise, vote such Units in favor of, and at the direction of, the Person who is the beneficial owner, and the Partnership shall be entitled to assume it is so acting without further inquiry. The provisions of this [Section 13.12\(b\)](#) (as well as all other provisions of this Agreement) are subject to the provisions of [Section 4.3](#).

[Section 13.13 Class B Units. For the avoidance of doubt and notwithstanding anything to the contrary herein, each holder of Class B Units shall be entitled to receive notice of, be included in any requisite quora for, and participate in any and all approvals, votes or other actions of the Partners on a Pro Rata basis as, and treating such Persons for all purposes as if they are, Unitholders holding Common Units, including any and all notices, quora, approvals, votes and other actions that may be taken pursuant to the requirements of the Delaware Act or any other applicable law, rule or regulation, except as otherwise explicitly provided herein. The affirmative vote of the holders of a majority of the voting power of all Class B Units voting separately as a class shall be required to alter, amend or repeal this Section 13.13 or to adopt any provision of this Agreement inconsistent with this Section 13.13.](#)

## **ARTICLE XIV**

### **MERGER**

**Section 14.1 Authority.** The Partnership may merge or consolidate with or into one or more corporations, limited liability companies, business trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a general partnership or limited partnership, formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written agreement of merger or consolidation ( *Merger Agreement* ) in accordance with this [Article XIV](#).

### *Section 14.2 Procedure for Merger or Consolidation.*

(a) Merger or consolidation of the Partnership pursuant to this Article XIV requires the prior consent of the General Partner, *provided, however*, that, to the fullest extent permitted by law, the General Partner, in declining to consent to a merger or consolidation, may act in its sole discretion.

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(b) If the General Partner shall determine to consent to the merger or consolidation, the General Partner shall approve the Merger Agreement, which shall set forth:

(i) the name and jurisdiction of formation or organization of each of the business entities proposing to merge or consolidate;

(ii) the name and jurisdiction of formation or organization of the business entity that is to survive the proposed merger or consolidation (the ***Surviving Business Entity***);

(iii) the terms and conditions of the proposed merger or consolidation;

(iv) the manner and basis of exchanging or converting the equity interests of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the Surviving Business Entity; and (i) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or general or limited partner interests, rights, securities or obligations of any limited partnership, corporation, trust or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their general or limited partner interests, securities or rights, and (ii) in the case of equity interests represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;

(v)(+) a statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;

(vi) the effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of the certificate of merger, the effective time shall be fixed no later than the time of the filing of the certificate of merger and stated therein); and

(vii) such other provisions with respect to the proposed merger or consolidation that the General Partner determines to be necessary or appropriate.

### *Section 14.3 Approval by Partners of Merger or Consolidation.*

(a) Except as provided in Section 14.3(d) and Section 14.3(e), the General Partner, upon its approval of the Merger Agreement, shall direct that the Merger Agreement be submitted to a vote of Partners, whether at a special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement shall be included in or enclosed with the notice of a special meeting or the written consent.

(b) Except as provided in Section 14.3(d) and Section 14.3(e), the Merger Agreement shall be approved upon receiving the affirmative vote or consent of the holders of a Unit Majority unless the Merger Agreement contains any provision that, if contained in an amendment to this Agreement, the provisions of this Agreement or the Delaware Act would require for its approval the vote or consent of a greater percentage of the Outstanding Units or of any class of Limited Partners, in which case such greater percentage vote or consent shall be required for approval of the Merger

Agreement.

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(c) Except as provided in Section 14.3(d) and Section 14.3(e), after such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger pursuant to Section 14.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement.

(d) 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 ~~or any Group Member to be treated as an association taxable to lose, revoke or change its election to be classified~~ as a corporation ~~or otherwise to be taxed as an entity~~ for U.S. federal ~~income~~ tax purposes ~~(to the extent not already treated as such)~~, (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 and the General Partner with substantially the same rights and obligations as are herein contained.

(e) Additionally, notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without Limited Partner approval, to merge or consolidate the Partnership with or into another entity if (A) the General Partner has received an Opinion of Counsel that the merger or consolidation, as the case may be, would not result in the loss of the limited liability under the Delaware Act of any Limited Partner ~~or cause the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for U.S. federal income tax purposes (to the extent not already treated as such)~~, (B) the merger or consolidation would not result in an amendment to this Agreement, other than any amendments that could be adopted pursuant to Section 13.1, (C) the Partnership is the Surviving Business Entity in such merger or consolidation, (D) each Partnership Interest outstanding immediately prior to the effective date of the merger or consolidation is to be an identical Partnership Interest of the Partnership after the effective date of the merger or consolidation, and (E) the number of Partnership Interests to be issued by the Partnership in such merger or consolidation does not exceed 20% of the Partnership Interests Outstanding immediately prior to the effective date of such merger or consolidation.

Section 14.4 Certificate of Merger. Upon the required approval by the General Partner and the Unitholders of a Merger Agreement, a certificate of merger shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

Section 14.5 Amendment of Partnership Agreement. Pursuant to Section 17-211(g) of the Delaware Act, an agreement of merger or consolidation approved in accordance with this Article XIV may (a) effect any amendment to this Agreement or (b) effect the adoption of a new partnership agreement for the Partnership if it is the Surviving Business Entity. Any such amendment or adoption made pursuant to this Section 14.5 shall be effective at the effective time or date of the merger or consolidation.

Section 14.6 Effect of Merger or Consolidation.

(a) At the effective time of the certificate of merger:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities, shall be vested in the Surviving Business Entity and after the

merger or consolidation shall be the property of the Surviving Business Entity to the extent they were of each constituent business entity;

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(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and is not in any way impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interests in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(b) A merger or consolidation effected pursuant to this Article shall not be deemed to result in a transfer or assignment of assets or liabilities from one entity to another.

## **ARTICLE XV**

### **RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS**

#### *Section 15.1 Right to Acquire Limited Partner Interests.*

(a) Notwithstanding any other provision of this Agreement, if at any time the General Partner and its Affiliates hold more than 97% of the total Limited Partner Interests of any class ~~then Outstanding~~, the General Partner shall then have the right, which right it may assign and transfer in whole or in part to the Partnership or any Affiliate of the General Partner, exercisable in its sole discretion, to purchase all, but not less than all, of such Limited Partner Interests of such class then Outstanding held by Persons other than the General Partner and its Affiliates, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 15.1(b) is mailed and (y) the highest price paid by the General Partner or any of its Affiliates for any such Limited Partner Interest of such class purchased during the 90-day period preceding the date that the notice described in Section 15.1(b) is mailed. Notwithstanding the foregoing, if, at any time, the General Partner and its Affiliates hold less than 75% of the total Limited Partner Interests of any class then Outstanding, from and after that time, the General Partner's right set forth in this Section 15.1(a) shall be exercisable if the General Partner and its Affiliates subsequently hold more than 80% of the total Limited Partner Interests of such class. Notwithstanding anything to the contrary herein, for the purposes of this Section 15.1(a) Common Units and Class B Units shall be considered Limited Partner Interests of a single class.

(b) If the General Partner, any Affiliate of the General Partner or the Partnership elects to exercise the right to purchase Limited Partner Interests granted pursuant to Section 15.1(a), the General Partner shall deliver to the Transfer Agent notice of such election to purchase (the ***Notice of Election to Purchase***) and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of Limited Partner Interests of such class (as of a Record Date selected by the General Partner) at least 10, but not more than 60, days prior to the Purchase Date. Such Notice of Election to Purchase shall also be filed and distributed as may be required by the Commission or any National Securities Exchange on which such Limited Partner Interests are listed. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 15.1(a)) at which Limited Partner Interests will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Limited Partner Interests, upon surrender of Certificates representing such Limited Partner Interests in exchange for payment (in the case of Limited Partner Interests evidenced by Certificates), at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading. Any such Notice of Election to Purchase mailed to a Record Holder of Limited Partner Interests at his address as reflected in the

records of the Transfer Agent shall be conclusively presumed to have been given regardless of whether the owner receives such notice. On or prior to the Purchase Date, the General Partner, its Affiliate or the Partnership, as the case may be, shall deposit with



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the Transfer Agent cash in an amount sufficient to pay the aggregate purchase price of all of such Limited Partner Interests to be purchased in accordance with this Section 15.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Limited Partner Interests subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any Certificate shall not have been surrendered for purchase, all rights of the holders of such Limited Partner Interests (including any rights pursuant to Articles IV, V, VI, and VII) shall thereupon cease, except the right to receive the purchase price (determined in accordance with Section 15.1(a)) for Limited Partner Interests therefor, without interest, upon surrender to the Transfer Agent of the Certificates representing such Limited Partner Interests (in the case of Limited Partner Interests evidenced by Certificates), and such Limited Partner Interests shall thereupon be deemed to be transferred to the General Partner, its Affiliate or the Partnership, as the case may be, on the record books of the Transfer Agent and the Partnership, and the General Partner or any Affiliate of the General Partner, or the Partnership, as the case may be, shall be deemed to be the owner of all such Limited Partner Interests from and after the Purchase Date and shall have all rights as the owner of such Limited Partner Interests (including all rights as owner of such Limited Partner Interests pursuant to Articles IV, V, VI, and VII).

(c) In the case of Limited Partner Interests evidenced by Certificates, at any time from and after the Purchase Date, a holder of an Outstanding Limited Partner Interest subject to purchase as provided in this Section 15.1 may surrender his Certificate evidencing such Limited Partner Interest to the Transfer Agent in exchange for payment of the amount described in Section 15.1(a), therefor, without interest thereon.

## **ARTICLE XVI**

### **GENERAL PROVISIONS**

#### *Section 16.1 Addresses and Notices; Written Communications.*

(a) Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner at the address described below. Any notice, payment or report to be given or made to a Partner hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Partnership Interests at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Partnership Interests by reason of any assignment or otherwise. Notwithstanding the foregoing, if (i) a Partner shall consent to receiving notices, demands, requests, reports or proxy materials via electronic mail or by the Internet or (ii) the rules of the Commission shall permit any report or proxy materials to be delivered electronically or made available via the Internet, any such notice, demand, request, report or proxy materials shall be deemed given or made when delivered or made available via such mode of delivery. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 16.1(a) executed by the General Partner, the Transfer Agent or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report given or made in accordance with the provisions of this Section 16.1(a) is returned marked to indicate that such notice, payment or report was unable to be delivered, such notice, payment or report and, in the case of notices, payments or reports returned by the United States Postal Service (or other physical mail delivery mail service outside the United States of America), any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) or other delivery if they are available for the Partner at

the principal office of the Partnership for a period of one year from the date of the giving or

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making of such notice, payment or report to the other Partners. Any notice to the Partnership shall be deemed given if received by the General Partner at the principal office of the Partnership designated pursuant to Section 16.1(a). The General Partner may rely and shall be protected in relying on any notice or other document from a Partner or other Person if believed by it to be genuine.

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

**Section 16.2 *Further Action.*** The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

**Section 16.3 *Binding Effect.*** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

**Section 16.4 *Integration.*** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

**Section 16.5 *Creditors.*** None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

**Section 16.6 *Waiver.*** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

**Section 16.7 *Counterparts.*** This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a Partnership Interest, pursuant to Section 10.1(a) without execution hereof.

**Section 16.8 *Applicable Law; Forum, Venue and Jurisdiction; Waiver of Trial by Jury; Attorney Fees.***

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

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

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

or otherwise, are based on common law, statutory, equitable, legal or other grounds, or are derivative or direct claims;

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

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

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

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

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

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

**Section 16.9 *Invalidity of Provisions.*** If any provision or part of a provision of this Agreement is or becomes, for any reason, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions and part thereof contained herein shall not be affected thereby, and this Agreement shall, to the fullest extent permitted by law, be reformed and construed as if such invalid, illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

**Section 16.10 *Consent of Partners.*** Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

**Section 16.11 *Facsimile and Email Signatures.*** The use of facsimile signatures [and signatures delivered by email in portable document format \(.pdf\) or similar format](#) affixed in the name and on behalf of the transfer agent and registrar of the Partnership on Certificates representing Units is expressly permitted by this Agreement.

**Section 16.12 *Third Party Beneficiaries.*** Each Partner agrees that (a) any Indemnitee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Indemnitee, and (b) any Unrestricted Person shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Unrestricted Person.



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IN WITNESS WHEREOF, the ~~parties hereto have~~ General Partner executed this Agreement ~~as~~ of the ~~date first~~  
~~written above~~ Second A&R Date.

GENERAL PARTNER:

**VIPER ENERGY PARTNERS GP LLC**

By:  
Name: Randall J. Holder  
Title: Vice President, General Counsel and  
Secretary

~~LIMITED PARTNER:~~

~~DIAMONDBACK ENERGY, INC.~~

~~By:~~  
~~Name: Randall J. Holder~~  
~~Title: Vice President, General Counsel and~~  
~~Secretary~~

**SECOND AMENDED AND RESTATED PARTNERSHIP AGREEMENT OF VIPER ENERGY PARTNERS LP**

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**EXHIBIT A to the ~~First~~Second Amended and Restated Agreement of Limited Partnership of Viper Energy Partners LP**

**Certificate Evidencing Common Units Representing Limited Partner Interests in Viper Energy Partners LP**

No. \_\_\_\_\_ Common Units  
 In accordance with Section 4.1 of the ~~First~~Second Amended and Restated Agreement of Limited Partnership of Viper Energy Partners LP, as amended, supplemented or restated from time to time (the **Partnership Agreement**), Viper Energy Partners LP, a Delaware limited partnership (the **Partnership**), hereby certifies that \_\_\_\_\_ (the **Holder**) is the registered owner of \_\_\_\_\_ Common Units representing limited partner interests in the Partnership (the **Common Units**) transferable on the books of the Partnership, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. The rights, preferences and limitations of the Common Units are set forth in, and this Certificate and the Common Units represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Partnership Agreement. Copies of the Partnership Agreement are on file at, and will be furnished without charge on delivery of written request to the Partnership at, the principal office of the Partnership located at 2277 Plaza Drive, Suite 500, Sugar Land, Texas 77479. Capitalized terms used herein but not defined shall have the meanings given them in the Partnership Agreement.

THE HOLDER OF THIS SECURITY ACKNOWLEDGES FOR THE BENEFIT OF VIPER ENERGY PARTNERS LP THAT THIS SECURITY MAY NOT BE SOLD, OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED IF SUCH TRANSFER WOULD (A) VIOLATE THE THEN APPLICABLE FEDERAL OR STATE SECURITIES LAWS OR RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER GOVERNMENTAL AUTHORITY WITH JURISDICTION OVER SUCH TRANSFER; OR (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF VIPER ENERGY PARTNERS LP UNDER THE LAWS OF THE STATE OF DELAWARE; ~~OR (C) CAUSE VIPER ENERGY PARTNERS LP TO BE TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION OR OTHERWISE TO BE TAXED AS AN ENTITY FOR U.S. FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR TAXED). VIPER ENERGY PARTNERS GP LLC, THE GENERAL PARTNER OF VIPER ENERGY PARTNERS LP, MAY IMPOSE ADDITIONAL RESTRICTIONS ON THE TRANSFER OF THIS SECURITY IF IT RECEIVES AN OPINION OF COUNSEL THAT SUCH RESTRICTIONS ARE NECESSARY TO AVOID A SIGNIFICANT RISK OF VIPER ENERGY PARTNERS LP BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR U.S. FEDERAL INCOME TAX PURPOSES.~~ THE RESTRICTIONS SET FORTH ABOVE SHALL NOT PRECLUDE THE SETTLEMENT OF ANY TRANSACTIONS INVOLVING THIS SECURITY ENTERED INTO THROUGH THE FACILITIES OF ANY NATIONAL SECURITIES EXCHANGE ON WHICH THIS SECURITY IS LISTED OR ADMITTED TO TRADING.

The Holder, by accepting this Certificate, is deemed to have (i) requested admission as, and agreed to become, a Limited Partner and to have agreed to comply with and be bound by and to have executed the Partnership Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement and (iii) made the waivers and given the consents and approvals contained in the Partnership Agreement.



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This Certificate shall not be valid for any purpose unless it has been countersigned and registered by the Transfer Agent and Registrar. This Certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

Dated: \_\_\_\_\_  
\_\_\_\_\_

VIPER ENERGY PARTNERS LP

Countersigned and Registered by: \_\_\_\_\_  
\_\_\_\_\_

By: VIPER ENERGY PARTNERS GP LLC

Computershare Trust Company, N.A., \_\_\_\_\_

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

As Transfer Agent and Registrar

Title: \_\_\_\_\_  
\_\_\_\_\_

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

Name: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

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[Reverse of Certificate]

**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as follows according to applicable laws or regulations:

TEN COM as tenants in common

UNIF GIFT/TRANSFERS MIN ACT

TEN ENT as tenants by the entireties

\_\_\_\_\_Custodian\_\_\_\_\_

JT TEN as joint tenants with right of survivorship and not (Cust) (Minor)  
as tenants in common

Under Uniform Gifts/Transfers to CD Minors Act  
(State)

Additional abbreviations, though not in the above list, may also be used.

**ASSIGNMENT OF COMMON UNITS OF**

**VIPER ENERGY PARTNERS LP**

FOR VALUE RECEIVED, \_\_\_\_\_ hereby assigns, conveys, sells and transfers unto

(Please print or typewrite name and address of assignee)

(Please insert Social Security or other identifying  
number of assignee)

\_\_\_\_\_ Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint \_\_\_\_\_ as its attorney-in-fact with full power of substitution to transfer the same on the books of Viper Energy Partners LP.

Date: \_\_\_\_\_

NOTE: The signature to any endorsement hereon must correspond with the name as written upon the face of this Certificate in every particular. without alteration, enlargement or change.

**THE SIGNATURE(S) MUST BE GUARANTEED BY  
AN ELIGIBLE GUARANTOR INSTITUTION  
(BANKS, STOCKBROKERS, SAVINGS AND LOAN  
ASSOCIATIONS AND CREDIT UNIONS WITH  
MEMBERSHIP IN AN APPROVED SIGNATURE**

(Signature)  
(Signature)

**GUARANTEE MEDALLION PROGRAM),  
PURSUANT TO S.E.C. RULE 17Ad-15**

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer.

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Annex B

**FORM OF**  
**SECOND AMENDED AND RESTATED**  
**LIMITED LIABILITY COMPANY AGREEMENT**  
**OF**  
**VIPER ENERGY PARTNERS LLC**  
**Dated as of [ ], 2018**

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

A Delaware Limited Liability Company

This Second Amended and Restated Limited Liability Company Agreement of Viper Energy Partners LLC, dated as of [ ], 2018, is entered into by and between Viper Energy Partners LP, a Delaware limited partnership, as Managing Member, and Diamondback Energy, Inc., a Delaware corporation. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

**RECITALS**

WHEREAS, Diamondback previously organized the Company as a Delaware limited liability company pursuant to a Limited Liability Company Agreement dated as of September 18, 2013 (the ***Original Agreement*** );

WHEREAS, Diamondback previously contributed the Company to the Managing Member in exchange for limited partnership interests in the Managing Member on June 23, 2014;

WHEREAS, the Members amended and restated the Original Agreement pursuant to an agreement dated as of June 23, 2014 (the ***First Amended and Restated Agreement*** );

WHEREAS, Diamondback, the Managing Member, the General Partner and the Company entered into the Recapitalization Agreement, whereby Diamondback agreed to exchange its Partnership Common Units for 73,150,000 Partnership Class B Units and 73,150,000 Units;

WHEREAS, in connection with the closing of the transactions contemplated in the Recapitalization Agreement, it is necessary to amend the First Amended and Restated Agreement as provided herein;

WHEREAS, the Managing Member has elected to be classified as an association taxable as a corporation for federal income tax purposes pursuant to Treasury Regulation Section 301.7701-3(c) (the ***Tax Election*** ), effective immediately after the closing of the transactions contemplated in the Recapitalization Agreement; and

WHEREAS, the Tax Election, the issuance of Units to Diamondback on the date hereof as specified in Section 5.1 and on Exhibit A and this amendment and restatement of the First Amended and Restated Agreement have been proposed and approved by the Managing Member pursuant to Section 13 of the First Amended and Restated Agreement.

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

**ARTICLE I**

**DEFINITIONS**



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

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

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

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

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

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

**Agreement** means this Second Amended and Restated Limited Liability Company Agreement of Viper Energy Partners LLC, as it may be amended, modified, supplemented or restated from time to time.

**Annual Allocation Amount** means the following specified amount in each taxable year during the Specified Period:

<b>Taxable Year</b>	<b>Annual Allocation Amount</b>
2018	\$111 million
2019	\$167 million
2020	\$250 million
2021	\$305 million

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

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

***Board of Directors*** means the board of directors of the General Partner.

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

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

***Capital Account*** means the capital account maintained for a Member pursuant to Section 5.3. The Capital Account of a Member in respect of any Membership Interest shall be the amount that such Capital Account would be if such Membership Interest were the only interest in the Company held by such Member from and after the date on which such Membership Interest was first issued.

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

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

***Cause*** means a court of competent jurisdiction has entered a final, non-appealable judgment finding the Managing Member liable to the Company or any Non-Managing Member for actual fraud or willful misconduct in its capacity as a managing member of the Company.

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

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

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

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

***Company*** means Viper Energy Partners LLC, a Delaware limited liability company.

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

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

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***Conflicts Committee*** has the meaning set forth in the Partnership Agreement.

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

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

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

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

***Diamondback*** means Diamondback Energy, Inc., a Delaware corporation.

***Disqualified Person*** means (a) a tax-exempt entity (unless such Person would be subject to tax under Section 511 of the Code on all income from the Company) or tax-exempt controlled entity (unless with respect to a tax-exempt controlled entity, an election is made under Section 168(h)(6)(F)(ii) of the Code) as those terms are defined in Section 168(h) of the Code; (b) a Person described in Section 50(b)(3) (unless such Person would be subject to tax under Section 511 of the Code on all income from the Company), Section 50(b)(4) or Section 50(d) of the Code; (c) an entity described in paragraph (4) of Section 54(j) of the Code; or (d) any partnership or other pass-through entity (including a single-member disregarded entity) any direct or indirect partner of which (or other direct or indirect holder of an equity or profits interest) is described in clauses (a) through (c) above, unless such Person holds its interest in the partnership or other pass-through entity indirectly through an entity taxable as a corporation for U.S. federal income tax purposes, other than an (i) a tax-exempt controlled entity as defined in Section 168(h) (unless with respect to a tax-exempt controlled entity, an election is made under Section 168(h)(6)(F)(ii) of the Code) or (ii) a corporation with respect to which the rules of Section 50(d) would apply.

***Disposed of Adjusted Property*** has the meaning set forth in Section 6.1(c)(xiii)(B).

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

***Excess Distribution*** has the meaning set forth in Section 6.1(c)(iii)(A).

***Excess Distribution Unit*** has the meaning set forth in Section 6.1(c)(iii)(A).

***Exchange Agreement*** means the Exchange Agreement, dated as of [ ], 2018, among the Managing Member, the General Partner, Diamondback and the Company.

***First Amended and Restated Agreement*** has the meaning set forth in the Recitals.

***General Partner*** means Viper Energy Partners GP LLC, a Delaware limited liability company, and its successors and permitted assigns that are admitted to the Managing Member as the general partner of the Managing Member, in their capacity as the general partner of the Managing Member.

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

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

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

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

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

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

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

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

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

**Managing Member** means Viper Energy Partners LP, a Delaware limited partnership, and its successors and permitted assigns that are admitted to the Company as the managing member of the Company, in its capacity as the managing member of the Company. The Managing Member is the sole managing member of the Company and the holder of the Managing Member Interest.

**Managing Member Interest** means the interest of the Managing Member in the Company (in its capacity as managing member without reference to any Membership Interest), evidenced by Units held by the Managing Member, and includes any and all rights, powers and benefits to which the Managing Member is entitled as provided in this Agreement, together with all obligations of the Managing Member to comply with the terms and provisions of this



Agreement.

**Member** means any of the Managing Member and the Non-Managing Members.

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

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

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

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

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

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

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

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

***Non-Managing Member*** means Diamondback and each additional Person other than the Managing Member that owns one or more Units.

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

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

***Nonrecourse Built-in Gain*** means with respect to any Contributed Properties or Adjusted Properties that are subject to a mortgage or pledge securing a Nonrecourse Liability, the amount of any taxable gain that would be allocated to

the Members pursuant to Section 6.2(c) if such properties were disposed of in a taxable transaction in full satisfaction of such liabilities and for no other consideration.

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

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

***Original Agreement*** has the meaning set forth in the Recitals.

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

***Partnership*** means Viper Energy Partners LP, a Delaware limited partnership.

***Partnership Agreement*** means the Second Amended and Restated Agreement of Limited Partnership of the Managing Member, dated as of [ ], 2018, as the same may be amended, supplemented or restated from time to time.

***Partnership Class B Unit*** means a limited partner interest in the Partnership having the rights and obligations specified with respect to Class B Units in the Partnership Agreement.

***Partnership Common Unit*** means a limited partner interest in the Partnership having the rights and obligations specified with respect to Common Units in the Partnership Agreement.

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

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

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

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

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

***Recapitalization Agreement*** means that certain Recapitalization Agreement among the Partnership, the Company, the General Partner and Diamondback dated as of March 28, 2018.

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



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

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

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

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

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

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

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

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

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

**Specified Period** means the period beginning on the date of this Agreement and ending on December 31, 2021.

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



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***Tax Election*** has the meaning set forth in the Recitals.

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

***Trading Day*** means a day on which the principal National Securities Exchange on which the referenced Partnership Common Units or the referenced Membership Interests of any class are listed or admitted to trading is open for the transaction of business or, if such Partnership Common Units or such Membership Interests are not listed or admitted to trading on any National Securities Exchange, a day on which banking institutions in New York City generally are open.

***transfer*** has the meaning set forth in Section 4.4(a).

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

***Unit*** means a limited liability company interest in the Company having the rights and obligations specified with respect to Units in this Agreement; *provided* that any Unit held by a holder of Partnership Class B Units shall not be entitled to vote and shall not be considered to be Outstanding for voting purposes under this Agreement.

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

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

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

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

**Section 1.2 Construction.** Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; (c) the terms include, includes, including and words of like import shall be deemed to be followed by the words without limitation ; and (d) the terms hereof, herein and hereunder refer to this Agreement as whole and not to any particular provision of this Agreement. The table of contents and headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement. The Managing Member has the power to construe and interpret this Agreement and to act upon any such construction or interpretation. Any construction or interpretation of this Agreement by the Managing Member and any action taken pursuant thereto and any determination made by the Managing Member in good faith shall, in each case, be conclusive and binding on all Record Holders and all other Persons for all purposes.





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**ARTICLE II**

**ORGANIZATION**

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

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

Section 2.3 *Registered Office; Registered Agent; Principal Office; Other Offices*. Unless and until changed by the Managing Member, the registered office of the Company in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the registered agent for service of process on the Company in the State of Delaware at such registered office shall be Corporation Service Company. The principal office of the Company shall be located at 500 West Texas Avenue, Suite 1200, Midland, Texas 79701 or such other place as the Managing Member may from time to time designate by notice to the other Members. The Company may maintain offices at such other place or places within or outside the State of Delaware as the Managing Member determines to be necessary or appropriate. The address of the Managing Member shall be 500 West Texas Avenue, Suite 1200, Midland, Texas 79701 or such other place as the Managing Member may from time to time designate by notice to the other Members.

Section 2.4 *Purpose and Business*. The purpose and nature of the business to be conducted by the Company shall be to (a) engage directly in, or enter into or form, hold and dispose of any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the Managing Member, in its sole discretion, and that lawfully may be conducted by a limited liability company organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Company pursuant to the agreements relating to such business activity, and (b) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to a Group Member; *provided, however*, that the Managing Member shall not cause the Company to engage, directly or indirectly, in any business activity that the Managing Member determines would be reasonably likely to cause the Company to be treated as an association taxable as a corporation or otherwise taxable as an entity for federal income tax purposes. The Managing Member has no obligation or duty (including any fiduciary duty) to the Company or the other Members to propose or approve, and may decline to propose or approve, the conduct by the Company of any business in its sole discretion.

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

Section 2.6 *Term*. The term of the Company commenced upon the filing of the Certificate of Formation in accordance with the Delaware Act and shall continue in existence until the dissolution of the Company in accordance with the

provisions of Article XII. The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the Delaware Act.

Section 2.7 *Title to Company Assets*. Title to the assets of the Company, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member,

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individually or collectively, shall have any ownership interest in such assets of the Company or any portion thereof. Title to any or all assets of the Company may be held in the name of the Company, the Managing Member, one or more of its Affiliates or one or more nominees of the Managing Member or its Affiliates, as the Managing Member may determine. The Managing Member hereby declares and warrants that any assets of the Company for which record title is held in the name of the Managing Member or one or more of its Affiliates or one or more nominees of the Managing Member or its Affiliates shall be held by the Managing Member or such Affiliate or nominee for the use and benefit of the Company in accordance with the provisions of this Agreement; *provided, however*, that the Managing Member shall use reasonable efforts to cause record title to such assets (other than those assets in respect of which the Managing Member determines that the expense and difficulty of conveyancing makes transfer of record title to the Company impracticable) to be vested in the Company or one or more of the Company's designated Affiliates as soon as reasonably practicable; *provided, further*, that, prior to the withdrawal or removal of the Managing Member or as soon thereafter as practicable, the Managing Member shall use reasonable efforts to effect the transfer of record title to the Company and, prior to any such transfer, will provide for the use of such assets in a manner satisfactory to any successor Managing Member. All assets of the Company shall be recorded as the property of the Company in its books and records, irrespective of the name in which record title to such assets of the Company is held.

**ARTICLE III**

**RIGHTS OF MEMBERS**

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

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

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

Section 3.4 *Rights of Members*.

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

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

**ARTICLE IV**

**CERTIFICATES; RECORD HOLDERS; TRANSFER OF MEMBERSHIP INTERESTS**

Section 4.1 *Certificates*. Notwithstanding anything to the contrary in this Agreement, unless the Managing Member shall determine otherwise in respect of some or all of any or all classes of Membership Interests, Membership Interests

shall not be evidenced by certificates. Certificates that are issued, if any, shall be executed on behalf of the Company by the President, Chief Executive Officer or any Vice President and the Chief Financial Officer or the Secretary or any Assistant Secretary of the Company, the Managing Member or the general partner of the Managing Member.

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

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

### Section 4.4 *Transfer by Members*.

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

(b) No Member may transfer all or any portion of its Units or other Membership Interests except with the written consent of the Managing Member (which may be granted or withheld in its sole discretion); *provided, further*, that notwithstanding the foregoing and subject to the provisions of Section 4.5, a Non-Managing Member may not transfer any of such Member's Units pursuant to and in accordance with the Exchange Agreement and the Partnership Agreement unless the Company provides a written determination in Good Faith based on the most current practically available geological data that there is sufficient Unrealized Gain or Unrealized Loss (or to the extent necessary, items thereof) attributable to the Company assets to make an allocation pursuant to Section 6.1(b)(x) to cause the Capital Account balances of the Members to be equal to the same ratio as the Members' Percentage Interests immediately prior to such transfer. In addition, unless the Managing Member determines in Good Faith that a proposed transfer would violate Section 4.5, the Managing Member shall be deemed to have consented to a transfer of Units by a Non-Managing Member to an Affiliate of such Member; *provided*, that in connection with any such transfer, the transferor shall transfer an equivalent number of Partnership Class B Units to the transferee, in accordance with the terms of the Partnership Agreement. Any purported transfer of all or a portion of a Member's Units or other Membership Interests not complying with this Section 4.4(b) shall be void and shall not create any obligation on the part of the Company or the other Members to recognize that transfer or to deal with the Person to which the transfer purportedly was made.

### Section 4.5 *Restrictions on Transfers*.

(a) Notwithstanding the other provisions of this Article IV, (i) no transfer of any Membership Interests shall be made if such transfer would (A) violate the then-applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer, (B) terminate the existence or qualification of the Company under the laws of the jurisdiction of its formation; or (C) cause the Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for

U.S. federal income tax purposes (to the extent not already so treated or taxed) and (ii) any transfer of a Membership Interest to a Disqualified Person will be void *ab initio*.

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

## **ARTICLE V**

### **CAPITAL CONTRIBUTIONS AND ISSUANCE OF MEMBERSHIP INTERESTS**

#### *Section 5.1 Capitalization.*

(a) On the date hereof and pursuant to the Recapitalization Agreement, the Company issued 73,150,000 Units to Diamondback.

(b) On the date hereof, the Interest (as defined in the First Amended and Restated Agreement) held by the Managing Member will be represented by 40,732,045 Units as set forth on Exhibit A.

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

#### *Section 5.3 Capital Accounts.*

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

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

(b) For purposes of computing the amount of any item of income, gain, loss, deduction, Simulated Depletion, Simulated Gain or Simulated Loss that is to be allocated pursuant to Article VI and is to be reflected in the Members Capital Accounts, the determination, recognition and classification of any such item shall be the same as its



determination, recognition and classification for federal income tax purposes (including any method of depreciation, cost recovery or amortization used for that purpose), *provided, that:*

(i) Solely for purposes of this Section 5.3, the Managing Member in its discretion may treat the Company as owning directly its share (as determined by the Managing Member based upon the

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provisions of the applicable Group Member Agreement or governing, organizational or similar documents) of all property owned by (x) any other Group Member that is classified as a partnership for federal income tax purposes and (y) any other partnership, limited liability company, unincorporated business or other entity classified as a partnership for federal income tax purposes of which a Group Member is, directly or indirectly, a partner, member or other equity holder.

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

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

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

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

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

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

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

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

(d) (i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(h)(2), on an issuance of any Membership Interests for cash or Contributed Property, on an issuance of a Noncompensatory Option or the issuance of Membership Interests as consideration for the provision of services, the Capital Account of each Member and the Carrying Value of each Company property immediately prior to such issuance shall be adjusted upward or

downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property; *provided, however*, that in the event of the issuance of a Membership Interest pursuant to the exercise of a Noncompensatory Option where the right to share in

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

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

### *Section 5.4 Issuances of Additional Units .*

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

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

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

*Section 5.5 Issuances of Securities by the Managing Member.* If the Managing Member issues any additional Partnership Common Units, the Managing Member shall contribute the net cash proceeds or other



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consideration received, if any, from the issuance of such additional Partnership Common Units in exchange for an equivalent number of Units. In addition, if the Managing Member issues Partnership Common Units pursuant to the Exchange Agreement or pursuant to a distribution (including any split or combination) of Partnership Common Units to all of the holders of Partnership Common Units, the Company shall, if necessary, issue to the Managing Member an equivalent number of Units, such that the number of Units held by the Managing Member is equal to the number of Partnership Common Units outstanding. In the event that the Managing Member issues any additional Partnership Common Units and contributes the net cash proceeds or other consideration, if any, received from the issuance thereof to the Company, the Company is authorized to issue a number of Units equal to the number of Partnership Common Units so issued without any further act, approval or vote of any Member or any other Persons.

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

**Section 5.7 *Issuance of Partnership Class B Units.*** In the event that the Company issues Units to, or cancels Units held by, any Person other than the Managing Member, the Managing Member shall issue Partnership Class B Units to such Person or cancel Partnership Class B Units held by such Person, as applicable, such that the number of Partnership Class B Units held by such Person is equal to the number of Units held by such Person.

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

## **ARTICLE VI**

### **ALLOCATIONS AND DISTRIBUTIONS**

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

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

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

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

amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. For purposes of

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

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

(iii) Priority Allocations. For each taxable year during the Specified Period, there shall be allocated to Diamondback an amount of income and gains over losses and deductions but without taking into account depletion (including, for the avoidance of doubt, Simulated Depletion) equal to the Annual Allocation Amount.

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

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

(vi) Nonrecourse Deductions. Nonrecourse Deductions for any taxable period shall be allocated to the Members Pro Rata. If the Managing Member determines that the Company's Nonrecourse Deductions should be allocated in a different ratio to satisfy the safe harbor requirements of the Treasury Regulations promulgated under Section 704(b)



of the Code, the Managing Member is

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authorized, upon notice to the other Members, to revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

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

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

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

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

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

(xii) Curative Allocation.

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



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

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

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

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

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

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

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

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

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

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

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(c) In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation, amortization and cost recovery deductions shall be allocated for federal income tax purposes among the Members in the manner provided under Section 704(c) of the Code, and the Treasury Regulations promulgated under Section 704(b) and 704(c) of the Code, with any permissible method determined to be appropriate by the Managing Member (taking into account the Managing Member's discretion under Section 6.1(c)(x)).

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

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

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

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

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

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

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

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

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

## **ARTICLE VII**

### **MANAGEMENT AND OPERATION OF BUSINESS**

#### ***Section 7.1 Management.***

(a) The business, property and affairs of the Company shall be managed under the sole, absolute and exclusive direction of the Managing Member, which may from time to time delegate authority to its officers or to others to act on behalf of the Company. Without limiting the foregoing provisions of this Section 7.1(a), the Managing Member shall have the sole power to manage or cause the management of the Company, including

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the power and authority to effectuate the sale, lease, transfer, exchange or other disposition of any, all or substantially all of the assets of the Company (including, but not limited to, the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Company) or the merger, consolidation, reorganization or other combination of the Company with or into another entity. The Partnership is the initial Managing Member of the Company.

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

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

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

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





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### *Section 7.3 Indemnification.*

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

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

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

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

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

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

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

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

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

*Section 7.4 Limitation of Liability of Indemnitees.*

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

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

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

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

*Section 7.5 Resolution of Conflicts of Interest; Standards of Conduct and Modification of Duties.*

(a) Whenever the Managing Member, acting in its capacity as the managing member of the Company, or any Affiliate of the Managing Member makes a determination or takes or omits to take any action in such capacity, whether or not under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, then, unless another lesser standard is provided for in this Agreement, the Managing Member or such Affiliate shall make such

determination, or take or omit to take such action, in Good Faith. The foregoing and other lesser standards provided for in this Agreement are the sole and exclusive standards governing any such determinations, actions and omissions of the Managing Member and any Affiliate of the Managing Member and no such Person shall be subject to any fiduciary duty or other duty or obligation, or

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any other, different or higher standard (all of which duties, obligations and standards are hereby waived and disclaimed), under this Agreement, any Group Member Agreement or any other agreement contemplated hereby, or under the Delaware Act or any other law, rule or regulation or at equity. Any such determination, action or omission by the Managing Member or of any Affiliate of the Managing Member will for all purposes be presumed to have been in Good Faith. In any proceeding brought by or on behalf of the Company, any Member, or any other Person who acquires an interest in the Company or any other Person who is bound by this Agreement, challenging such determination, act or omission, the Person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or omission was not in Good Faith.

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

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

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

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

(f) For the avoidance of doubt, whenever the Managing Member or any Affiliate of the Managing Member makes a determination on behalf of the Managing Member, or cause the Managing Member to take or omit to take any action, whether in the Managing Member's capacity as the Managing Member or in its individual capacity, the standards of

care applicable to the Managing Member shall apply to such Persons, and such Persons shall be entitled to all benefits and rights of the Managing Member hereunder, including waivers and modifications of duties, protections and presumptions, as if such Persons were the Managing Member hereunder.

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*Section 7.6 Other Matters Concerning the Managing Member.*

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

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

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

*Section 7.7 Reliance by Third Parties.* Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Company shall be entitled to assume that the Managing Member and any officer of the Company or of the General Partner has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Company and to enter into any authorized contracts on behalf of the Company, and such Person shall be entitled to deal with the Managing Member or any such officer as if it were the Company's sole party in interest, both legally and beneficially. Each Non-Managing Member, each other Person who acquires an interest in a Membership Interest and each other party who becomes bound by this Agreement hereby waives, to the fullest extent permitted by law, any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the Managing Member or any such officer in connection with any such dealing. In no event shall any Person dealing with the Managing Member or any such officer or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the Managing Member or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Company by the Managing Member or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Company and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Company.

**ARTICLE VIII**

**BOOKS, RECORDS, ACCOUNTING AND REPORTS**

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



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

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

## ARTICLE IX

### TAX MATTERS

Section 9.1 *Tax Returns and Information*. The Company shall timely file all returns of the Company that are required for federal, state and local income tax purposes on the basis of the taxable period or year that it is required by law to adopt, from time to time, as determined by the Managing Member. In the event the Company is required to use a taxable period other than a year ending on December 31, the Managing Member shall use reasonable efforts to change the taxable period of the Company to a year ending on December 31. The tax information reasonably required by Members for federal and state income tax reporting purposes with respect to a taxable period shall be furnished to them within 90 days of the close of the calendar year in which the Company's taxable period ends. In addition, the Company shall furnish to each Non-Managing Member any additional tax information reasonably requested by such Non-Managing Member in order to comply with its organizational documents, including additional detail regarding the source of any items of income, gain, loss, deduction, or credit allocated to such Non-Managing Member to the extent not otherwise reflected in the information provided to the Members under the preceding sentence.

Section 9.2 *Tax Characterization*. Unless otherwise determined by the Managing Member, the Company shall be treated as a partnership and not as an association taxable as a corporation for U.S. federal income tax purposes and as a continuation of Viper Energy Partners LP solely for U.S. federal income tax purposes under Section 708 of the Code. The Members and the Company shall not take any action that would cause the Company to be treated as a corporation for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes) and shall file all tax returns consistent with the tax characterization set forth in this Section 9.2.

Section 9.3 *Tax Elections*.

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

(b) The Company shall make the election under Section 6231(a)(1)(B)(ii) of the Code to have the provisions of Sections 6221 through 6234 of the Code apply to the Company.

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

Section 9.4 *Tax Controversies*.

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



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

(c) With respect to tax returns filed for taxable years beginning on or after January 1, 2018, of permissible, the Partnership Representative may cause the Company to, with the consent of the Members, make the election under Section 6221(b) of the Code with respect to determinations of adjustments at the partnership level and take any other action such as filings, disclosures and notifications necessary to effectuate such election for each year for which the election may be made. If the election described in the preceding sentence is not available and to the extent applicable, if the Company receives a notice of final partnership adjustment as described in Section 6226 of the Code the Partnership Representative may, with the consent of the Members, cause the Company to make the election under Section 6226(a) of the Code with respect to the alternative to payment of imputed underpayment by the Company and take other action such as filings, disclosures and notifications necessary to effectuate such election. If the election under Section 6226(a) is not made, then the Company shall make any payment required pursuant to Section 6225 and the Members shall have the obligations set forth in Section 9.5. The Members shall reasonably cooperate with the Company and the Partnership Representative, and undertake any action reasonably requested by the Company, in connection with any elections made by the Partnership Representative or as determined to be reasonably necessary by the Partnership Representative.

### Section 9.5 *Withholding.*

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

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

income or from a distribution to any Member (including by

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reason of Section 1446 of the Code), the amount withheld may at the discretion of the Managing Member be treated by the Company as a distribution of cash pursuant to Section 6.3 or Section 12.4(c) in the amount of such withholding from such Member.

Section 9.6 *Disqualified Person*. No Member will become a Disqualified Person.

## **ARTICLE X**

### **ADMISSION OF MEMBERS**

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

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

## **ARTICLE XI**

### **WITHDRAWAL OR REMOVAL OF MEMBERS**

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

Section 11.2 *Removal of the Managing Member*. The Managing Member may not be removed as the managing member of the Company unless the General Partner is removed as a general partner of the Managing Member in accordance with the Partnership Agreement. The removal of the Managing Member as the managing member of the Company shall also automatically constitute the removal of the Managing Member as general partner or managing member, to the extent applicable, of the other Group Members of which the Managing Member is a general partner or a managing member. If a Person is elected as a successor Managing Member in accordance with the terms of this Section 11.2, such Person shall automatically become a successor general partner or managing member, to the extent applicable, of the other Group Members of which the Managing Member is a general partner or a managing member.

## **ARTICLE XII**

### **DISSOLUTION AND LIQUIDATION**

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

- (a) an election to dissolve the Company by the Managing Member ;
- (b) the entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Delaware Act; or

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(c) at any time there are no Members, unless the Company is continued without dissolution in accordance with the Delaware Act.

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

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

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

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

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



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

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

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

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

## **ARTICLE XIII**

### **AMENDMENT OF LIMITED LIABILITY COMPANY AGREEMENT**

Section 13.1 *Amendments*. This Agreement may be amended, supplemented, waived or modified by the written consent of the Managing Member in its sole discretion without the approval of any other Member or other Person; *provided* that except as otherwise provided herein, no amendment may modify the limited liability of any Member, or increase the liabilities or obligations of any Member, in each case, without the consent of each such affected Member. Any amendment to this Agreement may be implemented and reflected in a writing executed solely by the Managing Member, and the Non-Managing Member(s) shall be deemed a party to and bound by such amendment.

## **ARTICLE XIV**

### **GENERAL PROVISIONS**

Section 14.1 *Addresses and Notices; Written Communications*.

(a) Any notice, demand, request, report or proxy materials required or permitted to be given or made to the Members under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Members at the address described below. Any notice, payment or report to be given or made to the Members hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Membership Interests at his address as shown in the records of the Company, regardless of any claim of any Person who may have an interest in such Membership Interests by reason of any assignment or otherwise. Notwithstanding the foregoing, if (i) the Members shall consent to receiving notices, demands, requests, reports or proxy materials via electronic mail or by the Internet or (ii) the rules of the Commission shall permit any report or proxy materials to be delivered electronically or made available via the Internet, any such notice, demand, request, report or proxy materials shall be deemed given or made when delivered or made available via such mode of delivery. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 14.1(a) executed by the Managing Member or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report given or made in accordance with the provisions of this Section 14.1(a) is returned marked to indicate that such notice, payment or report was unable to be delivered, such notice, payment or report and, in the case of notices, payments or reports returned by the United States Postal Service

(or other physical mail delivery mail service outside the United States of America), any subsequent notices, payments and reports

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shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Company of a change in his address) or other delivery if they are available for the Member at the principal office of the Company for a period of one year from the date of the giving or making of such notice, payment or report to the other Members. Any notice to the Company shall be deemed given if received by the Managing Member at the principal office of the Company designated pursuant to Section 2.3. The Managing Member may rely and shall be protected in relying on any notice or other document from any Member or other Person if believed by it to be genuine.

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

Section 14.2 *Further Action*. The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 14.3 *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 14.4 *Integration*. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 14.5 *Creditors*. None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Company.

Section 14.6 *Waiver*. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

Section 14.7 *Counterparts*. This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

Section 14.8 *Applicable Law; Forum; Venue and Jurisdiction; Waiver of Trial by Jury; Attorney Fees*.

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

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

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

matter jurisdiction), in each case regardless of whether such claims, suits, actions or proceedings sound in contract, tort, fraud or otherwise, are based on common law, statutory, equitable, legal or other grounds, or are derivative or direct claims;

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

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

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

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

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

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

**Section 14.9 *Invalidity of Provisions.*** If any provision or part of a provision of this Agreement is or becomes for any reason, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions and part thereof contained herein shall not be affected thereby and this Agreement shall, to the fullest extent permitted by law, be reformed and construed as if such invalid, illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

**Section 14.10 *Consent of Members.*** Each Member hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Members, such action may be so taken upon the concurrence of less than all of the Members and each Member shall be bound by the results of such action.

**Section 14.11 *Facsimile and Email Signatures.*** The use of facsimile signatures and signatures delivered by email in portable document format (.pdf) or similar format affixed in the name and on behalf of the Company on certificates representing Membership Interests is expressly permitted by this Agreement.

**Section 14.12 *Third-Party Beneficiaries.*** Each Member agrees that any Indemnitee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Indemnitee.

*[Signature page follows.]*



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

**Viper Energy Partners LP, by Viper Energy  
Partners GP LLC, its general partner**

By:  
Name:  
Title:

**Diamondback Energy, Inc.**

By:  
Name:  
Title:

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



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**EXHIBIT A**

**Unitholders**

<b>Name</b>	<b>Address</b>	<b>Number of Units</b>
Viper Energy Partners LP	500 West Texas Ave., Suite 1200, Midland, TX 79701	40,732,045
Diamondback Energy, Inc.	500 West Texas Ave., Suite 1200, Midland, TX 79701	73,150,000

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**EXHIBIT B**

**Officers**

Travis D. Stice	Chief Executive Officer
Kaes Van t Hof	President
Teresa L. Dick	Executive Vice President, Chief Financial Officer and Assistant Secretary
Randall J. Holder	Executive Vice President, Secretary and General Counsel
Paul Molnar	Executive Vice President Exploration and Business Development
Russell Pantermuehl	Executive Vice President Reservoir Engineering
Tom Hawkins	Senior Vice President Land

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**EXHIBIT C**

**Adoption Agreement**

This Adoption Agreement is executed by the undersigned pursuant to the Second Amended and Restated Limited Liability Company Agreement of Viper Energy Partners LLC (the ***Company*** ), dated as of [ ], 2018, as amended, restated or supplemented from time to time, a copy of which is attached hereto and is incorporated herein by reference (the ***Agreement*** ). By the execution of this Adoption Agreement, the undersigned agrees as follows:

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

EXECUTED AND DATED on this            day of            , 20   .

[NAME]

By:

Name:

Title:

Notice Address:

Facsimile:

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Annex C

**RECAPITALIZATION AGREEMENT**

**BY AND AMONG**

**DIAMONDBACK ENERGY, INC.**

**VIPER ENERGY PARTNERS GP LLC**

**VIPER ENERGY PARTNERS LLC**

**and**

**VIPER ENERGY PARTNERS LP**

**Dated as of March 28, 2018**

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**RECAPITALIZATION AGREEMENT**

This Recapitalization Agreement (this *Agreement* ), dated as of March 28, 2018 (the *Effective Date*), is by and among Diamondback Energy, Inc., a Delaware corporation (the *Transferor* ), Viper Energy Partners LLC, a Delaware limited liability company (the *Operating Company* ), Viper Energy Partners GP LLC, a Delaware limited liability company (the *General Partner* ), and Viper Energy Partners LP, a Delaware limited partnership (the *Partnership* ). The Transferor, the Operating Company, the General Partner and the Partnership are hereinafter sometimes referred to individually as a *Party* and together as the *Parties*.

**RECITALS**

WHEREAS, as of the Effective Date, (i) the Partnership has outstanding 113,882,045 Common Units and (ii) the Operating Company is a wholly-owned subsidiary of the Partnership;

WHEREAS, the Transferor owns 73,150,000 Common Units (the *Transferor Common Units* );

WHEREAS, at the Closing, the Transferor desires to deliver and assign the Transferor Common Units to the Partnership in exchange for Class B Units and OpCo Units, upon the terms and conditions hereinafter set forth; and

WHEREAS, certain capitalized terms are defined in Section 1.1 of this Agreement.

NOW, THEREFORE, in consideration of the premises, the respective representations, warranties, covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1.1 *Definitions*. For the purposes of this Agreement, the following terms have the meanings set forth below.

*Action* has the meaning set forth in Section 3.1.

*Affiliate* means, with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, control (including, with correlative meanings, the terms controlled by and under common control with ) as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

*Agreement* has the meaning set forth in the introductory paragraph hereto.

*Business Day* means any day that is not a Saturday, Sunday or legal holiday in the State of Texas and the State of New York.

*Class B Units* has the meaning set forth in the Restated Partnership Agreement.

*Closing* or *Closing Date* has the meaning set forth in Section 8.2.



***Closing Consideration*** has the meaning set forth in Section 2.2(b).

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**Code** means the Internal Revenue Code of 1986, as amended.

**Commission** has the meaning set forth in Section 3.3.

**Common Units** has the meaning set forth in the First Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of June 23, 2014.

**Consent** means any consent, order, waiver, approval or authorization of, or registration, qualification, designation, declaration or filing with, any Person or Governmental Body or under any applicable Laws.

**Contract** has the meaning set forth in Section 3.3.

**Damages** means all losses (including diminution in value), damages and other costs and expenses of any kind or nature whatsoever, whether known or unknown, contingent or vested, matured or unmatured, and whether or not resulting from third-party claims, including costs (including reasonable fees and expenses of attorneys, other professional advisors and expert witnesses and the allocable portion of the relevant person's internal costs) of investigation, preparation and litigation in connection with any Action or threatened Action.

**DRULPA** means the Delaware Revised Uniform Limited Partnership Act.

**Effective Date** has the meaning set forth in the introductory paragraph hereto.

**Enforceability Exception** has the meaning set forth in Section 3.2.

**Equity Interest** means (a) with respect to a corporation, any and all shares of capital stock and any Equity Rights with respect thereto, (b) with respect to a partnership, limited liability company, trust, or similar Person, any and all units, interests or other partnership/limited liability company interests, and any Equity Rights with respect thereto, and (c) any other direct or indirect equity ownership or participation in a Person.

**Equity Rights** has the meaning set forth in Section 3.5.

**Exchange** means the Transferor's transfer of the Transferor Common Units to the Partnership in return for Class B Units and OpCo Units pursuant to this Agreement.

**Exchange Agreement** has the meaning set forth in the Restated Partnership Agreement.

**General Partner** has the meaning set forth in the introductory paragraph hereto.

**Governmental Body** has the meaning set forth in Section 3.3.

**Indemnification Claim** has the meaning set forth in Section 10.3(a).

**Indemnified Party** has the meaning set forth in Section 10.3(a).

**Indemnitor** has the meaning set forth in Section 10.3(a).

**Information Statement** means collectively, the preliminary and definitive Information Statement pursuant to Section 14(c) of the Securities Exchange Act and Rule 14c-2 thereunder to be filed by the Partnership in connection

with, among other things, the Transactions.

***Law*** has the meaning set forth in Section 3.3.

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***Lien*** means all pledges, claims, liens, charges, restrictions, controls, easements, rights of way, exceptions, reservations, leases, licenses, grants, covenants and conditions, encumbrances and security interests of any kind or nature whatsoever.

***LTIP*** means the Viper Energy Partners LP Long Term Incentive Plan.

***OpCo Closing Consideration*** has the meaning set forth in Section 2.2(b).

***OpCo LLC Agreement*** means the Second Amended and Restated Limited Liability Company Agreement of the Operating Company, to be dated as of the Closing Date, in the form delivered to the Transferor, as it may be amended from time to time in accordance with its terms.

***OpCo Units*** has the meaning set forth in the Restated Partnership Agreement.

***Operating Company*** has the meaning set forth in the introductory paragraph hereto.

***Order*** has the meaning set forth in Section 3.3.

***Organizational Documents*** means with respect to any entity, the certificate of formation, limited liability company agreement (including, in the case of the Operating Company, the OpCo LLC Agreement) or operating agreement, participating agreements, certificate of incorporation, bylaws, certificate of limited partnership, limited partnership agreement (including, in the case of the Partnership, the Restated Partnership Agreement) and any other governing instrument, as applicable.

***Partnership*** has the meaning set forth in the introductory paragraph hereto.

***Partnership Closing Consideration*** has the meaning set forth in Section 2.2(a).

***Party*** or ***Parties*** has the meaning set forth in the introductory paragraph hereto.

***Permit*** has the meaning set forth in Section 3.3.

***Person*** means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

***Registration Rights Agreement*** has the meaning set forth in the Restated Partnership Agreement.

***Restated Partnership Agreement*** means the Second Amended and Restated Agreement of Limited Partnership of the Partnership, to be dated as of the Closing Date, in the form delivered to the Transferor, as it may be amended from time to time in accordance with its terms.

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

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

***Subsidiary*** means any corporation, partnership, limited liability company, joint venture, trust or other legal entity which the applicable Person owns (either directly or through or together with another Subsidiary) either (a) a general partner, managing member or other similar interest, or (b) (i) more than 50% of the equity interests, or (ii) more than

50% of the outstanding voting capital stock, units or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity.

***Termination Date*** has the meaning set forth in Section 9.2.

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***Transaction Documents*** has the meaning set forth in Section 3.2.

***Transactions*** has the meaning set forth in Section 3.2.

***Transferor*** has the meaning set forth in the introductory paragraph hereto.

***Transferor Common Units*** has the meaning set forth in the recitals of this Agreement.

**ARTICLE II**

**EXCHANGE**

Section 2.1 *Transfer of Interests*. At the Closing and subject to the terms and conditions contained in this Agreement, the Transferor shall transfer, exchange, assign, convey and deliver to the Partnership, and the Partnership shall acquire and accept all of the Transferor's right, title and interest in, the Transferor Common Units.

Section 2.2 *Consideration*. At the Closing, in exchange for the delivery and assignment of the Transferor Common Units to the Partnership:

(a) The Partnership shall issue to the Transferor 73,150,000 Class B Units (the ***Partnership Closing Consideration***); and

(b) The Partnership shall cause the Operating Company to issue to the Transferor 73,150,000 OpCo Units (the ***OpCo Closing Consideration***) and, together with the Partnership Closing Consideration, the ***Closing Consideration***).

Section 2.3 *Tax Treatment*. After the Transactions are completed, the Parties intend for the Operating Company to be treated as a continuation of the Partnership pursuant to Section 708 of the Code for U.S. federal income tax purposes.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF THE PARTNERSHIP**

The Partnership hereby represents and warrants to the Transferor as of the Effective Date and as of the Closing Date (except to the extent that any such representation or warranty expressly relates to another date, in which case such representation or warranty shall be as of such date) as follows:

Section 3.1 *Organization of the Partnership*. The Partnership (a) is a limited partnership duly organized, validly existing and in good standing under the Laws of the State of Delaware, (b) is duly qualified to do business as a foreign limited partnership and is in good standing under the Laws of each jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification, (c) has the partnership power and authority necessary to own or lease its properties and to carry on its business as currently conducted, and (d) is not in breach or violation of, or default under, any provision of its Organizational Documents. The Partnership has not approved or taken any action, and there is not pending or, to the Partnership's knowledge, threatened any action, suit, arbitration, mediation, investigation or similar proceeding (an ***Action***) for the dissolution, liquidation, insolvency or rehabilitation of the Partnership.

Section 3.2 *Power and Authority; Enforceability*. The Partnership has the relevant partnership power and authority necessary to execute and deliver this Agreement and each such other document contemplated hereby or in connection

herewith and any amendments or supplements to any of the foregoing (collectively, the

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**Transaction Documents** ) to which the Partnership is a party, and to perform and consummate the transactions contemplated by the Exchange (the **Transactions** ). The Partnership has taken all action necessary to authorize the execution and delivery by the Partnership of each Transaction Document to which it is a party, the performance of the Partnership's obligations thereunder, and the consummation by the Partnership of the Transactions. Each Transaction Document to which the Partnership is a party has been duly authorized, executed and delivered by or on behalf of the Partnership, and constitutes the legal, valid and binding obligation of the Partnership, enforceable against the Partnership in accordance with its terms except as such enforceability may be subject to the effects of bankruptcy, insolvency, reorganization, moratorium or other Laws relating to or affecting the rights of creditors and general principles of equity (the **Enforceability Exception** ).

Section 3.3 *No Violation; Necessary Approvals*. The execution and the delivery by the Partnership of this Agreement and the other Transaction Documents to which it is a party, the performance by the Partnership of its obligations hereunder and thereunder, and the consummation of the Transactions by the Partnership will not (a) with or without notice or lapse of time, constitute, create or result in a breach or violation of, default under, loss of benefit or right under or acceleration of performance of any obligation required under any (i) law (statutory, common or otherwise), constitution, ordinance, rule, regulation, executive order or other similar authority ( **Law** ) enacted, adopted, promulgated or applied by any legislature, agency, bureau, branch, department, division, commission, court, tribunal or other similar recognized organization or body of any federal, state, county, municipal, local or foreign government or other similar recognized organization or body exercising similar powers or authority (a **Governmental Body** ), (ii) order, ruling, decision, award, judgment, injunction or other similar determination or finding by, before or under the supervision of any Governmental Body or arbitrator (an **Order** ), (iii) contract, agreement, arrangement, commitment, instrument, document or similar understanding (whether written or oral), including a lease, sublease and rights thereunder ( **Contract** ) or permit, license, certificate, waiver, notice and similar authorization ( **Permit** ) to which, in the case of (i), (ii) or (iii), the Partnership is a party or by which the Partnership is bound or to which any of its assets are subject, or (iv) (assuming the Restated Partnership Agreement is then effective) any provision of the Organizational Documents of the Partnership as in effect on the Closing Date, (b) result in the imposition of any Lien upon any assets owned by the Partnership, or any Common Units owned by any of the unitholders of the Partnership, (c) require any Consent under any Contract or Organizational Document to which the Partnership is a party or by which it is bound or to which any of its assets are subject, except for approval of the Restated Partnership Agreement by a majority of the holders of Common Units and any other such Consents as have been or will be obtained, (d) require any Permit under any Law or Order other than (i) required filings with the Securities and Exchange Commission (the **Commission** ), and (ii) notifications or other filings with state or federal regulatory agencies after the Closing that are necessary or convenient and do not require approval of the agency as a condition to the validity of the Transactions, or (e) trigger any rights of first refusal, preferential purchase or similar rights with respect to any equity interest in the Partnership, which have not been validly waived.

Section 3.4 *Brokers' Fees*. The Partnership has no liability or obligation to pay any compensation to any broker, finder or agent with respect to the Transactions for which the Transferor could become directly or indirectly liable.

Section 3.5 *Capitalization*. The Partnership has 113,882,045 Common Units outstanding as of the Effective Date. All of the issued and outstanding Common Units (a) have been duly authorized and validly issued, and are fully paid and nonassessable (except as such nonassessability may be affected by Sections 17-303, 17-607 or 18-704 of the DRULPA), (b) were issued in compliance with all applicable state and federal securities Laws, and (c) were not issued in breach or violation of, or did not cause as a result of the issuance thereof a default under, any Contract with or right granted to any other Person. Except to the extent of any awards granted or to be granted under the LTIP, the Partnership has no outstanding options, warrants, exchangeable or convertible securities, subscription rights, exchange rights, statutory pre-emptive rights, preemptive rights granted under its Organizational Documents, stock appreciation rights, phantom units, profit participation or similar rights, or any other right or instrument pursuant to which any



person may be entitled to purchase any security interests in the Partnership, and has no obligation to issue any rights or instruments ( ***Equity Rights*** ). Except pursuant to this

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Agreement, the Partnership is not obligated to redeem or otherwise acquire any of its outstanding Common Units or other equity interests.

Section 3.6 *Issuance of Class B Units*. The Class B Units comprising the Partnership Closing Consideration, when issued and delivered to the Transferor in accordance with the terms of this Agreement and the Restated Partnership Agreement for the consideration described in this Agreement, will have been (a) duly authorized and validly issued by the Partnership, (b) fully paid and nonassessable (except as such nonassessability may be affected by Sections 17-303, 17-607 or 18-704 of the DRULPA), (c) not subject to any preemptive or similar rights created by any Law or Order to which the Partnership is a party or by which it is bound, and (d) free and clear of all Liens, other than those created by the Transferor, including but not limited to those arising under applicable securities Laws.

Section 3.7 *Registration Rights*. Except as described in the Restated Partnership Agreement, the Registration Rights Agreement and the Registration Rights Agreement dated as of June 23, 2014 by and between the Partnership and the Transferor, the Partnership has not granted or agreed to grant any registration rights with respect to the registration of its securities under the Securities Act, including piggyback registration rights, to any Person.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF THE OPERATING COMPANY**

The Operating Company hereby represents and warrants to the Transferor as of the Effective Date and as of the Closing Date (except to the extent that any such representation or warranty expressly relates to another date, in which case such representation or warranty shall be as of such date) as follows:

Section 4.1 *Organization of the Operating Company*. The Operating Company (a) is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware, (b) is duly qualified to do business as a foreign limited liability company and is in good standing under the Laws of each jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification, (c) has the limited liability company power and authority necessary to own or lease its properties and to carry on its business as currently conducted, and (d) is not in breach or violation of, or default under, any provision of its Organizational Documents. The Operating Company has not approved or taken any action, and there is not pending or, to the Operating Company's knowledge, threatened any Action for the dissolution, liquidation, insolvency or rehabilitation of the Operating Company.

Section 4.2 *Power and Authority; Enforceability*. The Operating Company has the relevant limited liability company power and authority necessary to execute and deliver this Agreement and each such other Transaction Documents to which the Operating Company is a party, and to perform and consummate the Transactions. The Operating Company has taken all action necessary to authorize the execution and delivery by the Operating Company of each Transaction Document to which it is a party, the performance of the Operating Company's obligations thereunder, and the consummation by the Operating Company of the Transactions. Each Transaction Document to which the Operating Company is a party has been duly authorized, executed and delivered by the Operating Company, and constitutes the legal, valid and binding obligation of the Operating Company, enforceable against the Operating Company in accordance with its terms subject to the Enforceability Exception.

Section 4.3 *No Violation; Necessary Approvals*. The execution and the delivery by the Operating Company of this Agreement and the other Transaction Documents to which it is a party, the performance by the Operating Company of its obligations hereunder and thereunder, and the consummation of the Transactions by the Operating Company will not (a) with or without notice or lapse of time, constitute, create or result in a breach or violation of, default under,

loss of benefit or right under or acceleration of performance of any obligation required under any Law, Order, Contract or Permit to which the Operating Company is a party or by which it is

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bound or to which any of its assets is subject, or (assuming the OpCo LLC Agreement is then effective) any provision of the Organizational Documents of the Operating Company as in effect on the Closing Date, (b) result in the imposition of any Lien upon any assets owned by the Operating Company, (c) require any Consent under any Contract or Organizational Document to which the Operating Company is a party or by which it is bound or to which any of its assets are subject, except for any such Consents as have been or will be obtained, (d) require any Permit under any Law or Order other than (i) required filings with the Commission, and (ii) notifications or other filings with state or federal regulatory agencies after the Closing that are necessary or convenient and do not require approval of the agency as a condition to the validity of the Transactions, or (e) trigger any rights of first refusal, preferential purchase or similar rights with respect to any equity interest in the Operating Company, which have not been validly waived.

**Section 4.4 *Brokers Fees.*** The Operating Company has no liability or obligation to pay any compensation to any broker, finder or agent with respect to the Transactions for which the Transferor could become directly or indirectly liable.

**Section 4.5 *Capitalization.*** On the Effective Date, the Partnership owns, and immediately before Closing the Partnership will own, 100% of the outstanding equity interests of the Operating Company. Other than as granted under this Agreement, the Operating Company has no outstanding Equity Rights.

**Section 4.6 *Issuance of OpCo Units.*** The OpCo Units comprising the OpCo Closing Consideration, when issued and delivered to the Transferor in accordance with the terms of this Agreement and the OpCo LLC Agreement for the consideration described in this Agreement, will have been (a) duly authorized and validly issued by the Operating Company, (b) fully paid and non-assessable, (c) not subject to any preemptive or similar rights created by any Law or Order to which the Operating Company is a party or by which it is bound, and (d) free and clear of all Liens, other than those created by the Transferor, including but not limited to those arising under applicable securities Laws.

**Section 4.7 *Registration Rights.*** The Operating Company has not granted or agreed to grant any registration rights with respect to the registration of its securities under the Securities Act, including piggyback registration rights, to any Person.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF THE TRANSFEROR**

The Transferor hereby represents and warrants to the Partnership, the General Partner and the Operating Company as of the Effective Date and as of the Closing Date (except to the extent that any such representation or warranty expressly relates to another date, in which case such representation or warranty shall be as of such date) as follows:

**Section 5.1 *Organization of the Transferor.*** The Transferor (a) is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, (b) is duly qualified to do business as a foreign corporation and is in good standing under the Laws of each jurisdiction in which either the ownership of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification, (c) has the corporate power and authority necessary to own or lease its properties and to carry on its business as currently conducted, and (d) is not in breach or violation of, or default under, any provision of its Organizational Documents. The Transferor has not approved or taken any action, and there is not pending or (to the Transferor's knowledge) threatened Action for the dissolution, liquidation, insolvency or rehabilitation of the Transferor.

**Section 5.2 *Power and Authority; Enforceability.*** The Transferor has the relevant corporate power and authority necessary to execute and deliver this Agreement and each such other Transaction Document to which it is a party and

to perform and consummate the Transactions. The Transferor has taken all action necessary to

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authorize its execution and delivery by the Transferor of each Transaction Document to which the Transferor is a party, the performance of its obligations thereunder and the consummation by the Transferor of the Transactions. Each Transaction Document to which the Transferor is a party has been duly authorized, executed and delivered by the Transferor, and constitutes the legal, valid and binding obligation of the Transferor, enforceable against the Transferor in accordance with its terms, subject to the Enforceability Exception.

**Section 5.3 *No Violation; Necessary Approvals.*** The execution and the delivery by the Transferor of this Agreement and the other Transaction Documents to which the Transferor is a party, the performance by the Transferor of its obligations hereunder and thereunder and the consummation of the Transactions by the Transferor will not (a) with or without notice or lapse of time, constitute, create or result in a breach or violation of, default under, loss of benefit or right under or acceleration of performance of any obligation required under any Law, Order, Contract or Permit to which the Transferor is a party or by which it is bound or to which any of its assets is subject, or any provision of the Transferor's Organizational Documents as in effect on the Closing Date, (b) result in the imposition of any Lien upon any assets owned by the Transferor, including without limitation, the Transferor Common Units, (c) require any Consent under any Contract or Organizational Document to which the Transferor is a party or by which it is bound or to which any of its assets are subject, except for any such Consents as have been or will be obtained, or (d) require any Permit under any Law or Order other than (i) required filings with the Commission, and (ii) notifications or other filings with state or federal regulatory agencies after the Closing that are necessary or convenient and do not require approval of the agency as a condition to the validity of the Transactions.

**Section 5.4 *Title to Interests.*** The Transferor owns the Transferor Common Units. The Transferor is the record and beneficial owner of the Transferor Common Units and, upon payment by the Partnership and the Operating Company to the Transferor of the Closing Consideration, the Transferor will convey to the Partnership good and marketable title to the Transferor Common Units, free and clear of all Liens other than those arising under federal and state securities Laws. There are no transfer restrictions (other than applicable federal and state securities Laws), voting restrictions, preemptive rights, rights of first refusal or any other rights pursuant to any contract, arrangement or understanding entered into or acknowledged by the Transferor or its Affiliates imposed upon or with respect to the Transferor Common Units, and no notices or consents to or from any other party are required under any agreement, Law, Order or otherwise with respect to the transfer of the Transferor Common Units hereunder by the Transferor. The Transferor is not (and none of its respective Affiliates are) a party to any voting trust or other similar contract or agreement with respect to the Transferor Common Units.

**Section 5.5 *Accredited Investor.*** The Transferor is an accredited investor, as such term is defined in Regulation D of the Securities Act, and will acquire the Class B Units and the OpCo Units for its own account and not with a view to a sale or distribution thereof in violation of the Securities Act, and the rules and regulations thereunder, any applicable state blue sky Laws or any other applicable securities Laws. The Transferor acknowledges that the Class B Units and OpCo Units will not be registered under the Securities Act or any applicable state securities law, and that the Class B Units and OpCo Units may not be transferred or sold except pursuant to the registration provisions of the Securities Act or pursuant to an applicable exemption therefrom and pursuant to state securities laws and regulations as applicable.

**Section 5.6 *Brokers' Fees.*** The Transferor has no liability or obligation to pay any compensation to any broker, finder or agent with respect to the Transactions for which the Partnership or the Operating Company could become directly or indirectly liable.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES OF THE GENERAL PARTNER**

The General Partner hereby represents and warrants to the Transferor as of the Effective Date and as of the Closing Date (except to the extent that any such representation or warranty expressly relates to another date, in which case such representation or warranty shall be as of such date) as follows:

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Section 6.1 *Organization of the Operating Company.* The General Partner (a) is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware, (b) is duly qualified to do business as a foreign limited liability company and is in good standing under the Laws of each jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification, (c) has the limited liability company power and authority necessary to own or lease its properties and to carry on its business as currently conducted, and (d) is not in breach or violation of, or default under, any provision of its Organizational Documents. The General Partner has not approved or taken any action, and there is not pending or, to the General Partner's knowledge, threatened any Action for the dissolution, liquidation, insolvency or rehabilitation of the General Partner.

Section 6.2 *Power and Authority; Enforceability.* The General Partner has the relevant limited liability company power and authority necessary to execute and deliver this Agreement and each such other Transaction Documents to which the General Partner is a party, and to perform and consummate the Transactions. The General Partner has taken all action necessary to authorize the execution and delivery by the General Partner of each Transaction Document to which it is a party, the performance of the General Partner's obligations thereunder, and the consummation by the General Partner of the Transactions. Each Transaction Document to which the General Partner is a party has been duly authorized, executed and delivered by the General Partner, and constitutes the legal, valid and binding obligation of the General Partner, enforceable against the General Partner in accordance with its terms subject to the Enforceability Exception.

Section 6.3 *No Violation; Necessary Approvals.* The execution and the delivery by the General Partner of this Agreement and the other Transaction Documents to which it is a party, the performance by the General Partner of its obligations hereunder and thereunder, and the consummation of the Transactions by the General Partner will not (a) with or without notice or lapse of time, constitute, create or result in a breach or violation of, default under, loss of benefit or right under or acceleration of performance of any obligation required under any Law, Order, Contract or Permit to which the General Partner is a party or by which it is bound or to which any of its assets is subject, or any provision of the Organizational Documents of the General Partner as in effect on the Closing Date, (b) result in the imposition of any Lien upon any assets owned by the General Partner, (c) require any Consent under any Contract or Organizational Document to which the General Partner is a party or by which it is bound or to which any of its assets are subject, except for any such Consents as have been or will be obtained, (d) require any Permit under any Law or Order other than (i) required filings with the Commission, and (ii) notifications or other filings with state or federal regulatory agencies after the Closing that are necessary or convenient and do not require approval of the agency as a condition to the validity of the Transactions, or (e) trigger any rights of first refusal, preferential purchase or similar rights with respect to any equity interest in the General Partner, which have not been validly waived.

Section 6.4 *Brokers' Fees.* The General Partner has no liability or obligation to pay any compensation to any broker, finder or agent with respect to the Transactions for which the Transferor could become directly or indirectly liable.

Section 6.5 *General Partner Status.* On the Effective Date, the General Partner is, and as of the Closing Date, will be, the sole general partner of the Partnership, with a non-economic general partner interest in the Partnership.

## **ARTICLE VII**

### **COVENANTS**

Section 7.1 *Covenants of the Transferor.* From the Effective Date through the Closing, the Transferor will:



(a) Not, without the prior written consent of the Partnership, the General Partner and the Operating Company, sell, transfer (or agree to sell or transfer) or otherwise dispose of, or cause the sale, transfer or disposition of (or agree to do any of the foregoing) all or any portion of the Transferor Common Units;

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(b) Not, without the prior written consent of the Partnership, the General Partner and the Operating Company, cause or take any action that would render any of the representations or warranties set forth in Article V untrue in any material respect; or

(c) Consent to or vote the Transferor Common Units in favor of the consummation of the Transactions, including approval and adoption of the Restated Partnership Agreement.

*Section 7.2 Covenants of the Partnership.* From the Effective Date through the Closing, and except as contemplated by or as may be specified in this Agreement or the Transaction Documents, the Partnership will not, without the prior written consent of the Transferor:

(a) Split, combine or reclassify any of its Equity Interests, declare, set aside or pay any dividend or other distribution (whether in cash, securities or property or any combination thereof) in respect of its Equity Interests, make any other actual, constructive or deemed distribution in respect of its Equity Interests or otherwise make any payments to unitholders in their capacity as such, or redeem or otherwise acquire any of its securities or any securities of any of its Subsidiaries; or

(b) Cause or take any action that would render any of the representations and warranties set forth in Article III untrue in any material respect.

*Section 7.3 Covenants of the General Partner.* From the Effective Date through the Closing, the General Partner will:

(a) Prior to the Closing, take all actions necessary to make effective the Restated Partnership Agreement, including the preparation, filing with the Commission and distribution of the Information Statement to the limited partners of the Partnership; or

(b) Not, except as contemplated by or as may be specified in this Agreement or the Transaction Documents, without the prior consent of the Transferor, cause or take any action that would render any of the representations and warranties set forth in Article VI untrue in any material respect.

*Section 7.4 Covenants of the Operating Company.* From the Effective Date through the Closing, and except as contemplated by or as may be specified in this Agreement or the Transaction Documents, the Operating Company will not, without the prior consent of the Transferor, cause or take any action that would render any of the representations and warranties set forth in Article IV untrue in any material respect.

*Section 7.5 Notice.* From the Effective Date through the Closing, each Party shall give prompt written notice to the other Parties of (a) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, or (b) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; *provided, however,* that no such notification shall affect the representations, warranties, covenants or agreements of the Parties or the conditions to the obligations of the Parties under this Agreement.

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**ARTICLE VIII**

**CLOSING**

*Section 8.1 Conditions Precedent.*

(a) Conditions to Each Party's Obligations. The obligations of each Party to effect the Transactions shall be subject to the satisfaction or waiver of the following conditions:

(i) No Law or Order shall have been enacted, issued, entered, promulgated or enforced by any Governmental Body that prohibits the consummation of the Transactions;

(ii) The Restated Partnership Agreement shall have been approved by the requisite number of the outstanding Common Units of the Partnership and the applicable periods after the filing of the Information Statement shall have lapsed; and

(iii) No action, proceeding, investigation, regulation or litigation shall have been instituted or threatened before any court or Governmental Body to enjoin, restrain, prohibit or obtain damages in respect of, or which is related to, or arises out of, this Agreement or the consummation of the Transactions.

(b) Conditions to Obligations of the Partnership, the Operating Company and the General Partner. The obligations of each of the Partnership, the Operating Company and the General Partner to consummate the Transactions to be performed by it in connection with the Closing are subject to satisfaction (or waiver by it in writing) of the following conditions:

(i) The representations and warranties of the Transferor contained in this Agreement shall be true and correct in all material respects at the Closing Date as if made at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date);

(ii) The Transferor shall have performed in all material respects all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date;

(iii) There shall be no Liens on the Transferor Common Units except those arising under federal and state securities laws and those created by the Partnership or the Operating Company; and

(iv) The Transferor shall have executed and delivered to the Partnership, the Operating Company and the General Partner the documents required to be delivered by it pursuant to Section 8.3 hereof.

Any or all of the foregoing conditions may be waived by the Partnership, the Operating Company and the General Partner in their sole and absolute discretion.

(c) Conditions to Obligations of the Transferor. The obligations of the Transferor to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction (or waiver by it in writing) of the following conditions:

(i) The representations and warranties of the Partnership, the Operating Company and the General Partner contained in this Agreement shall be true and correct in all material respects at the Closing Date as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and

correct only as of that earlier date);

(ii) The Partnership, the Operating Company and the General Partner shall have performed in all material respects all agreements and covenants required by this Agreement to be performed or complied with by them on or prior to the Closing Date; and

(iii) The Partnership, the Operating Company and the General Partner, as applicable, shall have executed and delivered to the Transferor the Restated Partnership Agreement, the OpCo LLC

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Agreement, the Exchange Agreement and the Registration Rights Agreement and the other documents required to be delivered to the Transferor pursuant to Section 8.4 and Section 8.5 hereof.

Any or all of the foregoing conditions may be waived by the Transferor in its sole and absolute discretion.

Section 8.2 *Time and Place; Closing*. Unless this Agreement shall have terminated pursuant to Article IX, the closing of the Transactions (the **Closing**) shall occur upon the satisfaction or waiver of the conditions in Section 8.1 (the **Closing Date**). The Closing shall take place at a place as determined by the Partnership and Operating Company.

Section 8.3 *The Transferor's Closing Deliveries*. On the Closing Date, the Transferor shall deliver or cause to be delivered to the Partnership, the Operating Company and the General Partner the following closing documents:

- (a) Instruments of conveyance and assignment, in form reasonably satisfactory to the Partnership, and any other documents or certificates that are in the possession of the Transferor which are reasonably requested by the Partnership and are reasonably necessary or desirable in connection with the assignment, transfer, exchange, conveyance and delivery of the Transferor Common Units to the Partnership and to effectuate the Transactions;
- (b) A certificate from an officer of the Transferor stating that all of the conditions to the Closing have been met as set forth in Section 8.1(b)(i) and Section 8.1(b)(ii); and
- (c) Such other documents, instruments and third party approvals as reasonably requested by the Partnership, the Operating Company and the General Partner.

Section 8.4 *The Partnership's Closing Deliveries*. On the Closing Date, the Partnership shall deliver or cause to be delivered to the Transferor the following:

- (a) 73,150,000 Class B Units, either in the form of one or more certificates or through the electronic registration of such Class B Units;
- (b) A certificate from an officer of the General Partner on behalf of the Partnership stating that all of the conditions to the Closing have been met as set forth in Section 8.1(c)(i) and Section 8.1(c)(ii); and
- (c) Such other documents, instruments and third party approvals as reasonably requested by the Transferor.

Section 8.5 *Operating Company's Closing Deliveries*. On the Closing Date, Operating Company shall deliver or cause to be delivered to the Transferor the following:

- (a) 73,150,000 OpCo Units, through the electronic registration of such OpCo Units;
- (b) A certificate from an officer of Operating Company stating that all of the conditions to the Closing have been met as set forth in Section 8.1(c)(i) and Section 8.1(c)(ii); and
- (c) Such other documents, instruments and third party approvals as reasonably requested by the Transferor.

Section 8.6 *The General Partner's Closing Deliveries*. On the Closing Date, the General Partner shall deliver or cause to be delivered to the Transferor the following:

(a) A certificate from an officer of the General Partner stating that all of the conditions to the Closing have been met as set forth in Section 8.1(c)(i) and Section 8.1(c)(ii); and

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(b) Such other documents, instruments and third party approvals as reasonably requested by the Transferor.

**ARTICLE IX**

**TERMINATION**

Section 9.1 *Termination*. This Agreement may be terminated as follows:

(a) By mutual written consent of the Parties; or

(b) By any Party upon written notice to each other Party if the Closing does not occur by June 30, 2018.

Section 9.2 *Effect of Termination*. In the event of the termination and abandonment of this Agreement pursuant to Section 9.1 (the date of such termination or abandonment is referred to in this Agreement as the ***Termination Date***), this Agreement shall forthwith become void and have no effect without any liability on the part of any Party or its Affiliates, directors, officers, managers, members or unitholders other than the provisions of this Section 9.2 and Article X hereof. Nothing contained in this Section 9.2 shall relieve any Party from liability for any breach of this Agreement prior to such termination.

**ARTICLE X**

**INDEMNIFICATION**

Section 10.1 *Survival*. The representations and warranties of the Parties contained in this Agreement and all covenants contained in this Agreement that are to be performed prior to the Closing will survive the Closing for a period of one (1) year following the Closing. All covenants and agreements of the Parties contained in this Agreement to be performed after the Closing will survive the Closing in accordance with their terms.

Section 10.2 *Indemnification*.

(a) The Transferor shall indemnify and hold the Partnership, the Operating Company and the General Partner, and their respective officers, directors, managers, employees, agents, representatives, members, unitholders and similarly situated persons, harmless from and pay any and all Damages directly or indirectly, resulting from, relating to, arising out of or attributable to (i) any breach of any representation or warranty the Transferor has made in this Agreement, or (ii) any breach, violation or default by the Transferor of any covenant, agreement or obligation of the Transferor in this Agreement.

(b) The Partnership, the Operating Company and the General Partner shall indemnify and hold the Transferor and its respective officers, directors, managers, employees, agents, representatives, controlling persons, members, partners, stockholders and similarly situated persons, harmless from and pay any and all Damages directly or indirectly, resulting from, relating to, arising out of or attributable to (i) any breach of any representation or warranty the Partnership, the Operating Company or the General Partner has made in this Agreement, or (ii) any breach, violation or default by the Partnership, the Operating Company or the General Partner of any covenant, agreement or obligation of the Partnership, the Operating Company or the General Partner in this Agreement.

Section 10.3 *Indemnification Claim Procedures*.

(a) If any Action is commenced or threatened that may give rise to a claim for indemnification (an ***Indemnification Claim*** ) by any person entitled to indemnification under this Agreement (each, an



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**Indemnified Party** ) against any person obligated to indemnify an Indemnified Party (an **Indemnitor** ), then such Indemnified Party will promptly give written notice to the Indemnitor. Such notice will describe the Indemnification Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate the estimated amount, if reasonably practicable, of the Damages that have been or may be sustained by the Indemnified Party. In the event of a delay in the Indemnified Party providing such notice, the Indemnitor shall not be responsible for damages resulting from any such delay, including damages resulting from an inability to mitigate or a delay in mitigating damages. An Indemnitor may elect at any time to assume and thereafter conduct the defense of the Indemnification Claim with counsel of the Indemnitor's choice reasonably satisfactory to the Indemnified Party; *provided, however*, that the Indemnitor will not approve of the entry of any judgment or enter into any settlement with respect to the Indemnification Claim without the Indemnified Party's prior written approval (which must not be withheld unreasonably). Until an Indemnitor assumes the defense of the Indemnification Claim, the Indemnified Party may defend against the Indemnification Claim in any manner the Indemnified Party reasonably deems appropriate. If the Indemnified Party gives an Indemnitor notice of an Indemnification Claim and the Indemnitor does not, within ten (10) days after such notice is given, give notice to the Indemnified Party of its election to assume the defense of such Indemnification Claim and thereafter promptly assume such defense, then the Indemnitor will be bound by any judicial determination made with respect to such Indemnification Claim or any compromise or settlement of such Indemnification Claim effected by the Indemnified Party.

(b) A claim for any matter not involving a third party may be asserted by notice to the Party from whom indemnification is sought.

Section 10.4 *Consideration Adjustment*. The Parties agree to treat all payments made pursuant to this Article X as adjustments to the consideration for tax purposes, except as otherwise required by Law following a final determination by the U.S. Internal Revenue Service or a Governmental Body with competent jurisdiction.

Section 10.5 *Exclusive Remedy*.

(a) No Party shall have any liability for contribution, and no Party shall make any such claim, for any Damages or other matter (and the Parties each hereby waive any right of contribution against the other and their respective Affiliates), under, arising out of or relating to this Agreement, any other document, agreement, certificate or other matter delivered pursuant hereto or the Transactions contemplated hereby, whether based on contract, tort, strict liability, other Laws or otherwise.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NO PARTY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, LOST PROFITS, LOST OPPORTUNITIES OR OTHER SPECULATIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM ANY OTHER PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT; *PROVIDED, HOWEVER*, THAT THIS SECTION 10.5 SHALL NOT LIMIT A PARTY'S RIGHT TO RECOVERY UNDER ARTICLE X FOR ANY SUCH DAMAGES TO THE EXTENT SUCH PARTY IS REQUIRED TO PAY SUCH DAMAGES TO A THIRD PARTY IN CONNECTION WITH A MATTER FOR WHICH SUCH PARTY IS OTHERWISE ENTITLED TO INDEMNIFICATION UNDER ARTICLE X.

## **ARTICLE XI**

### **MISCELLANEOUS**

Section 11.1 *Entire Agreement*. This Agreement, together with the other Transaction Documents and all schedules, exhibits, annexes or other attachments hereto or thereto, and the certificates, documents, instruments and writings that are delivered pursuant hereto or thereto, constitutes the entire agreement and understanding of the Parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or

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representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof. Except as provided in Article X, there are no third party beneficiaries having rights under or with respect to this Agreement.

**Section 11.2 *Assignment; Binding Effect.*** No Party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the other Parties, and any such assignment by a Party without prior written approval of the other Parties will be deemed invalid and not binding on such other Party. All of the terms, agreements, covenants, representations, warranties and conditions of this Agreement are binding upon, inure to the benefit of and are enforceable by, the Parties and their respective successors and permitted assigns.

**Section 11.3 *Notices.*** All notices, requests and other communications provided for or permitted to be given under this Agreement must be in writing and must be given by personal delivery, by certified or registered United States mail (postage prepaid, return receipt requested), by a nationally recognized overnight delivery service for next day delivery, or by facsimile transmission, to the intended recipient at the address set forth for the recipient on the signature page (or to such other address as any Party may give in a notice given in accordance with the provisions hereof). All notices, requests or other communications will be effective and deemed given only as follows: (i) if given by personal delivery, upon such personal delivery, (ii) if sent by certified or registered mail, on the fifth (5th) Business Day after being deposited in the United States mail, (iii) if sent for next day delivery by overnight delivery service, on the date of delivery as confirmed by written confirmation of delivery, or (iv) if sent by electronic mail, upon the recipient's confirmation in writing of receipt of such electronic mail, except that if such confirmation is received after 5:00 p.m. (in the recipient's time zone) on a Business Day, or is received on a day that is not a Business Day, then such notice, request or communication will not be deemed effective or given until the next succeeding Business Day. Notices, requests and other communications sent in any other manner will not be effective.

**Section 11.4 *Specific Performance; Remedies.*** Damages in the event of breach of this Agreement by a Party hereto may be difficult, if not impossible, to ascertain, and it is therefore agreed that each Party, in addition to and without limiting any other remedy or right it may have, will have the right to an injunction or other equitable relief in any court of competent jurisdiction, enjoining any such breach, and enforcing specifically the terms and provisions hereof, and each of the Parties hereto hereby waives any and all defenses it may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. The existence of this right will not preclude any such Party from pursuing any other rights and remedies at law or in equity that such Party may have.

**Section 11.5 *Headings.*** The article and section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

**Section 11.6 *Applicable Law; Forum; Venue and Jurisdiction; Waiver of Trial by Jury.***

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

(b) Each of the Parties:

(i) irrevocably agrees that any claims, suits, actions or proceedings arising out of or relating in any way to this Agreement (including any claims, suits or actions to interpret, apply or enforce the provisions of this Agreement or the duties, obligations or liabilities among the Parties, or the rights or powers of, or restrictions on, the Parties) shall be exclusively brought in the Court of Chancery of the State of Delaware (or, if such court does not have subject matter jurisdiction thereof, any other court located in the State of Delaware with subject matter jurisdiction), in each case regardless of whether such claims, suits, actions or proceedings sound in contract, tort, fraud or otherwise, are based

on common law, statutory, equitable, legal or other grounds, or are derivative or direct claims;

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

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

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

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

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

**Section 11.7 *Amendment; Extensions; Waivers.*** No amendment, modification, replacement, termination or cancellation of any provision of this Agreement will be valid, unless the same is in writing, makes reference to this Agreement and the provision(s) to be amended, modified, replaced, terminated or canceled and is signed by the Transferor, the Partnership, the General Partner and the Operating Company. Each waiver of a right hereunder does not extend beyond the specific event or circumstance giving rise to the right. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence. Neither the failure nor any delay on the part of any Party to exercise any right or remedy under this Agreement will operate as a waiver thereof, nor does any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy.

**Section 11.8 *Severability.*** The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof.

**Section 11.9 *Expenses.*** Except as otherwise expressly provided in this Agreement, each Party will bear its own costs and expenses incurred in connection with the preparation, execution and performance of this Agreement and the Transactions, including all fees and expenses of agents, representatives, financial advisors, legal counsel and accountants.

**Section 11.10 *Counterparts; Effectiveness.*** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each Party and delivered to the other Party.

**Section 11.11 *Construction.*** This Agreement has been freely and fairly negotiated among the Parties. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party because of the authorship of any

provision of this Agreement.

**[SIGNATURE PAGES FOLLOW]**

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date and year first above written.

**DIAMONDBACK ENERGY, INC.**

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

**Address for Notices:**

Attention: Randall J. Holder, General Counsel  
500 West Texas Avenue  
Suite 1200  
Midland, TX 79701  
Email: RJHolder@diamondbackenergy.com

*Signature Page to Recapitalization Agreement*

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**VIPER ENERGY PARTNERS LP, by  
Viper Energy Partners GP LLC, its general  
partner**

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

Address for Notices:  
Attention: Randall J. Holder, General Counsel  
500 West Texas Avenue  
Suite 1200  
Midland, TX 79701  
Email: RJHolder@diamondbackenergy.com

*Signature Page to Recapitalization Agreement*



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**VIPER ENERGY PARTNERS GP LLC**

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

**Address for Notices:**

Attention: Randall J. Holder, General Counsel  
500 West Texas Avenue  
Suite 1200  
Midland, TX 79701  
Email: RJHolder@diamondbackenergy.com

*Signature Page to Recapitalization Agreement*

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**VIPER ENERGY PARTNERS LLC**

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

**Address for Notices:**

Attention: Randall J. Holder, General Counsel  
500 West Texas Avenue  
Suite 1200  
Midland, TX 79701  
Email: RJHolder@diamondbackenergy.com

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**Annex D**

**FORM OF  
EXCHANGE AGREEMENT  
BY AND AMONG  
DIAMONDBACK ENERGY, INC.  
VIPER ENERGY PARTNERS LLC  
VIPER ENERGY PARTNERS GP LLC  
and  
VIPER ENERGY PARTNERS LP**

**Dated as of [ ], 2018**

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**EXCHANGE AGREEMENT**

This Exchange Agreement (this *Agreement* ), dated as of [ ], 2018, by and among Viper Energy Partners LP, a Delaware limited partnership (the *Partnership* ), Viper Energy Partners GP LLC, a Delaware limited liability company (the *General Partner* ), Viper Energy Partners LLC, a Delaware limited liability company (the *Operating Company* ), and Diamondback Energy, Inc., a Delaware corporation (the *Sponsor* ). The above-named entities are sometimes referred to in this Agreement as a *Party* and collectively as the *Parties*.

**RECITALS**

WHEREAS, the Parties hereto desire to provide for the possible future exchange by the Sponsor of OpCo Units (as defined herein) and Class B Units (as defined herein) for Common Units (as defined herein) or cash, on the terms and subject to the conditions set forth herein; and

WHEREAS, the Parties intend that an Exchange (as defined herein) consummated hereunder be treated for federal income tax purposes, to the extent permitted by law, as a taxable exchange of OpCo Units and Class B Units by the Sponsor.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1.1 *Definitions*. Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Partnership Agreement (as defined below). As used in this Agreement, the following terms shall have the following meanings:

*Agreement* has the meaning set forth in the preamble to this Agreement.

*Assignee* means a Person to whom a Membership Interest has been transferred in accordance with the OpCo Limited Liability Company Agreement but who has not become a Member.

*Applicable Percentage* has the meaning set forth in Section 2.1(b).

*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 New York shall not be regarded as a Business Day.

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

*Cash Purchase Price* has the meaning set forth in Section 2.1(b).

*Class B Units* has the meaning set forth in the Partnership Agreement.

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

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

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

**Common Unit Amount** means a number of Common Units equal to the number of Tendered Units.

**Common Units** has the meaning set forth in the First Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of June 23, 2014.

**Conflicts Committee** has the meaning set forth in the Partnership Agreement.

**Current Market Price** means, as of the date of determination, the average of the daily Closing Prices per Common Unit for the 20 consecutive Trading Days immediately prior to such date.

**Cut-Off Date** means the fifth (5th) Business Day after the Partnership's receipt of a Notice of Redemption.

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

**Delaware LP Act** means the Delaware Revised Uniform Limited Partnership Act, 6 Del C. Section 17-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

**Exercise Notice** has the meaning set forth in Section 2.1(c).

**Exchange** means (i) a Redemption by the Operating Company of one or more OpCo Units for Common Units and (ii) the purchase of Tendered Units by the Partnership from the Sponsor for the Cash Purchase Price.

**Exchange Right** means the rights of the Sponsor and the Partnership pursuant to Sections 2.1(a) and (b), respectively, of this Agreement.

**Financing Party** means any and all Persons, or the agents or trustees representing them, providing senior or subordinated debt or tax equity financing or refinancing (including letters of credit, bank guaranties or other credit support).

**General Partner** has the meaning set forth in the preamble to this Agreement.

**Governmental Entity** means any (a) multinational, federal, national, provincial, territorial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, administrative agency, board, bureau, agency or other statutory body, domestic or foreign, (b) subdivision, agent, commission, board or authority of any of the foregoing, or (c) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under, or for the account of, any of the foregoing (including the New York Stock Exchange and NASDAQ Stock Market), in each case, that has jurisdiction or authority with respect to the applicable Party.

**Holder** means either (a) a Member or (b) an Assignee that owns an OpCo Unit.

***Laws*** means any and all applicable (a) laws, constitutions, treaties, statutes, codes, ordinances, principles of common law and equity, rules, regulations and municipal bylaws whether domestic, foreign or international,



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(b) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions and awards of any Governmental Entity, and (c) policies, practices and guidelines of any Governmental Entity which, although not actually having the force of law, are considered by such Governmental Entity as requiring compliance as if having the force of law, and the term ***applicable***, with respect to such Laws and in the context that refers to one or more Persons, means such Laws that apply to such Person or Persons or its or their business, undertaking, property or securities at the relevant time and that emanate from a Governmental Entity having jurisdiction over the Person or Persons or its or their business, undertaking, property or securities.

***Member*** has the meaning set forth in the OpCo Limited Liability Company Agreement.

***Membership Interest*** has the meaning set forth in the OpCo Limited Liability Company Agreement.

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

***Notice of Redemption*** has the meaning set forth in Section 2.1(a)(i).

***OpCo Limited Liability Company Agreement*** means the Second Amended and Restated Limited Liability Company Agreement of the Operating Company, dated [ ], 2018, as may be amended from time to time.

***OpCo Units*** has the meaning set forth in the Partnership Agreement.

***Operating Company*** has the meaning set forth in the preamble to this Agreement.

***Partnership*** has the meaning set forth in the preamble to this Agreement.

***Partnership Agreement*** means the Second Amended and Restated Agreement of Limited Partnership of Viper Energy Partners LP, dated [ ], 2018, as may be amended from time to time.

***Party*** or ***Parties*** has the meaning set forth in the preamble to this Agreement.

***Person*** means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

***Redemption*** has the meaning set forth in Section 2.1(a).

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

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

***Specified Redemption Date*** means the fifteenth (15th) Business Day after the receipt by the Operating Company of a Notice of Redemption (or an election to receive the Common Unit Amount in respect of Tendered Units) or as otherwise agreed to in writing by the parties hereto.

***Sponsor*** has the meaning set forth in the preamble to this Agreement and, where applicable, includes a transferee of Class B Units and OpCo Units as permitted under the Partnership Agreement.

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***Tendered Units*** has the meaning set forth in Section 2.1(a).

***Trading Day*** means a day on which the principal National Securities Exchange on which the Common Units are listed or admitted to trading is open for the transaction of business.

***Treasury Regulations*** means the United States Treasury regulations promulgated under the Code.

***Unit*** has the meaning set forth in Section 2.1(a).

Section 1.2 *Gender*. For the purposes of this Agreement, the words it, he, his or himself shall be interpreted to include the masculine, feminine and corporate, other entity or trust form.

## ARTICLE II

### EXCHANGE

#### Section 2.1 *Redemption and Purchase Rights*.

(a) Subject to Section 4.4(b) of the OpCo Limited Liability Company Agreement, the Sponsor shall have the right, at any time and from time to time (subject to the terms and conditions set forth herein), to require the Partnership to redeem (each, a ***Redemption***) all or a portion of the Class B Units held by the Sponsor, which must be accompanied by an equal number of OpCo Units held by the Sponsor (one OpCo Unit and one Class B Unit are referred to herein as one ***Unit***, and Units that have in fact been tendered for redemption being hereafter referred to as ***Tendered Units***), in exchange for the Common Unit Amount.

(i) If the Sponsor desires to exercise its right to require a Redemption, it shall deliver a written notice to the Partnership and the Operating Company specifying the number of Units the Sponsor desires to tender for redemption (the ***Notice of Redemption***). The Partnership shall not be obligated to effect a Redemption until the Specified Redemption Date (it being understood that the Partnership will not be required to consummate such Redemption with respect to any Tendered Units that are purchased by the Partnership pursuant to Section 2.1(b)).

(ii) The Common Unit Amount shall be delivered by the Partnership on or before the Specified Redemption Date as duly authorized, validly issued, fully paid and non-assessable Common Units (except as such nonassessability may be affected by Sections 17-303, 17-607 or 18-704 of the Delaware LP Act), free of any pledge, lien, encumbrance or restriction, other than the restrictions provided in the Partnership Agreement, the Securities Act and relevant state securities or blue sky laws. Notwithstanding any delay in such delivery, the Sponsor shall be deemed the owner of such Common Units for all purposes, including, without limitation, rights to vote and consent, receive distributions, and exercise rights, as of the Specified Redemption Date. Common Units issued upon a Redemption pursuant to this Section 2.1(a) may contain such legends regarding restrictions under the Securities Act and applicable state securities laws as the Partnership in good faith determines to be necessary or advisable in order to ensure compliance with such laws.

(b) In lieu of any Redemption described in Section 2.1(a), the Partnership may, in its sole and absolute discretion (but subject to the approval of the Conflicts Committee), offer to purchase some or all of the Tendered Units (such amount, expressed as a percentage of the total number of Tendered Units rounded up to the nearest Unit, being referred to as the ***Applicable Percentage***) from the Sponsor by delivering a written notice of such election on or before the close of business on the Cut-Off Date. If the Sponsor accepts such offer in writing, on the Specified Redemption Date the Sponsor shall sell such number of the Tendered Units to the Partnership in exchange for a cash sum (the ***Cash***

**Purchase Price** ) equal to the product of the Cash Amount and the

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Applicable Percentage. If the Partnership offers, subject to the approval of the Conflicts Committee, to purchase some or all of the Tendered Units and the Sponsor accepts such offer:

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

(ii) the remaining Tendered Units shall be subject to Redemption pursuant to Section 2.1(a).

(c) In the event the Partnership elects to exercise its offer rights pursuant to Section 2.1(b), the Partnership shall provide a written notice to that effect (an ***Exercise Notice***) to the Operating Company and the Sponsor on or before the close of business on the Cut-Off Date. The failure of the Partnership to provide an Exercise Notice by the close of business on the Cut-Off Date shall be deemed to be an election by the Partnership not to make an offer to purchase any of the Tendered Units. The Sponsor shall have five (5) Business Days after receipt of the Exercise Notice to give written notice of acceptance.

(d) Without limiting the remedies of the Sponsor, if the Partnership offers to purchase some or all of the Tendered Units under Section 2.1(b) for the Cash Purchase Price and the Sponsor accepts, and the Cash Purchase Price is not paid on or before the Specified Redemption Date, interest shall accrue with respect to the Cash Purchase Price from the day after the Specified Redemption Date to and including the date on which the Cash Purchase Price is paid at a rate equal to the Applicable Federal Short-Term Rate as published monthly by the United States Internal Revenue Service.

(e) Notwithstanding anything herein to the contrary, with respect to any Redemption pursuant to Section 2.1(a), or any purchase of Units by the Partnership pursuant to Section 2.1(b) hereof:

(i) Without the consent of the Partnership, the Sponsor may not effect a Redemption for (A) less than two thousand (2,000) Units or (B) if the Sponsor holds less than two thousand (2,000) Units, all of the Units held by the Sponsor.

(ii) If (A) the Sponsor surrenders Tendered Units during the period after the Record Date with respect to a distribution payable to Holders of OpCo Units, and before the record date established by the Partnership for a distribution to its unitholders of some or all of its portion of such Operating Company distribution, and (B) the Partnership elects to purchase any of such Tendered Units pursuant to Section 2.1(b), then the Sponsor shall pay to the Partnership on the Specified Redemption Date an amount in cash equal to the Operating Company distribution paid or payable in respect of such Tendered Units.

(iii) Notwithstanding anything to the contrary herein, the consummation of a Redemption pursuant to Section 2.1(a) hereof or a purchase of Tendered Units by the Partnership pursuant to Section 2.1(b) hereof, as the case may be, shall not be permitted to the extent the Partnership determines that such Redemption or purchase (A) would be prohibited by applicable law or regulation (including, without limitation, the Securities Act, the Delaware LLC Act or the Delaware LP Act) or (B) would not be permitted under the Partnership Agreement, the OpCo Limited Liability Company Agreement or any other agreements to which the Partnership or the Operating Company may be party or any written policies of the Partnership related to unlawful or improper trading (including, without limitation, the policies of the Partnership relating to insider trading).

(f) The Partnership, the Operating Company and the Sponsor shall bear their own expenses in connection with the consummation of any Exchange, whether or not any such Exchange is ultimately consummated, except that the Operating Company shall bear any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or

arising by reason of, any Exchange; *provided, however*, that if any Common Units are to be delivered in a name other than that of the Sponsor, then the Sponsor and/or the person in whose name such shares are to be delivered shall pay to the Operating Company the amount of any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, such Exchange or shall establish to the reasonable satisfaction of the Partnership that such tax has been paid or is not payable.

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Section 2.2 *Expiration*. In the event that the Operating Company is dissolved pursuant to the OpCo Limited Liability Company Agreement, any Exchange Right pursuant to Section 2.1 of this Agreement shall terminate upon final distribution of the assets of the Operating Company pursuant to the terms and conditions of the OpCo Limited Liability Company Agreement.

Section 2.3 *Adjustment*. If there is any reclassification, reorganization, recapitalization or other similar transaction in which the OpCo Units, Common Units or Class B Units, as applicable, are converted or changed into another security, securities or other property, then upon any subsequent Exchange, the Sponsor shall be entitled to receive the amount of such security, securities or other property that the Sponsor would have received if such Exchange had occurred immediately prior to the effective date of such reclassification, reorganization, recapitalization or other similar transaction, taking into account any adjustment as a result of any subdivision (by any split, distribution or dividend, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse split, reclassification, recapitalization or otherwise) of such security, securities or other property that occurs after the effective time of such reclassification, reorganization, recapitalization or other similar transaction. For the avoidance of doubt, if there is any reclassification, reorganization, recapitalization or other similar transaction in which the OpCo Units, Common Units or Class B Units, as applicable, are converted or changed into another security, securities or other property, this Section 2.3 shall continue to be applicable, mutatis mutandis, with respect to such security or other property. This Agreement shall apply to, mutatis mutandis, and all references to OpCo Units, Common Units or Class B Units shall be deemed to include, any security, securities or other property of the Operating Company or the Partnership, as applicable, which may be issued in respect of, in exchange for or in substitution of the OpCo Units, Common Units or Class B Units, as applicable, by reason of any distribution or dividend, split, reverse split, combination, reclassification, reorganization, recapitalization, merger, exchange (other than an Exchange) or other transaction.

## **ARTICLE III**

### **MISCELLANEOUS PROVISIONS**

Section 3.1 *Notices*. Any notice, statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by facsimile, email, hand messenger delivery, overnight courier service, or certified mail (receipt requested) to each other Party at the address set forth below; *provided* that to be effective any such notice sent originally by facsimile or email must be followed within two (2) Business Days by a copy of such notice sent by overnight courier service:

If to the Partnership:

Viper Energy Partners LP

500 West Texas

Suite 1200

Midland, Texas

Email: RJHolder@diamondbackenergy.com

Attention: Randall J. Holder, General Counsel

If to the Sponsor:

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Diamondback Energy, Inc.

500 West Texas

Suite 1200

Midland, Texas

Email: [RJHolder@diamondbackenergy.com](mailto:RJHolder@diamondbackenergy.com)

Attention: Randall J. Holder, General Counsel



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If to the General Partner:

Viper Energy Partners GP LLC

500 West Texas

Suite 1200

Midland, Texas

Email:RJHolder@diamondbackenergy.com

Attention: Randall J. Holder, General Counsel

If to the Operating Company:

Viper Energy Partners LLC

500 West Texas

Suite 1200

Midland, Texas

Email:RJHolder@diamondbackenergy.com

Attention: Randall J. Holder, General Counsel

Each Party shall have the right to change the place to which notices shall be sent or delivered or to specify one additional address to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party. Without limiting any other means by which a Party may be able to prove that a notice has been received by another Party, all notices and communications shall be deemed to have been duly given: (i) at the time delivered by hand, if personally delivered; (ii) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed by first class certified mail, receipt requested; (iii) when received, if sent by facsimile or email, if received prior to 5 p.m., recipient's time, on a Business Day, or on the next Business Day, if received later than 5 p.m., recipient's time; and (iv) on the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery. In any case hereunder in which a Party is required or permitted to respond to a notice from another Party within a specified period, such period shall run from the date on which the notice was deemed duly given as above provided, and the response shall be considered to be timely given if given as above provided by the last day of the period provided for such response.

Section 3.2 *Time is of the Essence*. Time is of the essence of this Agreement; *provided, however*, notwithstanding anything to the contrary in this Agreement, if the time period for the performance of any covenant or obligation, satisfaction of any condition or delivery of any notice or item required under this Agreement shall expire on a day other than a Business Day, such time period shall be extended automatically to the next Business Day.

Section 3.3 *Assignment*. No Party will convey, assign or otherwise transfer either this Agreement or any of the rights, interests or obligations hereunder without the prior written consent of the other Parties hereto (in each of such Party's

sole and absolute discretion). Any such prohibited conveyance, assignment or transfer without the prior written consent of the other Parties will be void *ab initio*. Notwithstanding the foregoing, nothing contained in this Agreement shall preclude (i) any pledge, hypothecation or other transfer or assignment of a Party's rights, title and interest under this Agreement, including any amounts payable to such Party under this Agreement, to a *bona fide* Financing Party as security for debt financing to such Party or one of its Affiliates, or (ii) the assignment of such rights, title and interest under this Agreement upon exercise of remedies by a Financing Party following a default by such Party or one of its Affiliates under the financing agreements entered into with the Financing Parties.

Section 3.4 *Parties in Interest*. This Agreement is binding upon and is for the benefit of the Parties hereto and their respective successors and permitted assigns. This Agreement is not made for the benefit of any Person not a party hereto, and no Person other than the Parties hereto and their respective successors and permitted assigns will acquire or have any benefit, right, remedy or claim under or by virtue of this Agreement.

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Section 3.5 *Captions*. All Section titles or captions contained in this Agreement or in the table of contents of this Agreement are for convenience only and shall not be deemed to be a part of this Agreement or affect the meaning or interpretation of this Agreement.

Section 3.6 *Severability*. Whenever possible each provision and term of this Agreement will be interpreted in a manner to be effective and valid. If any term or provision of this Agreement or the application of any such term or provision to any Person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof, or the application of such term or provision to Persons or circumstances other than those as to which it has been held invalid, illegal or unenforceable, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby. If any term or provision of this Agreement is held to be prohibited or invalid, then such term or provision will be ineffective only to the extent of such prohibition or invalidity without invalidating or affecting in any manner whatsoever the remainder of such term or provision or the other terms and provisions of this Agreement. Upon determination that any other term or provision of this Agreement is invalid, void, illegal or unenforceable, a court of competent jurisdiction will modify such term or provision so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible under the Law.

Section 3.7 *Applicable Law; Forum; Venue and Jurisdiction; Waiver of Trial by Jury*.

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

(b) Each of the Parties:

(i) irrevocably agrees that any claims, suits, actions or proceedings arising out of or relating in any way to this Agreement (including any claims, suits or actions to interpret, apply or enforce the provisions of this Agreement or the duties, obligations or liabilities among the Parties, or the rights or powers of, or restrictions on, the Parties) shall be exclusively brought in the Court of Chancery of the State of Delaware (or, if such court does not have subject matter jurisdiction thereof, any other court located in the State of Delaware with subject matter jurisdiction), in each case regardless of whether such claims, suits, actions or proceedings sound in contract, tort, fraud or otherwise, are based on common law, statutory, equitable, legal or other grounds, or are derivative or direct claims;

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

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

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

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



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

Section 3.8 *Entire Agreement*. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and this Agreement supersedes all prior negotiations, agreements or understandings of the Parties of any nature, whether oral or written, relating thereto.

Section 3.9 *Amendment*. This Agreement may be modified, amended or supplemented only by written agreement executed by the Parties.

Section 3.10 *Facsimile; Counterparts*. Except as contemplated by Section 3.3, neither this Agreement nor any of the rights or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 3.11 *Tax Matters*.

(a) If the Partnership or the Operating Company shall be required to withhold any amounts by reason of any federal, state, local or foreign tax rules or regulations in respect of any Exchange, the Partnership or the Operating Company, as the case may be, shall be entitled to take such action as it deems appropriate in order to ensure compliance with such withholding requirements, including, without limitation, at its option withholding from, and paying over to the appropriate taxing authority, any consideration otherwise payable to the Sponsor under this Agreement, and any such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the person in respect of which such deduction and withholding was made. Notwithstanding anything to the contrary herein, each of the Partnership and the Operating Company may, at its own discretion, require as a condition to the effectiveness of an Exchange that an exchanging holder of Tendered Units deliver to the Partnership or the Operating Company, as the case may be, a certification of non-foreign status in accordance with Treasury Regulation Section 1.1445-2(b).

(b) This Agreement shall be treated as part of the OpCo Limited Liability Company Agreement as described in Section 761(c) of the Code and Sections 1.704-1(b)(2)(ii)(h) and 1.761-1(c) of the Treasury Regulations.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered, all as of the date first set forth above.

**Viper Energy Partners GP LLC**

By:  
Name:  
Title:

**Viper Energy Partners LP**

By: Viper Energy Partners GP LLC, its  
general partner

By:  
Name:  
Title:

**Viper Energy Partners LLC**

By:  
Name:  
Title:

**Diamondback Energy, Inc.**

By:  
Name:  
Title:

*Signature Page to the Exchange Agreement*

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Annex E

**FORM OF**  
**AMENDED AND RESTATED**  
**REGISTRATION RIGHTS AGREEMENT**  
**BY AND BETWEEN**  
**VIPER ENERGY PARTNERS LP**  
**AND**  
**DIAMONDBACK ENERGY, INC.**  
**DATED AS OF [ ], 2018**

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**AMENDED AND RESTATED**

**REGISTRATION RIGHTS AGREEMENT**

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this Agreement ) is made and entered into as of [ ], 2018, by and between Viper Energy Partners LP, a Delaware limited partnership (the Partnership ), and Diamondback Energy, Inc., a Delaware corporation (the Sponsor ).

WHEREAS, the Partnership and the Sponsor entered into the Registration Rights Agreement dated as of June 23, 2014 (the Original Registration Rights Agreement );

WHEREAS, in connection with the transactions contemplated by the Recapitalization Agreement (as defined below) and the adoption of the Second Amended and Restated Agreement of Limited Partnership of the Partnership dated the date hereof (as amended from time to time, the Partnership Agreement ), the Sponsor holds Class B Units of the Partnership (the Class B Units ) that are exchangeable, together with the Units of the Operating Company (as defined below) (the OpCo Units ), for Common Units of the Partnership (the Common Units );

WHEREAS, it is a condition of the Recapitalization Agreement that the Partnership and the Sponsor amend and restate that Original Registration Rights Agreement in its entirety as set forth herein;

WHEREAS, the Sponsor may from time to time acquire additional Common Units or Class B Units; and

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1.01. Definitions. Capitalized terms used herein without definition shall have the meanings given to them in the Partnership Agreement. The terms set forth below are used herein as so defined:

Affiliate means, with respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the specified Person. As used herein, the term control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

Agreement has the meaning given to such term in the introductory paragraph.

Class B Units has the meaning given to such term in the recitals of this Agreement.

Commission means the Securities and Exchange Commission.

Common Units has the meaning given to such term in the recitals of this Agreement.

Effectiveness Period has the meaning given to such term in Section 2.01.



Exchange Act means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

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Exchange Agreement means the Exchange Agreement, dated as of the date hereof, among the Partnership, the Sponsor, the General Partner and the Operating Company, pursuant to which the Sponsor can tender OpCo Units, together with Class B Units, in exchange for Common Units.

Holder means the record holder of any Registrable Securities.

Losses has the meaning given to such term in Section 2.07(a).

Managing Underwriter(s) means, with respect to any Underwritten Offering, the book-running lead manager(s) of such Underwritten Offering.

Notice has the meaning given to such term in Section 2.01.

OpCo Units has the meaning given to such term in the recitals of this Agreement

Operating Company means Viper Energy Partners LLC, a Delaware limited liability company.

Original Registration Rights Agreement has the meaning given to such term in the recitals of this Agreement.

Partnership has the meaning given to such term in the introductory paragraph.

Partnership Agreement has the meaning given to such term in the recitals of this Agreement.

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

Recapitalization Agreement means the Recapitalization Agreement, dated as of March 28, 2018, among the Sponsor, the Partnership, the Operating Company and the General Partner.

Registrable Securities means (i) the aggregate number of Common Units acquired or that may be acquired by the Sponsor in accordance with the Exchange Agreement; (ii) any securities of the Partnership or any of its subsidiaries issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization; and (iii) any other Common Units or other securities of the Partnership held by the Sponsor from time to time, which Registrable Securities are subject to the rights provided herein until such rights terminate pursuant to the provisions hereof.

Registration Expenses means all expenses (other than Selling Expenses) incident to the Partnership's performance under or compliance with this Agreement to effect the registration of Registrable Securities on a Registration Statement pursuant to Section 2.01 and/or in connection with an Underwritten Offering pursuant to Section 2.02(a), and the disposition of such Registrable Securities, including, without limitation, all registration, filing, securities exchange listing and securities exchange fees, all registration, filing, qualification and other fees and expenses of complying with securities or blue sky laws, fees of the Financial Industry Regulatory Authority, fees of transfer agents and registrars, all word processing, duplicating and printing expenses, any transfer taxes and the fees and disbursements of counsel and independent public accountants for the Partnership, including the expenses of any special audits or "cold comfort" letters required by or incident to such performance and compliance.

Registration Statement has the meaning given to such term in Section 2.01.



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Securities Act means the Securities Exchange Act of 1933, as amended, and the rules and regulations promulgated thereunder.

Selling Expenses means all underwriting fees, discounts and selling commissions applicable to the sale of Registrable Securities.

Selling Holder means a Holder who is selling Registrable Securities pursuant to a registration statement.

Sponsor has the meaning given to such term in the introductory paragraph.

Testing-the-Waters Communication means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act.

Underwritten Offering means an offering (including an offering pursuant to a Registration Statement) in which Common Units are sold to an underwriter on a firm commitment basis for reoffering to the public or an offering that is a "bought deal" with one or more investment banks.

Written Testing-the-Waters Communication means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

Section 1.02. Registrable Securities. Any Registrable Security will cease to be a Registrable Security (a) at the time a Registration Statement covering such Registrable Security has been declared effective by the Commission, or otherwise has become effective, and such Registrable Security has been sold or disposed of pursuant to such Registration Statement; (b) at the time such Registrable Security has been disposed of pursuant to Rule 144 (or any similar provision then in effect under the Securities Act); (c) ten (10) years after Sponsor ceases to be an Affiliate of the General Partner (including where Viper Energy Partners GP LLC ceases to be the general partner of the Partnership); (d) if such Registrable Security is held by the Partnership or one of its subsidiaries; (e) at the time such Registrable Security has been transferred in a private transaction in which the transferor's rights under this Agreement are not assigned to the transferee of such securities; or (f) if such Registrable Security has been transferred in a private transaction in which the transferor's rights under this Agreement are assigned to the transferee and such transferee is not an Affiliate of the General Partner, at the time that is two years following the transfer of such Registrable Security to such transferee.

## ARTICLE II

### REGISTRATION RIGHTS

Section 2.01. Demand Registration. Upon the written request (a Notice ) by Holders collectively owning at least 5% of the then-outstanding Registrable Securities, the Partnership shall file with the Commission, as soon as reasonably practicable, but in no event more than 90 days following the receipt of the Notice, a registration statement (each a Registration Statement ) under the Securities Act providing for the resale of such Registrable Securities (which may, at the option of the Holders giving such Notice, be a registration statement under the Securities Act that provides for the resale of such Registrable Securities pursuant to Rule 415 from time to time by the Holders). There shall be no limit on the number of Registration Statements that may be required by the Holders pursuant to this Section 2.01. The Partnership shall use its commercially reasonable efforts to cause each Registration Statement to be declared effective by the Commission as soon as reasonably practicable after the initial filing of the Registration Statement. Any Registration Statement shall provide for the resale pursuant to any method or combination of methods legally available to, and requested by, the Holders of any and all such Registrable Securities covered by such Registration

Statement. The Partnership shall use its commercially reasonable efforts to cause each Registration Statement filed pursuant to this Section 2.01 to be continuously effective,

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supplemented and amended to the extent necessary to ensure that it is available for the resale of all such Registrable Securities by the Holders until all such Registrable Securities covered by such Registration Statement have ceased to be Registrable Securities (the Effectiveness Period ). Each Registration Statement when effective (and the documents incorporated therein by reference) shall comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and shall not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any prospectus contained in such Registration Statement, in light of the circumstances under which a statement is made).

### Section 2.02. Underwritten Offerings.

(a) Request for Underwritten Offering. In the event that Holders collectively holding at least 5% of the then-outstanding Registrable Securities elect to dispose of Registrable Securities under a Registration Statement pursuant to an Underwritten Offering, and such Holders reasonably anticipate gross proceeds of at least \$50 million pursuant to such Underwritten Offering, the Partnership shall, upon request by such Holders, retain underwriters in order to permit such Holders to effect such sale through an Underwritten Offering and take all commercially reasonable actions as are requested by the Managing Underwriter to expedite or facilitate the disposition of such Registrable Securities. The Partnership shall, upon request of the Holders, cause its management to participate in a roadshow or similar marketing effort in connection with any such Underwritten Offering.

(b) Limitation on Underwritten Offerings. In no event shall the Partnership be required hereunder to participate in more than three Underwritten Offerings in any 12-month period.

(c) General Procedures. In connection with any Underwritten Offering pursuant to this Section 2.02, the Holders of a majority of the Registrable Securities being sold in such Underwritten Offering shall be entitled, subject to the Partnership's consent (which is not to be unreasonably withheld), to select the Managing Underwriter. In connection with any Underwritten Offering under this Agreement, each Selling Holder and the Partnership shall be obligated to enter into an underwriting agreement that contains such representations and warranties, covenants, indemnities and other rights and obligations as are customary in underwriting agreements for firm commitment offerings of securities. No Selling Holder may participate in such Underwritten Offering unless such Selling Holder agrees to sell its Registrable Securities on the basis provided in such underwriting agreement and completes and executes all questionnaires, powers of attorney, indemnities and other documents reasonably required under the terms of such underwriting agreement and furnish to the Partnership such information as the Partnership may reasonably request for inclusion in a Registration Statement or prospectus or any amendment or supplements thereto, as the case may be. Each Selling Holder may, at its option, require that any or all of the representations and warranties by, and the other agreements on the part of, the Partnership to and for the benefit of such underwriters also be made to and for such Selling Holder's benefit and that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement also be conditions precedent to such Selling Holder's obligations. If any Selling Holder disapproves of the terms of an Underwritten Offering contemplated by this Section 2.02, such Selling Holder may elect to withdraw from the Underwritten Offering by notice to the Partnership and the Managing Underwriter; *provided, however*, that such withdrawal must be made at a time prior to the time of pricing of such Underwritten Offering. No such withdrawal shall affect the Partnership's obligation to pay Registration Expenses.

Section 2.03. Delay Rights. Notwithstanding anything to the contrary contained herein, if the Partnership determines that its compliance with its obligations under this Article II would be materially detrimental to the Partnership because such compliance would (a) materially interfere with a significant acquisition, reorganization, financing or other similar transaction involving the Partnership, (b) require premature disclosure of material information that the Partnership has a bona fide business purpose for preserving as confidential or (c) render the Partnership unable to

comply with applicable securities laws, then the Partnership shall have the right to postpone compliance with its obligations under this Article II for a period of not more than three months;

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*provided, however,* that such right pursuant to this Section 2.03 may not be utilized more than twice in any 12-month period.

Section 2.04. Sale Procedures. Whenever the Holders have requested that any Registrable Securities be registered under this Agreement or have initiated an Underwritten Offering, such Holders shall, if applicable, cause such Registrable Securities to be exchanged into Common Units in accordance with the terms of the Exchange Agreement before or substantially concurrently with the sale of such Registrable Securities. In connection with its obligations under this Article II, the Partnership will, as promptly as reasonably practicable:

- (a) prepare and file with the Commission such amendments and supplements to each Registration Statement and the prospectus used in connection therewith as may be necessary to keep each Registration Statement effective for the Effectiveness Period and as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by such Registration Statement;
- (b) if a prospectus supplement will be used in connection with the marketing of an Underwritten Offering and the Managing Underwriter notifies the Partnership in writing that, in the sole judgment of such Managing Underwriter, inclusion of detailed information in such prospectus supplement is of material importance to the success of the Underwritten Offering of such Registrable Securities, use commercially reasonable efforts to include such information in such prospectus supplement;
- (c) furnish to each Selling Holder (i) as far in advance as reasonably practicable before filing a Registration Statement or any supplement or amendment thereto, upon request, copies of reasonably complete drafts of all such documents proposed to be filed (including exhibits and each document incorporated by reference therein to the extent then required by the rules and regulations of the Commission), and provide each such Selling Holder the opportunity to object to any information pertaining to such Selling Holder and its plan of distribution that is contained therein and make the corrections reasonably requested by such Selling Holder with respect to such information prior to filing a Registration Statement or supplement or amendment thereto, and (ii) such number of copies of such Registration Statement and the prospectus included therein and any supplements and amendments thereto as such Persons may reasonably request in order to facilitate the public sale or other disposition of the Registrable Securities covered by such Registration Statement;
- (d) if applicable, use its commercially reasonable efforts to register or qualify the Registrable Securities covered by a Registration Statement under the securities or blue sky laws of such jurisdictions as the Selling Holders or, in the case of an Underwritten Offering, the Managing Underwriter, shall reasonably request; *provided, however,* that the Partnership will not be required to qualify generally to transact business in any jurisdiction where it is not then required to so qualify or to take any action that would subject it to general service of process in any jurisdiction where it is not then so subject;
- (e) promptly notify each Selling Holder and each underwriter, at any time when a prospectus is required to be delivered under the Securities Act, of (i) the filing of a Registration Statement or any prospectus or prospectus supplement to be used in connection therewith, or any amendment or supplement thereto, and, with respect to such Registration Statement or any post-effective amendment thereto, when the same has become effective; and (ii) any written comments from the Commission with respect to any filing referred to in clause (i) and any written request by the Commission for amendments or supplements to a Registration Statement or any prospectus or prospectus supplement thereto;
- (f) immediately notify each Selling Holder and each underwriter, at any time when a prospectus is required to be delivered under the Securities Act, of (i) the happening of any event as a result of which the prospectus or prospectus



supplement contained in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order

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to make the statements therein not misleading (in the case of the prospectus contained therein, in the light of the circumstances under which a statement is made); (ii) the issuance or threat of issuance by the Commission of any stop order suspending the effectiveness of a Registration Statement, or the initiation of any proceedings for that purpose; or (iii) the receipt by the Partnership of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the applicable securities or blue sky laws of any jurisdiction. Following the provision of such notice, the Partnership agrees to, as promptly as practicable, amend or supplement the prospectus or prospectus supplement or take other appropriate action so that the prospectus or prospectus supplement does not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading in the light of the circumstances then existing and to take such other commercially reasonable action as is necessary to remove a stop order, suspension, threat thereof or proceedings related thereto;

(g) upon request and subject to appropriate confidentiality obligations, furnish to each Selling Holder copies of any and all transmittal letters or other correspondence with the Commission or any other governmental agency or self-regulatory body or other body having jurisdiction (including any domestic or foreign securities exchange) relating to any offering of Registrable Securities;

(h) in the case of an Underwritten Offering, furnish upon request, (i) an opinion of counsel for the Partnership dated the date of the closing under the underwriting agreement and (ii) a cold comfort letter, dated the pricing date of such Underwritten Offering (to the extent available) and a letter of like kind dated the date of the closing under the underwriting agreement, in each case, signed by the independent public accountants who have certified the Partnership's financial statements included or incorporated by reference into the applicable registration statement, and each of the opinion and the cold comfort letter shall be in customary form and covering substantially the same matters with respect to such registration statement (and the prospectus and any prospectus supplement included therein) as have been customarily covered in opinions of issuer's counsel and in accountants' letters delivered to the underwriters in Underwritten Offerings of securities by the Partnership and such other matters as such underwriters and Selling Holders may reasonably request;

(i) otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder;

(j) make available to the appropriate representatives of the Managing Underwriter and Selling Holders access to such information and Partnership personnel as is reasonable and customary to enable such parties to establish a due diligence defense under the Securities Act;

(k) cause all Registrable Securities registered pursuant to this Agreement to be listed on each securities exchange or nationally recognized quotation system on which similar securities issued by the Partnership are then listed;

(l) use its commercially reasonable efforts to cause the Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Partnership to enable the Selling Holders to consummate the disposition of the Registrable Securities;

(m) provide a transfer agent and registrar for all Registrable Securities covered by a Registration Statement not later than the effective date of such registration statement; and

(n) enter into customary agreements and take such other actions as are reasonably requested by the Selling Holders or the underwriters, if any, in order to expedite or facilitate the disposition of the Registrable Securities.

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Each Selling Holder, upon receipt of notice from the Partnership of the happening of any event of the kind described in subsection (f) of this Section 2.04, shall forthwith discontinue disposition of the Registrable Securities by means of a prospectus or prospectus supplement until such Selling Holder's receipt of the copies of the supplemented or amended prospectus contemplated by subsection (f) of this Section 2.04 or until it is advised in writing by the Partnership that the use of the prospectus may be resumed, and has received copies of any additional or supplemental filings incorporated by reference in the prospectus, and, if so directed by the Partnership, such Selling Holder will, or will request the Managing Underwriter, if any, to deliver to the Partnership all copies in their possession or control of the prospectus and any prospectus supplement covering such Registrable Securities current at the time of receipt of such notice.

**Section 2.05. Cooperation by Holders.** The Partnership shall have no obligation to include in a Registration Statement, or in an Underwritten Offering pursuant to Section 2.02(a), Registrable Securities of a Selling Holder who has failed to timely furnish such information that the Partnership determines, after consultation with its counsel, is reasonably required in order for the Registration Statement or prospectus or prospectus supplement, as applicable, to comply with the Securities Act.

**Section 2.06. Expenses.** The Partnership will pay all reasonable Registration Expenses, including in the case of an Underwritten Offering, regardless of whether any sale is made in such Underwritten Offering. Each Selling Holder shall pay all Selling Expenses in connection with any sale of its Registrable Securities hereunder. In addition, except as otherwise provided in Section 2.07, the Partnership shall not be responsible for legal fees incurred by Holders in connection with the exercise of such Holders' rights hereunder.

**Section 2.07. Indemnification.**

(a) **By the Partnership.** In the event of a registration of any Registrable Securities under the Securities Act pursuant to this Agreement, the Partnership will indemnify and hold harmless each Selling Holder participating therein, its directors, officers, employees and agents, and each Person, if any, who controls such Selling Holder within the meaning of the Securities Act and the Exchange Act, and its directors, officers, employees or agents, against any losses, claims, damages, expenses or liabilities (including reasonable attorneys' fees and expenses) (collectively, Losses), joint or several, to which such Selling Holder, director, officer, employee, agent or controlling Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such Losses (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact (in the case of any prospectus or any Written Testing-the-Waters Communication, in the light of the circumstances under which such statement is made) contained in any Written Testing-the-Waters Communication, a Registration Statement, any preliminary prospectus or prospectus supplement, free writing prospectus or final prospectus or prospectus supplement contained therein, or any amendment or supplement thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus or any Written Testing-the-Waters Communication, in the light of the circumstances under which they were made) not misleading, and will reimburse each such Selling Holder, its directors, officers, employee and agents, and each such controlling Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Loss or actions or proceedings as such expenses are incurred; *provided, however*, that the Partnership will not be liable in any such case if and to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Selling Holder, its directors, officers, employees and agents or such controlling Person in writing specifically for use in any Written Testing-the-Waters Communication, a Registration Statement, or prospectus or any amendment or supplement thereto, as applicable. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Selling Holder or any such directors, officers, employees agents or

controlling Person, and shall survive the transfer of such securities by such Selling Holder.

(b) By Each Selling Holder. Each Selling Holder agrees severally and not jointly to indemnify and hold harmless the Partnership, its directors, officers, employees and agents and each Person, if any, who controls the

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Partnership within the meaning of the Securities Act or of the Exchange Act, and its directors, officers, employees and agents, to the same extent as the foregoing indemnity from the Partnership to the Selling Holders, but only with respect to information regarding such Selling Holder furnished in writing by or on behalf of such Selling Holder expressly for inclusion in any Written Testing-the-Waters Communication, a Registration Statement, any preliminary prospectus or prospectus supplement, free writing prospectus or final prospectus or prospectus supplement contained therein, or any amendment or supplement thereof; *provided, however*, that the liability of each Selling Holder shall not be greater in amount than the dollar amount of the proceeds (net of any Selling Expenses) received by such Selling Holder from the sale of the Registrable Securities giving rise to such indemnification.

(c) Notice. Promptly after receipt by an indemnified party hereunder of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party hereunder, notify the indemnifying party in writing thereof, but the omission so to notify the indemnifying party shall not relieve it from any liability that it may have to any indemnified party other than under this Section 2.07. In any action brought against any indemnified party, it shall notify the indemnifying party of the commencement thereof. The indemnifying party shall be entitled to participate in and, to the extent it shall wish, to assume and undertake the defense thereof with counsel reasonably satisfactory to such indemnified party and, after notice from the indemnifying party to such indemnified party of its election so to assume and undertake the defense thereof, the indemnifying party shall not be liable to such indemnified party under this Section 2.07 for any legal expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation and of liaison with counsel so selected; *provided, however*, that, (i) if the indemnifying party has failed to assume the defense or employ counsel reasonably acceptable to the indemnified party or (ii) if the defendants in any such action include both the indemnified party and the indemnifying party and counsel to the indemnified party shall have concluded that there may be reasonable defenses available to the indemnified party that are different from or additional to those available to the indemnifying party, or if the interests of the indemnified party reasonably may be deemed to conflict with the interests of the indemnifying party, then the indemnified party shall have the right to select a separate counsel and to assume such legal defense and otherwise to participate in the defense of such action, with the reasonable expenses and fees of such separate counsel and other reasonable expenses related to such participation to be reimbursed by the indemnifying party as incurred. Notwithstanding any other provision of this Agreement, no indemnified party shall settle any action brought against it with respect to which it is entitled to indemnification hereunder without the consent of the indemnifying party, unless the settlement thereof imposes no liability or obligation on, and includes a complete and unconditional release from all liability of, the indemnifying party.

(d) Contribution. If the indemnification provided for in this Section 2.07 is held by a court or government agency of competent jurisdiction to be unavailable to any indemnified party or is insufficient to hold them harmless in respect of any Losses, then each indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of such indemnified party on the other in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations; *provided, however*, that in no event shall the Selling Holder be required to contribute an aggregate amount in excess of the dollar amount of proceeds (net of Selling Expenses) received by such Selling Holder from the sale of Registrable Securities giving rise to such indemnification. The relative fault of the indemnifying party on the one hand and the indemnified party on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact has been made by, or relates to, information supplied by such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contributions pursuant to this paragraph were to be determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to herein. The amount paid by an indemnified party as a result of the Losses referred to in the first sentence of this paragraph shall be

deemed to include any legal and other expenses reasonably incurred by such indemnified party in

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connection with investigating or defending any Loss that is the subject of this paragraph. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who is not guilty of fraudulent misrepresentation.

(e) Other Indemnification. The provisions of this Section 2.07 shall be in addition to any other rights to indemnification or contribution that an indemnified party may have pursuant to law, equity, contract or otherwise.

Section 2.08. Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Registrable Securities to the public without registration, the Partnership agrees to use its commercially reasonable efforts to:

(a) make and keep public information regarding the Partnership available, as those terms are understood and defined in Rule 144 under the Securities Act, at all times from and after the date hereof;

(b) file with the Commission in a timely manner all reports and other documents required of the Partnership under the Exchange Act at all times from and after the date hereof; and

(c) so long as a Holder owns any Registrable Securities, furnish, unless otherwise available via EDGAR, to such Holder forthwith upon request a copy of the most recent annual or quarterly report of the Partnership, and such other reports and documents so filed as such Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing such Holder to sell any such securities without registration.

Section 2.09. Transfer or Assignment of Registration Rights. The rights to cause the Partnership to register Registrable Securities granted to a Holder by the Partnership under this Article II may be transferred or assigned by such Holder to one or more transferee(s) or assignee(s) of such Registrable Securities; *provided, however*, that (a) unless such transferee or assignee is an Affiliate of the Sponsor, each such transferee or assignee holds Registrable Securities representing at least 5% of the then outstanding Registrable Securities, (b) the Partnership is given written notice prior to any said transfer or assignment, stating the name and address of each such transferee or assignee and identifying the Registrable Securities with respect to which such registration rights are being transferred or assigned and (c) each such transferor or assignor agrees to be bound by this Agreement.

Section 2.10. Restrictions on Public Sale by Holders of Registrable Securities. Each Holder agrees to enter into a customary letter agreement with underwriters providing such Holder will not affect any public sale or distribution of the Registrable Securities during the 90 calendar day period beginning on the date of a prospectus or prospectus supplement filed with the Commission with respect to the pricing of an Underwritten Offering; *provided, however*, that (i) the duration of the foregoing restrictions shall be no longer than the duration of the shortest restriction generally imposed by the underwriters on the Partnership or the officers, directors or any other Unitholder on whom a restriction is imposed and (ii) the restrictions set forth in this Section 2.10 shall not apply to any Registrable Securities that are included in such Underwritten Offering by such Holder.



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**ARTICLE III**

**MISCELLANEOUS**

Section 3.01. Communications. All notices and other communications provided for or permitted hereunder shall be made in writing by facsimile, electronic mail, courier service or personal delivery:

(a) if to Sponsor:

Diamondback Energy, Inc.

500 West Texas, Suite 1200

Midland, Texas 79701

Attention: General Counsel

E-mail: [rjholder@diamondbackenergy.com](mailto:rjholder@diamondbackenergy.com)

(b) if to a permitted transferee or assignee of a Holder, to such transferee or assignee furnished by such transferee or assignee; and

(c) if to the Partnership:

Viper Energy Partners LP

c/o Viper Energy Partners GP LLC

500 West Texas, Suite 1200

Midland, Texas 79701

Attention: General Counsel

E-mail: [rjholder@diamondbackenergy.com](mailto:rjholder@diamondbackenergy.com)

All such notices and communications shall be deemed to have been received at the time delivered by hand, if personally delivered; upon receipt, if sent via facsimile or sent via electronic mail; and when actually received, if sent by courier service or any other means.

Section 3.02. Successor and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including subsequent Holders of Registrable Securities to the extent permitted herein.

Section 3.03. Transfers and Assignment of Rights. All or any portion of the rights and obligations of the Holders under this Agreement may be transferred or assigned by the Holders in accordance with Section 2.09 hereof.

Section 3.04. Recapitalization, Exchanges, Etc. Affecting the Registrable Securities. The provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all securities of the Partnership or any successor or assign of the Partnership (whether by merger, consolidation, sale of assets or otherwise) that may be issued in respect of, in exchange for or in substitution of, the Registrable Securities, and shall be appropriately adjusted for combinations, splits, recapitalizations, pro rata distributions and the like occurring after the date of this Agreement.

Section 3.05. Specific Performance. Damages in the event of breach of this Agreement by a party hereto may be difficult, if not impossible, to ascertain, and it is therefore agreed that each party, in addition to and without limiting any other remedy or right it may have, will have the right to an injunction or other equitable relief in any court of competent jurisdiction, enjoining any such breach, and enforcing specifically the terms and provisions hereof, and each of the parties hereto hereby waives any and all defenses it may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. The existence of this right will not preclude any such party from pursuing any other rights and remedies at law or in equity that such party may have.

Section 3.06. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which counterparts, when so executed and delivered,

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shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

Section 3.07. Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 3.08. Governing Law. The laws of the State of New York shall govern this Agreement.

Section 3.09. Severability of Provisions. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting or impairing the validity or enforceability of such provision in any other jurisdiction.

Section 3.10. Scope of Agreement. The rights granted pursuant to this Agreement are intended to supplement and not reduce or replace any rights any Holders may have under the Partnership Agreement with respect to the Registrable Securities. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. Except as provided in the Partnership Agreement, there are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the rights granted by the Partnership set forth herein. Except as provided in the Partnership Agreement, this Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

Section 3.11. Amendment. This Agreement may be amended only by means of a written amendment signed by the Partnership and the Holders of a majority of the then outstanding Registrable Securities; *provided, however*, that no such amendment shall materially and adversely affect the rights of any Holder hereunder without the consent of such Holder.

Section 3.12. No Presumption. If any claim is made by a party relating to any conflict, omission, or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular party or its counsel.

Section 3.13. Aggregation of Registrable Securities. All Registrable Securities held or acquired by Persons who are Affiliates of one another shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

Section 3.14. Obligations Limited to Parties to Agreement. Each of the parties hereto covenants, agrees and acknowledges that no Person other than the Partnership and the Holders shall have any obligation hereunder and that, notwithstanding that one or more of the Holders may be a corporation, partnership or limited liability company, no recourse under this Agreement or under any documents or instruments delivered in connection herewith or therewith shall be had against any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of the Holders or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of the foregoing, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of the Holders or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of the foregoing, as such, for any obligations of the Holders under this Agreement or any documents or instruments delivered in

connection herewith or therewith or for any claim based on, in respect of or by reason of such obligation or its creation, except in each case for any transferee or assignee of the Holders hereunder.

*[Signature page follows]*

**Table of Contents**

IN WITNESS WHEREOF, the parties hereto execute this Agreement, effective as of the date first above written.

**VIPER ENERGY PARTNERS LP**

**By: Viper Energy Partners GP LLC, its  
general partner**

By:

Name: Randall J. Holder

Title: Vice President, General Counsel and  
Secretary

**DIAMONDBACK ENERGY, INC.**

By:

Name: Randall J. Holder

Title: Executive Vice President, General  
Counsel and Secretary

*[Signature Page to Amended and Restated Registration Rights Agreement]*