

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
: :
Debtors. : Jointly Administered
: :
----- X Re: Docket Nos. 13, 57 & 75

**CERTIFICATION OF COUNSEL REGARDING
FINAL ORDER UNDER 11 U.S.C. §§ 105(a) AND 366
(I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR
DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES,
(II) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT,
AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

The undersigned hereby certifies as follows:

1. On July 16, 2019, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of Orders Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment* [Docket No. 13] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

2. On July 17, 2019, the Court entered the *Interim Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III)*

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: EmERGE Energy Services LP (2937), EmERGE Energy Services GP LLC (4683), EmERGE Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and EmERGE Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment [Docket No. 57] (the “**Interim Order**”).

3. Pursuant to the Interim Order and the *Notice of (A) Entry of Interim Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment; and (B) Final Hearing Thereon* [Docket No. 75], objections to the Motion were to be filed and served by no later than August 7, 2019 at 4:00 p.m. (ET) (the “**Objection Deadline**”). The Objection Deadline was extended for the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) until August 9, 2019 at 4:00 p.m. (ET).

4. Prior to the Objection Deadline, the Debtors received informal comments (the “**Comments**”) to the relief requested in the Motion from the U.S. Trustee, Waste Management (“**WM**”), Synergy Community Cooperative Inc., Marabou Energy Management, LLC, and Marabou Superior Pipeline, LLC. The Comments were resolved by revising the original proposed order (the “**Original Order**”), and such revised order is attached hereto as Exhibit A (“**Revised Order**”).

5. The Revised Order has been circulated to counsel to the official committee of unsecured creditors, counsel to WM, counsel to the DIP Agent and the Prepetition Agents, and the U.S. Trustee, and the aforementioned parties do not object to the entry of the Revised Order. Other than the Comments, the Debtors received no other informal responses to the Motion, and no objection or responsive pleading to the Motion has appeared on the Court’s docket in these

chapter 11 cases. For the convenience of the Court and all parties in interest, a blackline of the Revised Order against the Original Order is attached hereto as Exhibit B.

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Order, attached hereto as Exhibit A, at its earliest convenience.

Dated: August 12, 2019
Wilmington, Delaware

/s/ Travis J. Cuomo

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Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

Revised Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	x	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	x	Re: Docket No. 13 & 57

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a) AND 366
(I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR
DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES,
(II) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT,
AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

Upon the motion (the “**Motion**”)² of the Debtors for entry of a Final Order under sections 105(a) and 366 of the Bankruptcy Code, (i) prohibiting the Debtors’ Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors, (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies, and (iii) establishing procedures for resolving any subsequent requests by the Utility Companies for additional adequate assurance of payment; and the Court having reviewed the Motion, the Gaston Declaration, and the Interim Order entered on July 17, 2019; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from*

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. Absent further order of this Court, the Utility Companies, including any subsequently added Utility Companies, are hereby prohibited from altering, refusing, discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, and from requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than in accordance with the Additional Adequate Assurance Procedures contained herein. The Utility Companies are also prohibited from drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.
4. To the extent not already deposited pursuant to the Interim Order, the Debtors shall cause an amount equal to \$199,500 to be deposited into a segregated, non-interest-bearing account (the “**Adequate Assurance Deposit**”) upon entry of this Final Order. The account will

be held at a bank that has executed the approved Uniform Depository Agreement with the United States Trustee for the District of Delaware. The Adequate Assurance Deposit shall serve as a cash security deposit to provide adequate assurance of payment for Utility Services provided to the Debtors after the Petition Date and through the pendency of the Chapter 11 Cases. The amount of the Adequate Assurance Deposit will remain \$199,500 throughout the Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for herein.

5. The balance of the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors, with notice to the DIP Agent without further order, to account for any of the following: (i) to the extent that the Adequate Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, (ii) an adjustment or payment made in accordance with the Delinquency Notice Procedures described in Paragraphs 7 and 8 below, (iii) the termination of a Utility Service by a Debtor regardless of any Additional Adequate Assurance Request (as defined below), (iv) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (v) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; *provided*, that, (a) with respect to a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon fourteen days’ advance notice to such company; and, (b) with respect to the Debtors’ termination of a Utility Service or closure of a utility account with a Utility Company, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon reconciliation and payment by the Debtors of

such Utility Company's final invoice in accordance with applicable nonbankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

6. The Debtors shall maintain the Adequate Assurance Deposit until the earlier of the Court's entry of an order authorizing the return of the Adequate Assurance Deposit to the Debtors and the effective date of a plan of reorganization for the Debtors (at which time the funds comprising the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors or reorganized Debtors, as applicable).

7. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall be permitted to file a written notice of such delinquency (the "**Delinquency Notice**") with the Court and serve such Delinquency Notice on: (i) Emerge Energy Services LP, 5600 Clearfork Main Street, Suite 400, Ft. Worth, TX 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Hugh K. Murtagh Esq., Liza L. Burton, Esq. and Sean McGrath, Esq. (emails: hugh.murtagh@lw.com, liza.burton@lw.com and sean.mcgrath@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq. and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com and candace.arthur@weil.com)); (v) HPS Investment Partners, LLC, 40 West 57th Street, 33rd Floor, New York, New York 10019 (Attn: Jeffrey Fitts, Brett Pertuz and Piero Russo (emails: jeffrey.fitts@hpspartners.com, brett.pertuz@hpspartners.com and piero.russo@hpspartners.com)); (vi) counsel to any statutory committee appointed in these cases, if any; and (vii) the United States Trustee for the District of

Delaware (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (each, a “**Delinquency Notice Party**”). Such Delinquency Notice must (i) set forth the amount of the delinquency, (ii) set forth the location for which Utility Services are provided, and (iii) provide each of the Debtors’ account numbers with the Utility Company that have become delinquent.

8. If a Delinquency Notice is properly provided as described above and such delinquency is not cured and no Delinquency Notice Party has objected to the Delinquency Notice within ten days of the receipt thereof, the Debtors shall (a) remit to such Utility Company from the Adequate Assurance Deposit the amount of postpetition charges claimed as delinquent in the Delinquency Notice and (b) cause the Adequate Assurance Deposit to be replenished for the amount remitted to such Utility Company. If a Delinquency Notice Party objects to the Delinquency Notice, the Court shall hold a hearing to resolve the dispute and determine whether a payment should be remitted from the Adequate Assurance Deposit and, if such payment is warranted, how much shall be remitted.

9. The following procedures (the “**Additional Adequate Assurance Procedures**”) are hereby approved with respect to all Utility Companies, including all subsequently added Utility Companies:

- (a) Except as provided by the Additional Adequate Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors’ Adequate Assurance Deposit, or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.
- (b) The Debtors will serve on the Utility Companies copies of the Motion and this Final Order within forty-eight hours after the entry of this Final Order.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not satisfactory adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company must

serve a written request (an “**Additional Adequate Assurance Request**”) for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit. All Additional Adequate Assurance Requests shall be delivered by mail and email to the Delinquency Notice Parties.

- (d) Any Additional Adequate Assurance Request must (i) set forth the location(s) for which Utility Services are provided and the type of Utility Services provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposit(s) or other security currently held by the requesting Utility Company, (iv) set forth why the Utility Company believes the proposed adequate assurance is not sufficient adequate assurance of future payment, (v) set forth the amount and nature of the adequate assurance of payment that would be satisfactory to the Utility Company, and (vi) provide an email address to which the Debtors may respond to the Additional Adequate Assurance Request.
- (e) Upon the Debtors’ receipt of an Additional Adequate Assurance Request, the Debtors will promptly negotiate with the Utility Company to resolve the Additional Adequate Assurance Request.
- (f) Without further order of the Court, the Debtors may resolve an Additional Adequate Assurance Request by entering into agreements granting additional adequate assurance to the requesting Utility Company if the Debtors, in their sole discretion, determine that the Additional Adequate Assurance Request is reasonable or if the parties negotiate alternative consensual provisions; provided that, the Debtors shall give prior notice to the DIP Agent of such agreement for additional adequate assurance and shall not provide such additional adequate assurance if the DIP Agent objects within three days of receiving such notice.
- (g) If the Debtors determine that the Additional Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Company within 30 days after the Additional Adequate Assurance Request is made, the Debtors will request a hearing before this Court at the next omnibus hearing date, or such other date as the Debtors and the requesting Utility Company may agree (the “**Determination Hearing**”).
- (h) The Determination Hearing will be an evidentiary hearing at which the Court will determine whether the Adequate Assurance Deposit and any additional adequate assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors,

or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.

- (i) Unless and until a Utility Company serves an Additional Adequate Assurance Request, it will be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.
- (j) All Utility Companies, including Utility Companies subsequently added to the Utility Company List (as defined below), will be prohibited from altering, refusing or discontinuing Utility Services to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

10. The Debtors are authorized, in their sole discretion, to amend Exhibit 1 attached hereto (the "Utility Company List") to add any Utility Company, and this Final Order shall apply in all respects to any such Utility Company that is subsequently added to the Utility Company List; provided that, the Debtors shall give prior notice to the DIP Agent of any such additions to the Utility Company List. For those Utility Companies that are subsequently added to the Utility Company List, the Debtors shall, within two business days of filing a supplement to the Utility Company List identifying any such additional Utility Company, serve a copy of the Motion and this Final Order on such Utility Company, along with an amended the Utility Company List that includes such Utility Company. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Company is added to the Utility Company List by an amount equal to fifty percent of the estimated average monthly cost of such Utility Services based on historical averages over the preceding twelve months.

11. The Debtors may amend the Utility Company List to delete a Utility Company, or may seek to terminate a Utility Company, only if the Debtors have provided fourteen days' advance notice to such Utility Company, and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the

next omnibus hearing date, or such other date that the Debtors and the Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Company List unless and until the fourteen days' notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

12. The Debtors are authorized, but not directed, to pay on a timely basis in accordance with their prepetition practices, all undisputed invoices in respect of postpetition Utility Services rendered by the Utility Companies to the Debtors. The Utility Companies are hereby prohibited from unilaterally applying any such postpetition payments to any amounts due on account of prepetition Utility Services, including, without limitation, any penalties or interest.

13. The Additional Adequate Assurance Procedures, the Adequate Assurance Deposit, and the Debtors' ability to pay for future Utility Services in the ordinary course of business constitute adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

14. Prior to termination of any Waste Management ("**WM**") services with the Debtors, the Debtors shall provide notice of such termination in writing, including email, to: (i) the counsel of record for WM, attn: Brian J. McLaughlin, Esq. and Rachel B. Mersky, Esq., 1201 N. Orange Street, Suite 400, Wilmington, DE 19801, bmclaughlin@monlaw.com; rmersky@monlaw.com and (ii) Waste Management, Attn: Jaqueline E. Hatfield Mills, Waste Management, 1001 Fannin, Suite 4000, Houston, TX 77002, Jmills@wm.com. The notice of termination shall include: (a) the date of termination; and (b) location of the services being terminated as defined in the agreement or invoices between WM and the Debtors. If the Debtors

fail to provide notice as provided for herein, the Debtors shall remain administratively obligated for the cost and expense of services provided by WM to such location until WM receives actual notice that WM's services at a particular location is terminated.

15. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

16. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

17. The Debtors shall administer the Adequate Assurance Deposit Account in accordance with the terms of this Final Order.

18. Notwithstanding anything to the contrary contained in the Motion or this Final Order, or any other order of this Court, including any orders approving the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, the interests of any prepetition lender or of any entity providing post-petition debtor-in-possession financing facilities in the Adequate Assurance Deposit shall be subordinate to each Utility Company's interest in the Adequate Assurance Deposit until such time as the Adequate Assurance Deposit is returned to the Debtors pursuant to paragraph 6 of this Final Order or as otherwise ordered by the Court.

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

20. Nothing contained herein constitutes a finding that any entity is or is not a Utility Company hereunder or a “utility” under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Company List.

21. Nothing in the Motion or this Final Order, or the Debtors’ payment of any claims pursuant to this Final Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors’ properties; (ii) a waiver of the Debtors’ rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors’ rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

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

EXHIBIT 1

Utility Company List

Utility Companies

The Utility Companies known and identified by the Debtors to date are listed below.

While the Debtors have used their best efforts to list all of their Utility Companies below, it is possible that certain Utility Companies may have been inadvertently omitted from this list. Accordingly, the Debtors reserve the right, under the terms and conditions set forth in the Motion, and the Interim and Final Orders, and without further order of the Court, to amend this Exhibit 1 to add any Utility Companies that were omitted therefrom and to apply the relief requested to all such entities.

In addition, the Debtors reserve the right to argue that any entity now or hereafter listed on this Exhibit 1 is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit ¹
Anchored Oak, LLC	Waste Services	PO Box 508 Chetek, WI 54728	\$500	\$250
Anderson Sanitation	Waste Services	E5502 County Road V Ridgeland, WI 54763	\$1,000	\$500
Apache Disposal	Waste Services	PO Box 470 Marion, TX 78124	\$500	\$250
AT&T	Telecommunications Services	PO Box 5014 Carol Stream, IL 60197	\$2,000	\$1000
AT&T Dallas	Electricity	PO Box 105414 Atlanta, Georgia 30348	\$500	\$250
AT&T Long Distance	Telecommunications Services	PO Box 5017 Carol Stream, IL 60191	\$500	\$250
Barron County Finance	Waste Services	335 E Monroe Avenue Barron, WI 54812	\$500	\$250
Barron Electric	Electricity	PO Box 40 Barron, WI 54812	\$75,000	\$37,500
Barron Light & Water	Electricity	PO Box 156 Barron, WI 54812	\$1,000	\$500
Bloomer Telephone	Telecommunications Services	1120 15th Avenue Bloomer, WI 54724	\$500	\$250
Century Link	Telecommunications Services	PO Box 2961 Phoenix, AZ 85062	\$1,000	\$500

¹ Adequate assurance reflects fifty percent of average monthly spend per Utility Company in preceding twelve months.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Charter Communications Operating, LLC	Telecommunications Services	PO Box 3019 Milwaukee, WI 53201	\$500	\$250
Chippewa Valley Energy	Fuel	PO Box 837 Eau Claire, WI 54702	\$25,000	\$12,500
Cimarron Electric Cooperative Inc.	Electricity	19306 US Hwy 81N Kingfisher, OK 73750	\$15,000	\$7,500
Citizens Connected	Telecommunications Services	PO Box 127 New Auburn, WI 54757	\$1,500	\$750
City Public Service	Electricity/Water	PO Box 2678 San Antonio, TX 78289	\$90,000	\$45,000
Entergy	Electricity	PO Box 8104 Baton Rouge, LA 70891	\$30,000	\$15,000
Jackson Electric	Electricity	N6868 County Road F Black River Falls, WI 54615	\$500	\$250
Mosaic	Telecommunications Services	PO Box 664 Cameron, WI 54822	\$5,000	\$2,500
New Auburn Utilities	Public Fire Charge	PO Box 100 New Auburn, WI 54757	\$500	\$250
Pioneer Telephone Cooperative, Inc.	Telecommunications Services	PO Box 539 Kingfisher, OK 73750	\$500	\$250
Red Gap Communications, Inc.	Telecommunications Services	504 Main Street Fort Worth, 76102	\$5,000	\$2,500
Republic Services, Inc.	Waste Services	PO Box 9001099 Louisville, KY 40290	\$5,000	\$2,500
Suburban Propane	Fuel	PO Box 290 Whippany, NJ 07981	\$500	\$250
Streetwater Sanitation	Waste Services	PO Box 171 Chetek, WI 54728	\$5,000	\$2,500
Verizon Wireless	Telecommunications Services	PO Box 25505 Lehigh Valley, PA 18002	\$5,000	\$2,500
Waste Connections Management Services, Inc.	Waste Services	PO Box 742695 Cincinnati, OH 45274	\$500	\$250

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Waste Management of WI-MN	Waste Services	PO Box 4648 Carol Stream, IL 60197	\$1,000	\$500
WE Energies	Electricity	PO Box 90001 Milwaukee, WI 53290	\$500	\$250
Xcel Energy	Electricity	PO Box 8 Eau Claire, WI 54702	\$125,000	\$62,500
Total			\$399,000	\$199,500

EXHIBIT B

Blackline

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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 In re: : Chapter 11
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 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. ~~19-11563~~ (~~19-11563~~
 : [\(KBO\)](#)
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 Debtors. :
 : (Jointly Administered)
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Upon the motion (the “**Motion**”)² of the Debtors for entry of a Final Order under sections 105(a) and 366 of the Bankruptcy Code, (i) prohibiting the Debtors’ Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors, (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies, and (iii) establishing procedures for resolving any subsequent requests by the Utility Companies for additional adequate assurance of payment; and the Court having reviewed the Motion, the Gaston Declaration, and the Interim Order entered on ~~19-11563~~ [July 17](#), 2019; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended*

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. Absent further order of this Court, the Utility Companies, including any subsequently added Utility Companies, are hereby prohibited from altering, refusing, discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, and from requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than in accordance with the Additional Adequate Assurance Procedures contained herein. The Utility Companies are also prohibited from drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.
4. To the extent not already deposited pursuant to the Interim Order, the Debtors shall cause an amount equal to ~~\$454,750~~ \$199,500 to be deposited into a segregated, non-interest-bearing account (the “**Adequate Assurance Deposit**”) upon entry of this Final Order. The

account will be held at a bank that has executed the approved Uniform Depository Agreement with the United States Trustee for the District of Delaware. The Adequate Assurance Deposit shall serve as a cash security deposit to provide adequate assurance of payment for Utility Services provided to the Debtors after the Petition Date and through the pendency of the Chapter 11 Cases. The amount of the Adequate Assurance Deposit will remain ~~\$454,750~~ 199,500 throughout the Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for herein.

5. The balance of the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors, with notice to the DIP Agent without further order, to account for any of the following: (i) to the extent that the Adequate Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, (ii) an adjustment or payment made in accordance with the Delinquency Notice Procedures described in Paragraphs 7 and 8 below, (iii) the termination of a Utility Service by a Debtor regardless of any Additional Adequate Assurance Request (as defined below), (iv) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (v) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; *provided*, that, (a) with respect to a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon fourteen days’ advance notice to such company; and, (b) with respect to the Debtors’ termination of a Utility Service or closure of a utility account with a Utility Company, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon reconciliation and payment by the Debtors of

such Utility Company's final invoice in accordance with applicable nonbankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

6. The Debtors shall maintain the Adequate Assurance Deposit until the earlier of the Court's entry of an order authorizing the return of the Adequate Assurance Deposit to the Debtors and the effective date of a plan of reorganization for the Debtors (at which time the funds comprising the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors or reorganized Debtors, as applicable).

7. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall be permitted to file a written notice of such delinquency (the "**Delinquency Notice**") with the Court and serve such Delinquency Notice on: (i) Emerge Energy Services LP, 5600 Clearfork Main Street, Suite 400, Ft. Worth, TX 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Hugh K. Murtagh Esq., Liza L. Burton, Esq. and Sean McGrath, Esq. (emails: hugh.murtagh@lw.com, liza.burton@lw.com and sean.mcgrath@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq. and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com and candace.arthur@weil.com)); (v) HPS Investment Partners, LLC, 40 West 57th Street, 33rd Floor, New York, New York 10019 (Attn: Jeffrey Fitts, Brett Pertuz and Piero Russo (emails: jeffrey.fitts@hpspartners.com, brett.pertuz@hpspartners.com and piero.russo@hpspartners.com)); (vi) counsel to any statutory committee appointed in these cases, if any; and (vii) the United States Trustee for the District of

Delaware (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (each, a “**Delinquency Notice Party**”). Such Delinquency Notice must (i) set forth the amount of the delinquency, (ii) set forth the location for which Utility Services are provided, and (iii) provide each of the Debtors’ account numbers with the Utility Company that have become delinquent.

8. If a Delinquency Notice is properly provided as described above and such delinquency is not cured and no Delinquency Notice Party has objected to the Delinquency Notice within ten days of the receipt thereof, the Debtors shall (a) remit to such Utility Company from the Adequate Assurance Deposit the amount of postpetition charges claimed as delinquent in the Delinquency Notice and (b) cause the Adequate Assurance Deposit to be replenished for the amount remitted to such Utility Company. If a Delinquency Notice Party objects to the Delinquency Notice, the Court shall hold a hearing to resolve the dispute and determine whether a payment should be remitted from the Adequate Assurance Deposit and, if such payment is warranted, how much shall be remitted.

9. The following procedures (the “**Additional Adequate Assurance Procedures**”) are hereby approved with respect to all Utility Companies, including all subsequently added Utility Companies:

- (a) Except as provided by the Additional Adequate Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors’ Adequate Assurance Deposit, or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.
- (b) The Debtors will serve on the Utility Companies copies of the Motion and this Final Order within forty-eight hours after the entry of this Final Order.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not satisfactory adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company must

serve a written request (an “**Additional Adequate Assurance Request**”) for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit. All Additional Adequate Assurance Requests shall be delivered by mail and email to the Delinquency Notice Parties.

- (d) Any Additional Adequate Assurance Request must (i) set forth the location(s) for which Utility Services are provided and the type of Utility Services provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposit(s) or other security currently held by the requesting Utility Company, (iv) set forth why the Utility Company believes the proposed adequate assurance is not sufficient adequate assurance of future payment, (v) set forth the amount and nature of the adequate assurance of payment that would be satisfactory to the Utility Company, and (vi) provide an email address to which the Debtors may respond to the Additional Adequate Assurance Request.
- (e) Upon the Debtors’ receipt of an Additional Adequate Assurance Request, the Debtors will promptly negotiate with the Utility Company to resolve the Additional Adequate Assurance Request.
- (f) Without further order of the Court, the Debtors may resolve an Additional Adequate Assurance Request by entering into agreements granting additional adequate assurance to the requesting Utility Company if the Debtors, in their sole discretion, determine that the Additional Adequate Assurance Request is reasonable or if the parties negotiate alternative consensual provisions; provided that, the Debtors shall give prior notice to the DIP Agent of such agreement for additional adequate assurance and shall not provide such additional adequate assurance if the DIP Agent objects within three days of receiving such notice.
- (g) If the Debtors determine that the Additional Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Company within 30 days after the Additional Adequate Assurance Request is made, the Debtors will request a hearing before this Court at the next omnibus hearing date, or such other date as the Debtors and the requesting Utility Company may agree (the “**Determination Hearing**”).
- (h) The Determination Hearing will be an evidentiary hearing at which the Court will determine whether the Adequate Assurance Deposit and any additional adequate assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors,

or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.

- (i) Unless and until a Utility Company serves an Additional Adequate Assurance Request, it will be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.
- (j) All Utility Companies, including Utility Companies subsequently added to the Utility Company List (as defined below), will be prohibited from altering, refusing or discontinuing Utility Services to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

10. The Debtors are authorized, in their sole discretion, to amend Exhibit 1 attached hereto (the "Utility Company List") to add any Utility Company, and this Final Order shall apply in all respects to any such Utility Company that is subsequently added to the Utility Company List; provided that, the Debtors shall give prior notice to the DIP Agent of any such additions to the Utility Company List. For those Utility Companies that are subsequently added to the Utility Company List, the Debtors shall, within two business days of filing a supplement to the Utility Company List identifying any such additional Utility Company, serve a copy of the Motion and this Final Order on such Utility Company, along with an amended the Utility Company List that includes such Utility Company. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Company is added to the Utility Company List by an amount equal to fifty percent of the estimated average monthly cost of such Utility Services based on historical averages over the preceding twelve months.

11. The Debtors may amend the Utility Company List to delete a Utility Company, or may seek to terminate a Utility Company, only if the Debtors have provided fourteen days' advance notice to such Utility Company, and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the

next omnibus hearing date, or such other date that the Debtors and the Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Company List unless and until the fourteen days' notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

12. The Debtors are authorized, but not directed, to pay on a timely basis in accordance with their prepetition practices, all undisputed invoices in respect of postpetition Utility Services rendered by the Utility Companies to the Debtors. The Utility Companies are hereby prohibited from unilaterally applying any such postpetition payments to any amounts due on account of prepetition Utility Services, including, without limitation, any penalties or interest.

13. The Additional Adequate Assurance Procedures, the Adequate Assurance Deposit, and the Debtors' ability to pay for future Utility Services in the ordinary course of business constitute adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

14. Prior to termination of any Waste Management ("WM") services with the Debtors, the Debtors shall provide notice of such termination in writing, including email, to: (i) the counsel of record for WM, attn: Brian J. McLaughlin, Esq. and Rachel B. Mersky, Esq., 1201 N. Orange Street, Suite 400, Wilmington, DE 19801, bmclaughlin@monlaw.com; rmersky@monlaw.com and (ii) Waste Management, Attn: Jaqueline E. Hatfield Mills, Waste Management, 1001 Fannin, Suite 4000, Houston, TX 77002, Jmills@wm.com. The notice of termination shall include: (a) the date of termination; and (b) location of the services being terminated as defined in the agreement or invoices between WM and the Debtors. If the Debtors

fail to provide notice as provided for herein, the Debtors shall remain administratively obligated for the cost and expense of services provided by WM to such location until WM receives actual notice that WM's services at a particular location is terminated.

15. ~~14.~~ Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

16. ~~15.~~ Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

17. ~~16.~~ The Debtors shall administer the Adequate Assurance Deposit Account in accordance with the terms of this Final Order.

18. Notwithstanding anything to the contrary contained in the Motion or this Final Order, or any other order of this Court, including any orders approving the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, the interests of any prepetition lender or of any entity providing post-petition debtor-in-possession financing facilities in the Adequate Assurance Deposit shall be subordinate to each Utility Company's interest in the Adequate Assurance Deposit until such time as the Adequate Assurance Deposit is returned to the Debtors pursuant to paragraph 6 of this Final Order or as otherwise ordered by the Court.

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

20. ~~18.~~ Nothing contained herein constitutes a finding that any entity is or is not a Utility Company hereunder or a “utility” under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Company List.

21. ~~19.~~ Nothing in the Motion or this Final Order, or the Debtors’ payment of any claims pursuant to this Final Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors’ properties; (ii) a waiver of the Debtors’ rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors’ rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

22. ~~20.~~ The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Utility Company List

Utility Companies

The Utility Companies known and identified by the Debtors to date are listed below.

While the Debtors have used their best efforts to list all of their Utility Companies below, it is possible that certain Utility Companies may have been inadvertently omitted from this list. Accordingly, the Debtors reserve the right, under the terms and conditions set forth in the Motion, and the Interim and Final Orders, and without further order of the Court, to amend this Exhibit 1 to add any Utility Companies that were omitted therefrom and to apply the relief requested to all such entities.

In addition, the Debtors reserve the right to argue that any entity now or hereafter listed on this Exhibit 1 is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit ¹
Anchored Oak, LLC	Waste Services	PO Box 508 Chetek, WI 54728	\$500	\$250
Anderson Sanitation	Waste Services	E5502 County Road V Ridgeland, WI 54763	\$1,000	\$500
Apache Disposal	Waste Services	PO Box 470 Marion, TX 78124	\$500	\$250
AT&T	Telecommunication s Services	PO Box 5014 Carol Stream, IL 60197	\$2,000	\$1000
AT&T Dallas	Electricity	PO Box 105414 Atlanta, Georgia 30348	\$500	\$250

¹ Adequate assurance reflects fifty percent of average monthly spend per Utility Company in preceding twelve months.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
AT&T Long Distance	Telecommunications Services	PO Box 5017 Carol Stream, IL 60191	\$500	\$250
Barron County Finance	Waste Services	335 E Monroe Avenue Barron, WI 54812	\$500	\$250
Barron Electric	Electricity	PO Box 40 Barron, WI 54812	\$75,000	\$37,500
Barron Light & Water	Electricity	PO Box 156 Barron, WI 54812	\$1,000	\$500
Bloomer Telephone	Telecommunications Services	1120 15th Avenue Bloomer, WI 54724	\$500	\$250
Century Link	Telecommunications Services	PO Box 2961 Phoenix, AZ 85062	\$1,000	\$500
Charter Communications Operating, LLC	Telecommunications Services	PO Box 3019 Milwaukee, WI 53201	\$500	\$250
Chippewa Valley Energy	Fuel	PO Box 837 Eau Claire, WI 54702	\$25,000	\$12,500
Cimarron Electric Cooperative Inc.	Electricity	19306 US Hwy 81N Kingfisher, OK 73750	\$15,000	\$7,500
Citizens Connected	Telecommunications Services	PO Box 127 New Auburn, WI 54757	\$1,500	\$750

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit ¹
City Public Service	Electricity/Water	PO Box 2678 San Antonio, TX 78289	\$90,000	\$45,000
Entergy	Electricity	PO Box 8104 Baton Rouge, LA 70891	\$30,000	\$15,000
Jackson Electric	Electricity	N6868 County Road F Black River Falls, WI 54615	\$500	\$250
Marabou Energy Management, LLC	Fuel	450 Gears Road, Ste 850 Houston, TX 77067	\$410,000	\$205,000
Marabou Superior Pipeline, LLC	Fuel	450 Gears Road, Ste 850 Houston, TX 77067	\$85,000	\$42,500
Mosaic	Telecommunications Services	PO Box 664 Cameron, WI 54822	\$5,000	\$2,500
New Auburn Utilities	Public Fire Charge	PO Box 100 New Auburn, WI 54757	\$500	\$250
Pioneer Telephone Cooperative, Inc.	Telecommunications Services	PO Box 539 Kingfisher, OK 73750	\$500	\$250
Red Gap Communications, Inc.	Telecommunications Services	504 Main Street Fort Worth, 76102	\$5,000	\$2,500

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit ¹
Republic Services, Inc.	Waste Services	PO Box 9001099 Louisville, KY 40290	\$5,000	\$2,500
Suburban Propane	Fuel	PO Box 290 Whippany, NJ 07981	\$500	\$250
Streetwater Sanitation	Waste Services	PO Box 171 Chetek, WI 54728	\$5,000	\$2,500
Synergy Community Cooperative Inc. (2877370)	Fuel	229 Railroad Avenue Ridgeland, WI 54763	\$5,000	\$2,500
Synergy Community Cooperative Inc. (587956)	Fuel	PO Box 155 Ridgeland, WI 54763	\$500	\$250
Synergy Community Cooperative Inc. (880764)	Fuel	PO Box 155 Ridgeland, WI 54763	\$10,000	\$5,000
Verizon Wireless	Telecommunications Services	PO Box 25505 Lehigh Valley, PA 18002	\$5,000	\$2,500
Waste Connections Management Services, Inc.	Waste Services	PO Box 742695 Cincinnati, OH 45274	\$500	\$250
Waste Management of WI-MN	Waste Services	PO Box 4648 Carol Stream, IL 60197	\$1,000	\$500

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit ¹
WE Energies	Electricity	PO Box 90001 Milwaukee, WI 53290	\$500	\$250
Xcel Energy	Electricity	PO Box 8 Eau Claire, WI 54702	\$125,000	\$62,500
Total			\$909,500 <u>\$399,000</u>	\$454,750 <u>\$199,500</u>