

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

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 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*, : Case No. 19-11563 (KBO)
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 Debtors.¹ : (Jointly Administered)
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**NOTICE OF FILING OF PLAN SUPPLEMENT FOR
THE FIRST AMENDED JOINT PREPACKAGED PLAN OF
REORGANIZATION FOR EMERGE ENERGY SERVICES LP AND
ITS AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that, as contemplated by the *First Amended Joint Prepackaged Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (as may be amended, modified, or supplemented from time to time, and including all exhibits and supplements thereto, the “**Plan**”), the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) hereby file the plan supplement (the “**Plan Supplement**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”). Capitalized terms used but not defined herein have the meanings set forth in the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement includes six (6) exhibits (in each case, as may be amended, modified, or supplemented from time to time), which are included in this Plan Supplement as follows:

- Exhibit 1** New Warrants Agreement
- Exhibit 2** Exit Facility Term Sheet
- Exhibit 3** Amended/New Organizational Documents
- Exhibit 4** New Board
- Exhibit 5** Assumed Executory Contracts and Unexpired Leases
- Exhibit 6** Litigation Claims

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.



PLEASE TAKE FURTHER NOTICE that these documents remain subject to continuing negotiations in accordance with the terms of the Plan and the Restructuring Support Agreement and the final versions may contain material differences from the versions filed herewith. For the avoidance of doubt, the parties thereto have not consented to such document as being in final form and reserve all rights in that regard. The parties reserve all rights to amend, modify, or supplement the Plan Supplement and any of the documents contained therein in accordance with the terms of the Plan and the Restructuring Support Agreement. To the extent material amendments or modifications are made to any of these documents, the Debtors will file a redline version with the Court prior to the Confirmation Hearing.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement is integral to, part of, and incorporated by reference into the Plan. Please note, however, these documents have not yet been approved by the Court. If the Plan is confirmed, the documents contained in the Plan Supplement will be approved by the Court pursuant to the order confirming the Plan.

PLEASE TAKE FURTHER NOTICE that the hearing to consider confirmation of the Plan (the “**Confirmation Hearing**”) is scheduled to commence at 1:00 p.m. (prevailing Eastern Time) on October 24, 2019, before the Honorable Karen B. Owens, in the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801. **The Confirmation Hearing may be continued by the Court or by the Debtors without further notice other than by announcement of same in open court and/or by filing and serving a notice of adjournment.**

PLEASE TAKE FURTHER NOTICE that the deadline for filing objections to the confirmation of the Plan is **October 11, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that the copies of the documents included in the Plan Supplement or the Plan, or any other document filed in the Debtors’ Chapter 11 Cases, may be obtained free of charge by contacting the Debtors’ Voting and Claims Agent

Kurtzman Carson Consultants LLC, by: (i) calling the Debtors’ restructuring hotline at 877-634-7165 (toll-free in US and Canada) or 424-236-7221 (for international callers); (ii) visiting the Debtors’ restructuring website at: <http://www.kccllc.net/EmergeEnergy> (see Tab for Plan and Disclosure Statement); and/or (iii) writing to Emerge Energy Claims Processing Center, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: <http://www.deb.uscourts.gov> or free of charge at <http://www.kccllc.net/EmergeEnergy>.

Dated: October 4, 2019
Wilmington, Delaware

/s/ Brett M. Haywood

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Counsel for Debtors and Debtors-in-Possession

Exhibit 1

New Warrants Agreement

WARRANT AGREEMENT

dated as of [], 2019

among

**EMERGE ENERGY SERVICES LP
(AS REORGANIZED),**

**[],
as Warrant Agent**

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SCHEDULE A SCHEDULE OF INCREASES OR DECREASES IN WARRANTS
EXHIBIT A FORM OF GLOBAL WARRANT CERTIFICATE
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WARRANT AGREEMENT

This Warrant Agreement (“**Warrant Agreement**”) dated as of [•], 2019 is among Emerge Energy Services LP, a Delaware limited partnership (“**Reorganized Emerge LP**”) and [•] (the “**Warrant Agent**”).

WITNESSETH THAT:

WHEREAS, pursuant to the terms and conditions of the Chapter 11 Plan of Reorganization confirmed on [•], 2019 (as the same may be amended, modified or restated from time to time, the “**Plan**”) relating to the reorganization under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) of Reorganized Emerge LP and certain of its affiliates, certain holders (such parties, the “**Initial Warrant Holders**”) are to be issued Warrants (as defined below) exercisable until the Maturity Date (as defined below), for up to an aggregate of [•] New Limited Partnership Interests;

WHEREAS, the Warrants and the underlying New Limited Partnership Interests are being issued in an offering in reliance on the exemption from the registration requirements of the Securities Act (as defined below) afforded by Section 1145 of the Bankruptcy Code, and of any applicable state securities or “blue sky” laws; and

WHEREAS, Reorganized Emerge LP desires that the Warrant Agent act on behalf of Reorganized Emerge LP, and the Warrant Agent is willing to act, in connection with the issuance, exchange, Transfer (as defined below), substitution and exercise of Warrants.

NOW THEREFORE in consideration of the mutual agreements herein contained, Reorganized Emerge LP and the Warrant Agent agree as follows:

Article 1

Definitions

Section 1.01 Certain Definitions. As used in this Warrant Agreement, the following terms shall have their respective meanings set forth below:

“**Affiliate**” shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first specified Person.

“**Authentication Order**” means a Company Order for authentication and delivery of Warrants.

“**Authorized Officer**” means the Chief Executive Officer, the Chief Financial Officer, any Vice President or any Chief Accounting Officer of Reorganized Emerge LP.

“**Authorized Unit Failure**” has the meaning set forth in Section 4.02(c).

“**Automatic Exercise**” has the meaning set forth in Section 3.01.

“**Automatic Exercise Date**” has the meaning set forth in Section 3.02(b).

“**Bankruptcy Code**” has the meaning set forth in the Recitals.

“**Beneficial Owner**” means any Person beneficially owning an interest in a Global Warrant, which interest is credited to the account of a direct participant in the Depository for the benefit of such Person through the book-entry system maintained by the Depository (or its agent). For the avoidance of doubt, a Participant may also be a Beneficial Owner.

“**Board**” means the board of directors of the general partner of Reorganized Emerge LP or any committee of such board duly authorized to exercise the power of such board with respect to the matters provided for in this Warrant Agreement as to which the board is authorized or required to act.

“**Business Day**” means any day other than a Saturday or Sunday or other day on which the New York Stock Exchange or banking institutions in the state of New York are authorized or obligated by law or executive order to close.

“**Cash**” means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

“**Charter**” means the [Second] Amended and Restated Limited Partnership Agreement of Reorganized Emerge LP, as amended.

“**Close of Business**” means 5:00 p.m., New York City time.

“**Closing Date**” means the effective date of the Plan.

“**Company**” has the meaning set forth in the preamble.

“**Company Order**” means a written order signed in the name of Reorganized Emerge LP by any two officers, at least one of whom must be an Authorized Officer, and delivered to the Warrant Agent.

“**Confidential Fees**” has the meaning set forth in Section 6.26.

“**Confidential Information**” has the meaning set forth in Section 6.26.

“**Contingency Event**” means the occurrence of the following events: (a) the holders of the New Equity Interests (as defined in the Plan) have received combined distributions, from Reorganized Emerge LP, in Cash or Cash equivalent consideration of \$190 million, (b) the holders of the Preferred Interests (as defined in the Plan) have received combined distributions, from Reorganized Emerge LP, in Cash or Cash equivalent consideration, equal to the face amount of the Perpetual Preferred Interests together with accrued but unpaid dividends and (c) all obligations under the Exit Facility shall have been repaid in full by Borrowers (as defined in the Plan).

“**Convertible Securities**” means options, rights, warrants or other securities convertible into or exchangeable or exercisable for New Limited Partnership Interests.

“**Depository**” means The Depository Trust Company, its nominees, and their respective successors.

“**Ex-Date**” means with respect to an issuance or distribution, the first date on which the New Limited Partnership Interests can be traded without the right to receive an issuance or distribution.

“**Exempt Transaction**” shall mean a merger, reorganization or consolidation that results in the voting securities of Reorganized Emerge LP outstanding immediately prior thereto continuing to

represent immediately following such merger, reorganization or consolidation (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of Reorganized Emerge LP or such surviving entity outstanding immediately after such merger or consolidation (or the ultimate parent company of Reorganized Emerge LP or such surviving entity).

“**Full Physical Unit Amount**” has the meaning set forth in Section 3.03(a).

“**Funds**” has the meaning set forth in **Error! Reference source not found.**

“**Global Warrant**” means a Warrant in the form of a Global Warrant Certificate.

“**Global Warrant Certificate**” means any certificate representing the Warrants satisfying the requirements set forth in Section 2.04.

“**Global Warrant Holder**” means Cede & Co. or such other entity designated by the Depository.

“**Initial Warrant Holders**” has the meaning set forth in the Recitals.

“**Liquidity Event**” means the first to occur of: (i) any transaction or series of related transactions that results in (a) the sale or exchange of all or substantially all of the equity interests of Reorganized Emerge LP to one or more third parties (whether by merger, sale, recapitalization, consolidation, combination or otherwise) or (b) the sale, directly or indirectly, by Reorganized Emerge LP of all or substantially all of the assets of Reorganized Emerge LP and its Subsidiaries, taken as a whole; or (ii) a liquidation, dissolution or winding up of Reorganized Emerge LP; provided that, in each case, the closing or other consummation of such Liquidity Event occurs on or prior to [•], 2029; provided further, however that notwithstanding the foregoing, no Exempt Transaction shall be a Liquidity Event.

“**Maturity Date**” means, for any Warrant, the earlier of (i) [•], 2029 and (ii) the date of consummation of any Liquidity Event.

“**New Management Incentive Plan**” has the meaning set forth in the Plan.

“**Non-Public Information**” has the meaning set forth in Section 6.26.

“**Number of Warrants**” means the “Number of Warrants” specified on the face of the Global Warrant Certificate, subject to adjustment pursuant to Article 4.

“**Officer’s Certificate**” means a certificate signed by any two officers of Reorganized Emerge LP, at least one of whom must be an Authorized Officer.

“**Open of Business**” means 9:00 a.m., New York City time.

“**New Limited Partnership Interests**” means the [].

“**Participant**” means any direct participant of the Depository, the account of which is credited with a beneficial interest in the Global Warrant for the benefit of a Beneficial Owner through the book-entry system maintained by the Depository (or its agent).

“**Person**” means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“**Plan**” has the meaning set forth in the Recitals.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of New Limited Partnership Interests have the right to receive any dividend or distribution, the date fixed for determination of holders of New Limited Partnership Interests entitled to receive such dividend or distribution (whether such date is fixed by the Board or by statute, contract or otherwise).

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Settlement Date**” means, in respect of a Warrant that is exercised hereunder, the third Business Day immediately following the Automatic Exercise Date for such Warrant.

“**Subsidiary**” means, as to any Person, any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or other interests having by their terms voting power to elect a majority of the Board or others performing similar functions with respect to such corporation or other organization is directly or indirectly beneficially owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

“**Transfer**” means, with respect to any Warrant, to directly or indirectly (whether by act, omission or operation of law), sell, exchange, transfer, hypothecate, negotiate, gift, convey in trust, pledge, assign, encumber, or otherwise dispose of, or by adjudication of a Person as bankrupt, by assignment for the benefit of creditors, by attachment, levy or other seizure by any creditor (whether or not pursuant to judicial process), or by passage or distribution of Warrants under judicial order or legal process, carry out or permit the transfer or other disposition of, all of such Warrant.

“**Transferee**” means a Person to whom any Warrant (or interest in the Global Warrant) is Transferred.

“**Warrant**” means a warrant of Reorganized Emerge LP exercisable for one unit of New Limited Partnership Interest as provided herein, and issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth in this Warrant Agreement.

“**Warrant Agent**” has the meaning set forth in the preamble.

“**Warrant Agreement**” has the meaning set forth in the preamble.

“**Warrant Register**” has the meaning set forth in Section 2.03(a).

Article 2

Issuance, Execution and Transfer of Warrants

Section 2.01 Issuance of Warrants.

(a) On the Closing Date, Reorganized Emerge LP shall initially issue and execute the Global Warrant (in accordance with Section 2.02) evidencing an initial aggregate Number of Warrants equal to [•] (such Number of Warrants to be subject to adjustment from time to time as described herein) in accordance with the terms of this Warrant Agreement and the Plan and deliver such Global Warrant to the Warrant Agent, for authentication, along with a duly executed Authentication Order. The Warrant

Agent shall then Transfer such Global Warrant to the Global Warrant Holder for crediting to the accounts of the applicable Participants for the benefit of the applicable Initial Warrant Holders pursuant to the procedures of the Depository and in accordance with the Plan on or after the Closing Date. The Global Warrant shall evidence one or more Warrants. Each Warrant evidenced thereby shall automatically convert into one unit of New Limited Partnership Interest if, and only if, prior to the Maturity Date, the Contingency Event occurs.

(b) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof. Each Warrant shall be, and shall remain, subject to the provisions of this Warrant Agreement until such time as all of the Warrants evidenced thereby shall have been duly exercised or shall have expired or been canceled in accordance with the terms hereof. The Global Warrant Holder shall be bound by all of the terms and provisions of this Warrant Agreement as fully and effectively as if the Global Warrant Holder had signed the same.

(c) Any Warrant that is forfeited by a Beneficial Owner, cancelled as a result of being unclaimed in accordance with Section E of Article VII of the Plan, or repurchased by Reorganized Emerge LP shall be deemed to be no longer outstanding for all purposes of this Warrant Agreement.

Section 2.02 Execution and Authentication of Warrants.

(a) The Global Warrant Certificate shall be executed on behalf of Reorganized Emerge LP by an Authorized Officer and attested by its Secretary [or any one of its Assistant Secretaries]. The signature of any of these officers on the Global Warrant Certificate may be manual or in the form of a facsimile or other electronically transmitted signature (including, without limitation, electronic transmission in portable document format (.pdf)).

(b) A Global Warrant Certificate bearing the manual or facsimile signatures of individuals, each of whom was, at the time he or she signed the Global Warrant Certificate or his or her facsimile signature was affixed to the Global Warrant Certificate, as the case may be, a proper officer of Reorganized Emerge LP, shall bind Reorganized Emerge LP, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Global Warrant by the Warrant Agent or did not hold such offices at the date of such Global Warrant.

(c) The Global Warrant shall not be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on the Global Warrant Certificate a certificate of authentication substantially in the form provided for herein executed by the Warrant Agent, and such signature upon the Global Warrant Certificate shall be conclusive evidence, and the only evidence, that such Global Warrant has been duly authenticated and delivered hereunder. The Global Warrant shall not be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on such Warrant the countersignature of the Global Warrant Holder. The signature of the Warrant Agent on the Global Warrant Certificate may be in the form of a facsimile or other electronically transmitted signature (including, without limitation, electronic transmission in portable document format (.pdf)).

Section 2.03 Registration, Transfer, Exchange and Substitution.

(a) The Warrant Agent shall, upon receipt of such Global Warrant and Authentication Order, authenticate the Global Warrant in accordance with Section 2.02 and register such Global Warrant in the Warrant Register. The Global Warrant shall be dated as of the Closing Date and, subject to the terms hereof, shall evidence the only Warrants issued or outstanding under this Warrant

Agreement. The Global Warrant shall be deposited with the Warrant Agent as custodian for the Depository. Reorganized Emerge LP shall cause to be kept at the office of the Warrant Agent, and the Warrant Agent shall maintain, a register (the “**Warrant Register**”) in which Reorganized Emerge LP shall provide for the registration of the Global Warrant and Transfers, exchanges or substitutions of the Global Warrant as provided herein. Any Global Warrant issued upon any registration of Transfer or exchange of or substitution for the Global Warrant shall be a valid obligation of Reorganized Emerge LP, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as the Global Warrant surrendered for such registration of Transfer, exchange or substitution.

(b) Transfers of a Global Warrant shall be limited to Transfers in whole, and not in part, to Reorganized Emerge LP, the Depository, their successors, and their respective nominees. A Global Warrant may be Transferred to such parties upon the delivery of a written instruction of Transfer in form reasonably satisfactory to the Warrant Agent and Reorganized Emerge LP, duly executed by the Global Warrant Holder or by such Global Warrant Holder’s attorney, duly authorized in writing. No such Transfer shall be effected until, and the Transferee shall succeed to the rights of the Global Warrant Holder only upon, final acceptance and registration of the Transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any Transfer of the Global Warrant by the Global Warrant Holder as provided herein, Reorganized Emerge LP, the Warrant Agent, and any agent of Reorganized Emerge LP or the Warrant Agent may treat the Person in whose name such Global Warrant is registered as the owner thereof for all purposes, notwithstanding any notice to the contrary. To permit a registration of a Transfer of a Global Warrant, Reorganized Emerge LP shall execute the Global Warrant Certificate at the Warrant Agent’s request and the Warrant Agent shall authenticate such Global Warrant Certificate. The Global Warrant Certificate shall be deposited on or after the date hereof with the Warrant Agent. No service charge shall be made for any such registration of Transfer. A party requesting transfer of the Global Warrant must provide any evidence of authority that may be required by the Warrant Agent, including but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association, Inc.

(c) Interests of Beneficial Owners in a Global Warrant registered in the name of the Depository or its nominee shall only be Transferred in accordance with the procedures of the Depository, the applicable Participant and applicable Law.

(d) So long as any Global Warrant is registered in the name of the Depository or its nominee, the Beneficial Owners shall have no rights under this Warrant Agreement with respect to such Global Warrant held on their behalf by the Depository, and the Depository may be treated by Reorganized Emerge LP, the Warrant Agent and any agent of Reorganized Emerge LP or the Warrant Agent as the absolute owner of such Global Warrant for all purposes. Accordingly, any such Beneficial Owner’s interest in such Global Warrant will be shown only on, and the Transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or the applicable Participant, and neither Reorganized Emerge LP nor the Warrant Agent shall have any responsibility or liability with respect to such records maintained by the Depository or its nominee or the applicable Participant. Notwithstanding the foregoing, nothing herein shall prevent Reorganized Emerge LP, the Warrant Agent or any agent of Reorganized Emerge LP or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair the operation of customary practices of the Depository or Participants governing the exercise of the rights of a Beneficial Owner.

Section 2.04 Form of Global Warrant Certificate. The Global Warrant Certificate shall be in substantially the form set forth in Exhibit A hereto and shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as Reorganized

Emerge LP may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

Section 2.05 Cancellation of Global Warrant Certificate. The Global Warrant Certificate shall be promptly cancelled by the Warrant Agent upon the earlier of (i) the Maturity Date, (ii) the replacement of the Global Warrant Certificate as described in Section 5.02, or (iii) registration of Transfer or exercise of all Warrants represented thereby and, except as provided in this Article 2 in case of a Transfer or Section 5.02 in case the Global Warrant Certificate is mutilated, defaced, lost, destroyed or stolen, no Global Warrant Certificate shall be issued hereunder in lieu thereof.

Section 2.06 Restrictions on Transfer. Notwithstanding any other provision of this Warrant Agreement, the Warrants are being offered, and the New Limited Partnership Interests issuable upon exercise thereof are being offered, pursuant to an exemption from the registration requirement of Section 5 of the Securities Act provided by Section 1145 of the Bankruptcy Code, and to the extent that any Beneficial Owner is an “underwriter” as defined in Section 1145(b)(1) of the Bankruptcy Code, such Beneficial Owner may not be able to sell or transfer any Warrants in the absence of an effective registration statement under the Securities Act or an exemption from registration thereunder. Notwithstanding anything contained in this Warrant Agreement (but without limiting or modifying any express obligation of the Warrant Agent hereunder), the Warrant Agent shall not be under any duty or responsibility to ensure compliance by Reorganized EmERGE LP, the Global Warrant Holder, any Beneficial Owner or any other Person with any applicable federal or state securities or bankruptcy Laws. By accepting a Transfer of a Warrant, (a) the applicable Participant agrees to inform the Beneficial Owner of the limitations on Transfer set forth in this Section 2.06, and shall instruct and direct such Beneficial Owner to conform to the restrictions set forth herein and shall maintain any applicable legends in its books and records and (b) the Beneficial Owner acknowledges the foregoing.

Article 3

Exercise and Settlement of Warrants

Section 3.01 Exercise of Warrants. At any time prior to Close of Business on the Maturity Date, if, and only if, the Contingency Event occurs, then each Warrant shall automatically convert into one unit of New Limited Partnership Interest (the “**Automatic Exercise**”). If the Contingency Event does not occur prior to the Maturity Date, then each Warrant shall expire unexercised and all rights thereunder and all rights in respect thereof under this Warrant Agreement shall cease as of the Close of Business on the Maturity Date.

Section 3.02 Procedure for Automatic Exercise.

(a) Upon the Automatic Exercise, a Beneficial Owner must arrange for (i) delivery of each Warrant(s) through the facilities of the Depository and (ii) compliance with all other procedures established by the Depository, the applicable Participant and the Warrant Agent for the exercise of Warrants.

(b) The date on which all requirements for exercise set forth in this Section 3.02 in respect of a Warrant are satisfied is the “**Automatic Exercise Date**” for such Warrant.

(c) Subject to Section 3.02(f), any exercise of a Warrant pursuant to the terms of this Warrant Agreement shall be irrevocable and enforceable in accordance with its terms.

(d) Upon the Automatic Exercise, 100% of the Warrant(s) a Beneficial Owner holds on the Closing Date shall be exercised.

(e) Reorganized Emerge LP shall assist and cooperate with any Beneficial Owner required to make any governmental filings or obtain any governmental approvals prior to or in connection with the Automatic Exercise (including, without limitation, making any filings required to be made by Reorganized Emerge LP), and the Automatic Exercise may be made contingent upon the making of any such filing and the receipt of such approval.

(f) Notwithstanding any other provision of this Warrant Agreement, if the Automatic Exercise is to be made in connection with a Liquidity Event, then the Automatic Exercise shall be conditioned upon consummation of such transaction or event in which case the Automatic Exercise shall not be deemed effective until the consummation of such transaction or event.

(g) [Reorganized Emerge LP hereby instructs the Warrant Agent to record tax basis for newly issued New Limited Partnership Interests as follows: the tax basis of each newly issued New Limited Partnership Interest equals the tax basis of each Warrant at the time of the Automatic Exercise. Reorganized Emerge LP shall provide to the Warrant Agent a completed Internal Revenue Service Form 8937 no later than 90 days after the Closing Date.]

Section 3.03 Settlement of Warrants.

(a) On the Settlement Date for the Warrants, Reorganized Emerge LP shall cause to be delivered to the Beneficial Owner one unit of New Limited Partnership Interest (the “**Full Physical Unit Amount**”).

(b) Any Beneficial Owner as of the Automatic Exercise Date shall be entitled to receive from Reorganized Emerge LP, for each Warrant exercised, a number of New Limited Partnership Interests equal to the Full Physical Unit Amount.

(c) In the case of a dispute as to the arithmetic calculation of the New Limited Partnership Interests to be delivered to a Beneficial Owner, Reorganized Emerge LP shall promptly issue to the applicable Beneficial Owner the number of New Limited Partnership Interests that are not disputed.

Section 3.04 Delivery of New Limited Partnership Interests.

(a) In connection with the delivery of New Limited Partnership Interests to a Beneficial Owner pursuant to Section 3.03(a) the Warrant Agent shall promptly cancel and destroy the applicable Global Warrant Certificate and deliver a certificate of destruction to Reorganized Emerge LP, unless Reorganized Emerge LP shall otherwise direct in writing; and

(b) With respect to each automatically exercised Warrant in accordance with this Warrant Agreement, Reorganized Emerge LP shall cause its transfer agent to issue, in book-entry form at the transfer agent or through the Depository, the New Limited Partnership Interests due in connection with the Automatic Exercise for the benefit and in the name of the Person designated by the Beneficial Owner submitting the applicable notice. The Person on whose behalf and in whose name any New Limited Partnership Interests are registered shall for all purposes be deemed to have become the holder of record of such New Limited Partnership Interests as of the Close of Business on the Automatic Exercise Date.

(c) Reorganized Emerge LP shall not close its books against the Transfer of a Warrant or any New Limited Partnership Interest issued or issuable upon the exercise of a Warrant in any manner which interferes with the timely exercise of a Warrant.

(d) Promptly after the Warrant Agent shall have taken the action required by this Section 3.04 (or at such later time as may be mutually agreeable to Reorganized Emerge LP and the Warrant Agent), the Warrant Agent shall account to Reorganized Emerge LP with respect to all Warrants exercised.

(e) All New Limited Partnership Interests issuable upon the Automatic Exercise will be duly and validly issued, fully paid and nonassessable and will be free of restrictions on transfer, other than restrictions on transfer under the Charter or any agreement between a Beneficial Owner and Reorganized Emerge LP and under applicable state and federal securities laws, and will be free from all taxes, liens and charges in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously or otherwise specified herein). Reorganized Emerge LP shall use its best efforts to take all such actions as may be necessary to ensure that all such New Limited Partnership Interests may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic stock exchange upon which New Limited Partnership Interests may be listed (except for official notice of issuance which shall be immediately delivered by Reorganized Emerge LP upon each such issuance).

Section 3.05 No Fractional Warrants or of an New Limited Partnership Interests to Be Issued.

(a) Notwithstanding anything to the contrary in this Warrant Agreement, Reorganized Emerge LP shall not issue any fraction of a Warrant or of an New Limited Partnership Interest upon exercise of any Warrants and any fractions will be rounded down to the nearest whole number.

(b) Each Beneficial Owner, by its acceptance of an interest in a Warrant, expressly waives its right to receive any fraction of an New Limited Partnership Interest or a certificate representing a fraction of an New Limited Partnership Interest upon its exercise of such Warrant.

Section 3.06 Obligations of the Warrant Agent. The Warrant Agent shall:

(a) examine all documents delivered to it by or on behalf of a Beneficial Owner to ascertain whether, on their face, such documents have been executed and completed in accordance with their terms;

(b) where any document appears on its face to have been improperly completed or executed or some other irregularity in connection with the exercise of the Warrant exists, the Warrant Agent shall endeavor to inform the appropriate parties (including the Person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

(c) inform Reorganized Emerge LP of and cooperate with and assist Reorganized Emerge LP in resolving any reconciliation problems with respect to the delivery of Warrants to the Warrant Agent's account; and

(d) advise Reorganized Emerge LP with respect to the Automatic Exercise, as promptly as practicable following the satisfaction of each of the applicable procedures for the Automatic Exercise set forth in Section 3.02(a), of (i) the instructions with respect to issuance of the New Limited

Partnership Interests, subject to the timely receipt from the Depository of the necessary information, (ii) the number of Persons who will become holders of record of Reorganized Emerge LP (who were not previously holders of record) as a result of receiving New Limited Partnership Interests upon the Automatic Exercise and (iii) such other information as Reorganized Emerge LP shall reasonably require.

Section 3.07 Validity of Exercise. All questions as to the validity, form and sufficiency (including time of receipt) of a Warrant exercise shall be determined by Reorganized Emerge LP, which determination shall be final and binding with respect to the Warrant Agent. The Warrant Agent shall incur no liability for or in respect of and, except to the extent such liability arises from the Warrant Agent's gross negligence, willful misconduct or bad faith (each as determined in a final non-appealable judgment by a court of competent jurisdiction), shall be indemnified and held harmless by Reorganized Emerge LP for acting or refraining from acting upon, or as a result of such determination by Reorganized Emerge LP. Reorganized Emerge LP reserves the absolute right to waive any of the conditions to the Automatic Exercise.

Section 3.08 Direction of Warrant Agent.

(a) Reorganized Emerge LP shall be responsible for performing all calculations required in connection with the exercise and settlement of the Warrants and the delivery, as the case may be, of New Limited Partnership Interests as described in this Article 3. In connection therewith, Reorganized Emerge LP shall provide prompt written notice to the Warrant Agent of the number of New Limited Partnership Interests payable or deliverable, as the case may be, upon the Automatic Exercise and settlement of the Warrants.

(b) Any New Limited Partnership Interests to be delivered, to a Beneficial Owner shall be delivered to the Warrant Agent by Reorganized Emerge LP (or, in the case of New Limited Partnership Interests, by the transfer agent) no later than the Business Day immediately preceding the date such consideration is required to be delivered to such Beneficial Owner.

(c) The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of Reorganized Emerge LP in providing such calculations or items to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any New Limited Partnership Interests that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible, to the extent not arising from the Warrant Agent's gross negligence, willful misconduct or bad faith (each as determined in a final non-appealable judgment by a court of competent jurisdiction), for any failure of Reorganized Emerge LP to issue, transfer or deliver any New Limited Partnership Interests or certificates, or to comply with any of the covenants of Reorganized Emerge LP contained in this Article 3.

Article 4

Adjustments

Section 4.01 Restrictions on Adjustments.

(a) The Number of Warrants will not be adjusted for the issuance of New Limited Partnership Interests or other securities of Reorganized Emerge LP.

(b) For the avoidance of doubt, the Number of Warrants will not be adjusted:

(1) upon the issuance of any securities by Reorganized Emerge LP on or after the Closing Date pursuant to the Plan or upon the issuance of New Limited Partnership Interests upon the exercise of such securities;

(2) upon the issuance of any New Limited Partnership Interests (or Convertible Securities) pursuant to the New Management Incentive Plan, regardless of when such New Limited Partnership Interests are issued;

(3) upon the issuance of New Limited Partnership Interests (or Convertible Securities) pursuant to the Automatic Exercise; or

(4) for a change in the par value of the New Limited Partnership Interests.

(c) If Reorganized Emerge LP takes a record of the holders of New Limited Partnership Interests for the purpose of entitling them to receive a dividend or other distribution, and thereafter (and before the dividend or distribution has been paid or delivered to limited partners) legally abandons its plan to pay or deliver such dividend or distribution, then thereafter no adjustment to the Number of Warrants then in effect shall be required by reason of the taking of such record.

(d) Subject to the restrictions set forth in this Section 4.01, if New Emerge LP at any time or from time to time on or after the Closing Date of the issuance of this Warrant effects a subdivision (by stock split and the like) of the New Limited Partnership Interests, the number of Warrants outstanding immediately prior to that subdivision shall be proportionately increased, and conversely, if New Emerge LP at any time or from time to time on or after the Closing Date combines the New Limited Partnership Interests into a smaller number of interests, the number of Warrants outstanding immediately prior to that combination shall be proportionately decreased.

Section 4.02 New Limited Partnership Interests Outstanding; Units Reserved for Issuance on Exercise.

(a) For the purposes of this Article 4, the number of New Limited Partnership Interests at any time outstanding shall not include units held, directly or indirectly, by Reorganized Emerge LP or any of its Subsidiaries.

(b) The Board has authorized and reserved for issuance such number of New Limited Partnership Interests as will be issuable upon the exercise of all outstanding Warrants for New Limited Partnership Interests. Reorganized Emerge LP covenants that all New Limited Partnership Interests that shall be so issuable shall be duly and validly issued, fully paid and non-assessable.

(c) Reorganized Emerge LP agrees to authorize and direct its current and future transfer agents for the New Limited Partnership Interests to reserve for issuance the number of New Limited Partnership Interests specified in this Section 4.02 and shall take all action required to increase the authorized number of New Limited Partnership Interests if at any time there shall be insufficient authorized but unissued New Limited Partnership Interests to permit such reservation or to permit the exercise of a Warrant (an “**Authorized Unit Failure**”). Reorganized Emerge LP shall instruct the transfer agent to deliver to the Warrant Agent, upon written request from the Warrant Agent, certificates (or beneficial interests therein) required to honor outstanding Warrants upon the Automatic Exercise in accordance with the terms of this Warrant Agreement. Promptly after the date of expiration of any Warrants, the Warrant Agent shall certify to Reorganized Emerge LP the aggregate Number of Warrants then outstanding, and thereafter no units shall be required to be reserved in respect of such Warrants.

Section 4.03 Calculations.

(a) Reorganized Emerge LP shall be responsible for making all calculations called for under this Warrant Agreement, including the Automatic Exercise Date, the Number of Warrants and the number of New Limited Partnership Interests, if any, to be issued upon the Automatic Exercise. Reorganized Emerge LP shall make the foregoing calculations in good faith. Such calculations and determinations shall be final and binding on the Global Warrant Holder and all Beneficial Owners absent manifest error. Reorganized Emerge LP shall provide a schedule of Reorganized Emerge LP's calculations to the Warrant Agent, and the Warrant Agent is entitled to rely upon the accuracy of Reorganized Emerge LP's calculations without independent verification.

Section 4.04 Warrant Agent Not Responsible for Validity. The Warrant Agent shall at no time be under any duty or responsibility to determine whether any facts exist that may require an adjustment or readjustment of the Number of Warrants, or with respect to the nature or extent of any such adjustment or readjustment when made, or with respect to the method employed, herein or in any supplemental agreement provided to be employed, in making the same. The Warrant Agent shall have no duty to verify or confirm any calculation called for hereunder. The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of Reorganized Emerge LP in providing such calculations to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any New Limited Partnership Interests or of any securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment or readjustment pursuant to this Article 4, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of Reorganized Emerge LP to issue, transfer or deliver any New Limited Partnership Interests or certificates or other securities or property or scrip upon the surrender of any Warrant for the purpose of exercise or upon any adjustment pursuant to this Article 4, or to comply with any of the covenants of Reorganized Emerge LP contained in this Article 4. The Warrant Agent shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein or in any notice from Reorganized Emerge LP. The Warrant Agent may rely conclusively, and shall be protected in acting, upon any notice, instruction, request, order, judgment, certification, opinion or advice of counsel, statement, demand or other instrument or document, not only as to its due execution, validity (including the authority of the person signing or presenting the same) and effectiveness, but also as to the truth and accuracy of any information contained therein, which the Warrant Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same.

Section 4.05 Statements on Warrants. Other than notation of any applicable increase or decrease in the Number of Warrants on Schedule A of the Global Warrant Certificate, the form of the Global Warrant Certificate need not be changed because of any adjustment or readjustment made pursuant to this Article 4, and the Global Warrant Certificate issued after such adjustment or readjustment may state the same information as is stated in the Global Warrant Certificate initially issued pursuant to this Warrant Agreement.

Article 5

Other Provisions Relating to Rights of Global Warrant Holder

Section 5.01 No Rights as Limited Partners. Nothing contained in this Warrant Agreement or in the Global Warrant Certificate shall be construed as conferring upon any Person, by virtue of holding or having a beneficial interest in a Global Warrant, the right to vote, to consent, to receive any Cash dividends, stock dividends, allotments or rights or other distributions paid, allotted or distributed or distributable to the holders of New Limited Partnership Interests, or to exercise any rights whatsoever

including subscription rights, appraisal rights or otherwise, as Reorganized Emerge LP's limited partners unless, until and only to the extent such Beneficial Owners become holders of record of New Limited Partnership Interests issued upon settlement of the Warrants. Notwithstanding the foregoing, in the event (a) Reorganized Emerge LP effects a split of the New Limited Partnership Interests by means of a stock dividend and the number of Warrants are adjusted as of the date of the distribution of the dividend, and (b) the Automatic Exercise occurs between the Record Date and the distribution date for such stock dividend, each Beneficial Owner shall be entitled to receive, on the distribution date, the stock dividend with respect to the New Limited Partnership Interests acquired upon the Automatic Exercise, notwithstanding the fact that such units were not outstanding as of the Close of Business on the Record Date for such stock dividend.

Section 5.02 Mutilated or Missing Warrant Certificates. If a Global Warrant Certificate held by the Warrant Agent as custodian for the Depository at any time is mutilated, defaced, lost, destroyed or stolen, then on the terms set forth in this Warrant Agreement, such Global Warrant Certificate may be replaced with a new Global Warrant Certificate, of like date and tenor and representing the same number of Warrants, at the cost of Reorganized Emerge LP at the office of the Warrant Agent subject to the replacement procedures of the Warrant Agent which shall include obtaining an open penalty surety bond satisfactory to the Warrant Agent holding Reorganized Emerge LP and the Warrant Agent harmless. Any such new Global Warrant Certificate shall constitute an original contractual obligation of Reorganized Emerge LP, whether or not the allegedly lost, stolen, mutilated or destroyed Global Warrant Certificate shall be at any time enforceable by anyone. All Global Warrant Certificates shall be issued upon the express condition that the foregoing provisions are exclusive with respect to the substitution for lost, stolen, mutilated or destroyed Global Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any Law or statute existing or hereafter enacted to the contrary with respect to the substitution for and replacement of negotiable instruments or other securities without their surrender.

Section 5.03 Modification, Waiver and Meetings.

(a) This Warrant Agreement may be modified or amended by Reorganized Emerge LP and the Warrant Agent, without the consent of the Global Warrant Holder, any Beneficial Owner of any Warrant, or any applicable Participant with respect to any Warrant, for the purposes of curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement or to make any other provisions in regard to matters or questions arising in this Warrant Agreement which Reorganized Emerge LP and the Warrant Agent may deem necessary or desirable; provided that such modification or amendment does not adversely affect the interests of the Global Warrant Holder or any of the Beneficial Owners under this Agreement in any material respect. As a condition precedent to the Warrant Agent's execution of any amendment, Reorganized Emerge LP shall deliver to the Warrant Agent a certificate from an Authorized Officer that states that the proposed amendment is in compliance with the terms of this Section 5.03.

(b) Modifications and amendments to this Warrant Agreement or to the terms and conditions of Warrants not contemplated by Section 5.03(a) may also be made by Reorganized Emerge LP and the Warrant Agent, and noncompliance with any provision of the Warrant Agreement or Warrants may be waived by the Global Warrant Holder (pursuant to a proper vote or consent of the Beneficial Owners holding a majority of the aggregate Number of Warrants at the time outstanding). Notwithstanding anything to the contrary herein, Reorganized Emerge LP may amend Schedule A from time to time to accurately reflect the name and address of the Global Warrant Holder after the Closing Date without any further consent or agreement from any other Person.

(c) However, no such modification, amendment or waiver may, without the written consent of:

(1) The Global Warrant Holder (pursuant to a proper vote or consent of each Beneficial Owner of Warrants under this Warrant Agreement):

(A) change the Maturity Date; or

(B) decrease the Number of Warrants (except as set forth in Article 4);

(2) the Global Warrant Holder (pursuant to a proper vote or consent of the Beneficial Owners of [two-thirds] of the Warrants affected under this Warrant Agreement):

(A) impair the right to institute suit for the enforcement of any delivery with respect to the exercise and settlement of any Warrant;

(B) except as otherwise expressly permitted by provisions of this Warrant Agreement concerning specified reclassifications or corporate reorganizations, impair or adversely affect the exercise rights of Beneficial Owners, including any change to the calculation of the Full Physical Unit Amount;

(C) reduce the percentage of Warrants outstanding necessary to modify or amend this Warrant Agreement or to waive any past default; or

(D) reduce the percentage in Warrants outstanding required for any other waiver under this Warrant Agreement.

Section 5.04 Notices of Record Date, etc. In the event (i) Reorganized Emerge LP commences any tender offer (including any exchange offer) as announced from time to time for all or a portion of the outstanding New Limited Partnership Interests; (ii) Reorganized Emerge LP shall take a record of the holders of its New Limited Partnership Interests (or other stock or securities at the time deliverable upon the exercise of a Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any units of stock of any class or any other securities, or to receive any other right; (iii) of the voluntary or involuntary dissolution, liquidation or winding-up of Reorganized Emerge LP; or (iv) any Liquidity Event, then, and in each such case, Reorganized Emerge LP will mail or cause to be mailed to the Global Warrant Holder (with a copy to the Warrant Agent) at least 15 days (21 days in the case of a Liquidity Event) prior to the Record Date or the effective date, as applicable a notice specifying, as the case may be, (A) the Record Date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (B) if applicable, the effective date on which such other event is to take place, and the time, if any is to be fixed, as of which the holders of record of New Limited Partnership Interests (or such other stock or Securities at the time deliverable upon the exercise of a Warrant) shall be entitled to exchange their New Limited Partnership Interests (or such other stock or Securities) for Securities or other property deliverable upon such other event. Nothing herein shall prohibit the Global Warrant Holder from exercising its Warrant during the 15 day period (21 days in the case of a Liquidity Event) commencing on the date of such notice.

Article 6

Concerning the Warrant Agent and Other Matters

Section 6.01 Payment of Certain Taxes.

(a) Reorganized Emerge LP shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the initial issuance of the Global Warrants hereunder and delivery to the Global Warrant Holder.

(b) Reorganized Emerge LP shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the issuance of New Limited Partnership Interests upon the Automatic Exercise and the issuance of certificates in respect thereof in the respective names of, or in such names as may be directed by, the Beneficial Owners.

(c) The Warrant Agent shall not register any Transfer or issue or deliver any Global Warrant Certificate or New Limited Partnership Interests unless or until the persons requesting the registration or issuance has either (i) paid to the Warrant Agent for the account of Reorganized Emerge LP the amount of the taxes described in Section 6.01(a) or Section 6.01(b) payable with respect to such Transfer, if any, or (ii) established to the reasonable satisfaction of the Warrant Agent that such tax, if any, has been paid by Reorganized Emerge LP.

(d) Nothing herein shall prejudice the applicability of Section 1146 of the Bankruptcy Code and the rights of Reorganized Emerge LP and other interested parties thereunder.

Section 6.02 Certain Tax Filings. The Warrant Agent shall prepare and file with the appropriate governmental agency all appropriate tax information forms in respect of any payments made by the Warrant Agent hereunder (including, without limitation, Internal Revenue Service Form 1099-B) during each calendar year, or any portion thereof, during which the Warrant Agent performs services hereunder.

Section 6.03 Change of Warrant Agent.

(a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder (except for liability arising as a result of the Warrant Agent's own gross negligence, willful misconduct or bad faith (each as determined in a final non-appealable judgment by a court of competent jurisdiction)) after giving sixty days' notice in writing to Reorganized Emerge LP, except that such shorter notice may be given as Reorganized Emerge LP shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, Reorganized Emerge LP shall appoint in writing a successor warrant agent in place of the Warrant Agent. If Reorganized Emerge LP shall fail to make such appointment within a period of thirty days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by the Global Warrant Holder (who shall, with such notice, submit his Global Warrant Certificate for inspection by Reorganized Emerge LP), then the Global Warrant Holder may apply to any court of competent jurisdiction for the appointment of a successor warrant agent.

(b) The Warrant Agent may be removed by Reorganized Emerge LP at any time upon thirty days' written notice to the Warrant Agent; provided, however, that Reorganized Emerge LP shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed.

(c) Any successor warrant agent, whether appointed by Reorganized Emerge LP or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the laws of the United States of America or any state thereof or the District of Columbia, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority and having a combined capital and surplus (together with its

affiliates) of not less than \$50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; provided that such reports are published at least annually pursuant to law or to the requirements of a federal or state supervising or examining authority. After acceptance in writing of such appointment by the successor warrant agent, such successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of Reorganized Emerge LP, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, Reorganized Emerge LP shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of Reorganized Emerge LP, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, Reorganized Emerge LP shall give notice thereof to the predecessor warrant agent, the Global Warrant Holder and each transfer agent for the units of its New Limited Partnership Interests. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(d) Any entity into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust or agency business of the Warrant Agent, shall be the successor warrant agent under this Warrant Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided that such entity would be eligible for appointment as a successor warrant agent under Section 6.03(c). In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Warrant Agreement, the Global Warrant Certificate shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Global Warrant Certificate so countersigned, and in case at that time the Global Warrant Certificate shall not have been countersigned, any successor to the Warrant Agent may countersign such Global Warrant Certificate either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases the Global Warrant Certificate shall have the full force provided in the Global Warrant Certificate and in this Warrant Agreement.

(e) In case at any time the name of the Warrant Agent shall be changed and at such time the Global Warrant Certificate shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Global Warrant Certificate so countersigned; and in case at that time the Global Warrant Certificate shall not have been countersigned, the Warrant Agent may countersign such Global Warrant Certificate either in its prior name or in its changed name; and in all such cases such Global Warrant Certificate shall have the full force provided in the Global Warrant Certificate and in this Warrant Agreement.

Section 6.04 Compensation; Further Assurances. Reorganized Emerge LP agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent in accordance with Exhibit C attached hereto and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon written demand for all reasonable and documented expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable compensation, expenses and disbursements of its agents and counsel incurred in connection with the execution and administration of this Warrant Agreement), except any

such expense, disbursement or advance as may arise from its or any of their gross negligence, willful misconduct or bad faith (each as determined in a final non-appealable judgment by a court of competent jurisdiction), and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement.

Section 6.05 Reliance on Counsel. The Warrant Agent may consult with legal counsel (who may be legal counsel for Reorganized Emerge LP), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 6.06 Proof of Actions Taken. Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by Reorganized Emerge LP prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in good faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Warrant Agent; and such Officer's Certificate shall, in good faith on the part of the Warrant Agent, be full warrant to the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement in reliance upon such Officer's Certificate; but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable. In the event the Warrant Agent reasonably believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Warrant Agent hereunder, the Warrant Agent shall promptly notify Reorganized Emerge LP of any such ambiguity or uncertainty, and it may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Reorganized Emerge LP, a Global Warrant Holder or any other person or entity for refraining from taking such action, except for its own gross negligence, willful misconduct or bad faith (each as determined by a final non-appealable judgment of a court of competent jurisdiction). unless the Warrant Agent receives written instructions signed by Reorganized Emerge LP which eliminates such ambiguity or uncertainty to the satisfaction of Warrant Agent.

Section 6.07 Correctness of Statements. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement or in the Global Warrant Certificate (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by Reorganized Emerge LP only.

Section 6.08 Validity of Agreement. From time to time, the Warrant Agent may apply to any Authorized Officer of Reorganized Emerge LP for instruction and Reorganized Emerge LP shall provide the Warrant Agent with such instructions concerning the services to be provided hereunder. The Warrant Agent shall not be held to have notice of any change of authority of any Person, until receipt of notice thereof from Reorganized Emerge LP. The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agreement or the execution and delivery hereof or in respect of the validity or execution of the Global Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by Reorganized Emerge LP of any covenant or condition contained in this Warrant Agreement or in the Global Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any New Limited Partnership Interests to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any New Limited Partnership Interests will, when issued, be validly issued and fully paid and nonassessable. The Warrant Agent and its agents shall not be liable and shall be indemnified by

Reorganized Emerge LP for any action taken or omitted, in the absence of bad faith, by the Warrant Agent in reliance upon any instructions from Reorganized Emerge LP.

Section 6.09 Use of Agents. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents provided that the Warrant Agent shall remain responsible for the activities or omissions of any such agent or attorney and reasonable care has been exercised in the selection and in the continued employment of such attorney or agent.

Section 6.10 Liability of Warrant Agent. The Warrant Agent shall incur no liability or responsibility to Reorganized Emerge LP or to the Global Warrant Holder for any action taken, suffered or omitted to be taken in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties. Reorganized Emerge LP agrees to indemnify the Warrant Agent and save it harmless against any and all costs, losses, expenses, liabilities and damages that the Warrant Agent has paid, incurred or suffered (or which it becomes obligated to pay, incur or suffer) by or to which it becomes subject, including judgments, costs and reasonable counsel fees, for any action taken, suffered or omitted to be taken by the Warrant Agent in the execution or performance of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's gross negligence, material breach of this Warrant Agreement, willful misconduct or bad faith (each as determined by a final non-appealable judgment of a court of competent jurisdiction). For the avoidance of doubt, nothing herein shall obligate Reorganized Emerge LP to advance any amounts to the Warrant Agent in respect of contingent liabilities until such liabilities actually are or become paid or payable. Notwithstanding anything contained herein to the contrary, the Warrant Agent's aggregate liability during any term of this Warrant Agreement with respect to, arising from, or arising in connection with this Warrant Agreement, or from all services provided or omitted to be provided under this Warrant Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, the amounts paid hereunder by Reorganized Emerge LP to the Warrant Agent as fees and charges, but not including reimbursable expenses, during the twelve (12) months immediately preceding the event for which recovery from Warrant Agent is being sought. Neither party to this Warrant Agreement shall be liable to the other party for any consequential, indirect, punitive, special or incidental damages under any provisions of this Warrant Agreement or for any consequential, indirect, punitive, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages.

Section 6.11 Legal Proceedings. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense or that it reasonably believes would subject it to expense or liability or risk of incurring expense or liability, unless Reorganized Emerge LP, the Global Warrant Holder or any applicable Participant on behalf of a Beneficial Owner shall furnish the Warrant Agent with indemnity or other assurances for payment reasonably satisfactory to the Warrant Agent for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. The Warrant Agent shall promptly notify Reorganized Emerge LP and the Global Warrant Holder in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Warrant Agreement. The Warrant Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any Beneficial Owner with respect to any action or default by Reorganized Emerge LP, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon Reorganized Emerge LP.

Section 6.12 Actions as Agent. The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. Subject to Section 6.26 below and applicable securities laws, the Warrant Agent and any limited partner, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of Reorganized Emerge LP or become pecuniarily interested in any transaction in which Reorganized Emerge LP may be interested, or contract with or lend money to Reorganized Emerge LP or otherwise act as fully and freely as though it were not Warrant Agent under this Warrant Agreement. Notwithstanding anything to the contrary herein, none of the Warrant Agent or its officers, directors, managers, employees, agents or other representatives shall use Confidential Information (as defined in Section 6.26) (a) for any purpose other than carrying out the transactions contemplated by this Warrant Agreement, and (b) in contravention of applicable securities laws (including, without limitation, laws prohibiting insider trading). The Warrant Agent shall not be liable for any action taken, suffered or omitted to be taken in connection with this Warrant Agreement except for its own gross negligence, willful misconduct or bad faith (each as determined by a final non-appealable judgement of a court of competent jurisdiction).

Section 6.13 Appointment and Acceptance of Agency. Reorganized Emerge LP hereby appoints the Warrant Agent to act as agent for Reorganized Emerge LP in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth or as Reorganized Emerge LP and the Warrant Agent may hereafter agree.

Section 6.14 Successors and Assigns. All the covenants and provisions of this Warrant Agreement by or for the benefit of Reorganized Emerge LP or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 6.15 Notices. Any notice or demand authorized by this Warrant Agreement to be given or made by the Warrant Agent or by the Global Warrant Holder to or on Reorganized Emerge LP shall be sufficiently given or made if in writing and sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by Reorganized Emerge LP with the Warrant Agent), as follows:

[]

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

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
Attn: Keith A. Simon
Fax: (212) 751-4864
keith.simon@lw.com

Any notice or demand authorized by this Warrant Agreement to be given or made by the Global Warrant Holder or by Reorganized Emerge LP to or on the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with Reorganized Emerge LP), as follows:

[]

With a copy to:

[]

Any notice or demand authorized by this Warrant Agreement to be given or made to the Global Warrant Holder shall be sufficiently given or made if sent by first-class mail, postage prepaid to the last address of the Global Warrant Holder as it shall appear on the Warrant Register.

Section 6.16 Applicable Law; Jurisdiction. The validity, interpretation and performance of this Warrant Agreement and the Global Warrant Certificate shall be governed in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof that would result in the application of law of another jurisdiction. The parties hereto irrevocably consent to the exclusive jurisdiction of the courts of the State of New York and any federal court located in such state in connection with any action, suit or proceeding arising out of or relating to this Warrant Agreement. Reorganized Emerge LP hereby acknowledges and agrees that its failure to perform its agreements and covenants hereunder will cause irreparable injury to the Global Warrant Holder for which damages, even if available, will not be an adequate remedy. Accordingly, Reorganized Emerge LP hereby consents to the issuance of injunctive relief by courts of the State of New York and any federal court located in such state to compel performance of Reorganized Emerge LP's obligations and to the granting by courts of the State of New York and any federal court located in such state of the remedy of specific performance of Reorganized Emerge LP's obligations hereunder.

Section 6.17 Waiver of Jury Trial. EACH OF REORGANIZED EMERGE LP AND THE WARRANT AGENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS WARRANT AGREEMENT OR A WARRANT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PERSON HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PERSON MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT AGREEMENT OR A WARRANT. EACH OF REORGANIZED EMERGE LP AND THE WARRANT AGENT CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) SUCH PERSON UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) SUCH PERSON MAKES THIS WAIVER VOLUNTARILY, AND (d) SUCH PERSON HAS BEEN INDUCED TO ENTER INTO THIS WARRANT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 6.18 Benefit of this Warrant Agreement. Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person or corporation other than the parties hereto and the Global Warrant Holder any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Global Warrant Holder.

Section 6.19 Registered Global Warrant Holder. Prior to due presentment for registration of Transfer, Reorganized Emerge LP and the Warrant Agent may deem and treat the Person in whose name any Warrants are registered in the Warrant Register as the absolute owner thereof for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than

Reorganized Emerge LP or the Warrant Agent) and neither Reorganized Emerge LP nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrants on the part of any other Person and shall not be liable for any registration of Transfer of Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of Transfer or with such knowledge of such facts that its participation therein amounts to bad faith.

Section 6.20 Headings. The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 6.21 Counterparts. This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. A signature to this Warrant Agreement transmitted/executed electronically or by facsimile shall have the same authority, effect and enforceability as an original signature.

Section 6.22 Entire Agreement. This Warrant Agreement and the Global Warrant Certificate constitute the entire agreement of Reorganized Emerge LP, the Warrant Agent and the Global Warrant Holder with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among Reorganized Emerge LP, the Warrant Agent and the Global Warrant Holder with respect to the subject matter hereof.

Section 6.23 Severability. Wherever possible, each provision of this Warrant Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant Agreement.

Section 6.24 Damages. Without limiting any other provision of this Warrant Agreement, if Reorganized Emerge LP willfully and knowingly fails to comply with any provision of this Warrant Agreement or a Warrant, which failure results in any material damages to the Global Warrant Holder, Reorganized Emerge LP shall pay to the Global Warrant Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Global Warrant Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

Section 6.25 Survival. This Warrant Agreement shall terminate at the Maturity Date (or Close of Business on the Settlement Date). Notwithstanding the foregoing, this Warrant Agreement will terminate on such earlier date on which all outstanding Warrants have been exercised. All provisions regarding indemnification, warranty, liability and limits thereon shall survive the termination or expiration of this Warrant Agreement.

Section 6.26 Confidential Information. The Warrant Agent and Reorganized Emerge LP agree that (a) inter alia, personal, non-public holder information ("**Non-Public Information**") which is exchanged or received pursuant to the negotiation or the carrying out of this Warrant Agreement and (b) the fees for services set forth in the attached schedule ("**Confidential Fees**," together with Non-Public Information, "**Confidential Information**") shall remain confidential, and shall not be voluntarily disclosed to any other person, except disclosures pursuant to bankruptcy proceedings, applicable securities laws or otherwise as may be required by law, including, without limitation, pursuant to subpoenas from state or federal government authorities.

Section 6.27 Force Majeure. Notwithstanding anything to the contrary contained herein, the Warrant Agent will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

[signature pages follow]

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

EMERGE ENERGY SERVICES LP

By: _____
Name:
Title:

[Signature Page to Warrant Agreement]

[] as Warrant Agent:

By: _____
Name:
Title:

[Signature Page to Warrant Agreement]

SCHEDULE A

SCHEDULE OF INCREASES OR DECREASES IN WARRANTS

The initial Number of Warrants is []. In accordance with the Warrant Agreement dated as of [], 2019 among Reorganized Emerge LP and [] as the Warrant Agent, the following increases or decreases in the Number of Warrants have been made:

Date	Amount of increase in Number of Warrants Evidenced by this Global Warrant	Amount of decrease in Number of Warrants Evidenced by this Global Warrant	Number of Warrants evidenced by this Global Warrant following such increase or decrease	Signature of authorized signatory

EXHIBIT A

FORM OF GLOBAL WARRANT CERTIFICATE

[FACE]

No. [_____]

CUSIP No. []

UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO EMERGE ENERGY SERVICES LP (“REORGANIZED EMERGE LP”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO REORGANIZED EMERGE LP, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

EMERGE ENERGY SERVICES LP

[], 2019

NUMBER OF WARRANTS: Initially, [] Warrants, subject to adjustment as described in the Warrant Agreement dated as of [], 2019 between Emerge Energy Services LP and [], as the Warrant Agent (the “**Warrant Agreement**”), each of which is exercisable for one unit of New Limited Partnership Interest.

FORM OF SETTLEMENT: Upon the Automatic Exercise of the Warrants represented hereby, the Beneficial Owner shall be entitled to receive one unit of New Limited Partnership Interest per Warrant exercised, as described in the Warrant Agreement.

AUTOMATIC EXERCISE: At any time prior to Close of Business on the Maturity Date, if, and only if, the Contingency Event occurs, then each Warrant shall automatically convert into one unit of New Limited Partnership Interest.

MATURITY DATE: The earlier of (i) [], 2019 and (ii) the date of consummation of any Liquidity Event.

This Global Warrant Certificate certifies that:

Cede & Co., or its registered assigns, is the Global Warrant Holder of the Number of Warrants (the “**Warrants**”) specified above (such number subject to adjustment from time to time as described in the Warrant Agreement).

In connection with the exercise of any Warrants, (a) Reorganized Emerge LP shall determine the Full Physical Unit Amount for each Warrant, and (b) Reorganized Emerge LP shall, or shall cause the Warrant Agent to, deliver to the exercising Beneficial Owner, on the applicable Settlement Date, for each Warrant exercised, a number of New Limited Partnership Interests equal to the relevant Full Physical Unit Amount, as described in the Warrant Agreement.

Prior to the Automatic Exercise Date as described more fully in the Warrant Agreement, subject to Section 5.01 of the Warrant Agreement, Warrants will not entitle the Global Warrant Holder to any of the rights of the holders of New Limited Partnership Interests.

Reference is hereby made to the further provisions of this Global Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Global Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Global Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, Emerge Energy Services LP has caused this instrument to be duly executed.

Dated: [], 2019

Emerge Energy Services LP

By: _____
Name:
Title:

Certificate of Authentication

These are the Warrants referred to in the above-mentioned Warrant Agreement.

Countersigned as of the date above written:

[] as Warrant Agent

By: _____
 Authorized Officer

[FORM OF REVERSE OF GLOBAL WARRANT CERTIFICATE]

Emerge Energy Services LP

The Warrants evidenced by this Global Warrant Certificate are part of a duly authorized issue of Warrants issued by Reorganized Emerge LP pursuant to the Warrant Agreement, dated as of [], 2019 (the “**Warrant Agreement**”), between Reorganized Emerge LP and [] as the “**Warrant Agent**”, and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Global Warrant Holder consents by acceptance of this Global Warrant Certificate. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement. A copy of the Warrant Agreement is on file at the Warrant Agent’s Office.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Global Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of New York without regard to the conflicts of laws principles thereof.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and Transfers the Warrant(s) represented by this Certificate to:

Name, Address and Zip Code of Assignee

and irrevocably appoints _____
Name of Agent

as its agent to Transfer this Warrant Certificate on the books of the Warrant Agent.

[Signature page follows]

Date: [_____]

Name of Transferee

By: _____

Name:

Title:

(Sign exactly as your name appears on the other side of this Certificate)

NOTICE: The signature(s) should 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.

EXHIBIT B

FEE SCHEDULE

[Reorganized Emerge LP shall pay the Warrant Agent for performance of its services under this Warrant Agreement such compensation as shall be agreed in writing between Reorganized Emerge LP and the Warrant Agent.]

Exhibit 2

Exit Facility Term Sheet

[\$100] MILLION SENIOR SECURED ASSET-BASED REVOLVING CREDIT FACILITY

SUMMARY OF TERMS AND CONDITIONS

This Summary of Terms and Conditions (this “*Term Sheet*”) sets forth the principal terms of a proposed Exit Facility (as defined below) to be made available to Emerge Energy Services Operating, LLC and Superior Silica Sands LLC. This Term Sheet was prepared for discussion purposes only and does not constitute an offer, commitment or agreement to provide any financing. Each party referred to herein has no obligation to commence or thereafter continue any negotiations to enter into any definitive agreement.

Borrower: Emerge Energy Services Operating, LLC, a Delaware limited liability company (“*EMES*”) and Superior Silica Sands LLC, a Texas limited liability company (“*SSS*” and, together with EMES, each a “*Borrower*” and together the “*Borrowers*”).

Guarantors: Guarantors will include Emerge Energy Services LP, a Delaware limited partnership (“*Holdings*”), and each subsidiary of Holdings that is a guarantor under the Existing Credit Agreement after giving effect to any restructuring by the voluntary cases (the “*Ch 11 Cases*”) filed by Holdings and its subsidiaries under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware on July 15, 2019 to the extent contemplated by the Chapter 11 Plan related thereto (the “*Ch 11 Plan*”) (the “*Subsidiary Guarantors*” and, together with Holdings and the Borrowers, the “*Loan Parties*”), on terms and subject to exceptions consistent with the Documentation Principles (as defined below).

Agent: HPS Investment Partners, LLC (“*HPS*”) will act as sole and exclusive administrative agent and collateral agent (in such capacities, the “*Agent*”) for the Lenders (as defined below) and, following the Closing Date, other lenders in accordance with the Section below entitled “Assignments and Participations”, and will perform the duties and be subject to the requirements customarily associated with each such applicable role.

Lenders: HPS, together with its affiliates and investment funds for which HPS or its affiliates is an “investment manager” or “investment adviser”, Oak Hill Advisors and certain investment funds for which Pacific Investment Management Company LLC is an “investment manager” or “investment advisor”, or any of their respective affiliated funds, and any of their respective successors and assigns (collectively the “*Lenders*”).

Revolving Facility: A senior secured asset-based revolving credit facility) in a maximum aggregate principal amount equal to \$[100.0] million (the “*Maximum Commitment Amount*”) subject to

“Availability” below (the “**Revolving Facility**”, the revolving commitments thereunder, the “**Revolving Commitments**” and the loans thereunder, the “**Loans**”). Borrowings under the Revolving Facility will be available in U.S. Dollars.

In connection with the Revolving Facility, the Lenders shall make available to the Borrowers Loans, so long as the borrowing request is made not later than 10:00 a.m., New York City time fifteen (15) business days before the date of the proposed borrowing (or such later time as may be reasonably acceptable to the Agent).

The Credit Documentation (as defined below) will include customary limitations on and protections with respect to “defaulting” lenders consistent with the Documentation Principles.

Purpose:

The proceeds of the Loans under Revolving Facility will be used (a) on the Closing Date, by the Borrowers to (i) repay in full the obligations owing under that certain Senior Secured Priming and Superpriority Debtor-In-Possession Credit and Security Agreement (the “**DIP Credit Agreement**”), dated as of July 19, 2019, by and among the Loan Parties, the financial institutions party thereto from time to time and HPS as Agent and Collateral Agent and (ii) to fund fees and expenses of the Ch 11 Plan and (b) following the Closing Date, by the Loan Parties for general corporate and working capital purposes.

Availability:

Loans under the Revolving Facility will be available (i) on the Closing Date in an aggregate principal amount equal to \$50 million to be used in accordance with clause (a) under “Purpose” above and (ii) at any time after the Closing Date and prior to the Revolving Termination Date (as defined below) in a maximum aggregate principal amount equal to the lesser of (x) the Maximum Commitment Amount and (y) (A) until delivery of the Initial Borrowing Base Report (as defined below), \$[50] million (the “**Initial Minimum Commitment Amount**”) or (B) thereafter, the Borrowing Base (as defined below), as applicable. Until the Revolving Termination Date (as defined below), (i) borrowings under the Revolving Facility shall be in minimum increments of \$7.5 million and subject to each of the conditions set forth under “Conditions Precedent to All Credit Events Below” and (ii) after the Closing Date, no more than four (4) drawings may be made under the Revolving Facility. Amounts repaid under the Revolving Facility may be reborrowed.

“**Borrowing Base**” shall mean the sum of (i) 85% of Eligible Receivables; plus (ii) the lesser of (A) 65% of the value of

Eligible Inventory consisting of sand and or (B) 85% of the net orderly liquidation value of Eligible Inventory consisting of sand; plus (iii) with respect to Sand Reserves, the lesser of (A) the Sand Reserve Advance Rate multiplied by the Sand Reserve Value and (B) thirty five percent (35%) of the Maximum Revolving Advance Amount; minus (iv) such reserves as Agent may reasonably deem proper and necessary from time to time in the exercise of its Permitted Discretion (each capitalized term in this definition to be defined in a manner consistent with the Existing Credit Agreement).

Interest Rates and Fees:

As set forth on Annex I hereto.

Default Rate:

Upon the occurrence of any event of default, without further notice, all amounts under the Revolving Facility shall bear interest, from the date of such event of default, after as well as before judgment, at a rate per annum equal to (i) in the case of principal of any loan, 2.00% per annum *plus* the rate otherwise applicable to such loan, or (ii) in the case of any other amount, 2.00% per annum *plus* the rate applicable to ABR loans (the “**Default Rate**”); *provided* that no amount shall be payable to a “defaulting” Lender so long as such Lender shall be a “defaulting” Lender.

Letters of Credit:

Letters of credit may be available to be issued under the Revolving Facility up to a maximum sub-limit to be agreed and by an issuer designated by the Borrower and acceptable to the Agent (which issuer shall become a party to the Revolving Facility in its capacity as a letter of credit issuer). For the avoidance of doubt, none of the Lenders shall be required to become a letter of credit issuer and as of the Closing Date, the letter of credit sub-limit shall be \$0, which sub-limit may be increased upon the designation of a letter of credit issuer as set forth above.

Final Maturity:

The Revolving Facility will mature and terminate on the date that is three (3) years after the Closing Date (the “**Revolving Termination Date**”).

Guarantees:

Consistent with the Existing Credit Agreement.

Security:

Consistent with the Existing Credit Agreement (all collateral thereunder, the “**Collateral**”), subject to certain exclusions (the “**Excluded Collateral**”) to be agreed.

Mandatory Prepayments:

Borrowings under the Revolving Facility shall be repaid if borrowings under the Revolving Facility exceed the commitments thereunder. Except as set forth below, amounts mandatorily prepaid may be reborrowed.

Mandatory prepayments of borrowings shall be required (and in the case of clauses (i) and (ii) below, permanent reductions of the Revolving Commitments): (i) in an amount equal to 100% of the net cash proceeds of all Dispositions, Extraordinary Receipts (each as defined in a manner consistent with the Existing Credit Agreement) and casualty or other insured damages to any Borrower's property or assets, by the Borrowers and their restricted subsidiaries subject to (x) *de minimis* thresholds consistent with the Existing Credit Agreement and (y) reinvestment rights consistent with the Existing Credit Agreement from the Closing Date until the Revolving Termination Date, (ii) in an amount equal to 100% of the net cash proceeds of issuances of debt obligations of the Borrower and its subsidiaries that are not permitted pursuant to the Credit Documentation and (iii) in an amount equal to 100% of the net cash proceeds arising from the issuance or sale by a Loan Party of its stock or stock equivalents. Amounts mandatorily prepaid pursuant to clauses (i) and (iii) of this paragraph shall be subject to the Applicable Premium (as defined below).

Voluntary Prepayments and
Reductions in Commitments:

At any time following the Closing Date and prior to and on the Revolving Termination Date, permanent reductions of the Revolving Commitments (whether voluntary or upon acceleration (automatic or otherwise) of the obligations) and prepayments of borrowings in connection therewith or otherwise will be permitted at any time after the Closing Date (subject to customary notice requirements), in minimum principal amounts to be agreed, without premium or penalty, other than (i) customary breakage payments consistent with the Existing Credit Agreement and (ii) payment of the Applicable Premium (as defined below).

For purposes hereof "***Applicable Premium***" shall mean, an amount paid to Agent for the benefit of the Lenders, equal to the aggregate outstanding amount of the Revolving Commitments permanently reduced *multiplied* by five percent (5.0%).

Credit Documentation:

The definitive documentation for the Revolving Facility (the "***Credit Documentation***") shall, except as otherwise set forth herein, be based on and substantially consistent with that certain Second Amended and Restated Revolving Credit and Security Agreement (the "***Existing Credit Agreement***"), dated as of January 5, 2018, by and among the Loan Parties, the financial institutions party thereto and HPS as Administrative Agent and Collateral Agent, with such modifications thereto to reflect the terms set forth in this Term Sheet, the circumstances related to or in connection with the Ch 11 Cases, the financial condition of the

Borrowers and their business' following emergence from the Ch 11 Cases such other changes to the terms of the Existing Credit Agreement to be mutually agreed between the Borrowers and the Agent, and to reflect administrative agency and operational matters of the Agent (the "**Documentation Principles**").

Representations and Warranties: Consistent with the Existing Credit Agreement, subject to the Documentation Principles.

Conditions Precedent to Closing Date: The effectiveness of the Revolving Facility and obligation of the Lenders to make Loans on such date (the "Closing Date") shall be subject to the satisfaction of certain conditions consistent with the Documentation Principles.

Conditions Precedent to all Credit Events: (i) Bring down of representations and warranties, (ii) no Default or Event of Default, (iii) pro forma financial covenant compliance and (iv) sufficient "Availability" under the Revolving Facility.

Cash Dominion: Consistent with the Existing Credit Facility, subject to the Documentation Principles.

Affirmative Covenants: Consistent with the Existing Credit Agreement, subject to the Documentation Principles.

Reporting Covenants: Consistent with the Existing Credit Agreement, subject to the Documentation Principles.

The Borrowers shall be required to delivery customary borrowing base reports and certificates consistent with the Existing Credit Agreement; provided, that the first borrowing base report ("**Initial Borrowing Base Report**") shall be required to be delivered by the Borrowers to the Agent within [90] days of the Closing Date.

Negative Covenants: Consistent with those in the Existing Credit Agreement, subject to the Documentation Principles; provided, that (i) no incurrence of debt for borrowed money shall be permitted and (ii) dividends with respect to the preferred shares shall be permitted subject to pro forma liquidity of \$[50] million and certain other investments and prepayments of indebtedness shall be subject to a FCCR Test (as defined below) of not less than [2.50:1.00], no Default or Event of Default and pro forma financial covenant compliance.

Financial Covenants:¹

Commencing with the [first] fiscal quarter following the Closing Date, limited to the following:

(i) A financial maintenance covenant (the “**Financial Covenant**”) of a maximum Total Leverage Ratio of the Borrowers and its subsidiaries of [4.00]:1.00, stepping down to [3.50]:1.00 by June 30, 2020, and stepping down to [3.00]:1.00 by September 30, 2020.

The Financial Covenant shall be tested on the last day of each fiscal quarter (commencing with the last day of the first full fiscal quarter ended after the Closing Date).

(ii) A Fixed Charge Coverage Ratio test (the “**FCCR Test**”) of not less than [2.00]:1.00, so long as Excess Availability is less than \$[50] million.

The FCCR Test shall be tested on the last day of each fiscal quarter (commencing with the last day of the first full fiscal quarter ended after the Closing Date).

For purposes of the Credit Documentation, “**Total Leverage Ratio**”, “**Consolidated Net Income**”, “**Consolidated EBITDA**”², “**Fixed Charge Coverage Ratio**”, “**Excess Availability**” (and component definitions), and other financial definitions shall be defined in a manner consistent with the Existing Credit Agreement, subject to the Documentation Principles.

Events of Default:

Consistent with the Existing Credit Agreement (including with respect to an equity cure), subject to the Documentation Principles.

Voting:

Consistent with the Existing Credit Agreement, subject to the Documentation Principles.

Cost and Yield Protection:

Consistent with the Existing Credit Agreement, subject to the Documentation Principles.

Assignments and Participations:

Consistent with the Existing Credit Agreement, subject to the Documentation Principles.

Expenses and Indemnification:

Consistent with the Existing Credit Agreement, subject to the Documentation Principles.

¹ Discuss financial covenants.

² Consolidated EBITDA definition to reflect calendarization starting in 4Q19 (three months ended December 31, 2019 multiplied by four, six months ended March 30, 2020 multiplied by two, nine months ended June 30, 2020 multiplied by four thirds, twelve months ended September 30, 2020 thereafter.

Governing Law and Forum:

New York and Borough of Manhattan, and, to the extent applicable, the Bankruptcy Court.

Counsel to the Agent:

Weil, Gotshal & Manges LLP.

Interest and Fees

Interest Rates:

The interest rates under the Revolving Facility will be as follows:

Revolving Facility

At the Borrower's option, Adjusted LIBOR, *plus* 5.50% or ABR *plus* 4.50%.

Calculation of interest shall be on the basis of the actual days elapsed in a year of 360 days (or 365 or 366 days, as the case may be, in the case of ABR Loans) and interest shall be payable (i) in the case of Adjusted LIBOR loans, at the end of each interest period and (ii) in the case of ABR loans, quarterly in arrears.

ABR is the Alternate Base Rate, [which is the highest of (i) the prime lending rate as set forth on the British Banking Association Telerate Page 5, (ii) the federal funds effective rate from time to time *plus* 0.50%, and (iii) the sum of the one-month LIBOR Rate (after giving effect to any floor) *plus* 1.00%] [*provided*, that in no event will the Alternate Base Rate at any time be less than []% *per annum*].

Adjusted LIBOR [is the rate (adjusted for statutory reserve requirements for eurocurrency liabilities) at which eurodollar deposits for three months appearing on the Reuters Screen LIBOR01 Page] [*provided* that in no event will the LIBOR Rate at any time be less than []% *per annum*].

Unused Line Fee:

0.375% per annum on the average daily undrawn portion of the commitments of "non-defaulting" Lenders in respect of the Revolving Facility, payable quarterly in arrears after the Closing Date and upon the termination of the commitments and calculated based on the number of days elapsed in a 360-day year.

Closing Fee:

The Borrowers shall pay to each Lender a closing fee (the "**Closing Fee**") in an amount equal to 2.00% of the aggregate amount of the commitments in respect of the Revolving Facility held by such Lender on the Closing Date, which Closing Fee will be fully earned and due and payable on the Closing Date. The Closing Fee may be payable in the form of original issue discount by net funding the Loans made on the Closing Date.

Exhibit 3

Amended/New Organizational Documents

**SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP**

of

EMERGE ENERGY SERVICES LP

A Delaware limited partnership

Dated as of [•], 2019

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EXHIBIT A

EXHIBIT B

EXHIBIT C

**SECOND AMENDED AND RESTATED AGREEMENT
OF LIMITED PARTNERSHIP OF EMERGE ENERGY SERVICES LP**

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF EMERGE ENERGY SERVICES LP, dated as of [•], 2019, is entered into by and among [•], a Delaware limited liability company, as the General Partner, and the Limited Partners holding 95% of the new Common Units issued pursuant to the Plan of Reorganization.

WHEREAS, the former General Partner and the former initial Limited Partner of the Partnership entered into that certain First Amended and Restated Agreement of Limited Partnership dated as of May 14, 2013, as amended by that certain Amendment No. 1 to the First Amended and Restated Agreement of Limited Partnership dated as of August 15, 2016 (the “First Amended and Restated LPA”).

WHEREAS, on July 15, 2019, the Partnership, along with certain of the Partnership’s subsidiaries, filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware in order to effect the Plan of Reorganization.

WHEREAS, pursuant to the Plan of Reorganization, on the Effective Date, Emerge Energy Services GP LLC withdrew as General Partner, and [•] was appointed the new General Partner.

WHEREAS, pursuant to the Plan of Reorganization, on the Effective Date, all Partnership Interests previously issued and governed by the First Amended and Restated LPA were cancelled and 95% of the new Common Units were issued to certain holders of prepetition note claims in exchange for such claims, and 5% of the new Common Units were issued to certain holders of general unsecured claims in exchange for such claims.

WHEREAS, pursuant to the Plan of Reorganization, on the Effective Date, certain holders of prepetition note claims were issued Preferred Interests in the Partnership in exchange for such claims.

WHEREAS, the Board of Directors and the Limited Partners issued 95% of the new Common Units deem it in the best interests of the Partnership to amend and restate the First Amended and Restated LPA to provide for the issuance of the Preferred Interests and such other matters as are provided herein to be consistent with the Plan of Reorganization.

NOW, THEREFORE, the First Amended and Restated LPA is amended and restated to provide 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 the Capital Account maintained for each Partner as of the end of each taxable period of the Partnership, (a) increased by any amounts that such Partner 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 under Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5)) and (b) decreased by (i) the amount of all losses and deductions that, as of the end of such taxable period, are reasonably expected to be allocated to such Partner in subsequent taxable periods under Sections 704(e)(2) and 706(d) of the Code and Treasury Regulation Section 1.751-1(b)(2)(ii), and (ii) the amount of all distributions that, as of the end of such taxable period, are reasonably expected to be made to such Partner in subsequent taxable periods in accordance with the terms of this Agreement or otherwise to the extent they exceed offsetting increases to such Partner’s Capital Account that are reasonably expected to occur during (or prior to) the taxable period in which such distributions are reasonably expected to be made (other than increases as a result of a minimum gain chargeback pursuant to Section 6.1(b)(i) or 6.1(b)(ii)). 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 Section 5.3(d)(i) or 5.3(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. Without limiting the foregoing, for purposes of this Agreement, any Person that, individually or together with its Affiliates, has the direct or indirect right to designate or cause the designation of at least one member to the Board of Directors, and any such Person’s Affiliates, shall be deemed to be Affiliates of the General Partner.

“*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 any Contributed Property means the fair market value of such property or other consideration at the time of contribution and in the case of an Adjusted Property, the fair market value of such Adjusted Property on the date of the revaluation event as described in Section 5.3(d), in both cases as determined by the General Partner. The General Partner shall use such method as it determines to be appropriate to allocate the aggregate Agreed Value of Contributed Properties contributed to the Partnership in a single or integrated transaction among each separate property on a basis proportional to the fair market value of each Contributed Property.

“*Agreement*” means this Second Amended and Restated Agreement of Limited Partnership of Emerge Energy Services 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.

“*Blocker Corporation*” has the meaning assigned to such term in Section 14.1.

“*Board of Directors*” means, with respect to the General Partner, its board of directors or board of managers, as applicable, if a corporation or limited liability company, or if a limited partnership, the board of directors or board of managers of the general partner 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 5.3 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 5.3. The “Capital Account” of a Partner in respect of a 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.

“*Capital Contribution*” means any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Partner contributes to the Partnership or that is contributed or deemed 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 Adjusted Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, amortization and 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. 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 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 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 (a) initial form of Certificate approved by the General Partner for Common Units is attached as Exhibit A to this Agreement and (b) initial form of Certificate approved by the General Partner for Preferred Interests is attached as Exhibit B to this Agreement. Any modification to or replacement of such form of Certificate adopted by the General Partner shall not constitute an amendment 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 Certification*” means a properly completed certificate in such form as may be specified by the General Partner by which a Limited 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 Citizen.

“*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 the respective 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.

“*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. The term “*Common Unit*” does not include a Preferred Interest and also does not include any interests of Limited Partners of the Partnership prior to the Effective Date, all of which such Units were cancelled pursuant to the Partnership’s Plan of Reorganization.

“*Conflicts Committee*” means a committee of the Board of Directors composed entirely of one or more directors, each of whom (a) is not an officer or employee of the General Partner, (b) is not an officer, director or employee of any Affiliate of the General Partner, (c) is not a holder of any ownership interest in the General Partner or its Affiliates or the Partnership Group, other than Common Units and other awards that are granted to such director under the Management Incentive Plan and (d) meets the independence standards required of 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.

“*Consenting Party*” or “*Consenting Parties*” is defined in Section 16.9(b).

“*Contributed Property*” means each property or other consideration, 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 5.3(d), such property or other consideration shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

“*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 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.

“*Default Rate*” means 17% per annum, payable in cash quarterly.

“*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 11.2.

“*Depository*” means, with respect to any Partnership Interests or any Preferred Interests issued in global form, [•] and its successors and permitted assigns.

“*Dividend Rate*” means 12% per annum payable in cash quarterly, except that during the first year after the issuance of the Preferred Interests, the Dividend Rate shall not be payable in full in cash, but shall instead be payable 35% in cash, with the remaining amount to be accrued and compounded on each quarterly payment date, or paid by the issuance of additional shares of Preferred Interests, with a face amount equal to such unpaid dividends at the Dividend Rate, divided by the number of shares of Preferred Interests issued

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

“*Effective Date*” has the meaning set forth in the Plan of Reorganization.

“*Eligible Citizen*” means a Person qualified to own interests in real property in jurisdictions in which any Group Member does business or proposes to do business from time to time, and whose status as a Limited Partner

the General Partner determines does not or would not subject such Group Member to a significant risk of cancellation or forfeiture of any of its properties or any interest therein.

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

“*First Amended and Restated LPA*” has the meaning assigned to such term in the Recitals.

“*General Partner*” means [•], a Delaware limited liability company, and its successors and permitted assigns that are admitted to the Partnership as general partner of the Partnership, in its capacity as the general partner of the Partnership (except as the context otherwise requires).

“*General Partner Interest*” means the non-economic management interest of the General Partner in the Partnership (in its capacity as general partner without reference to any Limited Partner Interest), 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 ownership or profits or losses or any rights to receive distributions from operations or upon the liquidation or winding-up of the Partnership.

“*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 a Person that with or through any of its Affiliates or Associates has 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 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.

“*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, 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, employee, agent, fiduciary or trustee of another Person owing a fiduciary 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. Notwithstanding the foregoing, no Person who was a Previous D&O shall be deemed an Indemnitee, and all rights of indemnification with respect to the Previous D&Os shall only be the to the extent and in the manner provided pursuant to the Plan of Reorganization.

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

“*Limited Partner*” means, unless the context otherwise requires, 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. For purposes of the Delaware Act, the Limited Partners shall constitute a single class or group of limited partners.

“*Limited Partner Interest*” means the ownership interest of a Limited Partner in the Partnership, which may be evidenced by Common Units or Preferred Interests or other Units or a combination thereof or interest therein, 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 to comply with the terms and provisions of this Agreement.

“*Liquidation Event*” means the first to occur of: (i) any transaction or series of related transactions that results in (a) the sale or exchange of all or substantially all of the equity interests of the Partnership or any successor to one or more third parties (whether by merger, sale, recapitalization, consolidation, combination or otherwise) or (b) the sale, directly or indirectly, by the Partnership or any successor of all or substantially all of the assets of the Partnership or any successor and its subsidiaries, taken as a whole; or (ii) a liquidation, dissolution or winding up of the Partnership or any successor. Notwithstanding the foregoing, no transaction shall be a Liquidation Event if the holders of the Partnership Interests prior to a transaction continue to own or control at least a majority of such interests or other equity interests in the Partnership following such transaction.

“*Liquidator*” means one or more Persons selected pursuant to Section 12.3 to perform the functions described in Section 12.4 as liquidating trustee of the Partnership within the meaning of the Delaware Act.

[“*Management Incentive Plan*” means the Management Incentive Plan of the Partnership, as may be amended, 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) (or successor to such Section) of the Securities Exchange Act) 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 or other consideration reduced by any Liabilities either assumed by the Partnership upon such contribution or to which such property or other consideration 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 5.3(d)(ii)) at the time such property is distributed, reduced by any Liability either assumed by such Partner upon such distribution or to which such property is subject at the time of distribution in each case as determined and required by the Treasury Regulations promulgated under Section 752 of the Code.

“*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 5.3(b) and shall not include any 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 and 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 not include any items specially allocated under Section 6.1(b).

“*Non-Citizen Assignee*” means a Person whom the General Partner has determined does not constitute an Eligible Citizen and as to whose Partnership Interest the General Partner has become the Limited Partner, pursuant to Section 4.8.

“*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 Partners pursuant to Section 6.2(b) 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) 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 1.752-1(a)(2).

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

“*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.

“*Other Entity*” is defined in Section 14.1.

“*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 Outstanding Limited Partner Interests of any class then Outstanding, none of the Limited Partner Interests owned by such Person or Group shall be voted on any matter and shall not 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 Limited Partner 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 or group of Partnership Interests for purposes of this Agreement or the Delaware Act); provided, further, that the foregoing limitation on voting of Partnership Interests shall not apply to (i) any Person or Group who acquired 20% or more of the Outstanding Limited Partner Interests of any class then Outstanding directly from the General Partner or its Affiliates (other than the Partnership), (ii) any Person or Group who acquired 20% or more of the Outstanding Limited Partner Interests of any class then Outstanding directly or indirectly from a Person or Group described in clause (i) provided that, at or prior to such acquisition, the General Partner, acting in its sole discretion, 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 Limited Partner Interests issued by the Partnership provided that, at or prior to such acquisition, the General Partner shall have notified such Person or Group in writing that such limitation shall not apply.

“*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) 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 Emerge Energy Services LP, a Delaware limited partnership.

“*Partnership Group*” means the Partnership and its Subsidiaries treated as a single consolidated entity.

“*Partnership Interest*” means an interest in the Partnership, which shall include any General Partner Interest, Limited Partner Interests but shall exclude any options, rights, warrants and appreciation rights relating to an equity interest in the Partnership. For purposes of this Agreement, the Partnership Interests constitute a single class or series of interests unless any Partnership Interests are designated in writing as a separate class or series by the General Partner in its sole discretion.

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

“*Paying Agent*” means the Transfer Agent, acting in its capacity as paying agent for the Preferred Interests, and its successors and assigns or any other payment agent appointed by the General Partner; provided, however, that if no Paying Agent is specifically designated for the Preferred Interests, the General Partner shall act in such capacity.

“*Percentage Interest*” means as of any date of determination (a) as to any Unitholder with respect to Units, the product obtained by multiplying (i) 100% less the percentage applicable to clause (b) below by (ii) the quotient obtained by dividing (A) the number of Units held by such Unitholder, by (B) the total number of all Outstanding Units, and (b) as to the holders of other Partnership Interests issued by the Partnership in accordance with Section 5.4, the percentage established (or determined as established) as a part of such issuance. The Percentage Interest with respect to the General Partner Interest, the Preferred Interests and the Percentage Interest of the Partnership with respect to Partnership Interests held by it in treasury, shall at all times be zero.

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

“*Plan of Reorganization*” means the First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code, dated September 11, 2019.

“*Plan of Conversion*” has the meaning assigned to such term in Section 14.1.

“*Preferred Interest*” means the Preferred Interests representing limited partner interests in the Partnership

“*Preferred Interest Distribution*” means distributions with respect to Preferred Interests pursuant to Section 16.3.

“*Preferred Interest Distribution Arrears*” means, with respect to Preferred Interest Distributions for any Preferred Interest Distribution Period, that the full cumulative Preferred Interest Distributions to and including the last day of the most recently completed Preferred Interest Distribution Period have not been paid on all Outstanding Preferred Interests.

“*Preferred Interest Distribution Record Date*” means the open of business on [•], [•], [•] or [•] immediately preceding the Preferred Interest Payment Date for which a Preferred Interest Distribution has been declared; provided, however, that in the case of payments of Preferred Interest Distributions in Preferred Interest Distribution Arrears, the Preferred Interest Distribution Record Date with respect to a Preferred Interest Distribution Payment Date shall be such date as may be designated by the General Partner in accordance with Article XVI.

“*Preferred Interest Distribution Period*” means the period of time from and including the preceding Preferred Interest Payment Date (other than the initial Preferred Interest Distribution Period, which shall commence on and include the Preferred Interest Original Issue Date), to, but excluding, the next Preferred Interest Payment Date for such Preferred Interest Distribution Period.

“*Preferred Interest Original Issue Date*” means [•], 2019.

“*Preferred Interest Holder*” means a Record Holder of the Preferred Interests.

“*Preferred Interest Liquidation Preference*” means a liquidation preference for each Preferred Interest initially equal to the Preferred Interest Stated Liquidation Preference, which liquidation preference shall be subject to increase by the per Preferred Interest amount of any Preferred Interest Unpaid Cash Distributions (whether or not such distributions shall have been declared), in each case, subject to adjustment for any splits, combinations or similar adjustment to the Preferred Interests.

“*Preferred Interest Payment Date*” means [•], [•], [•] or [•] of each year, as applicable for the Preferred Interest Distribution Period, commencing [•], 2019; provided, however, that if any Preferred Interest Payment Date would otherwise occur on a day that is not a Business Day, then such Preferred Interest Payment Date shall instead be the immediately succeeding Business Day, without the accumulation of additional distributions.

“*Preferred Interest Redemption Date*” has the meaning set forth in Section 16.6(a).

“*Preferred Interest Redemption Notice*” has the meaning set forth in Section 16.6(c).

“*Preferred Interest Redemption Price*” has the meaning set forth in Section 16.6(b).

“*Preferred Interest Stated Liquidation Preference*” means and amount equal to [•] per Preferred Interest.

“*Preferred Interest Unpaid Cash Distribution*” has the meaning assigned to such term in Section 16.3(c).

“*Previous D&Os*” means any directors, managers and officers of the Partnership, Emerge Energy Services GP LLC, Emerge Energy Services Operating LLC, Superior Silica Sands LLC or Emerge Energy Services Finance Corporation, as of July 15, 2019, that were not members of the Special Restructuring Committee of the Board of Directors.

“*Pro Rata*” means (a) when used with respect to Units or any class thereof, apportioned equally among all designated Units in accordance with their relative Percentage Interests, (b) when used with respect to Partners or Record Holders, apportioned among all Partners or Record Holders in accordance with their relative Percentage Interests, and (c) when used with respect to Preferred Interests, apportioned equally among all Preferred Interest Holders in accordance with the relative number or percentage of Preferred Interests held by each such holder.

“*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.

“*Recapture Income*” means any gain recognized by the Partnership (computed without regard to any adjustment required by Section 734 or 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.

“*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 or by electronic transmission 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 of Partnership Interests 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) the Person in whose name a Preferred Interest is registered on the books of the Transfer Agent as of, unless otherwise set forth in Article XVI, the opening of business on a particular Business Day, or (c) 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 Statement*” means the Registration Statement on Form S-1 (File No. 333- 187487) 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, 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 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) or 6.1(b)(ix).

“*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.

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

“*Superior Silica Resources*” means Superior Silica Resources LLC, a Texas limited liability company. “*Surviving Business Entity*” has the meaning assigned to such term in Section 14.2(b)(ii).

“*Trading Day*” means, for the purpose of determining the Current Market Price of any class of Limited Partner Interests, a day on which the principal National Securities Exchange on which such class of Limited Partner Interests is listed or admitted to trading is open for the transaction of business or, if Limited Partner Interests of a class 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, with respect to any class of Partnership Interests, 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 such class of Partnership Interests; provided that if no Transfer Agent is specifically designated for such class of Partnership Interests, the General Partner shall act in such capacity.

“*Treasury Regulations*” means the Treasury Regulations promulgated under the Code, as amended from time to time.

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

“*Unitholders*” means the holders of Units.

“*Unit Majority*” means at least a majority of the Outstanding Common 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 5.3(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*” 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 5.3(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)).

“*Unrestricted Person*” means (a) each Indemnitee, (b) each Partner, (c) each Person who is or was a member, partner, director, officer, employee or agent of any Group Member, a General Partner or any Departing General Partner or any Affiliate of any Group Member, a General Partner or any Departing General Partner and (d) 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” or words of like import shall be deemed to be followed by the words “without limitation”; and (d) the terms “hereof,” “herein” or “hereunder” refer to this Agreement as a whole and not to any particular provision of this Agreement. The table of 17 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.

ARTICLE II ORGANIZATION

Section 2.1 *Formation.* The General Partner and Superior Silica Resources, as the limited partner of the Partnership, previously formed the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. 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, liabilities and obligations of the Partners and the administration, dissolution and termination of the Partnership shall be governed by the Delaware Act. All Partnership Interests shall constitute personal property of the owner thereof for all purposes.

Section 2.2 *Name.* The name of the Partnership shall be “Emerge Energy Services 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 1675 South State St., Suite B, Dover, Delaware 19901, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be Capitol Services, Inc. The principal office of the Partnership shall be located at 1400 Civic Place, Suite 250, Southlake, Texas 76092, 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 1400 Civic Place, Suite 250, Southlake, Texas 76092, 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; 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 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 of any business and may decline to do so free of any fiduciary duty or obligation whatsoever to the Partnership or any Limited Partner and, in declining to so propose or approve, shall not be required to act in good faith or pursuant to any other 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 and the General Partner in determining whether to propose or approve the conduct by the Partnership of any business shall be permitted to do so in its sole and absolute discretion.

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 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 or its Subsidiaries, 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 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 successor 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. Any 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 not be deemed to be participation 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) and shall not 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 any business interests and engage in any 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) In addition to other rights provided by this Agreement or by applicable law (other than Section 17-305(a) of the Delaware Act, the obligations of which are to the fullest extent permitted by law expressly replaced in their entirety by the provisions below), and except as limited by Sections 3.4(b) and 3.4(c), 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 (provided that the requirements of this Section 3.4(a)(iii) shall be satisfied to the extent that true and correct copies of such documents are publicly available with the Commission via its Electronic Data Gathering, Analysis and Retrieval system or any successor thereto); and

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

(b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable in its sole discretion, (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 (other than agreements with Affiliates of the Partnership the primary purpose of which is to circumvent the obligations set forth in this Section 3.4).

(c) Notwithstanding any other provision of this Agreement or Section 17-305 of the Delaware Act, each of the Partners, each other Person who acquires 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

Section 4.1 *Certificates.* Notwithstanding anything otherwise 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 may be issued shall be executed on behalf of the General Partner on behalf of the Partnership by the Chairman of the Board, Chief Executive Officer, President, Chief Financial Officer or any Vice President of the General Partner and the Secretary or any Assistant Secretary of the General Partner or any other authorized officer or director of the General Partner. If a Transfer Agent has been appointed for a class of Partnership Interests, no Certificate for such class of Partnership Interests shall be valid for any purpose until it has been countersigned by the Transfer Agent; 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 officers of the General Partner specified in Section 4.1 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 officers of the General Partner specified in Section 4.1 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 and the Transfer Agent 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.

If a Partner fails to notify the General Partner within a reasonable period of time after such Partner has notice of the loss, destruction or theft of a Certificate, and a transfer of the Partnership Interests represented by the Certificate is registered before the Partnership, the General Partner or the Transfer Agent receives such notification, the 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 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 transfer, 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 transfer, sale, assignment, gift, exchange or any other disposition by law or otherwise (but not a 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 officers of the General Partner specified in Section 4.1 on behalf 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) By acceptance of the transfer of any Limited Partner Interests in accordance with this Section 4.5 and except as provided in Section 4.8, each transferee 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) acknowledges and agrees to the provisions of Section 10.1(a).

(d) 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.

(e) The General Partner and its Affiliates shall have the right at any time to transfer any Common Units they hold to one or more Persons.

Section 4.6 *Transfer of the General Partner Interest.*

(a) Subject to Section 4.6(c) below, prior to [•], the General Partner shall not transfer all or any part of its General Partner Interest to a Person unless such transfer (i) has been approved by the prior written consent or vote of Partners (excluding the General Partner and its Affiliates) holding a majority of the Percentage Interests of all Partners (excluding the Percentage Interests of the General Partner and its Affiliates) or (ii) is of all, but not less than all, of its General Partner Interest to (A) an Affiliate of the General Partner (other than an individual) or (B) another Person (other than an individual) in connection with the merger or consolidation of the General Partner with or into such other Person or the transfer by the General Partner of all or substantially all of its assets to such other Person.

(b) Subject to Section 4.6(c) below, on or after [•], the General Partner may at its option transfer all or any part of its General Partner Interest without Unitholder approval.

(c) 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 portion thereof, if applicable) of the partnership or membership interest of 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) Except as provided in Section 4.7(c) below, but 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, (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 at least a majority of the Outstanding Limited Partner Interests of such class.

(c) Nothing contained in this Article IV, or elsewhere in this Agreement, 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.

(d) Each Certificate evidencing Partnership Interests shall bear a conspicuous legend in substantially the following form:

THE HOLDER OF THIS SECURITY ACKNOWLEDGES FOR THE BENEFIT OF EMERGE ENERGY SERVICES 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, (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF EMERGE ENERGY SERVICES LP UNDER THE LAWS OF THE STATE OF DELAWARE, OR (C) CAUSE EMERGE ENERGY SERVICES LP TO BE TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION OR OTHERWISE TO BE TAXED AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR TAXED). [•], THE GENERAL PARTNER OF EMERGE ENERGY SERVICES 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 EMERGE ENERGY SERVICES LP BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR 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.

Section 4.8 *Citizenship Certificates; Non-Citizen Assignees.*

(a) If any Group Member is or becomes subject to any federal, state or local law or regulation that the General Partner determines 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, the General Partner may request any Limited Partner to furnish to the General Partner, within 30 days after receipt of such request, an executed Citizenship Certification or such other information concerning his nationality, citizenship or other related status (or, if the Limited Partner is a nominee holding for the account of another Person, the nationality, citizenship or other related status of such Person) as the General Partner may request. If a Limited Partner fails to furnish to the General Partner within the aforementioned 30-day period such Citizenship Certification or other requested information or if upon receipt of such Citizenship Certification or other requested information the General Partner determines that a Limited Partner is not an Eligible Citizen, the Limited Partner 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 may require that the status of any such Limited Partner be changed to that of a Non-Citizen Assignee and, thereupon, the General Partner shall be substituted for such Non-Citizen Assignee as the Limited Partner in respect of the Non-Citizen Assignee's Limited Partner Interests.

(b) The General Partner shall, in exercising voting rights in respect of Limited Partner Interests held by it on behalf of Non-Citizen Assignees, distribute the votes in the same ratios as the votes of Partners (including the General Partner) in respect of Limited Partner Interests other than those of Non-Citizen Assignees are cast, either for, against or abstaining as to the matter.

(c) Upon dissolution of the Partnership, a Non-Citizen Assignee 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 Non-Citizen Assignee's share of any distribution in kind. Such payment and assignment shall be treated for Partnership purposes as a purchase by the Partnership from the Non-Citizen Assignee of his Limited Partner Interest (representing his right to receive his share of such distribution in kind).

(d) At any time after he can and does certify that he has become an Eligible Citizen, a Non-Citizen Assignee may, upon application to the General Partner, request that with respect to any Limited Partner Interests of such Non-Citizen Assignee not redeemed pursuant to Section 4.9, such Non-Citizen Assignee be admitted as a Limited Partner, and upon approval of the General Partner, such Non-Citizen Assignee shall be admitted as a Limited Partner and shall no longer constitute a Non-Citizen Assignee and the General Partner shall cease to be deemed to be the Limited Partner in respect of the Non-Citizen Assignee's Limited Partner Interests.

Section 4.9 *Redemption of Partnership Interests of Non-Citizen Assignees.*

(a) If at any time a Partner fails to furnish a Citizenship Certification or other information requested within the 30-day period specified in Section 4.8(a), or if upon receipt of such Citizenship Certification or other information the General Partner determines, with the advice of counsel, that a Partner is not an Eligible Citizen, the Partnership may, unless the Partner establishes to the satisfaction of the General Partner that such Partner is an Eligible Citizen or has transferred his Partnership Interests to a Person who is an Eligible Citizen and who furnishes a Citizenship Certification 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, 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 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 10% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

(iii) 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, the Partner or his duly authorized representative shall be entitled to receive the payment therefor.

(iv) After the redemption date, Redeemable Interests shall no longer constitute issued and Outstanding Partnership 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 other than an Eligible Citizen.

(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 Citizen. If the transferee fails to make such certification, such redemption shall be effected from the transferee on the original redemption date.

ARTICLE V
CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS

Section 5.1 *Contributions Prior to or in Connection with the Plan of Reorganization.*

(a) On the Effective Date all Partnership Interests previously issued and governed by the First Amended and Restated LPA were cancelled and 95% of the new Common Units were issued to certain holders of prepetition note claims in exchange for such claims, and 5% of the new Common Units were issued to certain holders of general unsecured claims in exchange for such claims.

(b) No Limited Partner will be required to make any additional Capital Contribution to the Partnership pursuant to this Agreement.

Section 5.2 *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 5.3 *Capital Accounts.*

(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(c) 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 to the Partnership with respect to such Partnership Interest, provided that the initial Capital Account of the initial holder of a Preferred Interest with respect to such Preferred Interests shall equal the Preferred Interests Stated Liquidation Preference irrespective of the amount paid, if any, by such holder for such Preferred Interest and (ii) all items of Partnership income and gain (including income and gain exempt from tax) computed in accordance with Section 5.3(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1, 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 Partnership Interest, provided that the Capital Account of a Preferred Interest Holder shall not be reduced by the amount of Preferred Interest Distributions it receives and (y) all items of Partnership deduction and loss computed in accordance with Section 5.3(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1.

(b) For purposes of computing the amount of any item of income, gain, loss or deduction that is to be allocated pursuant to Article VI and is to be reflected 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 5.3, 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 or is disregarded for U.S. federal income tax purposes and (y) any other partnership, limited liability

company, unincorporated business or other entity that is classified as a partnership or is disregarded 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) Except as otherwise provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code that may be made by the Partnership and, 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. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code 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.

(iv) Any income, gain or 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 Partnership's Carrying Value with respect to such property as of such date.

(v) An item of income of the Partnership that is described in Section 705(a)(1)(B) of the Code (with respect to items of income that are exempt from tax) shall be treated as an item of income for the purpose of this Section 5.3(b), and an item of expense of the Partnership that is described in Section 705(a)(2)(B) of the Code (with respect to expenditures that are not deductible and not chargeable to capital accounts), shall be treated as an item of deduction for the purpose of this Section 5.3(b).

(vi) In accordance with the requirements of Section 704(b) of the Code, any deductions for depreciation, cost recovery or amortization attributable to any Contributed Property shall be determined as if the adjusted basis of such property on the date it was acquired by the Partnership were equal to the Agreed Value of such property. Upon an adjustment pursuant to Section 5.3(d) to the Carrying Value of any Partnership property subject to depreciation, cost recovery or amortization, any further deductions for such depreciation, cost recovery or amortization attributable to such 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.

(vii) If the Partnership's adjusted basis in a depreciable or cost recovery property is reduced for U.S. federal income tax purposes pursuant to Section 50(c)(1) or 50(c)(3) of the Code, the amount of such reduction shall, solely for purposes hereof, be deemed to be an additional depreciation or cost recovery deduction in the taxable period such property is placed in service and shall be allocated among the Partners pursuant to Section 6.1. Any restoration of such basis pursuant to Section 50(c)(2) of the Code shall, to the extent possible, be allocated in the same manner to the Partners to whom such deemed deduction was allocated.

(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) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), upon an issuance of additional Partnership Interests for cash or Contributed Property, the issuance of Partnership Interests as consideration for the provision of services or the conversion of the General Partner's (and its Affiliates') Combined Interest to Common Units pursuant to Section 11.3(b), the Capital Account of each Partner and 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, and any such Unrealized Gain or Unrealized Loss shall be treated, for purposes of maintaining Capital Accounts, as if it had been recognized on an actual sale of each such property for an amount equal to its fair market value immediately prior to such issuance and had been allocated among the Partners at such time pursuant to Section 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated; provided, however, that in the event of an issuance of Partnership Interests for a de minimis amount of cash or Contributed Property, 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 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 determine that it is appropriate to first determine an aggregate value for the Partnership, based on the current trading price of the Common Units, taking fully into account the fair market value of the Partnership Interests of all Partners at such time, and then allocate such aggregate value among the individual properties of the Partnership (in such manner as it determines is appropriate).

(ii) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), immediately prior to any actual or deemed 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 Capital Accounts of all Partners and 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, and any such Unrealized Gain or Unrealized Loss shall be treated, for the purposes of maintaining Capital Accounts, as if it had been recognized on an actual sale of each such property immediately prior to such distribution for an amount equal to its fair market value, and had been allocated to the Partners, at such time, pursuant to Section 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. 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 an actual distribution that is not made pursuant to Section 12.4 or in the case of a deemed distribution, 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 Partnership Interests.*

(a) Subject to any approvals required by Preferred Interest Holders pursuant to Section 16.5, The Partnership may issue additional Partnership Interests and options, rights, warrants, appreciation rights and phantom or tracking interests relating to the Partnership Interests (including as described in Section 7.5(d)) 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 in its sole discretion, all without the approval of any Partners. The Partnership may reissue any Partnership Interests and options, rights, warrants, appreciation rights and phantom or tracking interests relating to Partnership Interests held by the Partnership in treasury 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 in its sole discretion, all without the approval of any Partners.

(b) Each additional Partnership Interest authorized to be issued by the Partnership pursuant to Section 5.4(a) may be issued in one or more classes, or one or more series of any such classes, with such 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 the holder 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 options, rights, warrants, appreciation rights and phantom or tracking interests relating to Partnership Interests pursuant to this Section 5.4 or Section 7.5(d), (ii) the conversion of the General Partner's (and its Affiliates') Combined Interest to 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.

Section 5.5 *Preemptive Right.* Except as provided in this Section 5.5 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 or the beneficial owners thereof or any of their respective 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 or such beneficial owners thereof or any of their respective Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates and such beneficial owners or any of their respective Affiliates equal to that which existed immediately prior to the issuance of such Partnership Interests.

Section 5.6 *Splits and Combinations.*

(a) Subject to Section 5.6(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 (other than Preferred Interests unless otherwise permitted pursuant to Section 16.5) 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 (including those based on the Preferred Interest Stated Liquidation Preference) or stated as a number of Units are proportionately adjusted retroactively to the beginning of the term of the Partnership.

(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 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, 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 5.4(d) and this Section 5.6(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 5.7 *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 Section 17-607 or 17-804 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 Partners among themselves, the Partnership's items of income, gain, loss and deduction (computed in accordance with Section 5.3(b)) for each taxable period shall be allocated among the Partners as provided herein below.

(a) **Net Income and Net Loss.** After giving effect to the special allocations set forth in Section 6.1(b), Net Income and Net Loss for each taxable period and all items of income, gain, loss and deduction taken into account in computing Net Income and Net Loss for such taxable period shall be allocated among the Partners such that, as of the end of such Fiscal Year, the Capital Account of each Partner shall equal (a) the amount which would be distributed to it, determined as if the Partnership were to (i) liquidate the assets of the Partnership for an amount equal to their Carrying Value and (ii) distribute the proceeds of such liquidation pursuant to Section 12.4 minus (b) the sum of (i) such Partner's share of Partnership Minimum Gain and such Partner's Partner Nonrecourse Debt Minimum Gain (determined pursuant to Treasury Regulations Section 1.704-2(i)(5)) and (ii) the amount, if any, which such Partner is obligated to contribute to the capital of the Partnership as of the last day of such Fiscal Year.

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

(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 and 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 or 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 Sections 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 and 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 or 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), Sections 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.** 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 (A) 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 (B) 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 Section 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 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 as adjusted 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 and 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 as so adjusted 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.

(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 as determined by the General Partner in accordance with any permissible method under Treasury Regulation Section 1.752-3(a)(3).

(ix) **Code Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code 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 (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or 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 and cost recovery deductions; (ii) make special allocations of income, gain, loss or deduction, including 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 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, and if such allocations are consistent with the principles of Section 704 of the Code.

(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 and deduction 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. Notwithstanding the preceding sentence, Required Allocations relating to (1) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partnership Minimum Gain and (2) Partner Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partner Nonrecourse Debt Minimum Gain. 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. Further, allocations pursuant to this Section 6.1(b)(xi)(A) shall be deferred with respect to allocations pursuant to clauses (1) and (2) of the second sentence of this Section 6.1(b)(xi)(A) to the extent the General Partner determines that such allocations are likely to be offset by subsequent Required Allocations.

(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.

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) 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(c) of the Code, and the Treasury Regulations promulgated under Section 704(b) and 704(c) 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 the General Partner shall apply the principles of Treasury Regulation Section 1.704-3(d) in all events.

(c) 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(c)-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.

(d) 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.

(e) 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.

(f) Each item of Partnership income, gain, loss and deduction shall, for U.S. federal income tax purposes, be determined for each taxable period and prorated on a monthly basis and shall be allocated to the Partners as of the opening of the National Securities Exchange on which Partnership Interests are listed or admitted to trading on the first Business Day of each month; provided, however, such items for the period beginning on the Effective Date and ending on the last day of the month in which the Effective Date occurs shall be allocated to the Partners who are issued Units as a result of the transactions contemplated by the Plan of Reorganization; 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 Partnership Interests are listed or admitted to trading on the first Business Day of the month in which such item is recognized for federal income tax purposes. The General Partner may revise, alter or otherwise modify such methods of allocation to the extent the General Partner determines necessary or appropriate to comply with Section 706 of the Code and the regulations or rulings promulgated thereunder or for the proper administration of the Partnership.

(g) 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.

Section 6.3 *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) Subject to Section 16.3, the Partnership will make distributions to Unitholders Pro Rata.

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

(e) The General Partner may treat taxes paid by the Partnership on behalf of, or amounts withheld with respect to, all or less than all of the Partners, as a distribution of cash to such Partners, as determined appropriate under the circumstances by the General Partner.

(f) 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, 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 (subject to Section 16.5, with respect to any securities senior to the Preferred 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; subject to Section 7.7(a), 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 Partnership cash;
- (vii) the selection and dismissal of employees (including employees having titles such as “chief executive officer,” “president,” “chief financial officer,” “chief operating officer,” “general counsel,” “vice president,” “secretary” and “treasurer”) and agents, outside attorneys, accountants, consultants and contractors 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 further 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) subject to the restrictions set forth in Section 2.4;
- (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 expenses 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 (subject to any prior approval that may be required under Section 4.7);
- (xiii) the purchase, sale or other acquisition or disposition of Partnership Interests (subject to Section 16.5 with respect to any securities senior to the Preferred Interests or Section 16.6(g)), or the issuance of options, rights, warrants, appreciation rights and phantom or tracking interests relating to Partnership Interests;
- (xiv) the undertaking of any action in connection with the Partnership’s participation in the management of any Group Member; and
- (xv) the entering into of agreements with any of its Affiliates 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 Limited Partners and each other Person who may acquire an interest in Partnership Interests or in the Partnership or is otherwise bound by this Agreement hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of this Agreement; (ii) agrees that the General Partner (on its own or on behalf of the Partnership) is authorized to execute, deliver and perform the agreements referred to in clause (i) of this sentence without any further act, approval or vote of the Partners or the other Persons who may acquire an interest in Partnership Interests or are otherwise bound by this Agreement; and (iii) 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 any provision of this Agreement (i) replaces, restricts or eliminates the duties (including fiduciary duties) that might otherwise, as a result of Delaware or other applicable law, be owed by the General Partner, the Board of Directors, any committee thereof or any other Indemnitee to the Partnership, the

Partners, any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement, or (ii) constitutes a waiver or consent by the Partnership, the Partners, any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement to any such replacement, restriction or elimination, such provision is hereby approved by the Partnership, all the Partners, each other Person who acquires an interest in a Partnership Interest and each other Person who is 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 holders 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 forced 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) Except as provided in this Section 7.5 and elsewhere in this Agreement, the General Partner shall not be compensated for its services as a general partner or managing member of any Group Member.

(b) 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 reasonably 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 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.8.

(c) 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 of such management fee or fees exceeds the amount of such fee or fees.

(d) The General Partner, without the approval of the other 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 options to purchase or rights, warrants or appreciation rights or phantom or tracking interests relating to 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, in each case for the benefit of employees and directors of the General Partner or any of 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 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, to fulfill options or awards under such plans, programs and practices) shall be reimbursed in accordance with Section 7.5(b). 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(d) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to Section 11.1 or 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 (i) agrees that its sole business will be to act as a general partner or managing member, as the case may be, of the Partnership and any other partnership or limited liability company of which the Partnership is, directly or indirectly, a partner or member and to undertake activities that are ancillary or related thereto (including being a limited partner in the Partnership) and (ii) shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (A) 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, (B) the acquiring, owning or disposing of debt securities or equity interests in any Group Member, or (C) the guarantee of, and mortgage, pledge or encumbrance of any or all of its assets in connection with, any indebtedness of any Affiliate of the General Partner.

(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, and none of the same shall constitute a breach of this Agreement or any duty otherwise existing at law, in equity or otherwise, to any Group Member, any Partner or any other Person bound by this Agreement. None of any Group Member, any Partner or any other Person shall have any rights by virtue of this Agreement, any Group Member Agreement, or the partnership relationship established hereby in any business ventures of any Unrestricted Person.

(c) Subject to the terms of Sections 7.6(a) and (b), 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, all Partners, and all other Persons bound by this Agreement, (ii) it shall not be a breach of any fiduciary duty or any other obligation of any type whatsoever of the General Partner or any other Unrestricted Person for the Unrestricted Persons (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership or any other Group Member and (iii) the Unrestricted Persons shall have no obligation hereunder or as a result of any duty otherwise existing at law, in equity or otherwise, to present business opportunities to the Partnership or any other Group Member. 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 any Group Member 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, any Limited Partner, any other Person who acquires a Partnership Interest or any other Person who is 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; 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.

(d) The General Partner and each of its Affiliates may acquire Partnership Interests in addition to any acquired on the Effective Date and, except as otherwise expressly provided in this Agreement, shall

be entitled to exercise, at their option, all rights relating to all Partnership Interests acquired by them. The term “Affiliates” when used in this Section 7.6(d) with respect to the General Partner shall not include any Group Member.

(e) Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall limit or otherwise affect any separate contractual obligations outside of this Agreement of any Person (including any Unrestricted Person) to the Partnership or any of its Affiliates.

Section 7.7 Loans from the General Partner; Loans or Contributions from the Partnership or Group Members.

(a) The General Partner or any of its Affiliates may, but shall be under no obligation to, lend to any Group Member, and any Group Member may borrow from the General Partner or any of its Affiliates, funds needed or desired by the Group Member for such periods of time and in such amounts as the General Partner may determine; provided, however, that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party or impose terms materially less favorable to the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arm’s length basis (without reference to the lending party’s financial abilities or guarantees), all as determined by the General Partner. The borrowing party shall reimburse the lending party for any costs (other than any additional interest costs) incurred by the lending party in connection with the borrowing of such funds. For purposes of this Section 7.7(a) and Section 7.7(b), the term “Group Member” shall include any Affiliate of a Group Member that is Controlled by the Group Member.

(b) The Partnership may lend or contribute to any Group Member, and any Group Member may borrow from the Partnership, funds on terms and conditions determined by the General Partner.

(c) No borrowing by any Group Member or the approval thereof by the General Partner shall be deemed to constitute a breach of any duty, expressed or implied, of the General Partner or its Affiliates to the Partnership or the Partners by reason of the fact that the purpose or effect of such borrowing is directly or indirectly to enable distributions to the General Partner or its Affiliates (including in their capacities, if applicable, as Limited Partners).

Section 7.8 Indemnification.

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Partnership on an after tax basis 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 on behalf of or for the benefit of the Partnership; provided, that the Indemnitee shall not be indemnified and held harmless pursuant to this Agreement 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 fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee’s conduct was unlawful. Any indemnification pursuant to this Section 7.8 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 7.8(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 7.8, 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 7.8.

(c) The indemnification provided by this Section 7.8 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 (including any capacity under the Plan of Reorganization), 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 or any other Group Member's activities or such Person's activities on behalf of the Partnership or any other Group Member, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement. In addition, the Partnership may enter into additional indemnification agreements with any Indemnitee.

(e) For purposes of this Section 7.8, 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 in such Indemnitee's capacity as a fiduciary or administrator of an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 7.8(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 7.8 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 7.8 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 7.8 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 7.8 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.

(j) If a claim for indemnification (following the final disposition of the action, suit or proceeding for which indemnification is being sought) or advancement of expenses under this Section 7.8 is not paid in full within thirty (30) days after a written claim therefor by any Indemnitee has been received by the Partnership, such Indemnitee may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expenses of prosecuting such claim, including reasonable attorneys' fees. In any such action the Partnership shall have the burden of proving that such Indemnitee is not entitled to the requested indemnification or advancement of expenses under applicable law.

(k) This Section 7.8 shall not limit the right of the Partnership, to the extent and in the manner permitted by law, to indemnify and to advance expenses to, and purchase and maintain insurance on behalf of, Persons other than Indemnitees.

Section 7.9 *Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, to the fullest extent permitted by law, no Indemnitee shall be liable for monetary damages to the Partnership, the Partners, any other Persons who have acquired interests in the Partnership Interests or any other Person who is bound by this Agreement, for losses sustained or liabilities incurred as a result of any act or omission of an Indemnitee, including any breach of contract (including breach of this Agreement) or any breach of duties (including breach of fiduciary duties) whether arising hereunder, at law, in equity or otherwise unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful. To the fullest extent permitted by law, the Limited Partners, any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement waives any and all rights to claim punitive damages or damages based upon the Federal, State or other income taxes paid or payable by any such Limited Partner or other Person.

(b) Subject to its obligations and duties as General Partner set forth in Section 7.1(a), 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 neither the General Partner nor any other Indemnitee shall be responsible for any misconduct, negligence or wrong doing on the part of any such agent appointed by the General Partner or any such Indemnitee in good faith.

(c) To the extent that, at law or in equity, the General Partner and any other Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Partnership, the Partners or any other Person who is 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, any Partner or any other Person who is bound by this Agreement for its good faith reliance on the provisions of this Agreement.

(d) Any amendment, modification or repeal of this Section 7.9 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 7.9 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 7.10 *Resolution of Conflicts of Interest; Standards of Conduct and Modification of Duties.*

(a) Unless otherwise expressly provided in this Agreement or any Group Member Agreement, whenever a potential conflict of interest exists or arises between the General Partner (in its individual capacity or in its capacity as the General Partner or a Partner) or any of its Affiliates or Associates or any Indemnitee, on the one hand, and the Partnership, any Group Member or any Partner, on the other, any resolution or course of action by the General Partner or any of its Affiliates or Associates or any Indemnitee in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement, of any Group Member Agreement, of any agreement contemplated herein or therein, or of any duty hereunder or existing at law, in equity or otherwise, if the resolution or course of action in respect of such conflict of interest is (i) approved by Special Approval, (ii) approved by the vote of holders of a majority of the Common Units (excluding Common Units owned by the General Partner and its Affiliates), (iii) determined by the Board of Directors to be on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iv) determined by the Board of Directors to be fair and reasonable to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership). The General Partner shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval or Unitholder approval of such resolution, and the General Partner may also adopt a resolution or course of action that has not received Special Approval or Unitholder approval. Notwithstanding any other provision of this Agreement, any

Group Member Agreement or applicable law, whenever the General Partner makes a determination to refer any potential conflict of interest to the Conflicts Committee for Special Approval or seek Unitholder approval, then the General Partner shall be entitled, to the fullest extent permitted by law, to make such determination free of any duty or obligation whatsoever to the Partnership or any Partner, and the General Partner shall not, to the fullest extent permitted by law, be required to act in good faith or pursuant to any other 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, and the General Partner in making such determination shall be permitted to do so in its sole discretion. If Special Approval is sought or obtained, then it shall be conclusively deemed that, in making its decision, the Conflicts Committee acted in good faith, and if neither Special Approval nor Unitholder approval is sought or obtained and the Board of Directors determines that the resolution or course of action taken with respect to a conflict of interest satisfies either of the standards set forth in clauses (iii) or (iv) above, then it shall be presumed that, in making its decision, the Board of Directors acted in good faith, and in any proceeding brought by any Partner or by or on behalf of such Partner or any other Partner or the Partnership challenging such approval, the Person bringing or prosecuting such proceeding shall have the burden of overcoming such presumption. Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or equity, the existence of the conflicts of interest described in the Registration Statement and any actions of the General Partner or any of its Affiliates or Associates or any other Indemnitee taken in connection therewith are hereby approved by all Partners and shall not constitute a breach of this Agreement or of any duty hereunder or existing at law, in equity or otherwise.

(b) Whenever the General Partner, the Board of Directors or any committee thereof (including the Conflicts Committee), makes a determination or takes or declines to take any other action, or any Affiliate, Associate or Indemnitee of the General Partner causes the General Partner to do so, in its capacity as the general partner of the Partnership as opposed to in its individual capacity, whether under this Agreement or any other agreement contemplated hereby or otherwise, then, unless another express standard is provided for in this Agreement, the General Partner, the Board of Directors, such committee, or such Affiliate, Associate or Indemnitee causing the General Partner to do so, shall make such determination or take or decline to take such other action in good faith and shall not be subject to any other or different standards (including fiduciary standards) 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. A determination or other action or inaction will conclusively be deemed to be in “good faith” for all purposes of this Agreement, if the Person or Persons making such determination or taking or declining to take such other action subjectively believe that the determination or other action or inaction is in the best interests of the Partnership Group; provided, that if the Board of Directors is making a determination or taking or declining to take an action pursuant to clause (iii) or clause (iv) of the first sentence of Section 7.10(a), then in lieu thereof, such determination or other action or inaction will conclusively be deemed to be in “good faith” for all purposes of this Agreement if the members of the Board of Directors making such determination or taking or declining to take such other action subjectively believe that the determination or other action or inaction meets the standard set forth in clause (iii) or clause (iv) of the first sentence of Section 7.10(a), as applicable; provided further, that if the Board of Directors is making a determination that a director satisfies the eligibility requirements to be a member of a Conflicts Committee, then in lieu thereof, such determination will conclusively be deemed to be in “good faith” for all purposes of this Agreement if the members of the Board of Directors making such determination subjectively believe that the director satisfies the eligibility requirements to be a member of the Conflicts Committee. In any proceeding brought by the Partnership, any Partner or any Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement challenging such action, determination or inaction, the Person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or inaction was not in good faith.

(c) Whenever the General Partner (including the Board of Directors or any committee thereof) makes a determination or takes or declines to take any other action, or any of its Affiliates or Associates or any Indemnitee causes it to do so, in its individual capacity as opposed to in its capacity as the general partner of the Partnership, whether under this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise, then the General Partner, the Board of Directors or any committee thereof, or such Affiliates or Associates or any Indemnitee causing it to do so, are entitled, to the fullest extent permitted by law, to make such determination or to take or decline to take such other action free of any duty (including any fiduciary or other duty) existing at law, in equity or otherwise or obligation whatsoever to the Partnership, any Partner, any other Person who acquires an interest in a Partnership Interest and any other Person bound by this Agreement, and the General

Partner, the Board of Directors or any committee thereof, or such Affiliates or Associates or any Indemnitee 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 other 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. By way of illustration and not of limitation, whenever the phrases, “at the option of the General Partner,” “in its sole discretion” or some variation of those phrases, are used in this Agreement, it indicates that the General Partner is acting in its individual capacity. For the avoidance of doubt, whenever the General Partner votes or transfers its Partnership Interests, or refrains from voting or transferring its Partnership Interests, or otherwise acts in its capacity as a Limited Partner or holder of Partnership Interests, it shall be acting in its individual capacity.

(d) The General Partner’s organizational documents may provide that determinations to take or decline to take any action in its individual, rather than representative, capacity may or shall be determined by its members, if the General Partner is a limited liability company, stockholders, if the General Partner is a corporation, or the members or stockholders of the General Partner’s general partner, if the General Partner is a limited partnership.

(e) Notwithstanding anything to the contrary in this Agreement, the General Partner 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 other than in the ordinary course of business 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 shall be in its sole discretion.

(f) Notwithstanding anything to the contrary contained in this Agreement or otherwise applicable provision of law or in equity, except as expressly set forth in this Agreement, to the fullest extent permitted by law, none of the General Partner, the Board of Directors, any committee thereof or any other Indemnitee shall have any duties or liabilities, including fiduciary duties, to the Partnership, any Partner or any other Person bound by this Agreement, and the provisions of this Agreement, to the extent that they restrict, eliminate or otherwise modify the duties and liabilities, including fiduciary duties, of the General Partner or any other Indemnitee otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of the General Partner or such other Indemnitee.

(g) The Partners, each Person who acquires an interest in a Partnership Interest and each other Person who is 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 7.10.

(h) The Limited Partners expressly acknowledge and agree that none of the General Partner, the Board of Directors or any committee thereof is under any obligation to consider the separate interests of the Limited Partners (including, without limitation, the tax consequences to Limited Partners) in deciding whether to cause the Partnership to take (or decline to take) any actions, and that none of the General Partner or any other Indemnitee shall be liable to the Limited Partners for monetary damages or equitable relief or losses sustained, liabilities incurred or benefits not derived by Limited Partners in connection with such decisions.

Section 7.11 *Other Matters Concerning the General Partner.*

(a) The General Partner, the Board of Directors (or any committee thereof) and any other Indemnitee may rely upon, and shall be protected from liability to the Partnership, any Partner, any Person who acquires an interest in a Partnership Interest, and any other Person bound by this Agreement 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, the Board of Directors (or any committee thereof) and any other Indemnitee 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 or such Indemnitee 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 7.12 *Purchase or Sale of Partnership Interests.* The General Partner may cause the Partnership to purchase or otherwise acquire Partnership Interests. Notwithstanding any other provision of this Agreement or otherwise applicable provision of law or equity, any Partnership Interests or options, rights, warrants, appreciation rights or phantom or tracking interests relating to Partnership Interests that are purchased or otherwise acquired by the Partnership or any Group Member may, in the sole discretion of the General Partner, be canceled or held by the Partnership in treasury and, if so held in treasury, shall no longer be deemed to be Outstanding for any purpose. For the avoidance of doubt, Partnership Interests or options, rights, warrants, appreciation rights or phantom or tracking interests relating to Partnership Interests that are canceled or held by the Partnership in treasury (i) shall not be allocated Net Income (Loss) pursuant to Article VI, (ii) shall not be entitled to distributions pursuant to Article VI, and (iii) shall neither be entitled to vote nor be counted for quorum purposes.

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.

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 soon as practicable, but in no event later than 105 days after the close of each fiscal year of the Partnership, 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.

(b) As soon as practicable, but in no event later than 50 days after the close of each Quarter 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 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 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.

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(f) 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 Tax Matters Partner (as defined in the Code), or the "partnership representative" of the Partnership for purposes of Section 6223 of the Code (the "Tax Matters Representative") and each Partner hereby approves of such designation, agrees and acknowledges the Tax Matters Partner or Tax Matters Representative, as applicable, is authorized and required to represent the Partnership (at the Partnership's expense) as it may deem appropriate in

carrying out its duties as the Tax Matters Partner or Tax Matters Representative, as applicable. The Tax Matters Partner or Tax Matters Representative, as applicable, is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs at the Partnership level 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 or Tax Matters Representative, as applicable, and to do or refrain from doing any or all things reasonably required by the Tax Matters Partner or Tax Matters Representative, as applicable, to conduct such proceedings. The Tax Matters Representative shall be entitled to cause the Partnership to elect the application of Section 6226 of the Code with respect to any imputed underpayment or make any other decision or election, or take any action pursuant to Sections 6221 through 6235 and 6241 of the Code. The Partnership shall reimburse the Tax Matters Representative for all reasonable out-of-pocket expenses incurred by the Tax Matters Representative, including reasonable fees of any professional accountants or attorneys, in carrying out its duties as the Tax Matters Representative, as applicable.

Section 9.4 *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 and 1446 of the Code or established by 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 6.3, 12.4(c), or 16.3 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 in accordance with this Section 10.1 or the issuance of any Limited Partner Interests in accordance herewith, and except as provided in Sections 4.8 and 7.12, 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, acknowledgements 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 a Non-Citizen Assignee shall be determined in accordance with Section 4.8.

(b) The name and mailing address of each Limited Partner 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 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 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 is hereby authorized to and 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 or appropriate 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 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 Section 11.1(a)(iv), (v) or (vi)(A), (B), (C) or (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 Effective Date and ending at 11:59 pm, prevailing Central Time, on [•], 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 at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates) 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 [•], 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)(i), the holders of a Unit Majority, may, prior to the effective date of such withdrawal, elect a successor General Partner who shall be admitted as a general partner of the Partnership upon the effective date of such withdrawal. 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 Partnership is continued without dissolution 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 Partners holding a majority of the Outstanding Common Units (including Common Units held by the General Partner and its Affiliates). 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 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 11.2 (or if the Partnership is continued without dissolution 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 Partnership is continued without dissolution pursuant to Section 12.2, prior to the date 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.

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, 11.2 or 12.2, the Partnership shall not be dissolved and such successor General Partner is hereby authorized to, and shall, continue the business of the Partnership. Subject to Section 12.2, the Partnership shall dissolve, and 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 pursuant to this Agreement 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 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 (iii) and the failure of the Partners to select a successor to such Departing General Partner pursuant to Section 11.1 or 11.2, then within 90 days thereafter, or (b) an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), (v) or (vi), then, to the maximum extent permitted by law, within 180 days thereafter, the holders of 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, effective as of the date of the Event of Withdrawal, as the successor General Partner a Person approved by the holders of 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 the holders 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, the General Partner shall select one or more Persons to act as Liquidator (which may be the General Partner). 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 at least a majority of the Outstanding Common Units voting as a single class. 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 at least a majority of the Outstanding Common Units. 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 at least a majority of the Outstanding Common Units. 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 discharge liabilities as provided in Section 12.4(b) shall be distributed to the Partners in accordance with Section 6.3 and 16.4, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.4(c)) 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(b)(2)(ii)(g)), and, to the extent reasonably practicable, such distribution shall be made by the end of such taxable period (or, if later, within 90 days after said date of such occurrence), provided, that any Preferred Interest Unpaid Cash Distribution shall be paid prior to the making of any other distributions pursuant to this Section 12.4(c).

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 winding up 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) the 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 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 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 5.6 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 (other than Preferred Interest 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 its 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 options, rights, warrants, appreciation rights or phantom or tracking interests relating to an equity interest in the Partnership pursuant to Section 5.4;

(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;

(k) a merger, conveyance or conversion pursuant to Section 14.3(d) or an amendment effected in accordance with Section 14.5; 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 and, in declining to propose or approve an amendment, to the fullest extent permitted by law shall not be required to act in good faith or pursuant to any other 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. An amendment shall be effective upon its approval by the General Partner and, except as provided by Section 13.1 or 13.3, the holders of a Unit Majority, unless a greater or different percentage is required under this Agreement. Each proposed amendment that requires the approval of Partners holding a specified Percentage Interest 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 Partners holding the specified Percentage Interest or call a meeting of the Partners to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments. The General Partner shall be deemed to have notified all Record Holders as required by this Section 13.2 if it has either (i) 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 (ii) made such amendment available on any publicly available website maintained by the Partnership.

Section 13.3 *Amendment Requirements.*

(a) Notwithstanding the provisions of Sections 13.1 and 13.2, no provision of this Agreement that requires a vote or approval of Partners (or a subset of the 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, in the case of any provision of this Agreement other than Section 11.2 or 13.4, reducing such percentage unless such amendment is approved by the written consent or the affirmative vote of Partners whose aggregate Percentage Interest constitutes not less than the voting requirement sought to be reduced.

(b) Notwithstanding the provisions of Sections 13.1 and 13.2, no amendment to this Agreement may (i) enlarge the obligations of any 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 in its sole discretion.

(c) Except as provided in Section 14.3 or 13.1 (this Section 13.3(c) being subject to the General Partner's authority to approve an amendment to this Agreement without the approval of any other Partners (as contemplated by 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 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 Partners.

Section 13.4 *Special Meetings.* All acts of Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the 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 Partners wish to call a special meeting and indicating the general or specific purposes for which the special meeting is to be called. Within 60 days after receipt of such a call from 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 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 mailing of notice of the meeting. 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 Partnership Interests 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 Partners entitled to notice of or to vote at a meeting of the 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) in the event that a meeting is to be held for a vote or approvals, the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Partnership Interests 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 to be sought without a meeting, the date by which 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 Partners entitled to notice of or to vote at a meeting of the 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 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.* 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 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 Partner at a meeting shall constitute a waiver of notice of the meeting, except (i) when the 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 (ii) 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 the 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 Partners holding 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 Partners holding Partnership Interests that in the aggregate represent at least such greater or different percentage 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 Partners holding the required Percentage Interest specified in this Agreement. In the absence of a quorum any meeting of Partners may be adjourned from time to time by the affirmative vote of Partners with at least a majority, by Percentage Interest, of the Partnership Interests entitled to vote at such meeting (including Partnership Interests deemed owned by the General Partner) represented either in person or by proxy, but no other business may be transacted, except as provided in Section 13.7.

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 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 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 Partners may be taken without a meeting, without a vote and without prior notice, if consented to in writing or by electronic transmission by Partners owning Partnership Interests representing not less than the minimum Percentage Interest that would be necessary to authorize or take such action at a meeting at which all the Partners entitled to vote thereon were present and voted (unless such provision conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which Partnership Interests 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 Partners who have not consented. The General Partner may specify that any written ballot submitted to 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 Partnership Interests held by the Partners, the Partnership shall be deemed to have failed to receive a ballot for the Partnership Interests that were not voted. If approval of the taking of any action by the Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals or approvals transmitted by electronic transmission 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 Partners in connection with a matter approved by the requisite percentage of Partnership Interests acting by written consent or consent by electronic transmission without a meeting.

Section 13.12 *Right to Vote and Related Matters.*

(a) Only those Record Holders of Partnership Interests on the Record Date set pursuant to Section 13.6 (and also subject to the limitations contained in the definition of “Outstanding”) shall be entitled to notice of, and to vote at, a meeting of Partners or to act with respect to matters as to which the Partners 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 Partners shall be deemed to be references to the votes or acts of the Record Holders of Partnership Interests.

(b) Only those Record Holders of the Outstanding Preferred Interests on the Record Date set pursuant to Section 13.6 (and subject to the limitations set forth in Section 16.5) shall be entitled to notice of, and to vote at, a meeting of Limited Partners holding Preferred Interests or to act with respect to matters as to which the holders of the Outstanding Preferred Interests 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 Preferred Interests shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Preferred Interests.

(c) With respect to Partnership Interests 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 Partnership Interests are registered, such other Person shall, in exercising the voting rights in respect of such Partnership Interests on any matter, and unless the arrangement between such Persons provides otherwise, vote such Partnership Interests 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.

ARTICLE XIV MERGER, CONSOLIDATION OR CONVERSION

Section 14.1 *Authority.* The Partnership may merge or consolidate with or into one or more corporations, limited liability companies, statutory trusts, business trusts, associations, real estate investment trusts, common law trusts or unincorporated businesses or entities, including a partnership (whether general or limited (including a limited liability partnership or a limited liability limited partnership)) (each an “Other Entity”) or convert into any such Other Entity, whether such Other Entity is formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written plan of merger or consolidation (“Merger Agreement”) or a written plan of conversion (“Plan of Conversion”), as the case may be, in accordance with this Article XIV. In the event that, at the time of any merger, consolidation or conversion of the Partnership pursuant to this Article XIV, any Partnership Interests are then directly or indirectly held by any entity that is taxable as a corporation for U.S. federal income tax purposes and listed in Exhibit C (each a “Blocker Corporation”), and provided that any such Blocker Corporation certifies to the Partnership that it has not held any other property and has not conducted any other business other than its ownership of Partnership Interests, such merger, consolidation or conversion shall be structured in the most tax-advantageous manner reasonably available, including effecting such tax-free mergers, contributions to capital and other transactions (including transactions in which a Blocker Corporation is merged or combined with or otherwise contributed to the Surviving Business Entity or converted entity in connection with such transaction) as are reasonable and will enable the holders of equity interests in such Blocker Corporations to receive, and hold, in exchange therefor, equity securities in the Surviving Business Entity or converted entity, as applicable, in tax-free transactions.

Section 14.2 *Procedure for Merger, Consolidation or Conversion.*

(a) Merger, consolidation or conversion 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 shall have no duty or obligation to consent to any merger, consolidation or conversion of the Partnership and may decline to do so free of any fiduciary duty or obligation whatsoever to the Partnership or any Partner and, in declining to consent to a merger, consolidation or conversion, shall not be required to act in good faith or pursuant to any other 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.

(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 names and jurisdictions of formation or organization and type of entity 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 general or limited partner 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, then the cash, property or general or limited partner interests, rights, securities or obligations of any 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 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 or certificate of trust, declaration of trust, certificate or agreement of limited partnership, certificate of formation or limited liability company agreement 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.
- (c) If the General Partner shall determine to consent to the conversion, the General Partner shall approve the Plan of Conversion, which shall set forth:
- (i) the name of the converting entity and the converted entity;
 - (ii) a statement that the Partnership is continuing its existence in the organizational form of the converted entity;
 - (iii) a statement as to the type of entity that the converted entity is to be and the state or country under the laws of which the converted entity or an Other Entity, or for the cancellation of such equity securities;
 - (iv) the manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the converted entity or another Person;
 - (v) in an attachment or exhibit, the certificate of limited partnership of the Partnership;

(vi) in an attachment or exhibit, the certificate of limited partnership, articles of incorporation or other organizational documents of the converted entity;

(vii) the effective time of the conversion, which may be the date of the filing of the certificate of conversion or a later date specified in or determinable in accordance with the Plan of Conversion (provided, that if the effective time of the conversion is to be later than the date of the filing of such certificate of conversion, the effective time shall be fixed at a date or time certain at or prior to the time of the filing of such certificate of conversion and stated therein); and

(viii) such other provisions with respect to the proposed conversion that the General Partner determines to be necessary or appropriate.

Section 14.3 *Approval by Limited Partners.*

(a) Except as provided in Section 14.3(d), the General Partner, upon its approval of the Merger Agreement or the Plan of Conversion, as the case may be, shall direct that the Merger Agreement or the Plan of Conversion and the merger, consolidation or conversion contemplated thereby, as applicable, be submitted to a vote of Limited Partners, whether at a special meeting or by written consent or consent by electronic transmission, in any case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement or the Plan of Conversion, as the case may be, shall be included in or enclosed with the notice of a special meeting or the solicitation of written consent or consent by electronic transmission.

(b) Except as provided in Section 14.3(d) or 14.3(e), the Merger Agreement or the Plan of Conversion, as the case may be, shall be approved upon receiving the affirmative vote or consent of a Unit Majority unless the Merger Agreement or the Plan of Conversion, as the case may be, 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 Partners holding a greater Percentage Interest or the vote or consent of a specified percentage of any class of Partners, in which case such greater Percentage Interest or percentage vote or consent shall be required for approval of the Merger Agreement or the Plan of Conversion, as the case may be.

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

(d) Notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without 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 conversion, 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 conversion, 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 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 conversion, merger or conveyance is to effect a mere change in the legal form of the Partnership into another limited liability entity and (iii) the governing instruments of the new entity provide the 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 Partner approval, to merge or consolidate the Partnership with or into an Other 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 or 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 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 or Certificate of Conversion.* Upon the required approval by the General Partner and the Partners of a Merger Agreement or a Plan of Conversion, as the case may be, a certificate of merger or certificate of conversion, as applicable, 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, Consolidation or Conversion.*

(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) At the effective time of the certificate of conversion, for all purposes of the laws of the State of Delaware:

(i) the Partnership shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(ii) all rights, title, and interests to all real estate and other property owned by the Partnership shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(iii) all liabilities and obligations of the Partnership shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(iv) all rights of creditors or other parties with respect to or against the prior interest holders or other owners of the Partnership in their capacities as such in existence as of the effective time of the

conversion will continue in existence as to those liabilities and obligations and are enforceable against the converted entity by such creditors and obligees to the same extent as if the liabilities and obligations had originally been incurred or contracted by the converted entity; and

(v) the Partnership Interests that are to be converted into partnership interests, shares, evidences of ownership, or other securities in the converted entity as provided in the Plan of Conversion shall be so converted, and Partners shall be entitled only to the rights provided in the Plan of Conversion.

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 80% of the total Limited Partner Interests of any class then Outstanding (other than the Preferred Interests), 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, the repurchase right described in this Article XV shall not apply to the Preferred Interests.

(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 published for a period of at least three consecutive days in at least two daily newspapers of general circulation printed in the English language and circulated in the Borough of Manhattan, New York. 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 III, IV, V, VI, and XII) 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 III, IV, V, VI, and XII).

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

ARTICLE XVI
PREFERRED INTERESTS

Section 16.1 *Designations.* A series of Preferred Interests to be known as the “Preferred Interests” is hereby designated and created. Each Preferred Interest shall be identical in all respects to every other Preferred Interest. Each Preferred Interest represents a perpetual equity interest in the Partnership and, except as set forth in Section 16.4 and Section 16.6, shall not give rise to a claim by the Partnership or a Preferred Interest Holder thereof for redemption thereof at any particular date.

Section 16.2 *Preferred Interests.*

(a) The authorized number of Preferred Interests shall be unlimited. Any Preferred Interests that are redeemed, purchased or otherwise acquired by the Partnership shall be cancelled.

(b) The Preferred Interests shall be represented by a single certificate registered in the name of the Depository or its nominee, and no Preferred Interest Holder shall be entitled to receive a certificate evidencing the Preferred Interests, unless otherwise required by law or the Depository gives notice of its intention to resign or is no longer eligible to act as such with respect to the Preferred Interests and the partnership shall not have selected a substitute Depository within 60 calendar days thereafter. So long as the Depository shall have been appointed and is serving with respect to such series of Preferred Interests, payments and communications made by the Partnership shall be made by making payments to, and communicating with, the Depository.

Section 16.3 *Distributions.*

(a) Distributions on each Preferred Interest shall be cumulative and shall accumulate at the Dividend Rate in each Preferred Interest Distribution Period from and including the Preferred Interest Original Issue Date or the first day of the following Preferred Interest Distribution Period, as the case may be, and including the last day of such Preferred Interest Distribution Period, until such time as the Partnership pays the Preferred Interest Distribution or redeems all of the Outstanding Preferred Interests in accordance with Section 16.6, whether or not the Preferred Interest Distribution has been declared. Preferred Interest Holders shall be entitled to receive the Preferred Interest Distribution from time to time at the Dividend Rate per Preferred Interest, when, as and if declared by the General Partner out of any assets of the Partnership legally available for the payment of distributions, prior to any other distributions made in respect of any other Partnership Interest pursuant to Section 6.3. Distributions, to the extent declared by the General Partner to be paid by the Partnership in accordance with this Section 16.3, shall be payable quarterly for each Preferred Interest Distribution Period on each Preferred Interest Payment Date. If any Preferred Interest Payment Date would otherwise occur on a date that is not a Business Day, declared Preferred Interest Distributions shall be paid on the immediately succeeding Business Day without the accumulation of additional distributions. Preferred Interest Distributions for any Preferred Interest Distribution Period shall be payable based on a 360-day year consisting of twelve 30-day periods. [All Preferred Interest Distributions payable by the Partnership pursuant to this Section 16.3 shall be payable without regard to income of the Partnership and shall be treated for federal income tax purposes as guaranteed payments for the use of capital under Section 707(c) of the Code.]

(b) Not later than 5:00 p.m., New York City time, on each Preferred Interest Payment Date, the Partnership shall pay those Preferred Interest Distributions, if any, that shall have been declared by the General Partner to Preferred Interest Holders on the Preferred Interest Distribution Record Date. So long as the Preferred Interests are held of record by the Depository or a nominee of the Depository, declared Preferred Interest Distributions shall be paid to the Depository in same-day funds on each Preferred Interest Payment Date or other distribution payment date in the case of payments for Preferred Interest Distributions in Preferred Interest Distribution Arrears.

(c) If the Partnership fails to pay in full a Preferred Interest Distribution on any Preferred Interest Payment Date, then from and after the first date of such failure and continuing until such failure is cured by payment in full in cash of all such arrearages, the amount of such unpaid distributions unless and until paid will accumulate at the Default Rate from and including the first day of the Preferred Interest Distribution Period immediately following the Preferred Interest Distribution Period in respect of which such payment is due until paid in full (such unpaid and accrued distributions, the “Preferred Interest Unpaid Cash Distribution”). Payments in respect of the Preferred Interest Unpaid Cash Distribution may be declared by the General Partner and paid on any date fixed by the General Partner, whether or not a Preferred Interest Payment Date, to Preferred Interest Holders on the Preferred Interest Record Date for such payment, which may not be less than 10 Business Days before such payment date.

Section 16.4 *Liquidation Rights.*

(a) Upon the occurrence of any Liquidation Event, Preferred Interest Holders shall be entitled to receive out of the assets of the Partnership or proceeds thereof legally available for distribution to the Partners, (i) after satisfaction of all liabilities, if any, to creditors of the Partnership, and (ii) before any distribution of such assets or proceeds is made to or set aside for the holders of Partnership Interests, a liquidating distribution or payment in full redemption of the Preferred Interests in an amount equal to the Preferred Interest Liquidation Preference. Preferred Interest Holders shall not be entitled to any other amounts from the Partnership, in their capacities as Preferred Interest Holders after they have received the Preferred Interest Liquidation Preference. The payment of the Preferred Interest Liquidation Preference shall be a payment in redemption of the Preferred Interests, such that, from and after payment of the full Preferred Interest Liquidation Preference, any Preferred Interests shall thereafter be cancelled and no longer be Outstanding.

(b) If, in the event of any distribution or payment described in Section 16.4(a) above where the Partnership’s assets available for distribution to holders of the Preferred Interests are insufficient to satisfy the Preferred Interest Liquidation Preference, the Partnership’s then remaining assets or proceeds thereof legally available for distribution to unitholders of the Partnership shall be distributed among the holders of the Preferred Interests ratably on the basis of their relative aggregate Liquidation Preferences. To the extent that the Preferred Interest Holders receive a partial payment of their Preferred Interest Liquidation Preference such partial payment shall reduce Preferred Interest Liquidation Preference of their Preferred Interests but only to the extent of such amount paid.

(c) After payment of the Preferred Interest Liquidation Preference to the holders of the Preferred Interests, the Partnership’s remaining assets and funds shall be distributed among the holders of the Partnership Interests then outstanding according to their respective rights and preferences.

Section 16.5 *Voting Rights.*

(a) Notwithstanding anything to the contrary in this Agreement, the Preferred Interests shall have no voting, consent or approval rights except as set forth in this Section 16.5 or as otherwise required by the Delaware Act.

(b) Notwithstanding anything to the contrary in this Agreement,

(i) without the affirmative vote or consent of the holders of at least two-thirds of the Outstanding Preferred Interests, voting as a separate class, the General Partner shall not adopt any amendment to this Agreement that the General Partner determines would have a material adverse effect on the powers, preferences, duties, or special rights of the Preferred Interests; provided, however, that subject to Section 16.5(b)(ii), the issuance of additional Partnership Interests (and any amendment to this Agreement in connection therewith) shall not be deemed to constitute such a material adverse effect for purposes of this Section 16.4(b)(i); and

(ii) without the affirmative vote or consent of the holders of at least two-thirds of the Outstanding Preferred Interests, voting as a class, the Partnership shall not (x) create or issue any new Preferred

Interests, (y) create or issue any securities senior in nature to the Preferred Interests or (z) declare or pay any distribution to holders of Partnership Interests pursuant to Section 6.3.

(c) For any matter described in this Section 16.5 in which the Preferred Interest Holders are entitled to vote as a class, such Preferred Interest Holders shall be entitled to one vote per Preferred Interest. Any Preferred Interests held by the Partnership or any of its Subsidiaries or their controlled Affiliates shall not be entitled to vote.

Section 16.6 *Optional Redemption.*

(a) The Partnership shall have the right at any time, and from time to time, on or after [•], 2023 to redeem the Preferred Interests, in whole or in part, from any source of funds legally available for such purpose. Any such redemption shall occur on a date set by the General Partner (the “Preferred Interest Redemption Date”).

(b) The Partnership shall effect any such redemption by paying cash for each Preferred Interest, to be redeemed equal to the Preferred Interest Liquidation Preference for such Preferred Interest on such Preferred Interest Redemption Date (the “Preferred Interest Redemption Price”). So long as the Preferred Interests to be redeemed are held of record by the nominee of the Depository, Preferred Interest Redemption Price shall be paid by the Paying Agent to the Depository on the Preferred Interest Redemption Date.

(c) The Partnership shall give notice of any redemption by mail, postage prepaid, not less than 30 days and not more than 60 days before the scheduled Preferred Interest Redemption Date, to the Preferred Interest Holders (as of 5:00 p.m. New York City time on the Business Day next preceding the day on which notice is given) of any Preferred Interests to be redeemed as such Preferred Interest Holders’ names appear on the books of the Transfer Agent and at the address of such Preferred Interest Holder shown therein. Such notice (the “Preferred Interest Redemption Notice”) shall state: (1) the Preferred Interest Redemption Date, (2) the number of Preferred Interests to be redeemed and, if less than all Outstanding Preferred Interests are to be redeemed, the number (and the identification) of Preferred Interests to be redeemed from such Preferred Interest Holder, (3) the Preferred Interest Redemption Price, (4) the place where the Preferred Interests are to be redeemed and shall be presented and surrendered for payment of the Preferred Interest Redemption Price therefor and (5) that distributions on the Preferred Interests to be redeemed shall cease to accumulate from and after such Preferred Interest Redemption Date.

(d) If the Partnership elects to redeem less than all of the Outstanding Preferred Interests, the number of Preferred Interests to be redeemed shall be determined by the General Partner, and such Preferred Interests shall be redeemed by such method of selection as the Depository shall determine either Pro Rata or by lot, with adjustments to avoid redemption of fractional Preferred Interests. The aggregate Preferred Interest Redemption Price for any such partial redemption of the Outstanding Preferred Interests shall be allocated correspondingly among the redeemed Preferred Interests. The Preferred Interests not redeemed shall remain outstanding and entitled to all the rights and preferences provided in this Article XVI.

(e) If the Partnership gives or causes to be given a Preferred Interest Redemption Notice, the Partnership shall deposit with the Paying Agent funds, sufficient to redeem the Preferred Interests, as applicable, as to which such Preferred Interest Redemption Notice shall have been given, no later than 5:00 p.m. New York City time on the Business Day immediately preceding the Preferred Interest Redemption Date, and shall give the Paying Agent irrevocable instructions and authority to pay the Preferred Interest Redemption Price to the Preferred Interest Holders to be redeemed upon surrender or deemed surrender (which shall occur automatically if the certificate representing the Preferred Interests is issued in the name of the Depository or its nominee) of the certificates therefor as set forth in the Preferred Interest Redemption Notice. If the Preferred Interest Redemption Notice shall have been given, from and after the Preferred Interest Redemption Date unless the Partnership defaults in providing funds sufficient for such redemption at the time and place specified for payment pursuant to the Preferred Interest Redemption Notice, all Preferred Interest Distributions on such Preferred Interests to be redeemed shall cease to accumulate and all rights of holders of the Preferred Interests as Limited Partners with respect to the Preferred Interests to be redeemed shall cease, except the right to receive the Preferred Interest Redemption Price and the Preferred Interests shall not thereafter be transferred on the books of the Transfer Agent or be deemed to be

outstanding for any purpose whatsoever. The Partnership shall be entitled to receive from the Paying Agent the interest income, if any, earned on such funds deposited with the Paying Agent (to the extent that such interest income is not required to pay the Preferred Interest Redemption Price of the Preferred Interests to be redeemed), and the holders of any Preferred Interests so redeemed shall have no claim to any such interest income. Any funds deposited with the Paying Agent hereunder by the Partnership for any reason, including redemption of the Preferred Interests that remain unclaimed or unpaid after two years after the applicable Preferred Interest Redemption Date or other payment date, as applicable, shall be, to the extent permitted by law, repaid to the Partnership upon its written request, after which repayment the Preferred Interest Holders entitled to such redemption or other payment shall have recourse only to the Partnership. Notwithstanding any Preferred Interest Redemption Notice, there shall be no redemption of any Preferred Interests called for redemption until funds sufficient to pay the full Preferred Interest Redemption Price of the Preferred Interests shall have been deposited by the Partnership with the Paying Agent.

(f) Any Preferred Interests that are redeemed or otherwise acquired by the Partnership shall be canceled. If only a portion of the Preferred Interests represented by a certificate shall have been called for redemption, upon surrender of the certificate to the Paying Agent (which shall occur automatically if the certificate representing the Preferred Interests is registered in the name of the Depository or its nominee), the Paying Agent shall issue to the Preferred Interest Holders a new certificate (or adjust the applicable book-entry account) representing the number of Preferred Interests represented by the surrendered certificate that have not been called for redemption.

(g) Notwithstanding anything to the contrary in this Article XVI, in the event that full cumulative distributions on the Preferred Interests shall not have been paid or declared and set apart for payment, none of the Partnership, the General Partner or any Affiliate of the General Partner shall be permitted to repurchase, redeem or otherwise acquire, in whole or in part, any Preferred Interests except pursuant to a purchase or exchange offer made on the same terms to all Preferred Interest Holders. None of the Partnership, the General Partner or any Affiliate of the General Partner shall be permitted to redeem, repurchase or otherwise acquire any Partnership Interests unless full cumulative distributions on the Preferred Interests for all prior and the then-ending Preferred Interest Distribution Periods shall have been paid or declared and set apart for payment.

Section 16.7 *No Sinking Fund.* None of the Preferred Interests shall have the benefit of any sinking fund.

Section 16.8 *Record Holders.* To the fullest extent permitted by applicable law, the General Partner, Partnership, the Transfer Agent and the Paying Agent may deem and treat any Preferred Interest Holder as the true, lawful and absolute owner of the Preferred Interests for all purposes, and neither the General Partner, the Partnership, the Transfer Agent or the Paying Agent shall be affected by any notice to the contrary.

Section 16.9 *Notices.* All notices or communications in respect of the Preferred Interests shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Article XVI, this Agreement or by applicable law.

Section 16.10 *Other Rights; Fiduciary Duties.* The Preferred Interests shall not have any designations, preferences, rights, powers or duties, other than as set forth in this Agreement or as required by applicable law. Notwithstanding anything to the contrary in this Agreement or any duty existing at law, in equity or otherwise, to the fullest extent permitted by applicable law, neither the General Partner nor any other Indemnitee shall owe any duties, including fiduciary duties, or have any liabilities to Preferred Interest Holders.

ARTICLE XVII GENERAL PROVISIONS

Section 17.1 *Addresses and Notices; Written Communications.*

(a) Except as otherwise provided Section 16.9 in relation to the Preferred Interests, 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.

(b) 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.

(c) 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.

(d) An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 16.1 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 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 2.3. 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.

(e) 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 17.2 *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 17.3 *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 17.4 *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 17.5 *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 17.6 *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 17.7 *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.

Section 17.8 *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 17.9 *Applicable Law; Forum, Venue and Jurisdiction*.

(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) The Partnership, each Partner, each Record Holder, each other Person who acquires any legal or 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) and each other Person who is bound by this Agreement (collectively, the “Consenting Parties” and each a “Consenting Party”):

(i) irrevocably agrees that, unless the General Partner shall otherwise agree in writing, any claims, suits, actions or proceedings arising out of or relating in any way to this Agreement or any Partnership Interest (including, without limitation, any claims, suits or actions under or to interpret, apply or enforce (A) the provisions of this Agreement, including without limitation the validity, scope or enforceability of this Section 16.9, (B) the duties, obligations or liabilities of the Partnership to the Limited Partners or the General Partner, or of Limited Partners or the General Partner to the Partnership, or among Partners, (C) the rights or powers of, or restrictions on, the Partnership, the Limited Partners or the General Partner, (D) any provision of the Delaware Act or other similar applicable statutes, (E) any other instrument, document, agreement or certificate contemplated either by any provision of the Delaware Act relating to the Partnership or by this Agreement or (F) the federal securities laws of the United States or the securities or antifraud laws of any international, national, state, provincial, territorial, local or other governmental or regulatory authority, including, in each case, the applicable rules and regulations promulgated thereunder (regardless of whether such Disputes (x) sound in contract, tort, fraud or otherwise, (y) are based on common law, statutory, equitable, legal or other grounds, or (z) are derivative or direct claims)) (a “Dispute”), 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;

(ii) irrevocably submits to the exclusive jurisdiction of such courts in connection with any such claim, suit, action or proceeding;

(iii) irrevocably agrees not to, and, to the fullest extent permitted by law, waives any right to, assert in any such claim, suit, action or proceeding that (A) it is not personally subject to the jurisdiction of such courts or of any other court to which proceedings in such courts 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) to the fullest extent permitted by law, 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) hereof shall affect or limit any right to serve process in any other manner permitted by law; and

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

(vii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate; and

(viii) agrees that if a Dispute that would be subject to this Section 16.9 if brought against a Consenting Party is brought against an employee, officer, director, agent or indemnitee of such Consenting Party or its Affiliates (other than Disputes brought by the employer or principal of any such employee, officer, director, agent or indemnitee) for alleged actions or omissions of such employee, officer, director, agent or indemnitee undertaken as an employee, officer, director, agent or indemnitee of such Consenting Party or its Affiliates, such employee, officer, director, agent or indemnitee shall be entitled to invoke this Section 16.9.

Section 17.10 *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 17.11 *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 and each other Person bound by this Agreement shall be bound by the results of such action.

Section 17.12 *Facsimile Signatures.* The use of facsimile signatures 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.

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

GENERAL PARTNER:

[•]

By: _____
Name:
Title:

[95% Common Unit Holders]

[•]

By: _____
Name:
Title:

EXHIBIT A

**to the Second Amended and Restated
Agreement of Limited Partnership of
Emerge Energy Services LP**

**Certificate Evidencing Common Units
Representing Limited Partner Interests in
Emerge Energy Services LP**

No.

Common Units

In accordance with Section 4.1 of the Second Amended and Restated Agreement of Limited Partnership of Emerge Energy Services LP, as amended, supplemented or restated from time to time (the "**Partnership Agreement**"), Emerge Energy Services 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 1400 Civic Place, Suite 250, Southlake, Texas 76092. 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 EMERGE ENERGY SERVICES 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, (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF EMERGE ENERGY SERVICES LP UNDER THE LAWS OF THE STATE OF DELAWARE, OR (C) CAUSE EMERGE ENERGY SERVICES LP TO BE TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION OR OTHERWISE TO BE TAXED AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR TAXED). [•], THE GENERAL PARTNER OF EMERGE ENERGY SERVICES 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 EMERGE ENERGY SERVICES LP BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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

Emerge Energy Services LP

Dated: _____

By: [•]

Countersigned and Registered by:

[_____],

As Transfer Agent

By: _____

Name: _____

By: _
Secretary

[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 entirety	Custodian
JT TEN — as joint tenants with right of survivorship and not as tenants in common	(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 EMERGE ENERGY SERVICES 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 Emerge Energy Services 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.

EXHIBIT B

**to the Second Amended and Restated
Agreement of Limited Partnership of
Emerge Energy Services LP**

**Certificate Evidencing Preferred Interests
Representing Limited Partner Interests in
Emerge Energy Services LP**

No.

Preferred Interests

In accordance with Section 4.1 of the Second Amended and Restated Agreement of Limited Partnership of Emerge Energy Services LP, as amended, supplemented or restated from time to time (the "**Partnership Agreement**"), Emerge Energy Services LP, a Delaware limited partnership (the "Partnership"), hereby certifies that

(the "**Holder**") is the registered owner of Preferred Interests representing limited partner interests in the Partnership (the "**Preferred Interests**") 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 Preferred Interests are set forth in, and this Certificate and the Preferred Interests 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 1400 Civic Place, Suite 250, Southlake, Texas 76092. 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 EMERGE ENERGY SERVICES 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, (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF EMERGE ENERGY SERVICES LP UNDER THE LAWS OF THE STATE OF DELAWARE, OR (C) CAUSE EMERGE ENERGY SERVICES LP TO BE TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION OR OTHERWISE TO BE TAXED AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR TAXED). [•], THE GENERAL PARTNER OF EMERGE ENERGY SERVICES 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 EMERGE ENERGY SERVICES LP BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR 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.

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

Emerge Energy Services LP

Dated: _____

By: [•]

Countersigned and Registered by:

[_____],

As Transfer Agent

By: _____

Name: _____

By: _
Secretary

[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 entirety	Custodian
JT TEN — as joint tenants with right of survivorship and not as tenants in common	(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 PREFERRED INTERESTS OF EMERGE ENERGY SERVICES 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)

Preferred Interests 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 Emerge Energy Services 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 Preferred Interests evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Preferred Interests to be transferred is surrendered for registration or transfer.

EXHIBIT C

BLOCKER CORPORATIONS

Exhibit 4

New Board

To Come

Exhibit 5

Assumed Executory Contracts and Unexpired Leases

Exhibit 5**Assumed Executory Contracts and Unexpired Leases**

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
AFCO Credit Corporation	Superior Silica Sands LLC	Commercial Premium Finance Agreement - Promissory Note	\$0.00
Aflac Insurance	Emerge Energy Services LP	Payroll Account Acknowledgement	\$0.00
Aflac Insurance	Superior Silica Sands LLC	Payroll Account Acknowledgement	\$0.00
American Express Travel Related Services Company, Inc.	Emerge Energy Services LP	Corporate Services Commercial Account Agreement	\$0.00
American Stock Transfer & Trust Company	Emerge Energy Services LP	Administration Services Agreement	\$28,684.44
Ankura Consulting Group, LLC	Emerge Energy Services LP	Letter Agreement	\$0.00
Antero Resources Corporation	Superior Silica Sands LLC	Mutual Confidentiality Agreement	\$0.00
AP Mezzanine Partners, L.P.	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Aspen Specialty Insurance	Superior Silica Sands LLC	Commercial General Liability & Environmental Exposures Policy #ERAA9EE19	\$0.00
Aspen Specialty Insurance	Superior Silica Sands LLC	Commercial Environmental Excess Follow Form Declarations	\$0.00
Aspen Specialty Insurance	Superior Silica Sands LLC	Commercial Excess Liability Policy Declarations	\$0.00
AT Tax Advisory	Emerge Energy Services LP	Service Agreement	\$0.00
AT&T	Superior Silica Sands LLC	Service Agreement	\$0.00
Atlantic Specialty Insurance Company	Superior Silica Sands LLC	Financial Assurance Bond/Nonmetallic Mining No. 800008776	\$0.00
Atlantic Specialty Insurance Company	Superior Silica Sands LLC	Financial Assurance Bond/Nonmetallic Mining No. 800008775	\$0.00
Avis	Superior Silica Sands LLC	Avis Express Billing Terms of Agreement	\$0.00
BDO	Emerge Energy Services LP	Agreement to Provide Services	\$0.00
Benefit Strategies, LLC.	Emerge Energy Services LP	Administrative Services Agreement	\$0.00
Benefit Strategies, LLC.	Emerge Energy Services LP	Health Saving Account and Premium Conversion Plan	\$0.00
CertainTeed Corporation	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
Certify, Inc.	Emerge Energy Services LP	Sales Order	\$616.91
CIT Group/Equipment Financing, INC.	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
Citibank, N.A.	Superior Silica Sands LLC	Escrow Agreement	\$0.00
Clay M. Tooke	Emerge Energy Services LP	Disclosure Schedules to Asset Purchase Agreement	\$0.00
Clay M. Tooke	Emerge Energy Services LP	Asset Purchase Agreement	\$0.00
Coggins Promotional Advertising, Inc.	Emerge Energy Services LP	Online Retail Store & Fulfillment Agreement	\$0.00
Elite Workforce Management	Emerge Energy Services LP	Services Outline and Agreement	\$0.00
Emerge Energy Services Holdings LLC	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Eugene L. Davis	Emerge Energy Services LP	Non-Employee Director Compensation	\$0.00
Everest Reinsurance Company	Superior Silica Sands LLC	Surety Bond	\$0.00
FedEx Corporate Services, LLC.	Emerge Energy Services LP	FedEx Automation Agreement	\$2,072.70
Future Fund Board of Guardians	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Global One Transport, Inc.	Superior Silica Sands LLC	Non Disclosure Agreement	\$0.00
Global Resources Engineering, Ltd.	Superior Silica Sands LLC	Confidentiality Agreement	\$0.00
Granite Re, Inc.	Superior Silica Sands LLC	Performance Bond No. GRWI25376B	\$0.00
H S A Bank	Emerge Energy Services LP	Benefits Services Agreement	\$0.00
Hexion, Inc.	Superior Silica Sands LLC	Non Disclosure Agreement	\$0.00
Houlihan Lokey	Emerge Energy Services LP	Professional Service Agreement	\$0.00
HPS Investment Partners, LLC	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Hychem, Inc.	Superior Silica Sands LLC	Amendment to Confidentiality Agreement	\$0.00
Indiana Public Retirement System	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Innovation, Science and Economic Development Canada	Emerge Energy Services LP	Trademark Registration	\$0.00
Insight Equity (Affiliated Coinvestors) 1 LP	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Insight Equity (Cayman) 1 LP	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Insight Equity (Tax Exempt) 1 LP	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Insight Equity 1 LP	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
James R. and Rebecca Kulig	Emerge Energy Services LP	Landowner Road Use Agreement	\$0.00
KCC	Superior Silica Sands LLC	KCC	\$0.00
Kelly Family Ventures	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
Latham & Watkins	Emerge Energy Services LP	Professional Service Agreement	\$0.00

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
Legal Shield	Emerge Energy Services LP	Agreement	\$0.00
Lerner Enterprises, LLC	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Liberty Mutual Insurance Company	Superior Silica Sands LLC	Continuation Certificate	\$0.00
Liberty Mutual Insurance Company	Superior Silica Sands LLC	License and Permit Bond No. 022044040	\$0.00
Liberty Mutual Insurance Company	Superior Silica Sands LLC	Surety Bond	\$0.00
Liberty Mutual Insurance Company	Superior Silica Sands LLC	Surety Bond	\$0.00
Master SIF SICAV-SIF	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Mezzanine Partners III, L.P.	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
MP III Offshore Mezzanine Investments, L.P.	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
MUL Railcars Leasing, LLC.	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
MUL Railcars, LLC.	Superior Silica Sands LLC	MUL Rail CA_Executed.pdf	\$0.00
Mutual of Omaha (MOO)	Superior Silica Sands LLC	Voluntary Life/Basic or Group Life/Short Term Disability	\$772.32
Nodus, Inc.	Emerge Energy Services LP	Agreement between Nodus, Inc and Emerge Energy Services	\$0.00
OC II LVS III LP	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
OCA OHA Credit Fund LLC	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
OHA AD Customized Credit Fund (International), L.P.	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
OHA BCSS SSD, L.P.	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
OHA Cetre Street Partnership, LP	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
OHA Enhanced Credit Strategies Master Fund, L.P.	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
OHA Finlandia Credit Fund, L.P.	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
OHA MPS SSD, L.P.	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
OHA-CDP ESCF, L.P.	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Oklahoma Sand LLC.	Superior Silica Sands LLC	Confidentiality Agreement	\$0.00
One Beacon (Atlantic Specialty)	Superior Silica Sands LLC	Nondisclosure and Confidentiality Agreement	\$0.00

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
Opportune LLP	Superior Silica Sands LLC	Engagement Letter for Valuation Services	\$0.00
Oregon Public Employees Retirement Fund	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
Parsley Energy Operations, LLC.	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
Pioneer Sands, LLC.	Superior Silica Sands LLC	Confidentiality Agreement	\$0.00
Pioneer Sands, LLC.	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
Pricewaterhousecoopers	Superior Silica Sands LLC	Professional Service Agreement	\$4,734.58
Richards Layton & Finger	Emerge Energy Services LP	Engagement Letter	\$0.00
River Aggregates, LLC.	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
Service Uniform	Emerge Energy Services LP	Service Agreement - Renewal Act #11303	\$1,270.03
Shook, Hardy & Bacon, LLP	Superior Silica Sands LLC	Engagement Letter	\$0.00
SmartChain Solutions, LLC.	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
Solaris Oilfield Infrastructure, LLC.	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
Sonoco Petroleum Operating Company LLC	Emerge Energy Services Operating LLC	Purchase Sale Agreement	\$0.00
SWN Production Company, LLC.	Superior Silica Sands LLC	Confidentiality Agreement	\$0.00
Texas Commission on Environmental Quality	Emerge Energy Services LP	Letter - TCEQ Air Permit for San Antonio	\$0.00
The Coca-cola Company Master Retirement Trust	Emerge Energy Services LP	Restructuring Support Agreement	\$0.00
The Ultimate Software Group, Inc.	Emerge Energy Services LP	Software Agreement	\$0.00
Trinity Industries Leasing Company	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
Union Pacific Mutual CA	Superior Silica Sands LLC	Confidentiality Agreement	\$0.00
VSP Vision	Emerge Energy Services LP	Application for Vision Care Plan	\$0.00
Westward Environmental, Inc.	Superior Silica Sands LLC	Nondisclosure Agreement	\$0.00
Westward Environmental, Inc.	Emerge Energy Services LP	Proposal for Civil Engineering Services	\$4,017.91
William Transier	Emerge Energy Services LP	Non-Employee Director Compensation	\$0.00
Willis of New York, Inc.	Emerge Energy Services LP	Business Associate Agreement	\$0.00
Zyrka LLC	Emerge Energy Services LP	Hourly IT Services Agreement	\$860.00
Deloitte Tax LLP	Superior Silica Sands LLC	Professional Service Agreement	\$0.00
Infor-Syteline	Superior Silica Sands LLC	MultiYear Support Commitment	\$0.00
Nasdaq	Emerge Energy Services LP	Service Agreement	\$0.00

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
Thomson Reuters	Emerge Energy Services LP	Service Agreement - Investor Relations	\$0.00
Thomson Reuters	Emerge Energy Services LP	Service Agreement - Other Services	\$0.00
VisualLease Software	Superior Silica Sands LLC	Terms of Use for the Client Access Site, Software & Services	\$0.00
Aramark Uniform Services	Emerge Energy Services LP	Service Agreement Customer No. 792359032, 792358376	\$1,310.40
BB&T	Superior Silica Sands LLC	Daily Defined Contribution Fee Agreement	\$0.00
Red Wing	Superior Silica Sands LLC	Service Agreement	\$2,958.60
Robert Half International, Inc.	Emerge Energy Services LP	Customer Agreement for Placement Services	\$0.00
United HealthCare Services, Inc.	Emerge Energy Services LP	Billing and Collection Agreement	\$0.00
Apprix Software Agreement	Superior Silica Sands LLC	Software Agreement	\$0.00
Avalara	Emerge Energy Services LP	Sales Order Terms and Conditions for Avalara Services	\$0.00
BNA Software	Superior Silica Sands LLC	BNA Software Agreement	\$0.00
Bridgehead IT, Inc.	Superior Silica Sands LLC	Support Services Agreement	\$1,469.62
Coastal Training Technologies Corporation	Superior Silica Sands LLC	Workshop Agreement ID: 0032633192-0ILT	\$0.00
Coastal Training Technologies Corporation	Superior Silica Sands LLC	STOP DataPro License Agreement	\$0.00
Coastal Training Technologies Corporation	Superior Silica Sands LLC	1st Amendment to the STOP DataPro License Agreement	\$0.00
CoreSpace, Inc	Superior Silica Sands LLC	Service Order Form	\$0.00
Donnelley Financial Solutions	Superior Silica Sands LLC	ActiveDisclosure Proposal	\$2,351.92
FloQast Software Agreement	Superior Silica Sands LLC	Software Agreement	\$0.00
Office 365	Superior Silica Sands LLC	General Terms and Conditions	\$0.00
PrintRX	Emerge Energy Services LP	Maintenance Agreement	\$58.94
RSI Logistics, Inc.	Superior Silica Sands LLC	Service Agreement	\$33,824.25
Upkeep Software	Superior Silica Sands LLC	Software Agreement	\$0.00
US Bank Equipment Finance	Superior Silica Sands LLC	Value Lease Agreement No. 548873	\$0.00
US Bank Equipment Finance	Superior Silica Sands LLC	Value Lease Supplement App No. 2438953	\$0.00
US Bank Equipment Finance	Superior Silica Sands LLC	Value Lease Supplement App No. 2450132	\$0.00
US Bank Equipment Finance	Superior Silica Sands LLC	Value Lease Supplement App No. 2452039	\$0.00

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
Wonderwear Software	Superior Silica Sands LLC	Software Agreement	\$0.00
Reynolds Frizzell, LLP	Superior Silica Sands LLC	Engagement Letter	\$4,190.00
1845 Trucking	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Aggregate Haulers	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
AJ Lopez Trucking	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Apple Valley Trucking, LLC	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Badger State Recovery, Inc	Superior Silica Sands LLC	Transportation Services Agreement	\$40.00
Bobcat Trucking Inc	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Brian Nelson Trucking, Inc	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Canadian National Railway Company	Superior Silica Sands LLC	Binding Memorandum of Understanding	\$0.00
Capital Aggregates, Inc.	Superior Silica Sands LLC	Capital Aggregates, Inc.	\$45,528.27
Chaplin Trucking LLC	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Chippewa Valley Grain Transport Inc	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
CIG Logistics	Superior Silica Sands LLC	Letter Agreement	\$0.00
CIG Logistics	Superior Silica Sands LLC	Transloading Terms Agreement - San Antonio	\$77,486.10
CT Ent of Sand Creek, LLC	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Dave Michels Grading & Trucking	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Degerman Trucking	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Leslie A Smith	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Monster Services	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Nordquist Trucking, Inc	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Norfolk Southern Railway Company	Superior Silica Sands LLC	Transportation Contract REG-NS-C-20371	\$0.00
Northwest Sand Transport, Inc	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Northwest Sand Transport, Inc	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Precision Excavating Enterprises, LLC	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Progressive Rail Inc (dba Wisconsin Northern Railway)	Superior Silica Sands LLC	Amendment #3 to Track and Site Lease	\$0.00
Sandman Transit LLC	Superior Silica Sands LLC	Transportation Services	\$0.00

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
		Agreement	
Springbrook Express, LLC	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Toro Express, LLC	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Transwood	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Twin Town Sands, LLC	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Union Pacific Railroad Company	Superior Silica Sands LLC	Rail Transportation Contract	\$0.00
United Sand & Materials, LLC.	Superior Silica Sands LLC	Railcar Sublease Agreement	\$0.00
Yoder Trucking	Superior Silica Sands LLC	Transportation Services Agreement	\$0.00
Rango, Inc.	Superior Silica Sands LLC	Project Quote (San Antonio)	\$55,648.60
Barron County	Superior Silica Sands LLC	Amendment to County Highway Repair and Maintenance Agreement	\$439.15
Barron County	Superior Silica Sands LLC	County Highway Repair and Maintenance Agreement	\$0.00
Barron Electric Cooperative	Emerge Energy Services LP	First Amendment to Electric Service Agreement	\$74.99
Caterpillar Financial Services Corp.	Superior Silica Sands LLC	Lease Transaction Number 3529247	\$0.00
Caterpillar Financial Services Corp.	Superior Silica Sands LLC	Lease Transaction Number 3529247	\$5,668.72
Caterpillar Financial Services Corp.	Superior Silica Sands LLC	Lease Transaction Number 3505161	\$8,473.22
Caterpillar Financial Services Corp.	Superior Silica Sands LLC	Lease Transaction Number 3521981	\$0.00
Caterpillar Financial Services Corp.	Superior Silica Sands LLC	Lease Transaction Number 3448784	\$1,442.70
Caterpillar Financial Services Corp.	Superior Silica Sands LLC	Lease Transaction Number 3448783	\$3,246.06
Caterpillar Financial Services Corp.	Superior Silica Sands LLC	Lease Transaction Number 3448780	\$0.00
Caterpillar Financial Services Corp.	Superior Silica Sands LLC	Lease Transaction Number 3448780	\$4,351.59
CIT Group/Equipment Financing, INC.	Superior Silica Sands LLC	Master Net Locomotive Lease	\$0.00
CIT Group/Equipment Financing, INC.	Superior Silica Sands LLC	CIT Schedule 5	\$3,255.00
CIT Group/Equipment Financing, INC.	Superior Silica Sands LLC	CIT Schedule 4	\$0.00
CIT Group/Equipment Financing, INC.	Superior Silica Sands LLC	CIT Amendment 1 to Schedule 4	\$3,255.00
Darrell Friesen	Superior Silica Sands LLC	Land Lease Agreement	\$0.00

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
Deere Credit, Inc.	Superior Silica Sands LLC	Lease Agreement Application ID 12718663	\$0.00
Deere Credit, Inc.	Superior Silica Sands LLC	Lease Agreement Application ID 12718766	\$0.00
Deere Credit, Inc.	Superior Silica Sands LLC	Co-Lessee Addendum	\$0.00
Fastenal Company	Superior Silica Sands LLC	Amendment	\$0.00
Fila-Mar Energy Services, LLC.	Superior Silica Sands LLC	Equipment Lease Agreement	\$0.00
Herc-U-Lift, Inc.	Superior Silica Sands LLC	Lease Agreement (Forklift Serial Number HHF08CJ00042550	\$5,580.10
John Fabick Tractor Co	Superior Silica Sands LLC	Equipment Purchase Order #TSP139	\$3,327.61
Marabou Energy Management, LLC	Superior Silica Sands LLC	Natural Gas Purchase and Sale Agreement	\$0.00
Marabou Energy Management, LLC	Superior Silica Sands LLC	Exhibit A Confirmation (Retail Natural Gas Sales Agreement - Barron)	\$0.00
Marabou Energy Management, LLC	Superior Silica Sands LLC	Exhibit A Confirmation (Retail Natural Gas Sales Agreement - Clayton)	\$0.00
Marabou Energy Management, LLC	Superior Silica Sands LLC	Exhibit A Confirmation (Retail Natural Gas Sales Agreement - New Auburn)	\$0.00
Marabou Superior Pipeline, LLC	Superior Silica Sands LLC	Settlement Agreement	\$756,826.26
Nexus Program Management Group, LLC	Emerge Energy Services LP	Services Agreement	\$0.00
Nexus Program Management Group, LLC	Emerge Energy Services LP	First Amendment to Request for Services No. 2 by and between Emerge Energy Services LP and Nexus Program Management Group, LLC	\$0.00
R&R Scales	Superior Silica Sands LLC	Inspection Service Agreement	\$8,930.63
Total Excavating, LLC	Superior Silica Sands LLC	Mining Services Agreement	\$0.00
Town of Alma	Superior Silica Sands LLC	Mining Agreement	\$0.00
Town of Arland Developers	Superior Silica Sands LLC	Developers Agreement	\$0.00
Town of Auburn	Superior Silica Sands LLC	Mining Agreement Between the Town of Auburn and Superior Silica Sand	\$0.00
Town of Sioux Creek	Superior Silica Sands LLC	Ordinance Regarding Operation of Nonmetallic Mines	\$0.00
Waste Management of WI-MN	Superior Silica Sands LLC	Service Agreement	\$200.42
Wells Fargo Vendor Financial Services, LLC	Superior Silica Sands LLC	Power Lease No. 9960528-004	\$543.00

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
Wells Fargo Vendor Financial Services, LLC	Superior Silica Sands LLC	Power Lease No. 9960528-001	\$43.83
Zinsmeyer Air Conditioning & Heating LLC	Superior Silica Sands LLC	ZACH Commercial Maintenance Agreement	\$1,334.75
AutoNation Ford Southeast Fort Worth	Superior Silica Sands LLC	Texas Motor Vehicle Lease Agreement	\$0.00
BJ Services, LLC.	Superior Silica Sands LLC	Supply Agreement	\$0.00
Chesapeake Operating, LLC.	Superior Silica Sands LLC	Master Service and Supply Agreement - Exploration and Production	\$0.00
Chesapeake Operating, LLC.	Superior Silica Sands LLC	Scope of Work	\$0.00
City of Austin	Superior Silica Sands LLC	Sand Supply Agreement (GA 160000007)	\$0.00
City of Austin	Superior Silica Sands LLC	Amendment No. 1 to Contract No. GA 160000007	\$0.00
City of Austin	Superior Silica Sands LLC	Amendment No. 2 of Contract No. GA16000007	\$0.00
Devon Energy, LLC.	Superior Silica Sands LLC	Commercial Terms for Sand Supply	\$0.00
Devon Energy, LLC.	Superior Silica Sands LLC	Master Sand Supply Agreement	\$0.00
Encana Oil & Gas	Superior Silica Sands LLC	Master Purchasing Agreement	\$0.00
EOG Resources, LLC.	Superior Silica Sands LLC	Sand Purchase Agreement	\$0.00
EP Energy E&P Company, LP	Superior Silica Sands LLC	Amendment No. 1 to Award Letter EF-WC-17-2277	\$0.00
EP Energy E&P Company, LP	Superior Silica Sands LLC	Award Letter EF-WC-17-2170	\$0.00
EP Energy E&P Company, LP	Superior Silica Sands LLC	Award Letter EF-WC-18-2451	\$0.00
EP Energy E&P Company, LP	Superior Silica Sands LLC	Sand Supply Agreement No. EPEEP-COMP-SA-4812	\$0.00
GTM International, LLC	Superior Silica Sands LLC	Distributor Agreement	\$0.00
Hawkwood Energy Operating, LLC	Superior Silica Sands LLC	Sand Supply Agreement	\$0.00
Laredo Energy Operating, LLC.	Superior Silica Sands LLC	Master Service Agreement	\$0.00
Liberty Oilfield Services, LLC	Superior Silica Sands LLC	Sand Supply Agreement	\$0.00
Liberty Oilfield Services, LLC	Superior Silica Sands LLC	First Amendment to Sand Supply Agreement	\$0.00
Marathon Oil Company	Superior Silica Sands LLC	Master Major Service and Supply Contract for US Operations No. MSA-0002439	\$0.00
Stevens Tanker Division	Superior Silica Sands LLC	Sand Supply Agreement	\$0.00

Contract Counterparty	Debtor	Title of Contract or Lease	Cure Amount
Texas Specialty Sands, LLC.	Superior Silica Sands LLC	Sand Supply Agreement	\$0.00
Union Pacific Railroad Company	Superior Silica Sands LLC	Materials Purchase Agreement	\$0.00
Universal Pressure Pumping, Inc.	Superior Silica Sands LLC	Amended and Restated Purchase Option Agreement	\$0.00
Universal Pressure Pumping, Inc.	Superior Silica Sands LLC	Sand Supply Contract	\$0.00
Universal Pressure Pumping, Inc.	Superior Silica Sands LLC	Amended and Restated Purchase Option Agreement	\$0.00

Exhibit 6

Litigation Claims

Exhibit 6

Litigation Claims

Pursuant to the Debtors' *First Amended Joint Prepackaged Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (the "Plan"),¹ the Debtors previously disclosed their intention to retain Causes of Action in Article X.F of the Plan, as set forth below:

1. Maintenance of Causes of Action

Except as otherwise provided in Article X of the Plan (including, without limitation, and for the avoidance of doubt, the Releases contained in Article X.B and Exculpation contained in Article X.E of the Plan) or elsewhere in the Plan or the Confirmation Order, after the Effective Date, the Reorganized Debtors shall retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Litigation Claims, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Cases. The Reorganized Debtors, as the successors-in-interest to the Debtors and the Estates, may, and shall have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of such Litigation Claims without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Except as otherwise expressly provided in the Plan, the Debtors expressly reserve all Causes of Action and Litigation Claims for later adjudication by the Debtors or the Reorganized Debtors (including, without limitation, Causes of Action and Litigation Claims not specifically identified or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action or Litigation Claims upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except in each case where such Causes of Action or Litigation Claims have been expressly waived, relinquished, released, compromised or settled in the Plan (including, without limitation, and for the avoidance of doubt, the Releases contained in Article X.B of the Plan and Exculpation contained in Article X.E of the Plan) or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtors and the Reorganized Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which any of the Debtors are a plaintiff, defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

Notwithstanding and without limiting the generality of Article X.F of the Plan, the specific types of Causes of Action detailed below are expressly preserved by the Debtors and/or the Reorganized Debtors.

In addition, the Debtors prepared and filed with the Court a Creditor Matrix [Docket No. 12]. In addition to the below, to the extent not released pursuant to the Plan, the Debtors expressly retain all claims and Causes of Action against any entity listed in the Creditor Matrix, regardless of whether such entity is set forth below, to the extent such entity or entities owe or may in the future owe money to the Debtors or the Reorganized Debtors.

The below includes entities that are party to or that the Debtors believe may become party to litigation, arbitration or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial. Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action against or related to all entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial, including, without limitation, dealers, creditors, customers, employees, utilities, suppliers, vendors, insurers, sureties, factors, lenders, bondholders, lessors or any other parties, regardless of whether such entity is included below.

1. Litigation Claims related to that certain action titled *Superior Silica Sands LLC vs. EP Energy E&P Company LP*, Case No. 201919297-7 filed in the District Court of Harris County, Texas, and any and all proceedings and appeals related thereto.
2. Litigation Claims relating to Sales & Use tax refunds, including, without limitation, those pending with the State of Wisconsin Department of Revenue. The State of Wisconsin Department of Revenue is concurrently conducting an audit of the Debtors' Sales & Use Tax filings for the past four calendar years.
3. Litigation Claims relating to pass-through entity taxes, including, without limitation, those pending with the West Virginia Office of Tax Appeals.
4. Litigation Claims and all Causes of Action in connection with the MSHA Action.
5. Litigation Claims contesting the issuance of citations and any associated fines issued by MSHA related to the fatality at the San Antonio facility currently under appeal with the Federal Mine Safety and Health Review Commission (*Secretary of Labor, Mine Safety and Health Administration v. Superior Silica Sands LLC*, Docket Nos. CENT 2019-0133 and CENT 2019-0171).
6. Litigation Claims and counterclaims that may be asserted against lien claimants in connection with lien disposition, including, without limitation, Litigation Claims and counterclaims related to rights of setoff and contractual breaches.
7. Litigation Claims relating to customer contract breaches under contracts with Universal Pressure Pumping, Inc.