

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.*,¹ : Case No. 19-11563 (KBO)
Debtors. : (Jointly Administered)
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**NOTICE OF (I) PLAN CONFIRMATION HEARING, (II) OBJECTION AND
VOTING DEADLINES AND (III) SOLICITATION AND VOTING PROCEDURES**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU MAY BE ENTITLED
TO VOTE ON THE PLAN OR MAY HAVE YOUR RIGHTS AFFECTED BY THE
PLAN. THEREFORE, YOU SHOULD READ THIS NOTICE CAREFULLY AND
DISCUSS IT WITH YOUR ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY,
YOU MAY WISH TO CONSULT ONE.**

**TO: ALL HOLDERS OF CLAIMS AGAINST, AND HOLDERS OF EQUITY
INTERESTS IN, EMERGE ENERGY SERVICES LP AND ITS AFFILIATE
DEBTORS AND DEBTORS IN POSSESSION AND ALL OTHER PARTIES IN
INTEREST IN THE ABOVE-CAPTIONED CHAPTER 11 CASES.**

PLEASE TAKE NOTICE THAT on September 11, 2019, EmERGE Energy Services LP and its affiliate debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) filed their (i) *First Amended Joint Plan of Reorganization for EmERGE Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 362] (as may be amended from time to time, the “**Plan**”) and (ii) *Disclosure Statement for the First Amended Joint Plan of Reorganization for EmERGE Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 363] (as may be amended from time to time, the “**Disclosure Statement**”),² and by no later than October 4, 2019, the Debtors shall file the Plan Supplement. On September 11, 2019, the Bankruptcy Court entered the *Order (I) Approving the Disclosure Statement, (II) Establishing the Voting Record Date, Voting Deadline and Other dates, (III) Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing objections to the Plan and (IV) Approving the Manner and Forms of Notice and Other Related Documents, (V) Approving Procedures for Assumption of Contracts and Leases and Form and Manner of Assumption Notice, and (VI) Granting Related Relief* [Docket No. 361] (the “**Disclosure Statement Order**”).

PLEASE TAKE FURTHER NOTICE THAT the Debtors are soliciting acceptances of the Plan from Holders of Claims who are entitled to vote on the Plan. The Bankruptcy Court can

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

² Capitalized terms used but not otherwise defined herein will have the meanings set forth in the Plan.



confirm the Plan and bind all Holders of Claims and Equity Interests if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of the Claims in each Impaired Class who vote on the Plan and if the Plan otherwise satisfies the applicable requirements of Bankruptcy Code Section 1129(a). If the requisite acceptances are not obtained, the Bankruptcy Court nonetheless may confirm the Plan if it finds that the Plan (i) provides fair and equitable treatment to, and does not unfairly discriminate against, each Class rejecting the Plan and (ii) otherwise satisfies the requirements of Bankruptcy Code Section 1129(b). If the Plan is confirmed by the Bankruptcy Court, it will be binding on all Holders of Claims and Equity Interests whether or not a particular Holder voted or affirmatively voted to reject the Plan, or whether you had the right to vote on the Plan.

PLEASE TAKE FURTHER NOTICE THAT the Confirmation Hearing to consider confirmation of the Plan will commence at **1:00 p.m. (prevailing Eastern Time) on October 24, 2019**, before the Honorable Karen B. Owens, United States Bankruptcy Judge, 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 from time to time by the Bankruptcy Court or the Debtors without further notice other than by such adjournment being announced in open court and/or by a notice of adjournment filed with the Bankruptcy Court and served on such parties as the Bankruptcy Court may order. Moreover, the Plan may be modified or amended, if necessary, pursuant to Bankruptcy Code Section 1127, prior to, during or as a result of the Confirmation Hearing, without further notice to parties in interest.

CRITICAL INFORMATION REGARDING VOTING ON THE PLAN

1. In accordance with Bankruptcy Code Sections 1122 and 1123, the Plan contemplates classifying Holders of Claims and Equity Interests into various Classes for all purposes, including with respect to voting on the Plan, as follows:

SUMMARY OF STATUS AND VOTING RIGHTS			
<u>Class</u>	<u>Claim/Equity Interest</u>	<u>Status</u>	<u>Voting Rights</u>
1.	Other Priority Claims	Unimpaired	Deemed to Accept
2.	Other Secured Claims	Unimpaired	Deemed to Accept
3.	Secured Tax Claims	Unimpaired	Deemed to Accept
4.	Prepetition Credit Agreement Claims	Unimpaired	Deemed to Accept
5.	Prepetition Notes Claims	Impaired	<i>Entitled to Vote</i>
6.	General Unsecured Claims	Impaired	<i>Entitled to Vote</i>
7.	Intercompany Claims	Unimpaired	Deemed to Accept
8.	Old Emerge GP Equity Interests	Impaired	Deemed to Reject
9.	Old Emerge LP Equity Interests	Impaired	Deemed to Reject
10.	Old Affiliate Equity Interests	Unimpaired	Deemed to Accept

2. **Voting Record Date.** The Voting Record Date is **September 9, 2019**. The Voting Record Date is the date by which it will be determined which Holders of Claims in Classes 5 and 6, are entitled to vote on the Plan.

3. Every holder of Claims in Class 5 and Class 6 shall receive a Solicitation Package with this mailing, which package shall include a Ballot, the Plan, and Disclosure Statement. If

you have not received a Solicitation Package, including a Ballot, and are entitled to vote on the Plan, you may request a Ballot and voting instructions appropriate for your Claim from the Debtors' Voting and Claims Agent, Kurtzman Carson Consultants LLC, whose contact information is in paragraph 8 below.

4. Voting Deadline. The deadline for voting on the Plan is **5:00 p.m. (prevailing Eastern Time) on October 17, 2019** (the "**Voting Deadline**"). If you hold a Claim against one or more of the Debtors as of the Voting Record Date and are entitled to vote to accept or reject the Plan, you should have received a Ballot and corresponding voting instructions. For your vote to be counted, you must: (i) follow such voting instructions carefully, (ii) complete all the required information on the Ballot,; and (iii) sign, date and return your completed Ballot, so that it is **actually received** by the Voting and Claims Agent according to and as set forth in detail in the voting instructions on or before the Voting Deadline. *A failure to follow such instructions may disqualify your vote.*

5. Temporary Allowance of Claims for Voting Purposes. Any Holder of a Claim in Class 5 and Class 6 against the Debtors for which such Holder has filed a proof of claim, which, in whole or in part, reflects an unliquidated or contingent claim, and which is not subject to an objection filed by the Debtors, shall have its entire claim temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00. Any Holder of a Claim in Class 5 and Class 6 against the Debtors for which the Debtors have filed an objection on or before **September 9, 2019**, whether such objection related to the entire claim or a portion thereof, shall not be entitled to vote on the Plan and shall not be counted in determining whether the requirements of Bankruptcy Code Section 1126(c) have been met with respect to the Plan, unless such Holder files and serves upon the Notice Parties listed below a motion requesting temporary allowance of its Claim solely for voting purposes in accordance with Bankruptcy Rule 3018 (such motion, the "**Rule 3018(a) Motion**") by **4:00 p.m. (prevailing Eastern Time) on September 27, 2019** (the "**Rule 3018(a) Motion Deadline**"); provided however, that if the Debtors file an objection to a Claim on or after the date that is fourteen (14) days before the Rule 3018(a) Motion Deadline, then Rule 3018(a) Motion Deadline shall be extended as to such Claim such that the Holder thereof shall have at least fourteen (14) days to file a Rule 3018(a) Motion; provided further however, that all objections to Claims for voting purposes shall be filed and served by the Debtors no later than September 23, 2019. No later than three (3) Business Days after the filing and service of a Rule 3018(a) Motion, the Voting and Claims Agent will send such Holder a Solicitation Package, including the appropriate Ballot, and a pre-addressed, postage pre-paid envelope, which such Holder must then return its Ballot according to the instructions attached thereto so it is **actually received** by the Voting and Claims Agent on or before the Voting Deadline. Please be advised that the Debtors reserve all of their rights and objections regarding any and all Rule 3018(a) Motions that may be filed with the Bankruptcy Court and that the distribution of a Solicitation Package is not and shall not constitute a waiver or release of such rights and objections.

CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN

ARTICLE X OF THE PLAN CONTAINS RELEASE, EXCULPATION AND INJUNCTION PROVISIONS. THUS, YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.

6. Plan Objection Deadline. The deadline for filing objections to the Plan is **October 11, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the "**Plan Objection Deadline**").

7. Objections to the Plan. Any objection to the Plan must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) state the name and address of the objecting party and the amount and nature of the Claim of such Entity; (iv) state with particularity the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (v) be filed with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801, no later than the Plan Objection Deadline and served on the parties listed below (the “**Notice Parties**”), with proof of service filed as and when required by the Local Rules of the Bankruptcy Court. CONFIRMATION OBJECTIONS NOT TIMELY FILED AND SERVED IN THE MANNER SET FORTH HEREIN MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND MAY BE OVERRULED WITHOUT FURTHER NOTICE.

Notice Parties

- (i) Counsel to the Debtors, Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022-4834 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq., and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com, and liza.burton@lw.com)) and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com));
- (ii) Counsel to the DIP Agent and the Prepetition Agents, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153-0119 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); and
- (iii) Counsel to the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Todd C. Meyers, Esq., David M. Posner, Esq., and Kelly Moynihan, Esq. (emails: tmeyers@kilpatricktownsend.com, dposner@kilpatricktownsend.com, and kmoynihan@kilpatricktownsend.com)), Kilpatrick Townsend & Stockton LLP, 700 Louisiana Street, Suite 4300, Houston, Texas 77002 (Attn: Lenard M. Parkins, Esq. (email: lparkins@kilpatricktownsend.com)), and Potter Anderson & Corroon LLP, 1313 North Market Street, Sixth Floor, P.O. Box 951, Wilmington, Delaware 19899 (Attn: Jeremy W. Ryan, Esq., Christopher M. Samis, Esq., and D. Ryan Slaugh, Esq. (emails: jryan@potteranderson.com, csamis@potteranderson.com, and rslaugh@potteranderson.com)); and
- (iv) The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian, Esq. (email: Juliet.M.Sarkessian@usdoj.gov)).

ADDITIONAL INFORMATION

8. Obtaining Solicitation Materials. If you would like to obtain a Solicitation Package, a copy of the Plan Supplement once filed, or if you have questions regarding the procedures and requirements for objecting to the Plan, you may contact 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>. Please be advised that the Voting and Claims Agent is authorized to answer questions and provide additional copies of solicitation materials but may not advise you as to whether you should vote to accept or reject the Plan.

9. Filing the Plan Supplement. The Debtors shall file the Plan Supplement by no later than October 4, 2019, and will serve the Plan Supplement on all parties that have filed requests for notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002 as of such filing date and on such parties directed by the Court pursuant to the Disclosure Statement Order. Copies of the Plan Supplement may be obtained in the manner set forth in paragraph 8 above, once it is filed.

10. **THE PLAN CONTAINS RELEASE, EXCULPATION AND INJUNCTION PROVISIONS. THE PROVISIONS ARE SET FORTH AT THE END OF THIS NOTICE. YOU SHOULD REVIEW THESE PROVISIONS CAREFULLY.**

Wilmington, Delaware
September 11, 2019

LATHAM & WATKINS LLP	RICHARDS, LAYTON & FINGER, P.A.
Attn: George A. Davis	Attn: John H. Knight
Attn: Keith A. Simon	Attn: Paul N. Heath
Attn: Hugh K. Murtagh	Attn: Zachary I. Shapiro
Attn: Liza L. Burton	Attn: Brett M. Haywood
885 Third Avenue	One Rodney Square
New York, New York 10022-4834	920 North King Street
Fax: 212-751-4864	Wilmington, Delaware 19801
	Fax: 302-651-7701
<i>Co-Counsel to the Debtors</i>	

**RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS CONTAINED
IN THE PLAN**

Release of Claims and Causes of Action

1. Release by the Debtors and their Estates. Pursuant to section 1123(b) and any other applicable provisions of the Bankruptcy Code, and except as otherwise expressly provided in the Plan, effective as of the Effective Date, for good and valuable consideration provided by each of the Released Parties, the adequacy and sufficiency of which is thereby confirmed, the Debtors and the Reorganized Debtors, in their respective individual capacities and as debtors-in-possession, and on behalf of themselves and their respective Estates, including, without limitation, any successor to the Debtors or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code (collectively, the “Debtor Releasing Parties”) will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full discharge, waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever released, waived and discharged by the Debtor Releasing Parties) and their respective assets and properties (the “Debtor Release”) from any and all claims, Causes of Action, Released and Settled Claims, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the

Effective Date or thereafter arising, in law, at equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of the Debtors, including, without limitation, (i) the Chapter 11 Cases, the Disclosure Statement, the Plan, the Restructuring Support Agreement and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, (iv) the negotiation, formulation or preparation of the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, the Restructuring Documents, or related agreements, instruments or other documents, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale, or rescission of the purchase or sale of any Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of the Plan or the solicitation of votes on the Plan that such Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) or that any Holder of a Claim or Equity Interest or other Entity would have been legally entitled to assert for, or on behalf or in the name of, any Debtor, its respective Estate or any Reorganized Debtor (whether directly or derivatively) against any of the Released Parties; provided, however, that the foregoing provisions of this Debtor Release shall not operate to waive or release: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) any Causes of Action relating to the MSHA Action (other than against a member of the Special Restructuring Committee); and/or (iii) the rights of such Debtor Releasing Party to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with the Plan or assumed pursuant to the Plan or assumed pursuant to Final Order of the Bankruptcy Court. The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this Debtor Release. Notwithstanding the foregoing, nothing in this Article X.B shall or shall be deemed to (i) prohibit the Debtors or the Reorganized Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors or the Reorganized Debtors and/or (ii) operate as a release or waiver of any Intercompany Claims, in each case unless otherwise expressly provided for in the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained under the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the claims released by the Debtor Release; (iii) in the best interest of the Debtors and their Estates; (iv) fair, equitable and reasonable; and (v) given and made after due notice and opportunity for hearing.

2. Release By Third Parties. Except as otherwise expressly provided in the Plan, effective as of the Effective Date, to the fullest extent permitted by applicable law, for good and valuable consideration provided by each of the Released Parties, the adequacy and

sufficiency of which is thereby confirmed, and without limiting or otherwise modifying the scope of the Debtor Release provided by the Debtor Releasing Parties above, each Non-Debtor Releasing Party (together with the Debtor Releasing Parties, the “Releasing Parties”) will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full discharge, waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever released, waived and discharged by the Non-Debtor Releasing Parties) and their respective assets and properties (the “Third Party Release”) from any and all claims, Causes of Action, Released and Settled Claims, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, in law, at equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of the Debtors, including, without limitation, (i) the Chapter 11 Cases, the Disclosure Statement, the Plan, the Restructuring Support Agreement and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, (iv) the negotiation, formulation or preparation of the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, the Restructuring Documents, or related agreements, instruments or other documents, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale or rescission of the purchase or sale of any Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of the Plan or the solicitation of votes on the Plan that such Non-Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) against any of the Released Parties; provided, however, that the foregoing provisions of this Third Party Release shall not operate to waive or release (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) any Causes of Action relating to the MSHA Action (other than against a member of the Special Restructuring Committee); and/or (iii) the rights of such Non-Debtor Releasing Party to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with the Plan or assumed pursuant to the Plan or Final Order of the Bankruptcy Court. The foregoing release shall be effective as of the Effective Date, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this Third Party Release.

Entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the Third Party Release, which includes by reference each of the related provisions and definitions contained under the Plan, and further, shall constitute the Bankruptcy Court’s finding that the Third Party Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the claims released by the Third Party Release; (iii) in the best interest of the Debtors and all Holders of Claims and Equity Interests; (iv) fair, equitable and reasonable; and (v) given and made after due notice and opportunity for hearing.

3. Exculpation

Effective as of the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Person or Entity for any claims, Causes of Action or Released and Settled Claim arising prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Confirmation or Consummation of the Plan, the Disclosure Statement, the Restructuring Documents or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan, including the Restructuring Support Agreement, or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the approval of the Disclosure Statement or Confirmation or Consummation of the Plan; provided, however, that the foregoing provisions of this exculpation shall not operate to waive or release: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Exculpated Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; and/or (ii) the rights of any Person or Entity to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with the Plan or assumed pursuant to the Plan or Final Order of the Bankruptcy Court; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its respective duties pursuant to, or in connection with, the above referenced documents, actions or inactions. The foregoing exculpation shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person. Notwithstanding the foregoing, nothing in this Article X.E shall or shall be deemed to prohibit the Debtors or the Reorganized Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors or the Reorganized Debtors, in each case unless otherwise expressly provided for in the Plan.

4. Injunction

Except as otherwise expressly provided in the Plan or the Confirmation Order, from and after the Effective Date, all Persons and Entities are, to the fullest extent provided under section 524 and other applicable provisions of the Bankruptcy Code, permanently enjoined from (i) commencing or continuing, in any manner or in any place, any suit, action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff or right of subrogation of any kind; or (v) commencing or continuing in any manner any action or other proceeding of any kind, in each case on account of or with respect to any Claim, demand, liability, obligation, debt, right, Cause of Action, equity interest, or remedy released or to be released, exculpated or to be exculpated, settled or to be settled or discharged or to be discharged pursuant to the Plan or the Confirmation Order against any Person or Entity so released, discharged, or exculpated (or the property or estate of any Person or Entity so released, discharged, or exculpated). All injunctions or stays provided for in the Chapter 11 Cases under section 105 or section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

Certain Definitions Contains in the Plan Release, Exculpation and Injunction Provisions

“Causes of Action” means any claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date.

“Exculpated Parties” means, collectively: (a) the Debtors; (b) the Reorganized Debtors; (c) any Committee and the members thereof in their capacity as such; (d) the DIP Credit Agreement Agent; (e) DIP Credit Agreement Lenders; (f) the Prepetition Credit Agreement Agent; (g) the Prepetition Credit Agreement Lenders; (h) the Prepetition Notes Agent; (i) the Prepetition Noteholders; and (j) in each case, the respective Related Persons of each of the foregoing Entities.

“Litigation Claims” means the claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that any Debtor or any Estate may hold against any Person or Entity, including, without limitation, the Causes of Action of the Debtors or their Estates, in each case solely to the extent of the Debtors’ or their Estates’ interest therein. A non-exclusive list of the Litigation Claims held by the Debtors as of the Effective Date is to be Filed with the Plan Supplement, which shall be deemed to include any derivative actions filed against any Debtor as of the Effective Date.

“New Railcar Lease Agreements” means those certain railcar lease agreements entered into between the Debtors and the Specified Rail Car Lessors pursuant to the New Railcar Lease Agreements Order.

“New Railcar Lease Agreements Order” means the Order Authorizing the Debtors to (I) Reject Certain Railcar Lease Agreements Nunc Pro Tunc to the Petition Date and (II) Enter Into Proposed New Railcar Lease Agreements Effective as of the Petition Date entered by the Bankruptcy Court in the Chapter 11 Cases (Docket No. 208), as such order may be amended, supplemented, or modified from time to time.

“Non-Debtor Releasing Parties” means, collectively: (a) the Committee and the members thereof in their capacity as such; (b) the Prepetition Credit Agreement Agent and the Releasing Prepetition Credit Agreement Lenders; (c) the DIP Credit Agreement Agent and the DIP Credit Agreement Lenders (d) the Prepetition Notes Agent and the Releasing Prepetition Noteholders; (e) the Releasing Old Emerge LP Equity Holders; (f) those Holders of General Unsecured Claims or Old Emerge LP Equity Interests that do not affirmatively opt out of the Third Party Release as provided on their respective Ballots; and (g) each Specified Railcar Lessor (to the extent it is a Released Party).

“Related Persons” means, with respect to any Person, such Person’s predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members and managing members), managers, managed accounts or funds, management companies, fund advisors, advisory or subcommittee board members, partners, agents, financial advisors, attorneys, accountants,

investment bankers, investment advisors, consultants, representatives, and other professionals, in each case acting in such capacity at any time on or after the date of the Restructuring Support Agreement, and any Person claiming by or through any of them, including such Related Persons' respective heirs, executors, estates, servants, and nominees; provided, however, that no insurer of any Debtor shall constitute a Related Person.

“Released and Settled Claims” means all Claims and Causes of Action made, or which could have been made, on or on behalf of any of the Debtors against the Prepetition Revolver Agent, the Prepetition Revolving Lenders, the Prepetition Note Agent, or the Prepetition Noteholders, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees, in their respective capacities as such.

“Released Party” means, collectively: (a) the Debtors; (b) the Reorganized Debtors; (c) the Committee and the members thereof in their capacity as such; (d) the Prepetition Credit Agreement Agent and the Releasing Prepetition Credit Agreement Lenders; (e) the DIP Credit Agreement Agent and the DIP Credit Agreement Lenders; (f) the Prepetition Notes Agent and the Releasing Prepetition Noteholders; (g) the Releasing Old Emerge LP Equity Holders; and (h) each Specified Railcar Lessor, so long as the applicable New Railcar Lease Agreement(s) between the Debtors and the applicable Specified Railcar Lessor is in full force and effect as of the Effective Date; and in each case the respective Related Persons of each of the foregoing Entities.

“Specified Railcar Lessors” means, collectively, (a) Trinity Industries Leasing Company, (b) MUL Railcars Leasing, LLC, and (c) CIT Bank, N.A. and The CIT Group/Equipment Financing, Inc., as an assignee of CIT Rail, LLC.

Dated: September 11, 2019
Wilmington, Delaware

/s/ Travis J. Cuomo

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