SPECTRUM PHARMACEUTICALS INC
Form 10-K
February 28, 2019
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

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x ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2018

¨ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number: 001-35006

SPECTRUM PHARMACEUTICALS, INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware	93-0979187
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

11500 South Eastern Avenue, Suite 240
Henderson, Nevada 89052
(Address of principal executive offices)
(702) 835-6300
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, $0.001 par value	The NASDAQ Global Select
Rights to Purchase Series B Junior Participating Preferred Stock	

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes x No ¨
Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ¨ No x
Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No ¨

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes x No ¨

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	x	Accelerated filer	¨
Non-accelerated filer	¨	Smaller reporting company	¨
		Emerging growth company	¨

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ¨ No ý

As of June 29, 2018, the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant was $1,786,580,557 (based upon the $20.96 per share closing sale price for shares of the registrant's Common Stock as reported by the NASDAQ Global Select Market on June 29, 2018, the last trading date of the registrant's most recently completed second fiscal quarter).

As of February 21, 2019, approximately 111,049,989 shares of the registrant's Common Stock, $0.001 par value, were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for its 2019 Annual Meeting of Stockholders, to be filed on or before April 30, 2019, are incorporated by reference into Part III, Items 10-14 of this Annual Report on Form 10-K.

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Cautionary Note Concerning Forward-Looking Statements

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934 as amended, or the Exchange Act, in reliance upon the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, without limitation, statements regarding our future product development activities and costs, the revenue potential (licensing, royalty and sales) of our products and product candidates, the success, safety and efficacy of our drug products, revenues and revenue assumptions, clinical studies, including designs and implementation, development timelines, product acquisitions, litigation and regulatory actions, liquidity and capital resources and trends, and other statements containing forward-looking words, such as, “believes,” “may,” “could,” “will,” “expects,” “intends,” “estimates,” “anticipates,” “plans,” “seeks,” “continues,” or the negative thereof o thereon or similar terminology (although not all forward-looking statements contain these words). Such forward-looking statements are based on the reasonable beliefs of our management as well as assumptions made by and information currently available to our management. All forward-looking statements included in this Form 10-K speak only as of the date of this Form 10-K and readers should not put undue reliance on these forward-looking statements. Forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified; therefore, our actual results may differ materially from those described in any forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed elsewhere in this Annual Report on Form 10-K, and the following factors, among others:

- our ability to successfully develop, obtain regulatory approval for and market our products;
- our ability to continue to grow sales revenue of our marketed products;
- risks associated with doing business internationally;
- our ability to generate and maintain sufficient cash resources to fund our business;
- our history of net losses;
- our ability to enter into strategic alliances with partners for manufacturing, development and commercialization;
- efforts of our development partners;
- the ability of our manufacturing partners to meet our timelines;
- our ability to identify new product candidates and to successfully integrate those product candidates into our operations;
- the timing and/or results of pending or future clinical trials, and our reliance on contract research organizations;
- our ability to protect our intellectual property rights;
- competition in the marketplace for our drugs;
- delay in approval of our products or new indications for our products by the U.S. Food and Drug Administration, or the FDA;
- decreases in our revenue from the limited number of distributors that make up a significant portion of our revenue;
- actions by the FDA and other regulatory agencies, including international agencies;
- securing positive reimbursement for our products;
- the impact of any product liability, or other litigation to which we are, or may become a party;
- the impact of legislative or regulatory reform of the healthcare industry and the impact of recently enacted healthcare reform legislation;
- the availability and price of acceptable raw materials and components from third-party suppliers, and their ability to meet our demands;
- our ability, and that of our suppliers, development partners, and manufacturing partners, to comply with laws, regulations and standards, and the application and interpretation of those laws, regulations and standards, that govern or affect the pharmaceutical and biotechnology industries, the non-compliance with which may delay or prevent the development, manufacturing, regulatory approvals and sale of our products;

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- defending against claims relating to improper handling, storage or disposal of hazardous chemical, radioactive or biological materials which could be time consuming and expensive;
- our ability to maintain the services of our key executives and technical and sales and marketing personnel;
- the difficulty in predicting the timing or outcome of product development efforts and regulatory approvals; and
- demand and market acceptance for our approved products.

All subsequent written and oral forward-looking statements attributable to us or by persons acting on our behalf are expressly qualified in their entirety by these cautionary statements.

In addition, past financial or operating performance is not necessarily a reliable indicator of future performance, and you should not use our historical performance to anticipate results or future period trends. We can give no assurances that any of the events anticipated by the forward-looking statements will occur or, if any of them do, what impact they will have on our results of operations and financial condition. Except as required by law, we do not undertake to update any such forward-looking statements and expressly disclaim any duty to update the information contained in this Annual Report on Form 10-K.

Unless the context otherwise requires, all references in this Annual Report on Form 10-K to the “Company”, “we,” “us,” “our,” “Spectrum” and “Spectrum Pharmaceuticals” refer to Spectrum Pharmaceuticals, Inc. and its subsidiaries and other consolidated entities, as a consolidated entity. We primarily conduct our business activities as Spectrum Pharmaceuticals.

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PART I

ITEM 1. BUSINESS

Company Overview

Spectrum Pharmaceuticals, Inc. ("Spectrum", the "Company", "we", "our", or "us") is a biopharma company, with a primary strategy comprised of acquiring, developing, and commercializing a broad and diverse pipeline of clinical and commercial products. We have an in-house clinical development organization with regulatory and data management capabilities, in addition to commercial infrastructure and a field-based sales force for our marketed products.

Currently, we have seven approved oncology/hematology products (FUSILEV, KHAPZORY, FOLOTYN, ZEVALIN, MARQIBO, BELEODAQ, and EVOMELA) that target different types of cancer including: non-Hodgkin's lymphoma ("NHL"), advanced metastatic colorectal cancer ("mCRC"), acute lymphoblastic leukemia ("ALL"), and multiple myeloma ("MM").

We also have two drugs in late-stage development:

- Poziotinib, a novel pan-HER inhibitor under investigation for non-small cell lung cancer ("NSCLC") tumors with either EGFR or HER2 exon-20 insertion mutations; and
- ROLONTIS, a novel long-acting granulocyte colony-stimulating factor ("G-CSF"), analog for chemotherapy-induced neutropenia.

On January 17, 2019, we entered into a definitive asset purchase agreement for the sale of our FDA-approved product portfolio of FUSILEV, KHAPZORY, FOLOTYN, ZEVALIN, MARQIBO, BELEODAQ, and EVOMELA to Acrotech Biopharma L.L.C. ("Acrotech"), a New Jersey-based wholly-owned subsidiary of Aurobindo Pharma USA Inc. (the "Acrotech Transaction"). Upon the closing of the Acrotech Transaction, we are entitled to receive up to $160 million in an upfront cash payment (of which $4 million will be held in escrow for six months). In addition, we expect a purchase price adjustment for certain ongoing research and development activities of the commercialized product portfolio. We are also entitled to receive an aggregate $140 million upon Acrotech's achievement of certain regulatory and sales-based milestones relating to this product portfolio. We plan to reduce our staff by approximately 90

employees, the majority of which we expect to transition to

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Acrotech. The accounting recognition and financial reporting for the disposal of this commercial component of our business will be reflected in our financial statements in the period corresponding with its closing.

Cancer Background and Market Size

Cancer is a group of diseases characterized by the uncontrolled growth and spread of abnormal cells, which can result in death. The development of cancer is multi-factorial and includes both external factors (tobacco, infectious organisms, chemicals, and radiation) and internal factors (inherited mutations, hormones, immune conditions, and mutations that occur from exposure to environmental factors or errors in making DNA (deoxyribonucleic acid) during normal cell division). These causal factors may act together or in sequence to initiate or promote the development of cancer. Ten or more years often pass between exposure to these factors and the development of detectable cancer. Cancer is treated through surgery, radiation, chemotherapy, hormone therapy, immunotherapy, and/or targeted drug therapy.

According to the American Cancer Society's publication Cancer Facts & Figures 2018, cancer is the second leading cause of death in the U.S. (only behind heart disease). In the U.S., approximately 1.7 million new cancer cases were expected to be diagnosed in 2018 and approximately 610,000 persons were expected to die from the disease. Anyone can develop cancer. Since the risk of being diagnosed with cancer increases with age, most cases occur in adults who are middle aged or older. About 87% of all cancers are diagnosed in people 50 years of age and older. In the U.S., approximately 40 out of 100 men and 38 out of 100 women will develop cancer during their lifetime. These probabilities are estimated based on the overall experience of the general population. Individuals within the population may have higher or lower risk because of differences in exposures (e.g., smoking), and/or genetic susceptibility. In addition, currently available treatments are variably effective in the different cancers and individual patients. Together these patients' risks and the treatment limitations suggest a significant current and long-term demand for improved and novel cancer treatments.

Product Portfolio

We currently have a product portfolio consisting of both commercial stage and development stage products that address various cancer types (see the section titled Research and Development below for our pipeline of cancer therapeutics that are in various development stages). Our commercialized products and products in development may have serious adverse effects, or SAEs, that could result in a negative impact on sales and delays, or removal of regulatory approval. For further information on these SAEs, see the risk factor within accompanying Item 1A. Risk Factors – Risks Related to Our Business --Reports of adverse events or safety concerns involving each of our products or similar agents, sold by us or our development partners and/or licensees, could delay or prevent us from obtaining or maintaining regulatory approval or negatively impact sales.

Commercialized Products

FUSILEV

FUSILEV (levoleucovorin) is a novel folate analog and the pharmacologically active isomer (the levo-isomer) of the racemic compound, calcium leucovorin. Leucovorin is a mixture of equal parts of both isomers: the pharmacologically active levo-isomer and the inactive dextro-isomer. Preclinical studies have demonstrated that the inactive dextro-isomer may compete with the active levo-isomer for uptake at the cellular level. By removing the inactive dextro form, the dosage of FUSILEV is one-half that of leucovorin and patients are spared the administration of an inactive substance. FUSILEV is approved as a ready-to-use solution, and as freeze-dried powder. FUSILEV has the following indications for use:

- in combination chemotherapy with 5-fluorouracil in the palliative treatment of patients with advanced mCRC;
- for rescue after high-dose methotrexate, or MTX, therapy in osteosarcoma; and
- to diminish the toxicity and counteract the effects of impaired MTX elimination and of inadvertent over dosage of folic acid antagonists.

Effective December 2018, FUSILEV has been discontinued and we are no longer selling this product. We have since transitioned to marketing KHAPZORY (see below) for identical indications as FUSILEV.

KHAPZORY

On October 19, 2018, the FDA approved KHAPZORY (levoleucovorin), which is formulated as a freeze-dried powder. KHAPZORY is a novel folate analog and the pharmacologically active levo-isomer of d,1-leucovorin. Preclinical studies have

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demonstrated that the inactive dextro-isomer may compete with the active levo-isomer for uptake at the cellular level. By removing the inactive dextro form, the dosage of KHAPZORY is one-half that of leucovorin and patients are spared the administration of an inactive substance. While FUSILEV uses a calcium-based formulation, KHAPZORY uses a sodium-based formulation, though has the same indications for use as FUSILEV.

FOLOTYN

FOLOTYN (pralatrexate injection), a folate analogue metabolic inhibitor, was discovered by Memorial Sloan-Kettering Cancer Center, SRI International and Southern Research Institute, and was developed by Allos Therapeutics, Inc., or Allos. In September 2009, the FDA granted accelerated approval for FOLOTYN for use as a single agent for the treatment of patients with relapsed or refractory peripheral T-cell lymphoma, or PTCL. FOLOTYN was the first chemotherapy approved by the FDA, under its accelerated approval program, for the treatment of relapsed or refractory PTCL and has been available to patients in the U.S. since October 2009.

According to the Lymphoma Research Foundation, lymphoma is the most common blood cancer. Hodgkin's lymphoma and NHL are the two main forms of lymphoma. Lymphoma occurs when lymphocytes, a type of white blood cell, grow abnormally and accumulate in one or more lymph nodes or lymphoid tissues. The body has two main types of lymphocytes that can develop into lymphomas: B-lymphocytes, or B-cells, and T-lymphocytes, or T-cells. PTCL comprises a group of rare and aggressive NHLs that develop from mature T-cells and accounts for approximately 5 to 15% of all NHL cases in the U.S. and Europe.

Based on preclinical studies, we believe that FOLOTYN selectively enters cancer cells expressing reduced folate carrier, or RFC-1, a protein that is frequently over expressed on cancer cells compared to normal cells. Once inside cancer cells, FOLOTYN is efficiently polyglutamylated and retained inside the cells for a longer time. FOLOTYN and its polyglutamates inhibit dihydrofolate reductase, or DHFR, an enzyme critical in the folate pathway, thereby interfering with DNA and RNA synthesis and triggering cancer cell death.

The safety and efficacy of FOLOTYN was evaluated in an open-label, single-arm, multi-center, international trial that enrolled patients with relapsed or refractory PTCL. One hundred and eleven patients were treated with FOLOTYN at 30 mg/m² once weekly by IV push over three to five minutes for six weeks in seven-week cycles until disease progression or unacceptable toxicity. Of the 111 patients treated, 109 patients were evaluable for efficacy. The primary efficacy endpoint was overall response rate (complete response, complete response unconfirmed, and partial response) as assessed by International Workshop Criteria, or IWC. Of the 109 evaluable patients, 27% of patients achieved a response that met these criteria.

In addition to its approved indication, FOLOTYN is being investigated in a Phase 1 study in combination with the CHOP (cyclophosphamide, doxorubicin, vincristine, and prednisone) chemotherapy regimen. Once the proper dose of FOLOTYN in combination with CHOP has been determined, a Phase 3 study of the combinations of FOLOTYN and CHOP, and BELEODAQ and CHOP, compared to CHOP alone for the treatment of first line PTCL may be initiated. The Phase 1 study and the Phase 3 study concept are also the current post-marketing requirements for the FDA's accelerated approval of our currently marketed indication for FOLOTYN.

BELEODAQ

BELEODAQ (belinostat) is a histone deacytelase, or HDAC, inhibitor for the treatment of patients with relapsed or refractory PTCL. This indication was FDA approved in July 2014 under its accelerated approval program, based on tumor response rate and duration of response. BELEODAQ's anticancer effect is thought to be mediated through multiple mechanisms of action, including the inhibition of cell proliferation, induction of apoptosis (programmed cell death), inhibition of angiogenesis, induction of differentiation, and the activity in tumors that had become resistant to anticancer agents such as the platinums, taxanes, and topoisomerase II inhibitors.

The safety and effectiveness of BELEODAQ was evaluated in an open-label, single-arm, non-randomized international trial involving 129 participants with relapsed or refractory PTCL. Patients were treated with BELEODAQ 1,000 mg/m2 administered over 30 minutes via IV infusion once daily on days one to five of a 21-day cycle until disease progression or unacceptable toxicity. The primary efficacy endpoint was response rate (complete response and partial response) as assessed by an independent review committee, or IRC, using IWC. In all evaluable

patients (N = 120) treated with BELEODAQ, the overall response rate per central review using IWC was 25.8%.

We market FOLOTYN and BELEODAQ for the treatment of relapsed or refractory PTCL. These drugs have different mechanisms of action, and as a result, the treating physician may prefer to start treatment with one drug over the other. In

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addition, physicians may prefer one drug over another based on specific patient factors such as the subtype of PTCL being treated, existing comorbidities, or the performance status of the patient. However, both drugs have similar response rates of approximately 25-30%. It is common for patients to cycle through multiple drugs, including both FOLOTYN and BELEODAQ, though these drugs are not FDA-approved for use in combination with one another.

In addition to its approved indication, BELEODAQ has been investigated in a Phase 1 study in combination with the CHOP chemotherapy regimen. Once the proper dose of FOLOTYN in combination with CHOP has been determined, a Phase 3 study may be assessed for the combination of BELEODAQ and CHOP and FOLOTYN and CHOP, compared to CHOP alone for the treatment of first line PTCL. The Phase 1 study and the Phase 3 study concept are also the current post-marketing requirements for the FDA's accelerated approval of our currently marketed indication for BELEODAQ.

ZEVALIN

ZEVALIN (ibritumomab tiuxetan) injection for intravenous use is a prescription medication that is part of a three step treatment regimen consisting of: two treatments of Rituximab and one treatment of Yttrium-90 (Y-90) ZEVALIN. The National Cancer Institute, or NCI, estimated 75,000 new cases of NHL in the U.S. in 2018. Rituximab is used to reduce the number of B-cells in the blood and Y-90 ZEVALIN is then given to treat NHL. It is currently approved in the U.S. and more than 40 countries outside the U.S. including countries in Europe, Latin America and Asia for (i) treatment of patients with recurring, low-grade or follicular B-cell NHL after other anticancer drugs are no longer working, and (ii) newly diagnosed follicular NHL following a response to initial anticancer therapy.

MARQIBO

MARQIBO (vincristine sulfate liposome injection) is a novel, sphingomyelin/cholesterol liposome-encapsulated formulation of the FDA-approved anticancer drug Vincristine. MARQIBO’s approved indication is for the treatment of adult patients with Philadelphia chromosome-negative - ALL, or Ph-ALL, in second or greater relapse or whose disease has progressed following two or more lines of anti-leukemia therapy. According to the NCI, in 2018 it is estimated that there will be approximately 6,000 patients diagnosed with ALL in the U.S., of which approximately 1,600 can be categorized as ALL in second or greater relapse.

MARQIBO was studied in an international, open-label, multi-center, single-arm trial. Eligible patients were 18 years of age or older with Ph-ALL in second or greater relapse or whose disease progressed after two or greater treatment lines of anti-leukemia therapy. Patients received intravenous MARQIBO monotherapy at 2.25 mg/m2 over 60 minutes every seven days. The treated population included 65 patients who received at least one dose of MARQIBO. Of the 65 evaluable patients, three (4.6%) achieved complete remission, or CR, seven (10.8%) achieved complete remission with incomplete blood count recovery, or CRi, for a total of 10 (15.4%) total patients who achieved a CR or CRi.

In addition to its approved indication, MARQIBO is being investigated in pediatric ALL in a Phase 1 investigator-initiated study in the U.S. Based on data from this study, Spectrum will determine whether to conduct a registration study for MARQIBO in this setting. We are in discussions with the FDA regarding the possibility of using this development plan to satisfy one of the post-marketing requirements for the accelerated approval of our currently marketed indication for MARQIBO.

MARQIBO is also being investigated in diffuse large B-cell lymphoma in a Phase 3 investigator-initiated study in Europe in combination with the standard CHOP chemotherapy regimen in Europe, CHOP-14. Based on interim data from this study, Spectrum will consider whether to conduct a study of the combination of MARQIBO with the standard CHOP regimen in the U.S., CHOP-21 may be initiated.

EVOMELA

EVOMELA is intended for use as a high-dose conditioning treatment prior to autologous stem cell transplant, or ASCT, for patients with MM. MM is a cancer of plasma cells, a type of white blood cell present mainly in the bone marrow that produces antibodies. In MM, a group of plasma cells (myeloma cells) become cancerous and multiply, raising the number of plasma cells to a higher-than-normal level, which can crowd out normal blood cells and lead to abnormally high proteins in the blood or urine. The NCI estimated 31,000 new cases of MM in the U.S. in 2018, with

the incidence of new cases increasing by approximately 2% per year.

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The EVOMELA formulation avoids the use of propylene glycol, or PG, which is required as a co-solvent in the currently-available formulation of this product. The use of Betadex Sulfobutyl Ether Sodium technology to reformulate EVOMELA may allow for longer administration durations and slower infusion rates, potentially enabling clinicians to avoid reductions.

EVOMELA was approved by the FDA based on its bioequivalence to the standard melphalan formulation (Alkeran) via the new drug regulatory pathway provided by Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act. The safety and effectiveness of EVOMELA in high-dose conditioning treatment was evaluated in an open-label, single-arm, non-randomized trial. The objective of the trial was to determine the overall safety and toxicity profile of 200 mg/m2 of EVOMELA in patients with MM undergoing ASCT. The overall response rate (partial response or better) improved from 79% prior to the ASCT procedure to 95% at 90 to 100 days post-transplant. There was also an increase in the number of patients with a stringent complete response from zero patients prior to the ASCT procedure to 16% at 90 to 100 days post-transplant. Myeloablation, neutrophil engraftment, and platelet engraftment were achieved by all 61 patients. Myeloablation occurred on day five of ASCT (range of ASCT days was one to six) with the median time to myeloablation from dosing of eight days. The median time to neutrophil engraftment was 12 days (range of ASCT days was 10 to 16). The median time to platelet engraftment was 13 days (range of ASCT days was 10 to 28).

New Product Pipeline

Poziotinib

Poziotinib is a novel, pan-HER inhibitor that irreversibly blocks signaling through the Epidermal Growth Factor Receptor (EGFR, HER) Family of tyrosine-kinase receptors, including HER1 (erbB1; EGFR), HER2 (erbB2), HER4 (erbB4), and HER receptor mutations. This, in turn, leads to the inhibition of the proliferation of tumor cells that over-express these receptors. Mutations or over-expression/amplification of EGFR family receptors have been associated with a number of different cancers, including NSCLC, breast cancer, and gastric cancer.

Our clinical development program for poziotinib is focused on four pillars, including previously treated NSCLC, first-line treatment of NSCLC, combination therapy and treatment of other solid tumors with EGFR or HER2 mutations. Specifically, we are investigating poziotinib for the treatment of NSCLC tumors with either EGFR or HER2 exon-20 insertion mutations. NSCLC tumors with EGFR or HER2 exon-20 insertion mutations are rare, and have generally not been responsive to other tyrosine kinase inhibitors. Patients with these mutations have a poor prognosis, and available treatment options are limited. Poziotinib, due to its unique chemical structure and characteristics, is believed to inhibit cell growth of EGFR or HER2 exon-20 insertions. In collaboration with The University of Texas MD Anderson Cancer Center ("MD Anderson"), an investigator-sponsored Phase 2 trial was initiated in NSCLC patients with EGFR or HER2 exon-20 mutations (the "MD Anderson Phase 2 Trial"). The EGFR cohort of 50 patients has completed enrollment; the enrollment of the HER2 cohort of 30 patients is ongoing. In addition to the MD Anderson study, we have ongoing pivotal Phase 2 global study with active sites in the U.S., Canada, and Europe ("ZENITH20").

In April 2018, poziotinib data were published in Nature Medicine from the ongoing study led by MD Anderson, which provided an update on the preliminary clinical data of poziotinib dosing on the 11 NSCLC patients previously reported at World Conference on Lung Cancer in October 2017. This publication summarized the current preclinical and clinical data with poziotinib for EGFR or HER2 exon-20 mutations. MD Anderson utilized in silico, in vitro, and in vivo testing to model structural alterations induced by exon-20 mutations and identify potentially effective inhibitors. 3-D modeling indicated alterations restricted the size of the drug binding pocket, limiting the binding of large, rigid inhibitors. It was found that poziotinib, due to its small size and flexibility, can circumvent these steric changes, and is a potent inhibitor of the most common EGFR and HER2 exon-20 mutants. Poziotinib demonstrated greater activity than approved EGFR tyrosine kinase inhibitors ("TKIs") in vitro and in EGFR or HER2 exon-20 mutant patient-derived xenograft models, and genetically engineered mouse models of NSCLC.

In September 2018 we announced preliminary poziotinib data from the MD Anderson Phase 2 NSCLC study which were released during an oral presentation at the IASLC 19th World Conference on Lung Cancer. The MD Anderson study is the single largest data set of patients with an exon 20 mutation in EGFR or HER2. This Phase 2 study demonstrated high anti-tumor activity for poziotinib in metastatic, heavily pretreated EGFR exon 20 mutant NSCLC, a group for which no targeted agents have proven to be effective to date. This data is summarized below:

- In 44 evaluable patients with EGFR exon-20 mutations, the confirmed overall response rate (ORR) was 43% and disease control rate was 90%. Median progression free survival (PFS) was 5.5 months (ITT).
- In evaluable patients with HER2 exon-20 mutations, the confirmed overall response rate (ORR) was 42% and disease control rate was 83%. Median progression free survival (PFS) was 5.1 months (ITT).

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- EGFR-related toxicities (including rash, diarrhea, and paronychia) were manageable and required dose reductions in 60% of patients. Discontinuation due to poor tolerance was rare (approximately 3% of patients).

On January 2, 2019 we announced full enrollment of cohort 1 (N=87) for previously treated NSCLC patients with EGFR exon 20 insertion mutations with sites across the U.S., Europe, and Canada. The EGFR previously treated cohort is part of the ZENITH20 trial - an open-label, multi-center, global Phase 2 trial evaluating NSCLC patients with EGFR or HER2 exon 20 insertion mutations. Results from this cohort are expected by the second half of 2019. We have also been studying poziotinib in patients with HER2+ breast cancer, however we are no longer focusing on studying poziotinib in this group of patients as the unmet need is not as significant as it is for patients with EGFR or HER2 exon 20 insertion mutations. A Phase 2 study including patients with HER2+ metastatic breast cancer, who have failed at least two HER2 directed therapies, has been fully enrolled. A Phase 1b study testing the combination of poziotinib and ado-trastuzumab emtansine (T-DM1) in patients with metastatic breast cancer has now been closed to further enrollment.

ROLONTIS

ROLONTIS (eflapegrastim injection) is a novel long-acting G-CSF that employs a proprietary technology to enhance the duration of therapeutic effects and reduces the frequency of administration. ROLONTIS is being investigated for the treatment of chemotherapy-induced neutropenia. In January 2012, we entered into a co-development and commercialization agreement for ROLONTIS worldwide rights, except for Korea, China, and Japan, with Hanmi, based on their proprietary LAPSCOVERY™ technology.

Chemotherapy can cause myelosuppression and unacceptably low levels of white blood cells, making patients prone to infections, hospitalizations, and interruption of chemotherapy treatments.

Neutropenia, a common side effect of chemotherapy, is a condition where the number of neutrophils or white blood cells are too low, and can lead to infection, hospitalization, and even death. G-CSF stimulates the production of white blood cells by the bone marrow. A recombinant form of G-CSF is used in appropriate cancer patients to accelerate recovery from neutropenia after chemotherapy, allowing higher-intensity treatment regimens to be given at full-dose and on schedule. The worldwide annual market opportunity for long-acting G-CSF-related drugs is over $4 billion, based on a 2016 revenue and sales analysis performed by Evaluate Pharma.

In December 2015, we reached agreement with the FDA regarding our Phase 3 Special Protocol Assessment, or SPA, for ROLONTIS. This pivotal Phase 3 study (ADVANCE Study, or SPI-GCF-301) was initiated in the first quarter of 2016 to evaluate ROLONTIS as a treatment for chemotherapy-induced neutropenia. We announced in February 2018 that the top line results of this study met the non-inferiority of ROLONTIS to pegfilgrastim endpoint in the Duration of Severe Neutropenia, or DSN, across all four cycles (all $p<0.0001$). We initiated a second pivotal Phase 3 study (RECOVER Study, or SPI-GCF-302) and announced in June 2018, that it had also met its primary efficacy endpoint of non-inferiority in DSN between ROLONTIS and pegfilgrastim.

We submitted our Biologics License Application ("BLA") with the FDA in late December 2018. Due to the recent federal government shutdown, the BLA was officially received by the FDA on January 28, 2019. Once this BLA is accepted by the FDA, our Prescription Drug User Fee Act date is expected to be set for 10 months thereafter.

QAPZOLA

QAPZOLA is a potent tumor-activated drug that is being tested in non-muscle invasive bladder cancer ("NMIBC"). The NCI estimates that the 2018 incidence and prevalence of bladder cancer in the U.S. was approximately 79,000 cases. The global presence of bladder cancer is estimated at 2.7 million cases. According to Botteman et al., (PharmacoEconomics 2003), bladder cancer is the most expensive cancer to treat on a lifetime basis. The overall cost of bladder cancer treatment in the U.S. is approximately $3.4 billion annually, most of which is related to the direct treatment of this disease.

The initial treatment of bladder cancer is to attempt a complete surgical removal of the tumor. However, bladder cancer is a highly recurrent disease with approximately 80% of patients recurring within five years, and a majority of patients recurring within two years. This high recurrence rate is attributed to:

- the highly implantable nature of cancer cells that are dispersed during surgery;
- incomplete tumor resection; and

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- tumors present in multiple locations in the bladder which may be missed or too small to visualize at the time of resection.

Despite evidence in the published literature and guidance from the American and European Urology Associations, instillation of a chemotherapeutic agent immediately following surgery is not a standard clinical practice. Currently, there are no FDA approved drugs for this indication which may, in part, explain the difference between the literature and urology guidelines and actual clinical management of this disease. For more than 30 years, no new drugs have been introduced in the market for treatment of NMIBC. QAPZOLA represents much needed therapy for patients and may provide a meaningful opportunity to reduce overall medical costs.

Pharmacokinetic studies have verified that QAPZOLA is rarely detectable in the bloodstream of patients when it is administered either after surgical resection or as a part of a delayed multi-instillation protocol. QAPZOLA is inactivated in the systemic circulation by the red blood cell fraction. The proposed dose therefore carries a minimal risk of systemic toxicity that could arise from absorption of a drug through the bladder wall into the bloodstream. An immediate instillation of QAPZOLA may help by:

- reducing tumor recurrence by destroying dispersed cancer cells that would otherwise re-implant onto the inner lining of the bladder;
- destroying remaining cancer cells at the site of tumor resection (also known as chemo-resection); and
- destroying tumors not observed during resection (also known as chemo-ablation).

We submitted an NDA on December 11, 2015, which was accepted on February 9, 2016. In November 2016, we received a Complete Response Letter, or CRL, from the FDA. In February 2017, we received a SPA from the FDA for our redesigned Phase 3 study of QAPZOLA. The new Phase 3 study has been specifically designed to build on learnings from the previous studies as well as recommendations from the FDA. The Phase 3 study is currently enrolling up to 425 evaluable patients, using a single dose of 8 mg of QAPZOLA, and will evaluate time-to-recurrence as the primary endpoint.

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For information on operating revenue related to our principal products, as well as our net loss, see Item 8 of Part II to this Annual Report on Form 10-K. Additionally, for information regarding possible adverse events or safety concerns regarding our commercialized and development stage products, see Item 1A. Risk Factors - Risks Related to Our Business - Reports of adverse events or safety concerns involving each of our products or similar agents, sold by us or our development partners and/or licensees, could delay or prevent us from obtaining or maintaining regulatory approval or negatively impact sales.

Manufacturing

We currently do not have internal manufacturing capabilities; therefore, all of our products are manufactured on a contract basis. We expect to continue to contract with third-party providers for manufacturing and packaging services, including active pharmaceutical ingredients, or API, and finished-dosage products. We believe that our current agreements with third-party manufacturers provide for sufficient operating capacity to support the anticipated commercial demand and clinical requirements for our products. Where technically feasible, we maintain secondary supplier sources for our drug products to mitigate the risk of over-reliance on any one supplier. We attempt to prevent supply disruption through supply agreements, appropriate forecasting, and maintaining base stock levels.

Sales and Marketing

We presently market our pharmaceutical products through group purchasing organizations, or GPOs, wholesalers or directly to major hospitals and cancer centers in the U.S., except for our U.S. sales of ZEVALIN, in which case we sell directly to the end-user; and through distributors in Europe (and previously in Japan). Most of our revenues are derived from sales within the U.S. For information regarding the portion of our revenue attributable to sales outside the U.S., see Note 5, "Composition of Total Revenue," to our accompanying Consolidated Financial Statements. Our

U.S. sales team is divided between “corporate accounts” and “oncology accounts” that generally interact with different end-user types. The primary decision makers for our products are oncologists and hematologists. As of December 31, 2018, our U.S. sales force (sales management, sales representatives, and sales administrative support) numbered 61 employees.

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During fiscal years 2018, 2017, and 2016, each of FOLOTYN, EVOMELA and BELEODAQ accounted for 10% or more of our total revenue. The percentage of our total revenue contributed by such products in fiscal years 2018, 2017, and 2016 are as follows:

	Year Ended December 31,		
	2018	2017	2016
FOLOTYN	43.9%	33.5%	31.6%
EVOMELA	25.9%	27.4%	11.1%
BELEODAQ	11.3%	9.6 %	9.1 %

Customers

Our product sales are concentrated to large pharmaceutical distributors (that ship and bill to hospitals and clinics). The customers that represented 10% or more of our total gross product sales in fiscal years 2018, 2017, and 2016 are as follows:

	Product Sales		
	2018	2017	2016
McKesson Corporation and its affiliates	36.3%	31.1%	31.0%
AmerisourceBergen Corporation and its affiliates	29.1%	32.3%	38.4%
Cardinal Health, Inc. and its affiliates	22.0%	26.3%	24.0%

We are exposed to credit risk associated with trade receivables that result from these product sales. We do not require collateral or deposits from our customers due to our assessment of their creditworthiness and our long-standing relationship with them. We maintain reserves for potential bad debt, though credit losses have historically been nominal and within management's expectations. A summary of our customers that represented 10% or more of our "accounts receivable, net of allowance for doubtful accounts," as of December 31, 2018 and 2017 are as follows:

	Accounts Receivable, Net of Allowance for Doubtful Accounts December 31,	
	2018	2017
AmerisourceBergen Corporation, and its affiliates	35.0%	22.2%
Cardinal Health, Inc. and its affiliates	27.5%	29.5%
McKesson Corporation and its affiliates	25.5%	34.7%

See Note 5 to the accompanying Consolidated Financial Statements for additional summaries of revenue by geography and product/service source.

Competition

The pharmaceutical industry is characterized by rapidly-evolving technology and intense competition, which we expect will continue. Many companies are engaged in research and development of compounds that are similar to ours – both commercialized and in development, which fosters continuous innovation. In the event that one or more of our competitor's programs are successful, the market for some of our drug products could be reduced or eliminated. Any product for which we obtain FDA approval must also compete for market acceptance and market share.

Successful marketing of branded products depends primarily on the ability to communicate the effectiveness, safety, and value of the products to healthcare professionals in private practice, group practices, hospitals, academic institutions, and managed care organizations. Competition for branded drugs is less driven by price and is more

focused on innovation in treatment of disease, advanced drug delivery, and specific clinical benefits over competitive drug therapies. Unless our products are shown to be differentiated, i.e., have a better safety profile, efficacy, and cost-effectiveness, compared to other alternatives, they may not gain acceptance by medical professionals and may therefore never be commercially successful.

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Companies that have products on the market or in research and development that target the same indications as our products include, among others, AstraZeneca plc, Bayer AG, Endo International plc, Eli Lilly and Company, Novartis International AG, Genentech, Inc. (Roche Holding AG), Bristol-Myers Squibb Company, Seattle Genetics, Inc., GlaxoSmithKline plc, Biogen Inc., OSI Pharmaceuticals, Inc. (Astellas Pharma Inc.), Cephalon, Inc. (Teva Pharmaceutical Industries Ltd.), Sanofi S.A., Pfizer, Inc., Merck & Co., Inc., Celgene Corporation, BiPar Sciences, Inc. (Sanofi S.A.), Sanofi Genzyme, Shire plc, AbbVie Inc., Poniard Pharmaceuticals, Inc., Johnson & Johnson, Amgen, Inc., Coherus BioSciences, and Takeda Pharmaceutical Company Ltd.

Each of the aforementioned companies may be more advanced in the development of competing drug products. Many of these competitors are large and well-capitalized companies focusing on a wide range of cancers and drug indications, and have substantially greater resources and expertise than we do.

We believe that the current competitive landscape for each of our commercialized products, and key in-development products, is as follows:

(a) KHAPZORY is the sodium levo-isomeric form of the racemic compound calcium, leucovorin, a product already approved for the same indication as FUSILEV. There are several generic companies approved by the FDA to sell the calcium leucovorin product, we are competing with lower-cost alternatives.

(b) ZEVALIN has two competitive products for its currently approved indications:

- Rituxan® (rituximab), marketed by Genentech Inc. and Biogen Inc., is indicated for the treatment of patients with relapsed or refractory, low-grade or follicular, CD20-positive, B-cell NHL as a single agent; previously untreated follicular, CD20-positive, B-cell NHL in combination with CVP (cyclophosphamide, vincristine and prednisone combination) chemotherapy; and non-progressing (including stable disease), low-grade, CD20-positive B-cell NHL, as a single agent, after first-line CVP chemotherapy. Rituxan is administered as a part of various chemotherapy regimens and schedules, the vast majority of which, could be used in concert with other therapeutic agents, such as ZEVALIN, as part of a treatment plan.

- Bendeka® (bendamustine hydrochloride) for Injection, for Intravenous Infusion, marketed by Teva Pharmaceutical Industries Ltd., is indicated for the treatment of patients with indolent B-cell NHL that has progressed during or within six months of treatment with rituximab or a rituximab-containing regimen.

(c) FOLOTYN, was the first agent approved by the FDA for treatment of patients with relapsed or refractory PTCL. BELEODAQ is a HDAC inhibitor, also indicated for the treatment of patients with relapsed or refractory PTCL. Both drugs were approved under accelerated approval based on tumor response rate. Clinical benefit such as improvement in progression-free survival or overall survival has not been demonstrated. Continued approval for this indication may be contingent upon verification and description of clinical benefit in a confirmatory trial.

There are many existing approaches used in the treatment of relapsed or refractory PTCL, including combination chemotherapy and single agent regimens, which represent competition for FOLOTYN and BELEODAQ. Both drugs have two primary competitive products for their currently approved indications:

- Istodax® (Romidepsin), marketed by Celgene Corporation, was granted accelerated approval by the FDA in June 2011 for the treatment of patients with PTCL who have received at least one prior therapy.

- Adcetris® (Brentuximab vedotin), marketed by Seattle Genetics, Inc., was granted accelerated approval by the FDA in August 2011 for the treatment of patients with systemic anaplastic large cell lymphoma, or ALCL, after failure of at least one prior multi-agent chemotherapy regimen. ALCL is one of the subtypes of PTCL included in the labels of FOLOTYN, BELEODAQ and Istodax.

We are aware of multiple investigational agents that are currently being studied in clinical trials for PTCL which, if approved, may compete with FOLOTYN and BELEODAQ. Many patients with PTCL do not adequately respond to a single treatment agent, so many patients receive treatment with more than one agent (e.g., BELEODAQ and FOLOTYN).

(d) MARQIBO is a liposomal form of standard vincristine. In its current indication, MARQIBO is approved for adult patients with relapsed or refractory Ph-ALL who have not responded or relapsed after two prior treatments. This indication received the FDA's accelerated approval based on tumor response rate. Clinical benefit such as improvement

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in overall survival has not been verified. Continued approval for this indication may be contingent upon verification and description of clinical benefit in a confirmatory trial.

Currently, standard vincristine is not approved for the same indication as MARQIBO. However, there are many existing approaches used in the treatment of relapsed or refractory Ph-ALL, including combination chemotherapy and single agent regimens, which represent competition for MARQIBO. There are a variety of investigational agents in clinical trials for ALL that if approved could represent future competition for MARQIBO.

(e) EVOMELA is a propylene glycol-free formulation. Given its unique formulation, there are no generic forms of EVOMELA on the market. However, there are currently several generic forms of melphalan used in the treatment of MM, which represent direct competition for EVOMELA. The current companies with forms of generic melphalan include Mylan, Teva Pharmaceutical Industries Ltd., Sagent Pharmaceuticals, PAR Pharmaceutical Dr. Reddy's Laboratories, and Fresenius Kabi Global.

(f) ROLONTIS is a novel long-acting granulocyte colony-stimulating factor that employs a proprietary technology that prolongs the duration of biologics, reducing the frequency of administration. There is currently one novel long-acting granulocyte colony stimulating factor (G-CSF) and two biosimilar G-CSFs marketed in the United States including, Neulasta® (pegfilgrastim), marketed by Amgen, Inc., UDENYCA™ (pegfilgrastim-cbqv), a biosimilar marketed by Coherus BioSciences, and Fulphila® (pegfilgrastim-jmdb), a biosimilar marketed by Mylan Pharmaceuticals, Inc.

(g) Poziotinib is a novel investigational, oral, quinazoline-based pan-HER inhibitor that irreversibly blocks signaling through the EGFR family of tyrosine-kinase receptors, including human epidermal growth factor receptor (HER1\ErbB1/EGFR), HER2 (ErbB2), and HER4 (ErbB4), as well as HER receptor mutations. Poziotinib’s development program is primarily focused on advanced NSCLC patients harboring exon 20 insertion mutations in both HER1/Erb1/EGFR and HER2(ErbB2). At present there are no FDA approved therapies for metastatic NSCLC patients with EGFR or HER2 exon 20 mutations expect for afatinib, which is FDA- approved for S768I point mutations.

There are a number of other targeted therapies focused on this subtype of NSCLC that are in early clinical investigation by our potential competitors, including: TAK788 - Millennium Pharmaceuticals, Inc., TAGRISSO (Osimertinib) - AstraZeneca, Tarloxotinib - Rain Therapeutics Inc., DS-8201a - Daiichi Sankyo, and JNJ-61186372- Janssen Research & Development.

Research and Development

New drug development is the process whereby drug product candidates are tested for the purpose of filing an NDA or a BLA, in the U.S. (or similar filing in other countries). Obtaining marketing approval from the FDA or similar regulatory authorities outside of the U.S. is an inherently uncertain, lengthy, and expensive process that requires several phases of clinical trials to demonstrate to the satisfaction of the appropriate regulatory authorities that the products are both safe and effective for their respective indications. Our development focus is primarily based on acquiring and developing late-stage development drugs as compared to new drug discovery, which is particularly uncertain and lengthy.

Our in-development products are summarized below:

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Our research and development expenses for drug development are comprised of our personnel expenses, contracted services with third parties, license fees and milestone payments to third parties, clinical trial costs, laboratory supplies, drug products, and certain allocations of corporate costs. The below table summarizes our research and development expenses by project in 2018, 2017, and 2016:

	Research and Development Expenses for the Year Ended December 31, (in thousands)			
	2018	2017	2016	
ROLONTIS	$ 31,612	$ 20,254	$ 14,829	*
POZIOTINIB	18,272	6,761	976	
MARQIBO	5,255	5,813	4,249	
ZEVALIN	5,001	4,412	3,814	
QAPZOLA	1,091	4,156	5,437	
FOLOTYN	1,517	1,470	1,717	
EVOMELA	1,880	1,050	4,964	
BELEODAQ	704	718	772	
FUSILEV	20	61	—	
KHAPZORY	3,580	1,462	2,667	
Other in-development indications/drugs	151	153	283	
Total — Direct costs	69,083	46,310	39,708	
Add: General research and development expenses (including personnel costs that correspond to more than one in-development project)	26,612	21,584	21,335	
(Less): Reimbursements from development partners	(350)	(1,999)	(1,710)	
(Less): Incurred FOLOTYN study costs that credit expense and reduce our drug development liability (see Note 16 to Consolidated Financial Statements)	(389)	—	(210)	
Total research and development expenses	$ 94,956	$ 65,895	$ 59,123	

* Inclusive of 2016 milestone payment of $2.7 million (see Note 17(b)(xiii) to the accompanying Consolidated Financial Statements).

Patents and Proprietary Rights

Overview

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We in-license from third parties certain patent and related intellectual property rights related to our proprietary drug products. Under most of these license arrangements, we are generally responsible for all development, patent filing and maintenance costs, sales, marketing and liability insurance costs related to the drug products.

In addition, these licenses and agreements may require us to make royalty and other payments and to reasonably utilize the underlying technology of applicable patents. If we fail to comply with these and other terms in these licenses and agreements, we could lose the underlying rights to one or more of our potential products, which would adversely affect our product development and harm our business. For more information regarding these arrangements see Note 17(b), "Financial Commitments & Contingencies and License Agreements," to our accompanying Consolidated Financial Statements.

The protection, preservation and infringement-free commercial utilization of these patents and related intellectual property rights are very important to the successful execution of our strategy. However, the issuance of a patent is neither conclusive as to its validity nor as to the enforceable scope of the claims of the patent. Accordingly, our patents and the patents we have licensed may not prevent other companies from developing similar or functionally equivalent products or from successfully challenging the validity of our patents. If our patent applications are not allowed or, even if allowed and issued as patents, if such patents or the patents we have in-licensed are circumvented or not upheld by the courts, our ability to competitively utilize our patented products and technologies may be significantly reduced. Also, such patents may or may not provide competitive advantages for their respective products or they may be challenged or circumvented by competitors, in which case our ability to commercially sell these products may be diminished.

From time-to-time, we may need to obtain licenses to patents and other proprietary rights held by third parties to develop, manufacture and market our products. If we are unable to timely obtain these licenses on commercially reasonable terms, our ability to commercially exploit such products may be inhibited or prevented.

Commercialized and In-Development Drug Products - Patents and Licenses Summary

We believe that our patents and licenses are critical to operating our business, as summarized below by commercialized and in-development drug products.

FUSILEV: FUSILEV had orphan drug exclusivity for two indications. Marketing of the product has been discontinued in the U.S. beginning in December 2018.

ZEVALIN: We have sublicensed U.S. patents that cover the processes and tools for making monoclonal anti-bodies or MABs, in general, licensed U.S. patents that cover the CD-20 MAB in ZEVALIN as well as the use of ZEVALIN to treat NHL, and acquired patents covering the ZEVALIN compounding process (i.e., process of linking the CD-20 MAB to a radioactive isotope to make the patient-ready dosage form of ZEVALIN). These patents expire over a wide range of dates, and the licensed patents covering the CD-20 MAB began to expire in 2015. Additionally, we have U.S. patents covering the compounding process expiring in 2019.

FOLOTYN: We have a composition of matter patent due to expire in November 2022, following a five-year patent term extension in the U.S., as well as through confidential settlement agreements executed in June 2016 with five parties resulting from Paragraph IV certifications in connection with four separate ANDAs to manufacture a generic version of FOLOTYN. The composition of matter patent expired in Europe in 2017.

We also have patents covering the use of FOLOTYN for PTCL that will not expire until 2025. We have filed for extension of this patent in Japan where FOLOTYN was approved in 2017. If the extension is granted, the patent will be extended by approximately 3 years and 11 months. The use patent is eligible for similar patent term extension in Europe following regulatory approval.

BELEODAQ: The composition of matter patents that cover BELEODAQ and related compounds do not begin to expire until 2021. We have applied for extension of the composition of matter patent in US. If an extension is granted, the patent will expire in 2026. In addition, there is a formulation patent which will not expire until 2027 in the U.S. Currently, there are multiple U.S. and foreign patent applications pending that cover BELEODAQ formulations, uses and manufacturing and synthesis processes.

We and Onxeo have filed a patent infringement lawsuit against Fresenius which triggered an automatic stay of this ANDA for 30 months, which will expire in April of 2021. The trial is currently scheduled to start in February of 2021.

In addition, BELOEDAQ is protected from competition in the U.S. by an Orphan Drug Exclusivity indication until July 3, 2021.

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MARQIBO: We have U.S. and European patents covering the use of MARQIBO for leukemia, lymphoma and melanoma, and a U.S. patent covering the MARQIBO kit, all expiring in 2020. We have filed a patent cooperation treaty, or PCT, application claiming a method of encapsulating vincristine sulphate into liposomes. We are presently in the process of developing a “single vial” formulation of MARQIBO and filed patent applications covering the formulation worldwide. If we are successful, we believe our patent coverage could be extended to 2036.

EVOMELA: This drug is covered by issued patents claiming improved Captisol® technology that are due to expire between 2025 and 2034 in the U.S. Outside the U.S., we have issued patents that cover improved Captisol technology that are due to expire in 2025 and pending applications with anticipated expiry in 2029 (if issued). We also have filed patent applications covering the Captisol-based formulation of EVOMELA in the U.S. and a number of other countries.

EVOMELA has orphan drug exclusivity for use as a high-dose conditioning treatment prior to hematopietic progenitor (stem) cell transplantation in patients with MM, which expires on March 10, 2023.

We obtained global development and commercialization rights to EVOMELA from Ligand Pharmaceuticals Incorporated, or Ligand, in March 2013. We thereafter assumed responsibility for completing its clinical trials and were responsible for filing the NDA. Under our license agreement with Ligand, Ligand received a license fee and is eligible to receive milestone payments and royalties. On December 20, 2017, CyDex Pharmaceuticals, Inc., a Ligand company, filed an action against Teva Pharmaceuticals USA, Inc., TEVA Pharmaceuticals Industries Ltd., and Actavis, LLC, together Teva, in the U.S. District Court for the District of Delaware, alleging patent infringement with respect to a paragraph IV certification, or an ANDA, filed with the FDA seeking approval to market a generic version of EVOMELA. Ligand brought suit against Teva to protect its intellectual property rights.

KHAPZORY: The U.S. patent application is currently underway, and depending its outcome, it may provide intellectual property protections for this product.

Poziotinib: A composition of matter patent covering poziotinib is due to expire in 2028. The patent is eligible for patent term extension following regulatory approval. Poziotinib is also covered by additional patents and patent applications covering its formulations and synthetic processes which will expire between 2032 and 2034. We are also considering filing of additional patent applications covering new formulations and uses.

QAPZOLA: The U.S. formulation patent for QAPZOLA does not expire until 2022, and a patent for the method of treatment of bladder cancer using a stabilized formulation does not expire until 2024. Formulation patents outside the U.S. are due to expire in 2022. We have filed additional U.S. and foreign patent applications covering new formulations and/or uses for this product.

ROLONTIS: Composition of matter patents covering ROLONTIS are due to expire in 2025 in the U.S. and in 2024 outside the U.S. We also have a ROLONTIS formulation patent granted in the U.S., Europe, Japan and other countries. The formulation patent will not expire until 2031. One of these patents is eligible for patent term extension following regulatory approval of ROLONTIS. ROLONTIS is also covered by additional patents and pending applications claiming various aspects of the technology that are due to expire between 2024 and 2030.

Patent Protection and Value Maximization

We are constantly evaluating our patent portfolio and are currently assessing and filing patent applications for our drug products and considering new patent applications in order to maximize the life cycle of each of our products. While the U.S. and the European Union, or EU, are currently the largest potential markets for most of our products, we also have patents issued and patent applications pending outside of the U.S. and Europe. Limitations on patent protection in these countries, and the differences in what constitutes patentable subject matter in countries outside the U.S., may limit the protection we have on patents issued or licensed to us outside of the U.S. In addition, laws of foreign countries may not protect our intellectual property to the same extent as would laws in the U.S.

To minimize our costs and expenses and to maintain effective protection, we usually focus our patent and licensing activities within the U.S., the EU, Canada, and Japan. In determining whether or not to seek a patent or to license any patent in a certain foreign country, we weigh the relevant costs and benefits, and consider, among other things, the market potential and profitability, the scope of patent protection afforded by the law of the jurisdiction and its enforceability, and the nature of terms with any potential licensees. Failure to obtain adequate patent protection for our

proprietary drugs and technology would impair our ability to be commercially competitive in these markets.

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In conducting our business, we rely upon trade secrets, know-how, and licensing arrangements. We use customary practices for the protection of our confidential and proprietary information such as confidentiality agreements and trade secret protection measures. It is possible that these agreements will be breached or will not be enforceable in every instance, and that we will not have adequate remedies for any such breach. It is also possible that our trade secrets or know-how will otherwise become known or independently developed by competitors. The protection of know-how is particularly important because it is often necessary or useful information that allows us to practice the claims in the patents related to our proprietary drug products.

In addition to the specific intellectual property subjects discussed above, we have trademark registrations in the U.S. for Spectrum Pharmaceuticals, Inc.®, FUSILEV®, FOLOTYN®, ZEVALIN®, MARQIBO®, BELEODAQ®, EVOMELA®, and ROLONTIS®. We also have trademarks in KHAPZORY™, REDEFINING CANCER CARE™, and the Spectrum Pharmaceuticals' logos. Any other trademarks are the property of their respective owners.

The Patent Process

The U.S. Constitution provides Congress with the authority to provide inventors the exclusive right to their discoveries. Congress codified this right in U.S. Code Title 35, which gave the United States Patent and Trademark Office, or USPTO, the right to grant patents to inventors and defined the process for securing a U.S. patent. This process involves the filing of a patent application that instructs a person having ordinary skill in the respective art how to make and use the invention in clear and concise terms. The invention must be novel (i.e., not previously known) and non-obvious (i.e., not an obvious extension of what is already known). The patent application concludes with a series of claims that specifically describe the subject matter that the patent applicant considers his invention.

The USPTO undertakes an examination process that can take from one to seven years, or more, depending on the complexity of the patent and the problems encountered during examination.

In exchange for disclosing the invention to the public, for all U.S. patent applications filed after 1995, the successful patent applicant is currently provided a right to exclude others from making, using or selling the claimed invention for a period of 20 years from the effective filing date of the patent application.

Under certain circumstances, a patent term may be extended. Patent extensions are most frequently granted in the pharmaceutical and medical device industries under the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act, to recover some of the time lost during the FDA regulatory process, subject to a number of limitations and exceptions. The patent term may be extended up to a maximum of five years, but cannot be extended beyond a total of 14 years from the date of the product's approval; however, as a general rule, the average extension period granted for a new drug is approximately three years. Only one patent can be extended per FDA approved product, and a patent can only be extended once.

Product Exclusivity

Under the Hatch-Waxman Act, drug products are provided exclusivity whereby the FDA will not approve applications to market a generic form of an innovator reference listed drug product until the end of the prescribed period. A product is granted a five-year period of exclusivity if it contains a chemical entity never previously approved by the FDA either alone or in combination, although generic applications may be submitted after four years if they contain a certification of patent invalidity or non-infringement as further discussed below. A three-year period of exclusivity is granted to a previously approved product based on certain changes (e.g., in strength, dosage form, route of administration or conditions of use), where the application is supported by new clinical investigations that are essential to approval. In addition, in 1997, Congress amended the law to provide an additional six months of exclusivity as a reward for studying drugs in children. This pediatric exclusivity, which can be obtained during the approval process or after approval, effectively prevents the FDA from approving a generic application until six months after the expiration of any patent. In order to qualify for pediatric exclusivity, the FDA must make a written request for pediatric studies, the application holder must agree to the request and complete the studies within the required timeframe, and the studies must be accepted by the FDA based on a determination that the studies fairly respond to the request.

Generic Approval and Patent Certification

The Hatch-Waxman Act also created the ANDA approval process, which permits the approval of a generic version of a previously approved branded drug without the submission of a full NDA, and based in part on the FDA's finding of safety and effectiveness for the reference listed drug. Applicants submitting an NDA are required to list patents associated with the drug product, which are published in the FDA Orange Book, and the timing of an ANDA approval depends in part on patent

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protection for the branded drug. When an ANDA is filed, the applicant must file a certification for each of the listed patents for the branded drug, stating one of the following: (1) that there is no patent information listed; (2) that such patent has expired; (3) that the patent will expire on a particular date (indicating that the ANDA may be approved on that date); or (4) that the drug for which approval is sought either does not infringe the patent or the patent is unenforceable or invalid, otherwise known as paragraph IV certification. If an ANDA applicant files a paragraph IV certification, it is required to provide the patent holder with notice of that certification. If the patent holder brings suit against the ANDA applicant for patent infringement within 45 days of receiving notice, generally the FDA may not approve the ANDA until the earlier of (i) 30 months from the patent holder's receipt of the notice (the 30-month stay) or (ii) the issuance of a final, non-appealed, or non-appealable court decision finding the patent invalid, unenforceable or not infringed.

The Hatch-Waxman Act also provided an incentive for generic manufacturers to file paragraph IV certifications challenging patents that may be invalid, unenforceable, or not infringed, whereby the first company to successfully challenge a listed patent and receive ANDA approval is protected from competition from subsequent generic versions of the same drug product for up to 180 days after the earlier of (1) the date of the first commercial marketing of the first-filed ANDA applicant's generic drug or (2) the date of a decision of a court in an action holding the relevant patent invalid, unenforceable, or not infringed. These 180-day exclusivity provisions have been the subject of litigation and administrative review, and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or MMA, amended the provisions in several ways, including by providing that an ANDA applicant entitled to 180-day exclusivity may lose such exclusivity if any of the following events occur: (1) failure to market; (2) withdrawal of the ANDA; (3) change in patent certification; (4) failure to obtain tentative approval; (5) illegal settlement agreement; or (6) patent expiration.

With respect to the illegal settlement prong, the MMA amendments require that certain types of settlement agreements entered into between branded and generic pharmaceutical companies related to the manufacture, marketing and sale of generic versions of branded drugs are required to be filed with the Federal Trade Commission and the Department of Justice for review of potential anti-competitive practices. This requirement could affect the manner in which generic drug manufacturers resolve intellectual property litigation and other disputes with branded pharmaceutical companies, and could result generally in an increase in private-party litigation against pharmaceutical companies. The impact of this requirement, and the potential governmental investigations and private-party lawsuits associated with arrangements between brand name and generic drug manufacturers, remains uncertain. In addition, Congress has considered enacting legislation that would prohibit such settlements between brand name and generic drug manufacturers. Such a provision was considered as part of the Patient Protection and Affordable Care Act, or PPACA, signed into law on March 23, 2010. However, Congress removed the provision prior to passage. It is possible that Congress will again consider a ban on such settlements between brand name and generic drug manufacturers in the future.

The PPACA provides exclusivity protections for certain innovator biological products and a framework for FDA review and approval of biosimilar and interchangeable versions of innovator biologic products. The PPACA provides that no application for a biosimilar product may be approved until 12 years after the date on which the innovator product was first licensed, and no application may be submitted until four years after the date of first licensure. Products deemed interchangeable (as opposed to biosimilar) are also eligible for certain exclusivity.

Orphan Drug Designation

Some jurisdictions, including Europe and the U.S., may designate drugs for relatively small patient populations as "orphan" drugs. The FDA may grant orphan drug designation to a drug intended to treat a rare disease or condition that affects fewer than 200,000 individuals in the U.S., and a drug may also be considered an orphan even if the drug treats a disease or condition affecting more than 200,000 individuals in the U.S. Orphan drug designation does not necessarily convey any advantage in, or shorten the duration of, the regulatory review and process for marketing approval. If a product with an orphan drug designation subsequently receives the first FDA approval for the indication for which it has such designation, the product is entitled to seven years of orphan drug exclusivity, during which time

the FDA will not approve any other application to market the same drug for the same indication except in limited circumstances, such as a showing of clinical superiority to the product with orphan exclusivity. Also, competitors are not prohibited from receiving approval to market the same drug or biologic for a different indication than that which received orphan approval.

Under EU medicines laws, the criteria for designating an “orphan medicinal product” are similar in principle to those in the U.S. Criteria for orphan designation are set out in Article 3 of Regulation (EC) 141/2000 on the basis of two alternative conditions. A medicinal product may be designated as orphan if it is intended for the diagnosis, prevention or treatment of a life-threatening or chronically debilitating condition affecting not more than five in 10,000 persons in the EU, when the application is made. This is commonly known as the “disease prevalence criterion,” Alternatively, a product may be so designated if it is intended for the diagnosis, prevention or treatment of a life-threatening, seriously debilitating or serious and

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chronic condition in the EU and if, without incentives, it is unlikely that the marketing of the product in the EU would generate sufficient return to justify the necessary investment. This is commonly known as the "insufficient return criterion."

These two alternative criteria must cumulatively meet the second condition that there exists no satisfactory method of diagnosis, prevention or treatment of the condition in question that has been authorized in the EU, or if such a method exists, the product will be of significant benefit to those affected by the condition. "Significant benefit" is defined in Regulation (EC) 847/2000 as a clinically relevant advantage or a major contribution to patient care.

Upon grant of a marketing authorization, orphan medicinal products are entitled to ten years of market exclusivity in respect of the approved therapeutic indication. Within the period of market exclusivity, no competent authority in the EU is permitted to accept an application for marketing authorization, a variation or a line-extension for the same approved therapeutic indication in respect of a similar medicinal product pursuant to Article 8.1 of Regulation (EC) 141/2000 unless one of the derogations set out in Article 8.3 of the same Regulation applies. In order to determine whether two products are considered similar, Regulation (EC) 847/2000 requires an assessment of the principal molecular structure and the underlying mode of action. Any minor variation or modification of the principal molecular structure would not ordinarily render the second product dissimilar to the first authorized product.

In order for the second applicant to break the market exclusivity granted to the first authorized similar medicinal product in respect of the same therapeutic indication, the second applicant would principally rely upon data to demonstrate that its product is safer, more efficacious or clinically superior to the first product pursuant to Article 8.3(i) of Regulation (EC) 141/2000. Ordinarily, such an assessment will require a head-to-head comparative clinical trial for the purpose of demonstrating clinical superiority.

The 10-year market exclusivity may be reduced to six years if at the end of the fifth year it is established that the product no longer meets the criteria for orphan designation on the basis of available evidence. We have in the past received, and currently hold, orphan drug designations for some of our products.

Currently, BELEODAQ has orphan drug designation for use in PTCL, and EVOMELA has orphan drug designation as a high-dose conditioning treatment prior to hematopoietic progenitor (stem) cell transplantation in patients with MM. In addition, MARQIBO has orphan drug designations for its use in the treatment of adult patients with ALL in second or greater relapse or whose disease has progressed following two or more anti-leukemia therapies, and ZEVALIN has orphan drug designations for the treatment of patients with relapsed or refractory low-grade, follicular, or transformed B-cell NHL, including patients with Rituximab refractory follicular NHL.

Governmental Regulation

The development, production and marketing of our proprietary and biologic products are subject to regulation for safety, efficacy and quality by numerous governmental authorities in the U.S. and other countries. In the U.S., drugs and biologics are subject to rigorous regulation. The Federal Food, Drug, and Cosmetic Act, as amended from time to time, and the regulations promulgated thereunder, as well as other federal and state statutes and regulations, govern, among other things, the development, approval, manufacture, safety, labeling, storage, record keeping, distribution, promotion, and advertising of our products. Product development and approval within this regulatory framework, including for drugs already at a clinical stage of development, can take many years and require the expenditure of substantial resources, and to obtain FDA approval, a product must satisfy mandatory quality, safety, and efficacy requirements. In addition, each drug-manufacturing establishment must be registered with the FDA. Domestic manufacturing establishments must comply with the FDA's current Good Manufacturing Practices, or cGMP, regulations and are subject to inspections by the FDA. To supply drug ingredients or products for use in the U.S., foreign manufacturing establishments must also comply with cGMP and are subject to inspections by the FDA or by other regulatory authorities in certain countries under reciprocal agreements with the FDA.

General Information about the Drug Approval Process and Post-Marketing Requirements

The U.S. system of new drug and biologics approval is a rigorous process. Only a small percentage of compounds that enter the pre-clinical testing stage are ever approved for commercialization. Our strategy focuses on in-licensing clinical stage drug products that are already in or about to enter human clinical trials. A late-stage focus helps us to

effectively manage the high cost of drug development by focusing on compounds that have already passed the many hurdles in the pre-clinical and early clinical process.

The following general comments about the drug approval process are relevant to the development activities we are undertaking with our proprietary products.

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Pre-clinical Testing: During the pre-clinical testing stage, laboratory and animal studies are conducted to show biological activity of a drug or biologic compound against the targeted disease. The compound is evaluated for safety. While some of our compounds are currently in clinical trials, it is possible that additional pre-clinical testing could be requested by a regulatory authority for any of our compounds.

Investigational New Drug Application: After certain pre-clinical studies are completed, an IND application is submitted to the FDA to request the ability to begin human testing of the drug or biologic. An IND becomes effective thirty days after the FDA receives the application (unless the FDA notifies the sponsor of a clinical hold), or upon prior notification by the FDA.

Phase 1 Clinical Trials: These trials typically involve small numbers of healthy volunteers or patients and usually define a drug candidate's safety profile, including the safe dosage range.

Phase 2 Clinical Trials: In Phase 2 clinical trials, controlled studies of human patients with the targeted disease are conducted to assess the drug's effectiveness. These studies are designed primarily to determine the appropriate dose levels, dose schedules and route(s) of administration, and to evaluate the effectiveness of the drug or biologic on humans, as well as to determine if there are any side effects on humans to expand the safety profile following Phase 1. These clinical trials, and Phase 3 trials discussed below, are designed to evaluate the product's overall benefit-risk profile, and to provide information for physician labeling.

Phase 3 Clinical Trials: This Phase usually involves a larger number of patients with the targeted disease. Investigators (typically physicians) monitor the patients to determine the drug candidate's efficacy and to observe and report any adverse reactions that may result from long-term use of the drug on a large, more widespread, patient population. During the Phase 3 clinical trials, typically the drug candidate is compared to either a placebo or a standard treatment for the target disease.

New Drug Application or Biologics License Application: After completion of all three clinical trial Phases, if the data indicates that the drug is safe and effective, an NDA or BLA is filed with the FDA requesting FDA approval to market the new drug as a treatment for the target disease.

Fast Track and Priority Review: The FDA has established procedures for accelerating the approval of drugs to be marketed for serious or life-threatening diseases for which the manufacturer can demonstrate the potential to address unmet medical needs. As discussed above, we have obtained accelerated approval to market FOLOTYN, BELEODAQ and MARQIBO.

Abbreviated New Drug Application: An ANDA is an abbreviated new drug application for generic drugs created by the Hatch-Waxman Act. When a company files an ANDA, it must make a patent certification regarding the patents covering the branded product listed in the FDA's Orange Book. The ANDA drug development process generally takes less time than the NDA drug development process since the ANDA process usually does not require new clinical trials establishing the safety and efficacy of the drug product.

Breakthrough Therapy Designation: A BTD is available from the FDA for drugs or drug combinations used to treat serious or life-threatening disease conditions based on preliminary clinical evidence that the drug may offer substantial improvement over existing therapies. FDA may grant priority approval to breakthrough drug indications. FDA may also grant accelerated approval and priority review for drugs that fill an unmet medical need. An advantage to this designation is that clinical trials may use surrogate endpoints to predict clinical benefit, requiring less time than other objective endpoints such as overall survival.

NDA/BLA and ANDA Approval: The FDA approves drugs and biologics that are subject to NDA and BLA review based on data in the application demonstrating the product is safe and effective in its proposed use(s) and that the product's benefits outweigh its risks. The FDA will also review the NDA or BLA applicant's manufacturing process and controls to ensure they are adequate to preserve the drug's identity, strength, quality, and purity. Finally, the FDA will review and approve the product's proposed labeling. As for the ANDA approval process, these "abbreviated" applications are generally not required to include pre-clinical or clinical data to establish safety and effectiveness. Rather, an ANDA must demonstrate both chemical equivalence and bio-equivalence (the rate and extent of absorption in the body) to the innovator drug — unless a bio-equivalence waiver is granted by the FDA.

Phase 4 Clinical Trials: After a drug has been approved by the FDA, Phase 4 studies may be conducted to explore additional patient populations, compare the drug to a competitor, or to further study the risks, benefits and optimal use of a drug. These studies may be a requirement as a condition of the initial approval of the NDA or BLA.

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Post-Approval Studies Requirements under FDAAA: The Food and Drug Administration Amendments Act of 2007, or FDAAA, significantly added to the FDA's authority to require post-approval studies. Under the FDAAA, if the FDA becomes aware of new safety information after approval of a product, they may require us to conduct further clinical trials to assess a known serious risk, signals of serious risk or to identify an unexpected serious risk. If required to conduct a post-approval study, periodic status reports must be submitted to the FDA. Failure to conduct such post-approval studies in a timely manner may result in administrative action being taken by FDA, including substantial civil fines.

Risk Evaluation and Mitigation Strategy Authority under FDAAA: The FDAAA also gave the FDA authority to require the implementation of a Risk Evaluation and Mitigation Strategy, or REMS, for a product when necessary to minimize known and preventable safety risks associated with the product. The FDA may require the submission of a REMS before a product is approved, or after approval based on "new safety information," including new analysis of existing safety information. A REMS may include a medication guide, patient package insert, a plan for communication with healthcare providers, or other elements as the FDA deems are necessary to assure safe use of the product, which could include imposing certain restrictions on distribution or use of a product. A REMS must include a timetable for submission of assessments of the strategy at specified time intervals. Failure to comply with a REMS, including the submission of a required assessment, may result in substantial civil or criminal penalties.

Other Issues Related to Product Safety: Adverse events that are reported after marketing approval also can result in additional limitations being placed on a product's use and, potentially, withdrawal of the product from the market. In addition, under the FDAAA, the FDA has authority to mandate labeling changes to products at any point in a product's life cycle based on new safety information derived from clinical trials, post-approval studies, peer-reviewed medical literature, or post-market risk identification and analysis systems data.

FDA Enforcement

The development of drug and biologic products, as well as the marketing of approved drugs and biologics, is subject to substantial continuing regulation by the FDA, including regulation of adverse event reporting, manufacturing practices and the advertising and promotion of the product. Failure to comply with the FDA and other governmental regulations can result in fines, unanticipated compliance expenditures, recall or seizure of products, total or partial suspension of production and/or distribution, suspension of the FDA's review of NDAs, BLAs, ANDAs or other product applications, enforcement actions, injunctions and criminal prosecution. Under certain circumstances, the FDA also has the authority to revoke previously granted drug approvals.

With respect specifically to information submitted to the FDA in support of marketing applications, the FDA, under its Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities Policy, can significantly delay the approval of a marketing application, or seek to withdraw an approved application where it identifies fraud or discrepancies in regulatory submissions. Such actions by the FDA may significantly delay or suspend substantive scientific review of a pending application during validity assessment or remove approved products from the market until the assessment is complete and questions regarding reliability of the data are resolved. In addition, the Generic Drug Enforcement Act of 1992 established penalties for wrongdoing in connection with the development or submission of an ANDA. Under this Act, the FDA has the authority to permanently or temporarily bar companies or individuals from submitting or assisting in the submission of an ANDA, and to temporarily deny approval and suspend applications to market generic drugs. The FDA may also suspend the distribution of all drugs approved or developed in connection with certain wrongful conduct and/or withdraw approval of an ANDA and seek civil penalties.

Healthcare Reform

Continuing studies of the proper utilization, safety and efficacy of pharmaceuticals and other health care products are being conducted by industry, government agencies and others. Such studies, which increasingly employ sophisticated methods and techniques, can call into question the utilization, safety and efficacy of previously marketed products and in some cases have resulted, and may in the future result, in the discontinuance of their marketing.

The Patient Centered Outcomes Research Institute, or the Institute, a private, non-profit corporation created as a result of the PPACA, is tasked with assisting patients, clinicians, purchasers, and policy-makers in making informed health decisions. One of the Institute's initiatives will be to conduct comparative clinical effectiveness research, which is defined as "research evaluating and comparing health outcomes and the clinical effectiveness, risks, and benefits of two or more medical treatments, services, and items." It is important to note that the Institute would not be permitted to mandate coverage, reimbursement, or other policies for any public or private payer, however, the outcome of the Institute's initiatives could influence prescriber behavior.

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Foreign Regulation

Whether or not we obtain FDA approval for a product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country/region to country/region, and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement also may vary, sometimes significantly, from country/region to country/region.

Under the EU regulatory systems, we may submit marketing authorization applications either under a centralized procedure or decentralized procedure or the mutual recognition procedure. The centralized procedure is mandatory for medicines produced by a biotechnological process. The procedure is also mandatory for new active substances which are indicated for treatment of several diseases or conditions, including cancer and orphan conditions. Companies may apply for centralized assessment if the product contains a new active substance or the product constitutes significant therapeutic, scientific or technical innovation or the granting of authorization under the centralized procedure is in the interests of the EU patients. A centralized marketing authorization is valid in all EU member states. This marketing authorization is issued in the form of a European Commission decision which is legally binding in its entirety to which it is addressed.

Directive 2004/27/EC introduced two parallel procedures to the centralized procedure to allow a product to be progressively authorized in each of the member states of the EU. They are the decentralized procedure and the mutual recognition procedure. The mutual recognition procedure applies where the product has already been authorized in a member state of the EU that will act as reference member state. The national marketing authorization granted by the reference member state forms the basis for mutual recognition in the member states chosen by the applicant. In the decentralized procedure, the product in question is not authorized in any one the EU member states. In such a situation, the applicant company will request a member state to act as the reference member state to lead the scientific assessment for the benefit/risk balance for agreement by the concerned member states. In both cases, the concerned member states have up to 90 days to accept or raise reasoned objections to the assessment made by the reference member state.

In addition, pricing and reimbursement is subject to negotiation and regulation in most countries outside the U.S. Increasingly, adoption of a new product for use in national health services is subject to health technology assessment under the national rules and regulations to establish the clinical effectiveness and cost-effectiveness of a new treatment. In some countries, in order to contain health care expenditures, reference price is introduced in order for the national healthcare providers to achieve a price comparable to the reference price in the same therapeutic category. We may therefore face the risk that the resulting prices would be insufficient to generate an acceptable return to us.

Third Party Reimbursement and Pricing Controls

In the U.S. and elsewhere, sales of pharmaceutical products depend in significant part on the availability of reimbursement to the consumer from third-party payers, such as government and private insurance plans. Third-party payers are increasingly challenging the prices charged for medical products and services. It is time-consuming and expensive for us to go through the process of seeking coverage from Medicare and private payers. Our products may not be considered cost effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our products on a competitive and profitable basis.

The PPACA enacted significant reforms, including revising the definition of “average manufacturer price” for reporting purposes, increasing Medicaid rebates, expanding the 340B drug discount program, and making changes to affect the Medicare Part D coverage gap, or “donut hole.” In the coming years, additional significant changes could be made to governmental healthcare programs, and to the U.S. healthcare system as a whole, that may result in significantly increased demand for rebates, decreased pricing flexibility, diminished negotiating flexibility, coverage and reimbursement limitations based upon comparative and cost-effectiveness reviews, and other measures that could significantly impact the success of our products.

In many foreign markets, including the countries in the EU, pricing of pharmaceutical products is subject to governmental control. In the U.S., there have been, and we expect that there will continue to be, a number of federal

and state proposals to implement similar governmental pricing controls or product coverage limitations.

Employees

As of December 31, 2018, we had 235 employees (as compared to 215 employees as of December 31, 2017), 8 of whom hold an M.D. degree, and 17 of whom hold a Ph.D. degree. We believe that the success of our business will depend, in part, on

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our ability to attract and retain uniquely qualified personnel. Our employees are not part of any collective bargaining agreements, and we believe that we have good relations with our employees.
Upon the closing of the Acrotech Transaction, we plan to reduce our staff by approximately 90 employees, the majority of which we expect to transition to Acrotech.

General Information
We are a Delaware corporation. We originally incorporated in Colorado in December 1987 as Americus Funding Corporation. We changed our corporate name in August 1996 to NeoTherapeutics, Inc., and reincorporated in Delaware in June 1997. We changed our corporate name in December 2002 to Spectrum Pharmaceuticals, Inc.
Our principal executive office is located at 11500 South Eastern Avenue, Suite 240, Henderson, Nevada 89052. Our telephone number is (702) 835-6300. Our website is located at www.sppirx.com. The information that can be accessed through our website is not incorporated by reference into this Annual Report on Form 10-K and should not be considered to be a part hereof.
We make our proxy statements, annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K (and related amendments to these reports, as applicable) available on our website free of charge as soon as practicable after filing or furnishing with the Securities and Exchange Commission, or the SEC.
All such reports are also available free of charge via EDGAR through the SEC website at www.sec.gov. In addition, the public may read and copy materials filed by us with the SEC at the SEC's public reference room located at 100 F Street, NE, Washington, D.C., 20549. Information regarding operation of the SEC's public reference room can be obtained by calling the SEC at 1-800-732-0330.

ITEM 1A. RISK FACTORS

Before deciding to invest in our company, or to maintain or increase your investment, you should carefully consider the risks described below, in addition to the other information contained in this Annual Report on Form 10-K and other reports we have filed with the SEC. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us, or that we currently deem immaterial, may also affect our business operations. If any of these risks are realized, our business, financial condition, or results of operations could be seriously harmed and in that event, the market price for our common stock could decline, and you may lose all or part of your investment.
These risk factors should be considered in connection with evaluating the forward-looking statements contained in this Annual Report on Form 10-K. These factors could cause actual results and conditions to differ materially from those projected in our forward-looking statements.
Risks Related to Our Business

Our sales depend on coverage and reimbursement from third-party payers and a reduction in the coverage and/or reimbursement for our products could have a material adverse effect on our product sales, business and results of operations.
Sales of our products are dependent on the availability and extent of coverage and reimbursement, or level of reimbursement, from third-party payers, including government programs and private insurance plans. Governments and private payers may regulate prices, reimbursement levels and/or access to our products to contain costs or to affect levels of use. We rely in large part on the reimbursement of our products through government programs such as Medicare and Medicaid in the U.S., and a reduction in the coverage and/or reimbursement for our products could have a material adverse effect on our product sales, business and results of operations.
A substantial portion of our U.S. business relies on reimbursement from the U.S. federal government under Medicare Part B coverage. Most of our products furnished to Medicare beneficiaries in both a physician office setting and hospital outpatient setting are reimbursed under the Medicare Part B Average Sales Price, or ASP, payment methodology. ASP-based reimbursement of our products under Medicare may be below or could fall below the cost

that some medical providers pay for such products, which could materially and adversely affect sales of our products. We also face risks relating to the reporting of pricing data that affect the U.S. reimbursement of and discounts for our products. ASP data are calculated by the manufacturer

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based on a formula defined by statute and regulation and are then submitted to the Centers for Medicare & Medicaid Services, or CMS, the agency responsible for administering the Medicare program, on a quarterly basis.

CMS uses those ASP data to determine the applicable reimbursement rates for our products under Medicare Part B. However, the statute, regulations and CMS guidance do not define specific methodologies for all aspects of the reporting of ASP data. For example, CMS has not provided specific guidance regarding administrative fees paid to GPOs in the ASP calculation. CMS directs that manufacturers make "reasonable assumptions" in their calculation of ASP data in the absence of specific CMS guidance on a topic. As a result, we are required to apply our reasonable judgment to certain aspects of calculating ASP data. If our submitted ASP data are incorrect, we may become subject to substantial fines and penalties or other government enforcement actions, which could have a material adverse impact on our business and results of operations.

Clinical trials may fail to demonstrate the safety and efficacy of our drug products, which could prevent or significantly delay obtaining regulatory approval.

Prior to receiving approval to commercialize any of our drug products, we must demonstrate with substantial evidence from well-controlled clinical trials, and to the satisfaction of the FDA, and other regulatory authorities in the U.S. and other countries, that each of the products is both safe and effective. For each drug product, we will need to demonstrate its efficacy and monitor its safety throughout the process. If such development is unsuccessful, our business and reputation would be harmed and our stock price would be adversely affected.

We are currently conducting multiple clinical trials for our products. Each of our clinical trials requires investment of substantial financial and personnel resources. The commencement and completion of these clinical trials may be delayed by various factors, including scheduling conflicts with participating clinicians and clinical institutions, difficulties in identifying and enrolling patients who meet trial eligibility criteria, failure of patients to complete the clinical trial, delays in accumulating the required number of clinical events for data analysis, delay or failure to obtain the required approval to conduct a clinical trial at a prospective site, and shortages of available drug supply.

All of our drug products are prone to the risks of failure inherent in drug development. Clinical trials of new drug products sufficient to obtain regulatory marketing approval are expensive, uncertain, and take years to complete. We may not be able to successfully complete clinical testing within the time frame we have planned, or at all. Moreover, the outcome of a clinical trial is often uncertain. We may experience numerous unforeseen events during, or as a result of, the clinical trial process that could delay or prevent us from receiving regulatory approval or commercializing our drug products. In this regard, reports of adverse events or concerns involving any of our products could interrupt, delay or halt clinical trials of such products or could result in our inability to obtain regulatory approvals for such products. In addition, the results of pre-clinical studies and early-stage clinical trials of our drug products do not necessarily predict the results of later-stage clinical trials. Later-stage clinical trials may fail to demonstrate that a drug product is safe and effective despite having progressed through initial clinical testing. Even if we believe the data collected from clinical trials of our drug products is promising, data are susceptible to varying interpretations, and such data may not be sufficient to support approval by the FDA or any other U.S. or foreign regulatory approval.

Pre-clinical and clinical data can be interpreted in different ways.

Accordingly, FDA officials could interpret such data in different ways than we or our partners do which could delay, limit or prevent regulatory approval. The FDA, other regulatory authorities, our institutional review boards, our contract research organizations, or we may suspend or terminate our clinical trials for our drug products. Any failure or significant delay in completing clinical trials for our drug products, or in receiving regulatory approval for the sale of any drugs resulting from our drug products, may severely harm our business and reputation. Even if we receive FDA and other regulatory approvals, our drug products may later exhibit adverse effects that may limit or prevent their widespread use, may cause the FDA to revoke, suspend or limit their approval, or may force us to withdraw products derived from those drug products from the market. Furthermore, there is the risk that additional post-marketing requirements may be imposed by the FDA in the future on our products.

Moreover, the commencement and completion of clinical trials may be delayed by many factors that are beyond our control, including:

- delays obtaining regulatory approval to commence a trial;
- delays in reaching agreement on acceptable terms with contract research organizations, or CROs, and clinical trial sites;
- delays in obtaining institutional review board, or IRB, approval at each site;

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- slower than anticipated patient enrollment or our inability to recruit and enroll patients to participate in clinical trials for various reasons;
- our inability to retain patients who have initiated a clinical trial;
- scheduling conflicts with participating clinicians and clinical institutions;
- lack of funding to start or continue the clinical trial, including as a result of unforeseen costs due to enrollment delays, requirements to conduct additional trials and studies and increased expenses associated with our CROs and other third parties;
- negative or inconclusive results;
- deficiencies in the conduct of the clinical trial, including failure to conduct the clinical trial in accordance with regulatory requirements, GCP or clinical protocols;
- deficiencies in the clinical trial operations or trial sites resulting in the imposition of a clinical hold;
- patient noncompliance with the protocol;
- adverse medical events or side effects experienced by patients during the clinical trials as a result of or resulting from the clinical trial treatments;
- fatalities or other adverse events arising during a clinical trial due to medical problems that may not be related to clinical trial treatments;
- our ability to sustain the quality or stability of the applicable product candidate in compliance with acceptable standards;
- our inability to produce or obtain sufficient quantities of the applicable product candidate to complete the clinical trials;
- changes in governmental regulations or administrative actions that adversely affect our ability to continue to conduct or complete clinical trials;
- negative or problematic FDA inspections of our clinical operations or manufacturing operations; and
- real or perceived lack of effectiveness or safety.

We could encounter delays if a clinical trial is suspended or terminated by us, the IRBs of the clinical trial sites in which such trials are being conducted, or by the FDA or other regulatory authorities. Such authorities may impose such a suspension or termination due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a drug, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial. Any delays, interruptions or halts in our clinical trials involving any of our products or other adverse events negatively impacting our ability to obtain regulatory approvals for such products in a timely manner could adversely affect our overall profitability, results of operations and financial condition and prospects.

If we are unable to continue to successfully develop poziotinib, ROLONTIS, or any of our other pipeline products, our business, prospects, operating results, and financial condition will be materially harmed.

We are currently conducting clinical trials for poziotinib. This product will require significant further development, including financial resources and personnel to possibly obtain regulatory approval. In December 2018, we submitted our NDA to the FDA for ROLOTNIS. Due to the uncertain and time-consuming clinical development and regulatory approval process, we may not successfully develop these drugs or others, and thus it is possible that none of our pipeline compounds will ever become viable commercial products.

The announcement of any negative or unexpected data, any delay in our anticipated timelines for filing for regulatory approval, or a significant advancement of a competitor, may cause our stock price to decline significantly and may have an adverse impact on our business, financial condition and prospects. In addition, clinical trial results are frequently susceptible to varying interpretations that may delay, limit or prevent regulatory approvals. There is no

assurance that data from our clinical trials will support filings for regulatory approval of any of our pipeline products, or even if approved, that these drugs will become commercially successful for all approved indications. In addition, we may experience significant setbacks in our advanced clinical trials, even after promising results in earlier trials, including unexpected adverse events. Any deficiencies in

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the our clinical trial operations or other unexpected adverse events impacting such trials could cause increased costs, program delays or both, which may harm our business.

If one of our pipeline products fails at any stage of development, or we otherwise determine to discontinue development of that product, we will not have the anticipated revenues from that product, and we may not receive any return of our investment on it. Consequently, our stock price could decline significantly and there could be an adverse impact on our business, financial condition, results of operations and prospects.

Pricing for pharmaceutical products has come under increasing scrutiny by governments, legislative bodies and enforcement agencies. Changes in laws and regulations that control drug pricing for government programs, allow for negotiated pricing, or limit product coverage and reimbursements may adversely impact our operating results and our business.

Many companies in our industry have received a governmental request for documents and information relating to drug pricing and patient assistance programs. We may become subject to similar requests, which would require us to incur significant expense and result in distraction for our management team. Additionally, to the extent there are findings, or even allegations, of improper conduct on the part of the company or its employees, such findings or allegations could result in negative publicity or other negative actions that could harm our reputation; cause changes in our product pricing and distribution strategies; reduce demand for our approved products and/or reduce reimbursement of approved products, including by federal health care programs such as Medicare and Medicaid and state health care programs.

In addition, President Trump’s administration has indicated an interest in taking measures pertaining to drug pricing, including potential proposals relating to Medicare price negotiations, and importation of drugs from other countries. There have been several recent U.S. Congressional inquiries and proposed bills designed to, among other things, bring more transparency to drug pricing, reduce the cost of prescription drugs under Medicare, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs. At this time, it is unclear whether any of these proposals will be pursued; however, if pursued they could adversely affect our products or our future product candidates.

Our supply of APIs, and drug products will be dependent upon the production capabilities of contract manufacturing organizations, or CMOs, component and packaging supply sources, other third-party suppliers, and other providers of logistical services. Some of these parties are based overseas and, if they are not able to meet our demands and FDA scrutiny, we may be limited in our ability to meet demand for our products, ensure regulatory compliance, or maximize profit on the sale of our products.

We have no internal manufacturing capacity for APIs or our drug products, and, therefore, we have entered into agreements with CMOs and other suppliers to supply us with APIs and our finished drug product. Success in the development and marketing of our drug products depends, in part, upon our ability to maintain, expand and enhance our existing relationships and establish new sources of supply. Some of the third-party manufacturing facilities used in the production of APIs and our drug products are located outside the U.S. The manufacture of APIs and finished drug products, including the acquisition of compounds used in the manufacture of the finished drug product, may require considerable lead times. We have little or no control over the production processes of third-party manufacturers, CMOs or other suppliers.

Our ability to source APIs and drug products is also dependent on providers of logistical services who may be subject to disruptions that we cannot predict or sufficiently plan around. Accordingly, while we do not currently anticipate shortages of supply, circumstances could arise in which we will not have adequate supplies to timely meet our requirements or market demand for a particular drug product could outstrip the ability of our supply source to timely manufacture and deliver the product, thereby causing us to lose sales. In addition, our ability to make a profit on the sale of our drug products depends on our ability to obtain price arrangements that ensure a supply of product at favorable prices.

If problems arise during the production of a batch of our drug products, that batch of product may have to be discarded. This could, among other things, lead to increased costs, lost revenue, damage to customer relations, time and expense spent investigating the cause and, depending on the cause, similar losses with respect to other batches or products. If problems are not discovered before the product is released to the market, recall and product liability costs may also be incurred. To the extent that one of our suppliers experiences significant manufacturing problems, this could have a material adverse effect on our revenues and profitability.

Finally, reliance on CMOs entails risks to which we would not be subject if we manufactured products ourselves, including reliance on the third party for regulatory compliance and adherence to the cGMP, requirements, the possible breach

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of the manufacturing agreement by the CMO and the possibility of termination or non-renewal of the agreement by the CMO, based on its own business priorities, at a time that is costly or inconvenient for us. Before we can obtain marketing approval for our drug products, our CMO facilities must pass an FDA pre-approval inspection. In order to obtain approval, all of the facility's manufacturing methods, equipment and processes must comply with cGMP requirements.

The cGMP requirements govern all areas of record keeping, production processes and controls, personnel and quality control. In addition, our CMOs will be subject to on-going periodic inspection by the FDA and corresponding state and foreign agencies for compliance with cGMP regulations, similar foreign regulations and other regulatory standards. We do not have control over our CMOs' compliance with these regulations and standards. Any failure of our third party manufacturers or us to comply with applicable regulations, including an FDA pre-approval inspection, periodic on-going inspection by the FDA and cGMP requirements, could result in sanctions being imposed on them or us, including warning letters, fines, injunctions, civil penalties, failure of regulatory authorities to grant marketing approval of our products, delay, suspension or withdrawal of approvals, license revocation, seizures or recalls of product, operation restrictions and criminal prosecutions, any of which could significantly and adversely affect our business.

Our efforts to acquire or in-license and develop additional drug products may fail, or acquired or in-licensed products may fail to perform as we anticipate, which might limit our ability to grow our business.

To remain competitive and grow our business, our long-term strategy includes the acquisition or in-license of additional drug products. We are actively seeking to acquire, or in-license, additional commercial drug products as well as drug products that have demonstrated positive pre-clinical and/or clinical data. We have certain criteria that we are looking for in any drug product acquisition and in-license and we may not be successful in locating and acquiring, or in-licensing, additional desirable drug products on acceptable terms.

To accomplish our acquisition and in-license strategy, we intend to commit efforts, funds and other resources to research and development and business development. Even with acquired and in-licensed drug products, a high rate of failure is inherent in the development of such products. We must make ongoing substantial expenditures without any assurance that our efforts will be commercially successful. Failure can occur at any point in the process, including after significant funds have been invested. For example, promising new drug product candidates may fail to reach the market or may only have limited commercial success because of efficacy or safety concerns, failure to achieve positive clinical outcomes, inability to obtain necessary regulatory approvals, limited scope of approved uses, excessive costs to manufacture, the failure to establish or maintain intellectual property rights, limited payer coverage or infringement of the intellectual property rights of others.

In addition, many other large and small companies within the pharmaceutical and biotechnology industry seek to establish collaborative arrangements for product research and development, or otherwise acquire products in late-stage clinical development, in competition with us. We face additional competition from public and private research organizations, academic institutions and governmental agencies in establishing collaborative arrangements for drug products in late-stage clinical development. Many of the companies and institutions that compete against us have substantially greater capital resources, research and development staffs and facilities than we have, and greater experience in conducting business development activities. These entities represent significant competition to us as we seek to expand our portfolio through the in-license or acquisition of compounds. Finally, while it is not feasible to predict the actual cost of acquiring and developing additional drug products, that cost could be substantial and we may need to obtain additional financing for such purpose, which may further dilute existing stockholders.

We are aware of several competitors attempting to develop and market products competitive to our products, which may reduce or eliminate our commercial opportunities.

The pharmaceutical and biotechnology industries are intensely competitive and subject to rapid and significant technological changes, and a number of companies are pursuing the development of pharmaceuticals and products that target the same diseases and conditions that our products target, including products currently commercialized. We cannot predict with accuracy the timing or impact of the introduction of potentially competitive products or their

possible effect on our sales. Certain potentially competitive products to our products are in various stages of development, some of which have pending applications for approval with the FDA or have been approved by regulatory authorities in other countries. Also, there are many ongoing studies with currently marketed products and other developmental products, which may yield new data that could adversely impact the use of our products in their current and potential future indications. The introduction of competitive products or the development of technological advances that compete with our products could significantly reduce our sales, which, in turn would adversely impact our financial and operating results.

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Reports of adverse events or safety concerns involving each of our products or similar agents, sold by us or our development partners and/or licensees, could delay or prevent us from obtaining or maintaining regulatory approval or negatively impact sales.

Certain of our products may cause SAEs. In addition to the risk associated with known SAEs, discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, could interrupt, delay or halt clinical trials of such products, including the FDA-required post-approval studies, and could result in the FDA or other regulatory authorities denying or withdrawing approval of our products for any or all indications. The FDA, other regulatory authorities or we may suspend or terminate clinical trials at any time. We may also be required to update the package inserts based on reports of adverse events or safety concerns or implement a risk evaluation and mitigation strategy, or REMS, which could adversely affect such product's acceptance in the market. In addition, the public perception of our products might be adversely affected, which could harm our business and results of operations and cause the market price of our common stock to decline, even if the concern relates to another company's product or product candidate. Our planned trials to demonstrate efficacy in a variety of indications and to better manage side effect profiles of certain of our products may not be successful and there are no assurances that patients receiving our products will not experience SAEs in the future.

Future reports of SAEs or safety concerns involving any of our products could adversely affect our business, results of operations and prospects.

The known SAEs related to our commercialized products are as follows:

FOLOTYN:

Forty-four percent of patients experienced a serious adverse event while on the study or within 30 days after their last dose. The most common serious adverse events (> 3%), regardless of causality, were fever, mucositis (redness and sores of the mucous membrane lining of the mouth, lips, throat, stomach, and genitals), sepsis (complication of infection), febrile neutropenia (fever associated with low white blood cell count), dehydration, dyspnea (shortness of breath), and thrombocytopenia (low platelet count). One death from cardiopulmonary arrest in a patient with mucositis and febrile neutropenia was reported in this trial. Deaths from mucositis, febrile neutropenia, sepsis, and pancytopenia (deficiency of all three cellular components of the blood) occurred in 1.2% of patients treated on all FOLOTYN trials at doses ranging from 30 to 325 mg/m2.

FOLOTYN may cause serious side effects, including bone marrow suppression, manifested by thrombocytopenia (low platelet counts), neutropenia (low white blood cell counts), and/or anemia (low red blood cell count); mucositis (redness and sores of the mucous membrane lining of the mouth, lips, throat, stomach, and genitals); dermatologic reactions (severe skin reactions); tumor lysis syndrome (tumor cells releasing contents into blood stream); hepatic toxicity (harm to liver); risk of increased toxicity in the presence of impaired renal function (increased harm to the patients with abnormal kidney function); and embryo-fetal toxicity (harm to an unborn baby).

ZEVALIN:

ZEVALIN is associated with the following serious adverse reactions: serious infusion reactions, prolonged and severe cytopenias (low blood cell count), cutaneous and mucocutaneous (skin and mucus membrane) reactions, and leukemia and myelodysplastic syndrome. The most serious adverse reactions of ZEVALIN are prolonged and severe cytopenias (low platelets, red blood cells, lymphocytes, white blood cells) and secondary malignancies.

MARQIBO:

Seventy-six percent of patients experienced serious adverse events during the studies. The most commonly reported serious adverse events (> 6%) included, febrile neutropenia (fever associated with low white blood cell count), fever,

low-blood pressure, respiratory distress, and cardiac arrest.

MARQIBO may cause serious side effects, including extravasation tissue injury (leakage-induced tissue injury); neurologic toxicity (nerve problems, e.g., neuropathy); myelosuppression (low blood cell counts); tumor lysis syndrome (tumor cells releasing contents into blood stream); constipation and bowel obstruction (constipation and bowel blockage); fatigue (tiredness); hepatic toxicity (harm to liver); and embryo-fetal toxicity (harm to an unborn baby).

BELEODAQ:

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Forty-seven percent of patients experienced serious adverse reactions while taking BELEODAQ or within 30 days after their last dose of BELEODAQ. The most common serious adverse reactions (> 2%) were pneumonia, fever, infection, anemia (low red blood cell count), increased creatinine, thrombocytopenia (low platelet count), and multi-organ failure. One treatment-related death associated with hepatic failure was reported in the trial.

BELEODAQ may cause serious side effects, including hematologic toxicity (low blood cell counts); serious infections; hepatotoxicity (liver problems); tumor lysis syndrome (tumor cell releasing contents into blood stream); gastrointestinal toxicity, including nausea, vomiting, and diarrhea; and embryo-fetal toxicity (harm to an unborn baby).

EVOMELA:

Twenty percent of patients experienced a treatment emergent serious adverse reaction while on study. The most common serious adverse reactions (>1 patient, 1.6%) were fever, hematochezia (blood in stools), febrile neutropenia (fever associated with low white blood cell count), and kidney failure. Treatment-related serious adverse reactions reported in >1 patient were pyrexia, febrile neutropenia, and hematochezia.

EVOMELA may cause serious side effects, including bone marrow suppression (low blood cell counts); gastrointestinal toxicity, including nausea, vomiting, diarrhea and mucositis (redness and sores of the lining of the mouth, lips, throat, stomach, and genitals); hepatotoxicity (liver problems); hypersensitivity (allergic reactions); secondary malignancies (secondary cancers); embryo-fetal toxicity (harm to an unborn baby); and infertility (harm to reproductive system).

KHAPZORY:

The most common adverse reactions (>20%) in patients receiving high-dose methotrexate therapy with levoleucovorin rescue were stomatitis (38%) and vomiting (38%). The most common adverse reactions (>50%) in patients receiving levoleucovorin in combination with fluorouracil for metastic colorectal cancer were stomatitis (72%), diarrhea (70%), and nausea (62%).

Our dependence on key executives, scientists and sales and marketing personnel could impact the development and management of our business.

We are highly dependent upon our ability to attract and retain qualified scientific, technical sales and marketing and managerial personnel. There is intense competition for qualified personnel in the pharmaceutical and biotechnology industries, and we cannot be sure that we will be able to continue to attract and retain the qualified personnel necessary, particularly as business prospects change, for the development and management of our business. Although we do not believe the loss of one individual would materially harm our business, our business might be harmed by the loss of the services of multiple existing personnel, as well as the failure to recruit additional key scientific, technical and managerial personnel in a timely manner. Much of the know-how we have developed resides in our scientific and technical personnel and is not readily transferable to other personnel. We do not have employment agreements with most of our key scientific, technical, or managerial employees. However, we entered into new employment agreements with each of our named executive officers (chief executive officer, chief operating officer, chief financial officer, and chief legal officer) in April and June 2018, which supersede any prior Change in Control Severance Agreements with such individuals.

A significant portion of our revenue currently comes from a limited number of distributors, and any decrease in revenue from these distributors could harm our business

A significant portion of our revenue comes from a limited number of distributors. In the years ended December 31, 2018 and December 31, 2017, three distributors (and their affiliates) together represented approximately 88% and 90%, respectively, of our worldwide revenues. We expect that a significant portion of our future revenue will continue

to depend on sales to a limited number of distributors in the foreseeable future. We do not have long-term commitments from our distributors to carry our products, and any of our distributors may from quarter to quarter comprise a significant concentration of our revenues. These distributors comprise a significant part of the distribution network for pharmaceutical products in the U.S. and a small number of large distributors and wholesalers control a significant share of the market, which can increase competitive and pricing pressures on pharmaceutical manufacturers, including us. In addition, wholesalers may apply pricing pressure through their fee-for-service arrangements. Any reduction in the prices we receive for our products could adversely impact our revenues and financial condition. In addition, any individual distributor could choose to stop selling some or all of our products at any time, and without notice. If we lose our relationship with any of our significant distributors, we would experience

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disruption and delays in marketing our products and could also experience declines in our revenues which in turn could materially adversely impact our financial condition.

If the distributors that we rely upon to sell our products fail to perform, our business may be adversely affected.

Our success depends on the continued customer support efforts of our network of distributors. In the U.S., we sell our products to a small number of distributors who in turn sell-through to patient health care providers. These distributors also provide multiple logistics services relating to the distribution of our products, including transportation, warehousing, cross-docking, inventory management, packaging and freight-forwarding. We do not promote products to these distributors and they do not set or determine demand for products. The use of distributors involves certain risks, including, but not limited to, risks that these distributors will:

- not provide us with accurate or timely information regarding their inventories, the number of patients who are using our products or complaints about our products;
- not purchase sufficient inventory on hand to fulfill end user orders in a timely manner;
- be unable to satisfy financial obligations to us or others; and
- cease operations.

Any such actions may result in decreased sales of our products, which would harm our business.

Adverse economic conditions may have material adverse consequences on our business, results of operations and financial condition as well as our ability to raise additional capital.

Unpredictable and unstable changes in economic conditions, including recession, inflation, increased government intervention, or other changes, may adversely affect our general business strategy. In recent years, we have funded our operations through a combination of equity and debt offerings and sales of our pharmaceutical products. Based on our current plans and expectations, we believe that we will require additional funding to achieve our goals. We may need to raise these additional funds through public or private debt or equity financings, and any adverse economic conditions could adversely affect our ability to raise funds. If our business deteriorates, we may not be able to maintain compliance with any covenants or representations and warranties in any such financings which could result in reduced availability of such financings, an event of default under such financings, or could make other sources of financing unavailable to us. Any such event would have a material adverse impact on our business, results of operations and financial condition.

While we believe we have adequate capital resources to meet our current working capital and capital expenditure requirements, an economic downturn or an increase in our expenses could require us to seek additional financing on less than attractive rates or on terms that are excessively dilutive to existing stockholders. Failure to secure any necessary financing in a timely manner and on favorable terms could have a material adverse effect on our growth strategy, financial performance and stock price and could require us to delay or abandon clinical development plans or plans to acquire additional technology.

Volatile economic conditions may not only limit our access to capital, but may also make it difficult for our customers and us to accurately forecast and plan future business activities, and they could cause businesses to slow spending on our products, which would delay and lengthen sales cycles. Furthermore, during challenging economic times, our customers may face issues gaining timely access to sufficient credit, which could result in an impairment of their ability to make timely payments to us. In addition, adverse economic conditions could also adversely impact our suppliers' ability to provide us with materials which would negatively impact on our business, financial condition, and results of operations.

We are a small company relative to our principal competitors, and our limited financial resources may limit our ability to develop and market our drug products.

Many companies, both public and private, including well-known pharmaceutical companies and smaller niche-focused companies, are developing products to treat many, if not all, of the diseases we are pursuing or are currently distributing drug products that directly compete with the drugs that we sell or that we intend to develop, market and distribute.

Competition for branded or proprietary drugs is less driven by price and is more focused on innovation in the treatment of disease, advanced drug delivery and specific clinical benefits over competitive drug therapies. We may not be successful in any or all of our current clinical studies; or if successful, and if one or more of our drug products is approved by the FDA, we may

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encounter direct competition from other companies who may be developing products for similar or the same indications as our drug products.

Companies that have products on the market or in research and development that target the same indications as our products include, among others, AstraZeneca plc, Bayer AG, Endo International plc, Eli Lilly and Company, Novartis International AG, Genentech, Inc. (Roche Holding AG), Bristol-Myers Squibb Company, Seattle Genetics, Inc., GlaxoSmithKline plc, Biogen Inc., OSI Pharmaceuticals, Inc. (Astellas Pharma Inc.), Cephalon, Inc. (Teva Pharmaceutical Industries Ltd.), Sanofi S.A., Pfizer, Inc., Merck & Co. Inc., Celgene Corporation, BiPar Sciences, Inc. (Sanofi S.A.), Sanofi Genzyme, Shire plc, AbbVie Inc., Poniard Pharmaceuticals, Inc., and Johnson & Johnson. These companies may be more advanced in the development of competing drug products or are more established in the market.

Many of our competitors are large and well-capitalized companies focusing on a wide range of diseases and drug indications, and have substantially greater financial, research and development, marketing, human and other resources than we do. Furthermore, large pharmaceutical companies have significantly more experience than we do in pre-clinical testing, human clinical trials and regulatory approval procedures, among other things. As a result, our competitors may be more successful than us in developing their products, obtaining regulatory approvals and marketing their products to consumers.

If actual future payments for allowances for discounts, returns, rebates and chargebacks exceed the estimates we made at the time of the sale of our products, including, without limitation, due to a change in the composition of our sales over time, our financial position, results of operations and cash flows may be materially and negatively impacted.

We recognize product revenue net of estimated allowances for discounts, returns, rebates and chargebacks. Such estimates require subjective and complex judgment due to the need to make estimates about matters that are inherently uncertain. Based on industry practice, pharmaceutical companies, including us, have liberal return policies. Our FUSILEV, MARQIBO, and BELEODAQ customers are permitted to return purchased products beginning at its expiration date and within six months thereafter. Our EVOMELA customers are permitted to return purchased product beginning at six months prior to its expiration date, and within 12 months following its expiration date (as well as for overstock inventory, as determined by end-users). We authorize returns for damaged products and exchanges for expired products in accordance with our returned goods policy and procedures. Also, like our competitors, we also give credits for chargebacks to wholesale customers that have contracts with us for their sales to hospitals, GPOs, pharmacies or other retail customers.

A chargeback is the difference between the price the wholesale customer (in our case, wholesalers/distributors) pays (wholesale acquisition cost) and the price that the wholesalers/distributor's customer pays for a product (contracted customer). Our products are subject to certain programs with federal government qualified entities whereby pricing on products is discounted to such entities and results in a chargeback claim to us. To the extent that our sales to discount purchasers, such as federal government qualified entities, increases, our chargebacks will also increase. There may be significant lag time between our original sale to the wholesaler and our receipt of the corresponding government chargeback claims from our wholesalers.

Our products are subject to state government-managed Medicaid programs, whereby rebates for purchases are issued to participating state governments. These rebates arise when the patient treated with our products is covered under Medicaid. Our calculations related to these Medicaid rebate accruals require us to estimate end-user and patient mix to determine which of our sales will likely be subject to these rebates. There is a significant time lag in us receiving these rebate notices (generally several months after our sale is made). Our estimates are based on our historical claims from participating state governments, as supplemented by management’s judgment.

Although we believe that we have sufficient allowances, actual results may differ significantly from our estimated allowances for discounts, returns, rebates and chargebacks. Changes in estimates and assumptions based upon actual results may have a material impact on our financial condition, results of operations and cash flows. Such changes to estimates will be made to the financial statements in the year in which the estimate is changed. In addition, our financial position, results of operations and cash flows may be materially and negatively impacted if actual future

payments for allowances, discounts, returns, rebates and chargebacks exceed the estimates we made at the time of the sale of our products.

The marketing and sale of our products may be adversely affected by the marketing and sales efforts of third parties who sell our products or similar products outside of our territories.

We have only licensed the rights to develop and market our products in limited territories. Other companies market and sell the same products in other parts of the world. If, as a result of other companies' actions, negative publicity is associated with our products or similar products, our own efforts to successfully market and sell our products in our markets may be adversely impacted.

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We have engaged in, and may in the future engage in strategic transactions that increase our capital requirements, dilute our stockholders, cause us to incur debt or assume contingent liabilities and subject us to other risks.

We actively evaluate various strategic transactions on an ongoing basis, including licensing or otherwise acquiring complementary products, technologies or businesses. Any potential acquisitions or in-licensing transactions may entail numerous risks, including but not limited to:

- risks associated with satisfying the closing conditions relating to such transactions and realizing their anticipated benefits;
- increased operating expenses and cash requirements;
- difficulty in conforming standards, procedures and policies, business cultures and compensation structures;
- difficulty integrating acquired technologies, products and personnel with our existing business;
- difficulty conforming acquired operations, such as corporate and administrative functions, sales and marketing, or information technology and accounting systems with our existing business;
- diversion of management's attention in connection with both negotiating the acquisition or license and integrating the business, technology or product;
- retention of key employees
- uncertainties in our ability to maintain key business relationships of any acquired entities;
- strain on managerial and operational resources;
- exposure to regulatory, compliance and legal risks of the acquired entities;
- tax costs or inefficiencies associated with integrating operations;
- modifications to operating control standards to comply with the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder;
- difficulty coordinating geographically dispersed organizations;
- exposure to unforeseen liabilities of acquired companies or products or companies or products in which we invest; and
- potential costly and time-consuming litigation, including stockholder lawsuits.

As a result of these or other problems and risks, businesses, technologies or products we acquire or invest in or obtain licenses to may not produce the revenues, earnings or business synergies that we anticipated. In addition, acquired or licensed products may not perform as expected or we may not obtain necessary regulatory approvals on our anticipated timeline or at all.

As a result, we may incur higher costs and realize lower revenues than we had anticipated. We cannot assure you that any acquisitions or investments we have made or may make in the future will be completed or that, if completed, the acquired business, licenses, investments, products, or technologies will generate sufficient revenue to offset the negative costs or other negative effects on our business. Failure to effectively manage our growth through acquisition or in-licensing transactions could adversely affect our growth prospects, business, results of operations, financial condition, and cash flow.

In addition, in connection with acquisitions and in-licensing transactions, we may spend significant amounts of capital, issue dilutive securities, assume or incur significant debt obligations or contingent liabilities, and acquire intangible assets that could result in significant future amortization expense and write-offs. Moreover, we may not be able to locate suitable acquisition opportunities and this inability could impair our ability to grow or obtain access to technology or products that may be important to the development of our business. Even if appropriate opportunities are available, we may not be able to successfully identify them or we may not have the financial resources necessary to pursue them, and if pursued, we may be unable to structure and execute transactions in on our anticipated timeframe, or at all. Other pharmaceutical companies, many of which may have substantially greater financial, marketing and sales resources than we do, compete with us for these opportunities.

Even if we are able to successfully identify and acquire complementary products, technologies or businesses, we cannot assure you that we will be able to successfully manage the risks associated with integrating acquired products, technologies or businesses or the risks arising from anticipated and unanticipated problems in connection with an acquisition or in-licensing transaction. Further, while we seek to mitigate risks and liabilities of potential acquisitions and in-licensing transactions

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through, among other things, due diligence, there may be risks and liabilities that such due diligence efforts fail to discover, that are not disclosed to us, or that we inadequately assess. Any failure in identifying and managing these risks and uncertainties effectively would have a material adverse effect on our business. Additionally, actual costs and sales synergies, if achieved at all, may be lower than we expect and may take longer to achieve than we anticipate. Furthermore, the products of companies we acquire may overlap with our products or those of our customers, creating conflicts with existing relationships or with other commitments that are detrimental to the integrated businesses.

If we are unable to successfully integrate our acquisitions with our existing business, we may not obtain the advantages that the acquisitions were intended to create, which may materially adversely affect our business, results of operations, financial condition and cash flows, our ability to develop and introduce new products and the market price of our stock.

Our divestiture activities, including the Acrotech Transaction, may disrupt our ongoing business, may involve increased expenses and may present risks not contemplated at the time of the transactions.

As previously discussed, we have entered into an agreement with Acrotech to divest certain assets that no longer fit with our strategic direction. We may in the future engage in additional divestiture transactions. Divestitures generally involve significant risks and uncertainties, including, without limitation:

- our failure to effectively transfer contracts, facilities and employees to buyers;
- requirements that we indemnify buyers against certain liabilities and obligations;
- the possibility that we will become subject to third-party claims arising out of such divestitures;
- challenges in identifying and separating the intellectual property and data to be divested from the intellectual property and data that we wish to retain;
- our inability to reduce fixed costs previously associated with the divested assets;
- challenges in collecting the proceeds from any divestiture;
- disruption of our ongoing business and distraction of management; and
- loss of key employees who leave our Company as a result of a divestiture.

Because divestitures are inherently risky, our transactions, including the Acrotech Transaction, may not be successful and may, in some cases, harm our operating results or financial condition.

We may not be able to successfully or timely complete the Acrotech Transaction, which could materially impact the market price of our Company’s common stock, as well as our future business prospects and our financial condition, results of operations and cash flows.

On January 17, 2019, we entered into a definitive asset purchase agreement with Acrotech for the sale of our FDA-approved product portfolio. The Acrotech Transaction may not be completed, or may not be completed in the timeframe, on the terms or in the manner currently anticipated. The completion of the Acrotech Transaction is subject to the satisfaction or waiver of customary closing conditions, such as receipt of certain regulatory approvals. There can be no assurance that these conditions will be satisfied or waived, or that other events will not intervene to delay or result in the failure to close the Acrotech Transaction.

In addition, while we believe that we will receive all required approvals for the Acrotech Transaction and Acrotech and we have agreed to use reasonable best efforts, subject to certain limitations, to obtain such approvals, there can be no assurance as to the receipt or timing of receipt of these approvals. As a condition to approving the Acrotech Transaction, governmental authorities may impose conditions, terms, obligations or restrictions or require divestitures or place restrictions on the conduct of the business after consummation of the Acrotech Transaction, including those which Acrotech may not be required to accept pursuant to the terms of the executed asset purchase agreement. A substantial delay in obtaining any required authorizations or approvals or the imposition of unfavorable terms, conditions or restrictions contained in such authorizations or approvals, could prevent the completion of the Acrotech Transaction or have an adverse effect on the anticipated benefits of the Acrotech Transaction. If the Acrotech Transaction is not consummated in a timely manner or at all, our ongoing business may be materially adversely affected, including without limitation, as follows:

- we may experience negative reactions from financial markets and our stock price could decline;
- we may experience negative reactions from employees, customers, suppliers or other third parties;

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- our management's focus would have been diverted from pursuing other valuable opportunities; and
- the costs of completing the Acrotech Transaction may be higher than anticipated and, in any event, would be borne entirely by us.

Our collaborations with outside scientists may be subject to change, which could limit our access to their expertise.
We work with scientific advisors and collaborators at research institutions. These scientists are not our employees and may have other commitments that would limit their availability to us. If a conflict of interest between their work for us and their work for another entity arises, we may lose their services, which could negatively impact our research and development activities.

We may rely on CROs and other third parties to conduct clinical trials and, in such cases, we are unable to directly control the timing, conduct and expense of our clinical trials.
We may rely, in full or in part, on third parties to conduct our clinical trials. In such situations, we have less control over the conduct of our clinical trials, the timing and completion of the trials, the required reporting of adverse events and the management of data developed through the trial than would be the case if we were relying entirely upon our own staff. Communicating with outside parties can also be challenging, potentially leading to mistakes as well as difficulties in coordinating activities. Outside parties may have staffing difficulties, may undergo changes in priorities or may become financially distressed, adversely affecting their willingness or ability to conduct our trials. We may experience unexpected cost increases that are beyond our control. Problems with the timeliness or quality of the work of a CRO may lead us to seek to terminate the relationship and use an alternative service provider. However, making this change may be costly and may delay our trials, and contractual restrictions may make such a change difficult or impossible. Additionally, it may be challenging or impossible to find a replacement organization that can conduct our trials in an acceptable manner and at an acceptable cost.

Because we have obtained accelerated approval to market FOLOTYN, BELEODAQ and MARQIBO, we are subject to
ongoing regulatory obligations and review, including completion of the post-approval requirements.

FOLOTYN and BELEODAQ were approved for the treatment of patients with relapsed or refractory PTCL, and MARQIBO was approved for the treatment of adult patients with Ph-ALL in second or greater relapse or whose disease has progressed following two or more anti-leukemia therapies, under the FDA's accelerated approval regulations. These provisions allow the FDA to approve products for cancer or other serious or life threatening diseases based on initial positive data from clinical trials. Under these provisions, we are subject to certain post-approval requirements. Specifically, we are required to conduct Phase 1 dose escalating studies and a Phase 3 randomized study for FOLOTYN and BELEODAQ in patients with PTCL. The FDA also required that we conduct two Phase 1 trials to assess whether FOLOTYN poses a serious risk of altered drug levels resulting from organ impairment as well as additional post-marketing studies with BELEODAQ. For MARQIBO, we are required to conduct a randomized Phase 3 study in patients over 60 years of age with newly diagnosed ALL. Negative or inconclusive results in these additional trials could negatively impact, or preclude altogether, our ability to continue commercializing FOLOTYN, BELEODAQ OR MARQIBO. Failure to complete the studies or adhere to the timelines established by the FDA could result in penalties, including fines or withdrawal of FOLOTYN, BELEODAQ, and/or MARQIBO from the market, which could materially adversely affect our business.

The FDA may also initiate proceedings to withdraw approval or request that we voluntarily withdraw these drugs from the market if our Phase 3 studies fail to confirm clinical benefit. Further, the FDA may require us to amend the package inserts for these drugs, including by strengthening the warnings and precautions section or institute a REMS based on the results of these studies or clinical experience. Later discovery of previously unknown problems with our proposed products, including unanticipated clinical trial results or failure to comply with regulatory requirements, may result in restrictions on such products or manufacturing processes, withdrawal of the products from the market,

voluntary or mandatory recall, fines, suspension of regulatory approvals, product seizures, injunctions or the imposition of civil or criminal penalties, which could materially adversely affect our business. We are also subject to additional, continuing post-approval regulatory obligations, including the possibility of additional clinical studies required by the FDA, safety reporting requirements and regulatory oversight of the promotion and marketing of these drugs.

We may have conflicts with our third-party development partners that could delay or prevent the development or commercialization of our drug products.

We may have conflicts with our third-party development partners, such as conflicts concerning the interpretation of pre-clinical or clinical data, the achievement of milestones, the interpretation of contractual obligations, payments for services,

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development obligations or the ownership of intellectual property developed during our collaboration. If any conflicts arise with any of our third-party development partners, such partner may act in a manner that is adverse to our best interests. Any such disagreement could result in one or more of the following, each of which could delay or prevent the development or commercialization of our drug product, and in turn prevent us from generating revenues from such drug product:

- unwillingness on the part of a third-party development partner to pay us milestone payments or royalties that we believe are due to us under a collaboration;
- uncertainty regarding ownership of intellectual property rights arising from our collaborative activities, which could prevent us from entering into additional collaborations;
- unwillingness to cooperate in the manufacture of the product, including providing us with product data or materials;
- unwillingness to keep us informed regarding the progress of its development and commercialization activities or to permit public disclosure of the results of those activities;
- initiation of litigation or alternative dispute resolution options by either party to resolve the dispute;
- attempts by either party to terminate the collaboration;
- our ability to maintain or defend our intellectual property rights may be compromised by our partner's acts or omissions;
- a third-party development partner may utilize our intellectual property rights in such a way as to invite litigation that could jeopardize or invalidate our intellectual property rights or expose us to potential liability;
- a third-party development partner may change the focus of its development and commercialization efforts due to internal reorganizations, mergers, consolidations or otherwise;
- unwillingness to fully fund or commit sufficient resources to the testing, marketing, distribution or development of our products;
- unwillingness or inability to fulfill their obligations to us due to the pursuit of alternative products, conflicts of interest that arise or changes in business strategy or other business issues; and/or
- we may not be able to guarantee supplies of development or marketed products.

Given these risks, it is possible that any collaborative arrangements which we have or could enter into may not be successful.

From time to time we may need to in-license patents and proprietary technologies from third parties, which may be difficult or expensive to obtain.

We may need to obtain licenses to patents and other proprietary rights held by third parties to successfully develop, manufacture and market our drug products. As an example, it may be necessary to use a third party's proprietary technology to reformulate one of our drug products in order to improve upon the capabilities of the drug product. If we are unable to timely obtain these licenses on reasonable terms, or at all, our ability to commercially exploit our drug products may be inhibited or prevented.

The potential size of the market for our drug products is uncertain.

We often provide estimates of the number of people who suffer from the diseases that our drugs are targeting. However, there is limited information available regarding the actual size of these patient populations. In addition, it is uncertain whether the results from previous or future clinical trials of drug products will be observed in broader patient populations, and the number of patients who may benefit from our drug products may be significantly smaller than the estimated patient populations.

Our collaboration partner, Mundipharma International Corporation Limited, or Mundipharma, may not be successful in obtaining regulatory approval for FOLOTYN in a number of countries and FOLOTYN is subject to numerous complex regulatory requirements.

Our collaboration partner, Mundipharma, may not be successful in obtaining regulatory approval for FOLOTYN in a number of countries and FOLOTYN is subject to numerous complex regulatory requirements. Failure to comply with, or

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changes to, the regulatory requirements that are applicable to FOLOTYN outside the U.S. may result in a variety of consequences, including the following:

- restrictions on FOLOTYN or our manufacturing processes;
- warning letters;
- withdrawal of FOLOTYN from the market;
- voluntary or mandatory recall of FOLOTYN;
- fines against us;
- suspension or withdrawal of regulatory approvals for FOLOTYN;
- suspension or termination of any of our ongoing clinical trials of FOLOTYN;
- refusal to permit import or export of FOLOTYN;
- refusal to approve pending applications or supplements to approved applications that we submit;
- denial of permission to file an application or supplement in a jurisdiction;
- product seizure; and/or
- injunctions, consent decrees, or the imposition of civil or criminal penalties against us.

The occurrence of one or more of the above-mentioned actions could have a material and adverse impact on our business, financial condition, results of operations and cash flows.

Changes in our effective income tax rate could adversely affect our profitability.

We are subject to federal and state income taxes in the U.S. and our tax liabilities are dependent upon the distribution of income among these different jurisdictions. Various factors may have favorable or unfavorable effects on our effective income tax rate. These factors include, but are not limited to:

- interpretations of existing tax laws;
- the accounting for stock options and other share-based compensation;
- changes in tax laws and rates;
- future levels of research and development spending;
- changes in accounting standards;
- changes in the mix of earnings in the various tax jurisdictions in which we operate;
- the outcome of examinations by the Internal Revenue Service and tax regulators in other jurisdictions;
- the accuracy of our estimates for unrecognized tax benefits;
- realization of deferred tax assets; and
- changes in overall levels of pre-tax earnings.

The impact on our income taxes resulting from the above-mentioned factors may be significant and could have an impact on our profitability.

Our sales and operations are subject to the risks of doing business internationally.

We have a presence in international markets subjecting us to many risks that could adversely affect our business and revenues, such as:

- the inability to obtain necessary foreign regulatory or pricing approvals of products in a timely manner;
- collectability of accounts receivable;
- fluctuations in foreign currency exchange rates, in particular the recent strength of the U.S. dollar versus foreign currencies that has adversely impacted our revenues and net income;

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- difficulties in staffing and managing international operations;
- the imposition of governmental controls;
- less favorable intellectual property or other applicable laws;
- increasingly complex standards for complying with foreign laws and regulations that may differ substantially from country to country and may conflict with corresponding U.S. laws and regulations;
- the far-reaching anti-bribery and anti-corruption legislation in the U.K., including the U.K. Bribery Act 2010, and elsewhere and escalation of investigations and prosecutions pursuant to such laws;
- compliance with complex import and export control laws;
- restrictions on direct investments by foreign entities and trade restrictions;
- greater political or economic instability; and
- changes in tax laws and tariffs.

Failure to comply with domestic or foreign laws applicable to our international operations could result in various adverse consequences, including: possible delay in approval or refusal to approve a product; recalls, seizures or withdrawal of an approved product from the market; disruption in the supply or availability of our products or suspension of export or import privileges; the imposition of civil or criminal sanctions; the prosecution of executives overseeing our international operations; and damage to our reputation. Any significant impairment of our ability to sell products outside of the U.S. could adversely impact our business and financial results.

If our employees, representatives or agents fail to comply with regulatory standards and requirements, we could be exposed to financial, reputational or other harm.

Our business and financial condition could be adversely affected to the extent that our employees, representatives or agents fail to:

- comply with FDA regulations or similar regulations of similar regulatory authorities in other countries;
- provide accurate information to the FDA or similar regulatory authorities in other countries;
- comply with manufacturing standards we, the FDA or similar authorities in other countries have established;
- comply with federal and state healthcare fraud and abuse laws and regulations or similar laws and regulations established and enforced by comparable foreign regulatory authorities;
- comply with the provisions of the Foreign Corrupt Practices Act, or the FCPA; or
- report financial information or clinical or preclinical data accurately.

In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Misconduct by our employees, representatives or agents could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent these activities may not be effective in controlling unknown or unmanaged risks or losses, or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, even if we are ultimately exonerated, we could incur substantial costs and expenses in an effort to defend ourselves or to assert our rights and any such actions could result in reputational harm to us or have a significant impact on our business and results of operations, including the imposition of significant fines or other sanctions.

Earthquakes or other natural or man-made disasters and business interruptions could adversely affect our business.

Our operations are vulnerable to interruption by fire, power loss, floods, telecommunications failure and other events beyond our control. In addition, our operations are susceptible to disruption as a result of natural disasters such as earthquakes. So far we have never experienced any significant disruption of our operations as a result of earthquakes or other natural or

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man-made disasters. Although we have a contingency recovery plan, any significant business interruption could cause delays in our drug development and future sales and harm our business.

A breakdown or breach of our information technology systems and cybersecurity efforts could subject us to liability, reputational damage or interrupt the operation of our business.

We rely upon our sophisticated information technology systems and infrastructure to operate our business. In the ordinary course of business, we collect, store and transmit large amounts of confidential information (including, but not limited to, personal information and intellectual property), and we deploy and operate an array of technical and procedural controls to maintain the confidentiality and integrity of such confidential information. Data privacy breaches by those who access our systems, whether by employees or others, may pose a risk that sensitive data, including intellectual property, trade secrets or personal information belonging to us, our patients, employees, customers or other business partners, may be exposed to unauthorized persons or to the public or otherwise used for unauthorized purposes.We could also experience a business interruption, noncompliance with data privacy laws, theft of confidential information, or reputational damage from industrial espionage attacks, malware or other cyber-attacks, which may compromise our system infrastructure or lead to data leakage, either internally or at our third-party providers. Such attacks are of ever-increasing levels of sophistication, frequency and intensity, and have become increasingly difficult to detect. There can be no assurance that our efforts to protect our data and information technology systems will prevent breakdowns or breaches in our systems (or that of our third-party providers). Any such interruption or breach of our systems or improper use of confidential data could adversely affect our business operations, financial condition, and/or result in the loss of critical or sensitive confidential information or intellectual property, and could result in financial, legal, business and reputational harm to us.

We have a history of net losses. We expect to continue to incur net losses and may not achieve profitability for some time, if at all.

We have incurred net losses in each of the years ended December 31, 2018, 2017, and 2016, respectively. We have incurred these losses principally from costs incurred in our research and development programs and from our selling, general and administrative expenses. We expect that in the foreseeable future we will continue to spend substantial amounts on research and development to further develop and potentially commercialize poziotinib and ROLONTIS. Accordingly, we expect to continue to incur net losses in the foreseeable future and may not achieve profitability for some time, if at all. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. If we are unable to achieve and sustain profitability, the market value of our common stock will likely decline.

Risks Related to Our Industry

If we are unable to adequately protect our technology or enforce our patent rights, our business could suffer.

Our success with the drug products that we develop will depend, in part, on our ability and the ability of our licensors to obtain and maintain patent protection for these products. We currently have a number of U.S. and foreign patents issued and pending, however, we primarily rely on patent rights licensed from others. Our license agreements generally give us the right and/or obligation to maintain and enforce the subject patents. We may not receive patents for any of our pending patent applications or any patent applications we may file in the future. If our pending and future patent applications are not allowed or, if allowed and issued into patents, if such patents and the patents we have licensed are not upheld in a court of law, our ability to competitively exploit our drug products would be substantially harmed. Also, such patents may or may not provide competitive advantages for their respective products or they may be challenged or circumvented by our competitors, in which case our ability to commercially exploit these products may be diminished.

The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and involve complex legal and factual questions. No consistent policy regarding the breadth of claims allowed in pharmaceutical and biotechnology patents has emerged to date in the U.S. The laws of many countries may not protect intellectual property rights to the same extent as U.S. laws, and those countries may lack adequate rules and procedures for defending our intellectual property rights. Filing, prosecuting and defending patents on all our products or product candidates throughout the world would be prohibitively expensive. Competitors may use our technologies in

jurisdictions not covered by any of our patent claims or other intellectual property rights.

Changes in either patent laws or in interpretations of patent laws in the U.S. and other countries may diminish the value of our intellectual property. We do not know whether any of our patent applications will result in the issuance of any patents, and we cannot predict the breadth of claims that may be allowed in our patent applications or in the patent applications we license from others.

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The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- in certain jurisdictions, we or our licensors might not have been the first to make the inventions covered by each of our or our licensors' pending patent applications and issued patents, and we may have to participate in expensive and protracted interference proceedings to determine priority of invention;
- we or our licensors might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative product candidates or duplicate any of our or our licensors' product candidates;
- our or our licensors' pending patent applications may not result in issued patents;
- our or our licensors' issued patents may not provide a basis for commercially viable products or may not provide us with any competitive advantages or may be challenged by third parties;
- others may design around our or our licensors' patent claims to produce competitive products that fall outside the scope of our or our licensors' patents;
- we may not develop or in-license additional patentable proprietary technologies related to our product candidates; or
- the patents of others may prevent us from marketing one or more of our product candidates for one or more indications that may be valuable to our business strategy.

An issued patent does not guarantee us the right to practice the patented technology or commercialize the patented product. Third parties may have blocking patents that could be used to prevent us from commercializing our patented products and practicing our patented technology. Patents issued to us and our licensors and those that may be issued in the future to us and our licensors may be challenged, invalidated or circumvented, which could limit our ability to prevent competitors from marketing related product candidates or could limit the length of the term of patent protection of our product candidates. Our competitors may independently develop similar technologies. In addition, because of the extensive time required for development, testing and regulatory review of a potential product, it is possible that, before any of our product candidates can be commercialized, any related patent may expire or remain in force for only a short period following commercialization, thereby reducing any advantage of the patent.

We also rely on trade secret protection and contractual protections for our unpatented and proprietary drug compounds. Trade secrets are difficult to protect. While we enter into confidentiality agreements with our employees, consultants and others, these agreements may not successfully protect our trade secrets or other confidential and proprietary information. It is possible that these agreements will be breached, or that they will not be enforceable in every instance, and that we will not have adequate remedies for any such breach. Likewise, although we conduct periodic trade secret audits of certain partners, vendors and contract manufacturers, these trade secret audits may not protect our trade secrets or other confidential and proprietary information. It is possible that despite having certain trade secret audit security measures in place, trade secrets or other confidential and proprietary information may still be leaked or disclosed to a third party. It is also possible that our trade secrets will become known or independently developed by our competitors.

We also rely on trademarks to protect the names of our products. These trademarks may be challenged by others. If we enforce our trademarks against third parties, such enforcement proceedings may be expensive. Some of our trademarks, including ZEVALIN are owned by, or assignable to, our licensors and, upon expiration or termination of the applicable license agreements, we may no longer be able to use these trademarks. If we are unable to adequately protect our technology, trade secrets or proprietary know-how, or enforce our patents and trademarks, our business, financial condition and prospects could suffer.

Intellectual property rights are complex and uncertain and therefore may subject us to infringement claims.

The patent positions related to our drug products are inherently uncertain and involve complex legal and factual issues. We believe that there is significant litigation in the pharmaceutical and biotechnology industry regarding patent and other intellectual property rights. A patent does not provide the patent holder with freedom to operate in a way that infringes the patent rights of others. We may be accused of patent infringement at any time. The coverage of

patents is subject to interpretation by the courts, and the interpretation is not always uniform. If we are sued for patent infringement, we would need to demonstrate that our products or methods do not infringe the patent claims of the relevant patent and/or that the patent claims are invalid or unenforceable, and we may not be able to do this. Proving invalidity, in particular, is difficult since it requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents in the U.S.

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Although we are not aware of any infringement by any of our drug products on the rights of any third party, there may be third party patents or other intellectual property rights, including trademarks and copyrights, relevant to our drug products of which we are not aware. Third parties may assert patent or other intellectual property infringement claims against us, or our licensors and collaborators, with products. Any claims that might be brought against us relating to infringement of patents may cause us to incur significant expenses and, if successfully asserted against us, may cause us to pay substantial damages and result in the loss of our use of the intellectual property that is critical to our business strategy.

In the event that we or our partners are found to infringe any valid claim of a patent held by a third party, we may, among other things, be required to:

- pay damages, including up to treble damages and the other party's attorneys' fees, which may be substantial;
- cease the development, manufacture, use and sale of our products that infringe the patent rights of others through a court-imposed sanction such as an injunction;
- expend significant resources to redesign our products so they do not infringe others' patent rights, which may not be possible;
- discontinue manufacturing or other processes incorporating infringing technology; or
- obtain licenses to the infringed intellectual property, which may not be available to us on acceptable terms, or at all.

Rapid bio-technological advancement may render our drug products obsolete before we are able to recover expenses incurred in connection with their development. As a result, some of our drug products may never become profitable.

The pharmaceutical industry is characterized by rapidly evolving biotechnology. Biotechnologies under development by other pharmaceutical companies could result in treatments for diseases and disorders for which we are developing our own treatments. Several other companies are engaged in the research and development of compounds that are similar to our efforts. A competitor could develop a new biotechnology, product or therapy that has better efficacy, a more favorable side-effect profile or is more cost-effective than one or more of our drug products and thereby cause our drug products to become commercially obsolete. Some of our drug products may become obsolete before we recover the expenses incurred in their development. As a result, such products may never become profitable.

Failure to obtain regulatory approval outside the U.S. will prevent us from marketing our product candidates abroad.

We intend to market certain of our existing and future product candidates in and outside of the U.S. In order to market our existing and future product candidates in the EU and many other foreign jurisdictions, we must obtain separate regulatory approvals according to the applicable domestic laws and regulations. We have had limited interactions with foreign regulatory authorities, and the approval procedures vary among countries and can involve additional testing, and the time required to obtain approval may differ from that required to obtain FDA approval. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval as well as other risks specific to the jurisdictions in which we may seek approval. Approval by the FDA does not guarantee approval by regulatory authorities in other countries, and approval by one or more foreign regulatory authorities does not necessarily ensure approval by regulatory authorities in other countries.

A failure or delay in obtaining regulatory approval in one country may have a negative effect on the regulatory approval process in others. We may not obtain foreign regulatory approvals on a timely basis, if at all. We may not be able to file for foreign regulatory approvals and may not receive necessary approvals to commercialize our existing and future product candidates in any market.

Competition for patients in conducting clinical trials may prevent or delay product development and strain our limited financial resources.

Many pharmaceutical companies are conducting clinical trials involving patients with the disease indications that our drug products target. As a result, we must compete with them for clinical sites, physicians and the limited number of patients who fulfill the stringent requirements for participation in clinical trials. Also, due to the confidential nature of clinical trials, we do not know how many of the eligible patients may be enrolled in competing studies and who are consequently not available to us for our clinical trials. Our clinical trials may be delayed or terminated due to the

inability to enroll enough patients. Patient enrollment depends on many factors, including the size of the patient population, the nature of the trial protocol, the proximity of patients to clinical sites and the eligibility criteria for the study. The delay or inability to meet planned patient enrollment

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may result in increased costs and delays or termination of the trial, which could have a harmful effect on our ability to develop products.

Even after we receive regulatory approval to market our drug products, the market may not be receptive to our drug products upon their commercial introduction, which would negatively impact our ability to achieve profitability.

Our drug products may not gain market acceptance among physicians, patients, healthcare payers and the medical community. The degree of market acceptance of any approved drug products will depend on a number of factors, including:

- the effectiveness of the drug product;
- the prevalence and severity of any side effects;
- potential advantages or disadvantages over alternative treatments;
- relative convenience and ease of administration;
- the strength of marketing and distribution support;
- the price of the drug product, both in absolute terms and relative to alternative treatments; and
- sufficient third-party coverage and reimbursement.

If our drug products receive regulatory approval but do not achieve an adequate level of acceptance by physicians, healthcare payers and patients, we may not generate drug product revenues sufficient to attain profitability.

Guidelines and recommendations published by various organizations can reduce the use of our products.

Government agencies, such as the CMS, promulgate regulations, and issue guidelines, directly applicable to us and to our products. In addition, third parties such as professional societies, practice management groups, insurance carriers, physicians, private health/science foundations and organizations involved in various diseases from time to time may publish guidelines or recommendations to healthcare providers, administrators and payers, and patient communities. Recommendations may relate to such matters as utilization, dosage, route of administration and use of related therapies and coverage and reimbursement of our products by government and private payers. Third-party organizations like the above have in the past made recommendations about our products. Recommendations or guidelines that are followed by patients and healthcare providers could result in decreased utilization and/or dosage of our products, any of which could adversely affect our product sales and operating results materially.

The sale of our products is subject to regulatory approvals, and our business is subject to extensive regulatory requirements, and if we are unable to obtain regulatory approval for our product candidates, or if we fail to comply with governmental regulations, we will be limited in our ability to commercialize our products and product candidates and/or subject us to penalties.

We are not permitted to market or promote any of our product candidates before we receive regulatory approval from the FDA or comparable foreign regulatory authorities, and we may never receive such regulatory approval for any of our product candidates. Obtaining regulatory approval of a new drug is an uncertain, lengthy and expensive process, and success is never guaranteed. Despite the time, resources and effort expended, failure can occur at any stage. During each stage, there is a substantial risk that we will encounter serious obstacles that will further delay us and add substantial expense, that we will develop a product with limited potential for commercial success, or that we will be forced to abandon a product in which we have invested substantial amounts of time and money. These risks may include failure of the product candidate in preclinical studies, difficulty enrolling patients in clinical trials, clinical trial holds or other delays in completing clinical trials, delays in completing formulation and other testing and work necessary to support an application for regulatory approval, adverse reactions to the product candidate or other safety concerns, insufficient clinical trial data to support the safety or efficacy of the product candidate or to differentiate our product candidate from competitors, an inability to manufacture sufficient quantities of the product candidate for development or commercialization activities in a timely and cost-effective manner, and failure to obtain, or delays in obtaining, the required regulatory approvals for the product candidate or the facilities in which it is manufactured. In order to receive approval from the FDA for each product candidate, we must demonstrate that the new drug product is safe and effective for its intended use and that the manufacturing processes for the product candidate comply with the FDA's cGMPs, which include requirements related to production processes, quality control and assurance, and

recordkeeping. The FDA has substantial discretion in the approval process for human medicines.

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The FDA and comparable agencies in foreign countries impose many requirements related to the drug development process through lengthy and rigorous clinical testing and data collection procedures, and other costly and time consuming compliance procedures. While we believe that we are currently in compliance with applicable FDA regulations, if we or our partners, the CROs or CMOs with which we have relationships, fail to comply with the regulations applicable to our clinical testing, the FDA may delay, suspend or cancel our clinical trials, or the FDA might not accept the test results. The FDA, an institutional review board, third party investigators, any comparable regulatory agency in another country, or we, may suspend clinical trials at any time if the trials expose subjects participating in such trials to unacceptable health risks. Further, human clinical testing may not show any current or future drug product to be safe and effective to the satisfaction of the FDA or comparable regulatory agencies, or the data derived from the clinical tests may be unsuitable for submission to the FDA or other regulatory agencies. Once we submit an application seeking approval to market a drug product, the FDA or other regulatory agencies may not issue their approvals on a timely basis, if at all. If we are delayed or fail to obtain these approvals, our business and prospects may be significantly damaged. In addition, any regulatory approvals that we receive for our future product candidates may also be subject to limitations on the indicated uses for which they may be marketed or contain requirements for potentially cost prohibitive post-marketing follow-up studies and surveillance to monitor the safety and efficacy of the product.

If we obtain regulatory approval for our drug products, we, our partners, our manufacturers, and other contract entities will continue to be subject to extensive requirements by a number international, federal, state and local agencies. These regulations will impact many aspects of our operations, including testing, research and development, manufacturing, safety, effectiveness, labeling, storage, quality control, adverse event reporting, record keeping, approval, advertising and promotion of our future products. The FDA and foreign regulatory authorities strictly regulate the promotional claims that may be made about prescription products and our product labeling, advertising and promotion is subject to continuing regulatory review. Physicians may nevertheless prescribe our product to their patients in a manner that is inconsistent with the approved label, or that is off-label. The FDA and other regulatory agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and if we are found to have improperly promoted off-label uses we may be subject to significant sanctions, civil and criminal fines and injunctions prohibiting us from engaging in specified promotional conduct.

In addition, the Company is subject to the federal False Claims Act, or the FCA, as well as the false claims laws of several states. The FCA prohibits any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. Suits filed under the FCA, known as "qui tam" actions, can be brought by any private individual on behalf of the government and such private individuals, commonly known as "whistleblowers," may share in any amounts paid by the entity to the government in fines or settlement. The filing of qui tam actions has caused a number of pharmaceutical, medical device and other healthcare companies to have to defend a FCA action. When an entity is determined to have violated the FCA, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. Various states also have enacted laws modeled after the federal FCA.

In order to comply with these laws, we have implemented a compliance program designed to identify, prevent and mitigate risk through the implementation of compliance policies and training systems. We cannot guarantee that our compliance program will be sufficient or effective, that our employees will comply with our policies, that our employees will notify us of any violation of our policies, that we will have the ability to take appropriate and timely corrective action in response to any such violation, or that we will make decisions and take actions that will necessarily limit or avoid liability for whistleblower claims that individuals, such as employees or former employees, may bring against us or that governmental authorities may prosecute against us based on information provided by individuals. If we are found to be in violation of any of the laws and regulations described above or other applicable state and federal healthcare laws, we may be subject to penalties, including civil and criminal penalties, damages,

fines, disgorgement, contractual damages, reputational harm, imprisonment, diminished profits and future earnings, exclusion from government healthcare reimbursement programs such as Medicare and Medicaid, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws, and/or the curtailment or restructuring of our operations, any of which could have a material adverse effect on our business, results of operations and growth prospects. Any action against us for violation of these laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. Moreover, achieving and sustaining compliance with applicable federal, state and foreign healthcare laws is costly and time-consuming for our management.

The discovery of previously unknown safety risks with drug products approved to go to market or on the market may raise costs, prevent us from marketing such products, or require us to change the labeling of our products or take other potentially limiting or costly actions.

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The later discovery of previously unknown safety risks with our commercial products may result in the imposition of restrictions on distribution or use of the drug product, including withdrawal from the market. The FDA may revisit and change its prior determinations with regard to the safety and efficacy of our products. If the FDA's position changes, we may be required to change our labeling or to cease manufacture and marketing of the products at issue. Even prior to any formal regulatory action, we could voluntarily decide to cease the distribution and sale or recall any of our products if concerns about their safety or effectiveness develop.

The FDA has significant authority to take regulatory actions in the event previously unknown safety risks are identified or if data suggest that our products may present a risk to safety. For example, the FDA may:

- require sponsors of marketed products to conduct post-approval clinical studies to assess a known serious risk, signals of serious risk or to identify an unexpected serious risk;
- mandate labeling changes to products, at any point in a product's lifecycle, based on new safety information; and
- require sponsors to implement a REMS for a product which could include a medication guide, patient package insert, a communication plan to healthcare providers, or other elements the FDA deems necessary to assure safe use of the drug (either prior to approval or post-approval as necessary).

Failure to comply with a REMS could result in significant civil monetary penalties or other administrative actions by the FDA. Further, regulatory agencies could change existing, or promulgate new, regulations at any time which may affect our ability to obtain or maintain approval of our existing or future products or require significant additional costs to obtain or maintain such approvals.

Legislative or regulatory reform of the healthcare system and pharmaceutical industry related to pricing, coverage or reimbursement may hurt our ability to sell our products profitably or at all.

Our ability to commercialize any products successfully will depend in part on the availability of coverage and reimbursement from third-party payers such as government authorities, private health insurers, health maintenance organizations including pharmacy benefit managers and other health care-related organizations, in both the U.S. and foreign markets. Even if we succeed in bringing one or more products to market, the amount reimbursed for our products may be insufficient to allow us to compete effectively and could adversely affect our profitability. Coverage and reimbursement by governmental and other third-party payers may depend upon a number of factors, including a governmental or other third-party payer's determination that use of a product includes but is not limited to:

- a covered benefit under its health plan;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- cost-effective; and
- neither experimental nor investigational.

Obtaining coverage and reimbursement approval for a product from each third-party and governmental payer is a time-consuming and costly process that could require us to provide supporting scientific, clinical and cost-effectiveness data for the use of our products to each payer. We may not be able to provide data sufficient to obtain coverage and adequate reimbursement.

In both the U.S. and certain foreign jurisdictions, there have been and may continue to be a number of legislative and regulatory proposals related to coverage and reimbursement that could impact our ability to sell our products profitably. The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, collectively referred to as the Healthcare Reform Law, was signed into law on March 30, 2010. The Healthcare Reform Law substantially changed the way healthcare is financed by both governmental and private insurers and significantly impacted the pharmaceutical industry. The Healthcare Reform Law included, among other things, an annual, nondeductible fee on any entity that manufactures or imports specified branded prescription drugs and biologic agents, revisions to the definition of "average manufacturer price" for reporting purposes, increases in the amount of rebates owed by drug manufacturers under the Medicaid Drug Rebate Program, expansion of the

340B drug discount program that mandates discounts to certain hospitals, community centers and other qualifying providers, and changes to affect the Medicare Part D coverage gap, or “donut hole.” The full effects of these provisions will become apparent as these laws are implemented and the CMS and other agencies issue

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applicable regulations or guidance as required by the Healthcare Reform Law. Moreover, in the coming years, additional changes could be made to governmental healthcare programs that could significantly impact the success of our products.

The high cost of pharmaceuticals continues to generate substantial government interest. It is possible that proposals will be adopted, or existing regulations that affect the coverage and reimbursement of pharmaceutical and other medical products may change, that may impact our products currently on the market and any of our products approved for marketing in the future. Cost control initiatives could decrease the price that we receive for any of our products or product candidates. In addition, third-party payers are increasingly challenging the price and cost-effectiveness of medical products and services. Significant uncertainty exists as to the coverage and reimbursement status of newly-approved pharmaceutical products. Future developments may require us to decrease the price that we charge for our products, thereby negatively affecting our financial results.

In some foreign countries, particularly in the EU, prescription drug pricing is subject to governmental control. Drug pricing may be made against a reference price set by the healthcare providers as a measure for healthcare cost containment. Pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. If coverage and reimbursement of our products are unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels for the purpose of adoption of these products in the national health services in these jurisdictions, our profitability will likely be negatively affected.

If we market products in a manner that violates federal or state health care fraud and abuse laws, we may be subject to civil or criminal penalties, including exclusion from participation in government health care programs.

As a pharmaceutical company, even though we do not provide healthcare services or receive payments directly from or bill directly to Medicare, Medicaid or other third-party payers for our products, we are subject to certain federal and state healthcare laws and regulations pertaining to fraud and abuse applicable to our business. Violations of fraud and abuse laws may be punishable by criminal and/or civil sanctions, including fines and/or exclusion or suspension from federal and state health care programs such as Medicare and Medicaid and debarment from contracting with the U.S. government.

The laws that may affect our ability to operate include the federal health care program Anti-Kickback Statute, which prohibits, among other things, knowingly and willfully offering, paying, soliciting, or receiving remuneration to induce or in return for purchasing, leasing, ordering, or arranging for the purchase, lease or order of any health care item or service reimbursable under Medicare, Medicaid or other federally-financed health care programs. This statute applies to arrangements between pharmaceutical manufacturers and prescribers, purchasers and formulary managers. Although there are a number of statutory exceptions and regulatory safe harbors protecting certain common activities, the exceptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exception or safe harbor.

Pharmaceutical companies have been prosecuted under these laws for a variety of alleged promotional and marketing activities, such as providing free product to customers with the expectation that the customers would bill federal programs for the product; reporting to pricing services inflated average wholesale prices that were then used by federal programs to set reimbursement rates; engaging in off-label promotion that caused claims to be submitted to Medicaid for non-covered off-label uses; and submitting inflated best price information to the Medicaid Drug Rebate Program. Federal enforcement agencies have also recently scrutinized product and patient assistance programs, including manufacturer reimbursement support services as well as relationships with specialty pharmacies. If our past or present operations are found to be in violation of any of such laws or any other governmental regulations that may apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from federal health care programs and/or the curtailment or restructuring of our operations. Any penalties, damages, fines, curtailment, or restructuring of our operations could adversely affect our ability to operate our

business and our financial results. Any action against us for violation of these laws, even if we successfully defend against them, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business.

The Health Insurance Portability and Accountability Act of 1996 also created prohibitions against health care fraud and false statements relating to health care matters. The health care fraud statute prohibits knowingly and willfully executing a scheme to defraud any health care benefit program, including private payers. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for health care benefits, items or services.

In addition, there has been a recent trend of increased federal and state regulation of payments made to physicians. The federal "Sunshine" requirements pursuant to the Healthcare Reform Law imposed new requirements on (i) manufacturers of

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drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to report annually to CMS information related to payments or other "transfers of value" made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors and teaching hospitals), and (ii) applicable manufacturers and GPOs to report annually to CMS ownership and investment interests held by physicians (as defined above) and their immediate family members and payments or other "transfers of value" to such physician owners and their immediate family members. Manufacturers were required to begin data collection on August 1, 2013 and to report such data to the government by March 31, 2014 and by the 90th calendar day of each year thereafter. Failure to submit the required information may result in civil monetary penalties of up an aggregate of $150,000 per year (and up to an aggregate of $1 million per year for "knowing failures"), for all payments, transfers of value or ownership or investment interests not reported in an annual submission, and may result in liability under other federal laws or regulations.

The majority of states also have statutes or regulations similar to these federal laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payer. In addition, some states have laws that require pharmaceutical companies to adopt comprehensive compliance programs. For example, under California law, pharmaceutical companies must comply with both the April 2003 Office of Inspector General Compliance Program Guidance for Pharmaceutical Manufacturers and the PhRMA Code on Interactions with Healthcare Professionals, as amended. Certain states also mandate the tracking and reporting of gifts, compensation, and other remuneration paid by us to physicians and other health care providers. We have adopted and implemented a compliance program designed to comply with applicable federal, state and local requirements wherever we operate, including but not limited to the laws of the states of California and Nevada.

Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Compliance with these laws and regulations is costly and materially affects our business. Among other effects, health care regulations substantially increase the time, difficulty and costs incurred in obtaining and maintaining approval to market newly developed and existing products. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. We expect compliance with these regulations to require significant technical expertise and capital investment to ensure the reasonable design and operation of an effective compliance program.

Because of the breadth of these laws and the narrowness of the safe harbors, it is possible that some of our business activities could be subject to challenge under one or more of such laws. The Healthcare Reform Law also made several important changes to the federal Anti-Kickback Statute, false claims laws, and health care fraud statute by weakening the intent requirement under the anti-kickback and health care fraud statutes that may make it easier for the government, or whistleblowers to charge such fraud and abuse violations. A person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. In addition, the Health Care Reform Law provides that the government may assert that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the false claims statutes. In addition, the Healthcare Reform Law increases penalties for fraud and abuse violations. If our past, present or future operations are found to be in violation of any of the laws described above or other similar governmental regulations to which we are subject, we may incur significant civil, criminal and administrative penalties, damages, fines, imprisonment, exclusion from government funded healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and negatively impact our financial results.

We may be involved in additional lawsuits to defend or enforce our patents, which could be expensive, time-consuming and unsuccessful.

Competitors may infringe upon our patents. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. In addition, in an infringement proceeding, a court

may decide that one or more of our patents is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated, held unenforceable, or interpreted narrowly and could put our patent applications at risk of not issuing. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business.

Interference or derivation proceedings provoked by third parties or brought by the USPTO may be necessary to determine the priority of inventions with respect to our patents or patent applications. An unfavorable outcome could require us to cease using the related technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms. Litigation or interference proceedings may fail,

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even if successful, may result in substantial costs and distract our management and other employees. We may not be able to prevent misappropriation of our trade secrets or confidential information, particularly in countries where the laws may not protect those rights as fully as in the U.S. or in Europe.

Furthermore, because of the substantial amount of discovery that could be required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on our stock price.

We may be subject to product liability claims, and may not have sufficient product liability insurance to cover any such claims, which may expose us to substantial liabilities.

We may be held liable if any product we or our partners develop causes injury or is found otherwise unsuitable during product testing, manufacturing, clinical trials, marketing or sale. Regardless of merit or eventual outcome, product liability claims could result in decreased demand for our product candidates, injury to our reputation, withdrawal of patients from our clinical trials, substantial monetary awards to trial participants and the inability to commercialize any products that we may develop. These claims might be made directly by consumers, health care providers, competing pharmaceutical companies or others selling or testing our products. Although we currently carry product liability insurance that we believe is adequate, it is possible that this coverage will be insufficient to protect us from future claims. Additionally, our insurance may not reimburse us or may not be sufficient to reimburse us for expenses or losses we may suffer. Moreover, if insurance coverage becomes more expensive, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. Failure to maintain sufficient insurance coverage could have a material adverse effect on our business, prospects and results of operations if claims are made that exceed our coverage.

On occasion, juries have awarded large judgments in class action lawsuits for claims based on drugs that had unanticipated side effects. In addition, the pharmaceutical and biotechnology industries, in general, have been subject to significant medical malpractice litigation. A successful product liability claim or series of claims brought against us could harm our reputation and business and financial condition.

We could be adversely affected by violations of the FCPA, and other worldwide anti-bribery laws.

The FCPA prohibits U.S. companies and their respective representatives from offering, promising, authorizing, or making improper payments to foreign officials for the purpose of obtaining or retaining business abroad. In many countries, the health care professionals we regularly interact with meet the definition of a foreign government official for purposes of the FCPA. We have policies and procedures in place to ensure that we comply with the FCPA and similar laws; however, there is no assurance that such policies and procedures will protect us against liability under the FCPA or related laws for actions taken by our employees and intermediaries with respect to our business. Failure to comply with the FCPA and related laws could disrupt our business and lead to criminal and civil penalties including fines, suspension of our ability to do business with the federal government and denial of government reimbursement of our products, which could result in a material adverse impact on our business, financial condition, results of operations and cash flows. We could also be adversely affected by any allegation that we violated such laws.

The use of hazardous materials, including radioactive and biological materials, in our research and development and commercial efforts imposes certain compliance costs on us and may subject us to liability for claims arising from the use or misuse of these materials.

Our research and development, manufacturing (including a radio labeling step for ZEVALIN) and administration of our drugs involves the controlled use of hazardous materials, including chemicals, radioactive and biological materials, such as radioactive isotopes. We are subject to federal, state, local and foreign environmental laws and regulations governing, among other matters, the handling, storage, use and disposal of these materials and some waste byproducts. We cannot completely eliminate the risk of contamination or injury from these materials and we could be held liable for any damages that result, which could exceed our financial resources. We currently maintain insurance coverage for injuries resulting from the hazardous materials we use; however, future claims may exceed the amount of

our coverage. Also, we do not have insurance coverage for environmental cleanup and removal. Currently the costs of complying with such federal, state, local and foreign environmental regulations are not significant, and consist primarily of waste disposal expenses. However, they could become expensive, and current or future environmental laws or regulations may impair our research, development, production and commercialization efforts.

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Risks Related to Our Common Stock

Future issuances of our common stock or instruments convertible or exercisable into our common stock, may materially and adversely affect the price of our common stock and cause dilution to our existing stockholders.

We may obtain additional funds through public or private debt or equity financings in the near future. If we issue additional shares of common stock or instruments convertible into common stock, it may materially and adversely affect the price of our common stock. In the past, we have issued shares of common stock pursuant to at-the-market-issuance sales agreements and we may do so in the future. Certain issuances by us of equity securities may be at or below the prevailing market price of our common stock and may have a dilutive impact on our existing stockholders. In addition, future exercises of some or all of our outstanding options, warrants, or other rights may likewise dilute the ownership interests of our stockholders, and any sales in the public market of any shares of our common stock issuable upon such conversion or exercise, or the perception that such sales may occur, could adversely affect the prevailing market price of our common stock. These issuances or other dilutive issuances would also cause our per share net income, if any, to decrease in future periods.

Further, as of December 31, 2018, an aggregate 5.0 million shares of common stock were issuable pursuant to the exercise of outstanding options and the vesting of restricted stock awards and units. Further, 17.6 million shares of common stock were reserved for future issuance under our equity compensation plans.

We are subject to the risks of securities and related litigation, which may expose us to substantial liabilities and could seriously harm our business.

We may be subject to the risk of securities litigation and derivative actions from time to time as a result of being publicly traded, including the remaining unresolved actions set forth in “Item 3. Legal Proceedings.” There can be no assurance that any settlement or liabilities in such actions or any future lawsuits or claims against us would be covered or partially covered by our insurance policies, which could have a material adverse effect on our earnings in one or more periods. While we and our Board of Directors deny the allegations of wrongdoing against us in the unresolved actions initiated against us, there can be no assurance as to the ultimate outcome or timing of their resolutions. In addition to the potential costs and liabilities, securities litigation could divert management’s attention and resources, which could seriously harm our business.

The market price and trading volume of our common stock fluctuate significantly and could result in substantial losses for individual investors.

The stock market from time to time experiences significant price and trading volume fluctuations that are unrelated to the operating performance of particular companies. These broad market fluctuations may cause the market price and trading volume of our common stock to decrease. In addition, the market price and trading volume of our common stock is often highly volatile.

Factors that may cause the market price and volume of our common stock to decrease include, among other things:

- recognition on up-front licensing or other fees or revenues;
- payments of non-refundable up-front or license fees, or payment for cost-sharing expenses, to third parties;
- adverse results or delays in our clinical trials;
- fluctuations in our results of operations;
- timing and announcements of our technological innovations or new products or those of our competitors;
- developments concerning any strategic alliances or acquisitions we may enter into;
- announcements of FDA non-approval of our products, or delays in the FDA or other foreign regulatory review processes or actions;
- changes in recommendations or guidelines of government agencies or other third parties regarding the use of our products;
- adverse actions taken by regulatory agencies with respect to our drug products, clinical trials, manufacturing processes or sales and marketing activities;

- concerns about our products being reimbursed;

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- any lawsuit involving us or our products;
- developments with respect to our patents and proprietary rights;
- public concern as to the safety of products developed by us or others;
- regulatory developments in the U.S. and in foreign countries;
- changes in stock market analyst recommendations regarding our common stock or lack of analyst coverage;
- the pharmaceutical industry generally and general market conditions;
- failure of our results of operations to meet the expectations of stock market analysts and investors;
- sales of our common stock by our executive officers, directors and significant stockholders or sales of substantial amounts of our common stock generally;
- changes in accounting principles; and
- loss of any of our key scientific or management personnel.

Also, certain dilutive securities such as warrants can be used as hedging tools which may increase volatility in our stock and cause a price decline. While a decrease in market price could result in direct economic loss for an individual investor, low trading volume could limit an individual investor's ability to sell our common stock, which could result in substantial economic loss as well. From January 2, 2018 through February 21, 2019, the closing price of our common stock ranged between $6.39 and $24.82, and the daily trading volume was as high as 12.4 million shares and as low as 0.5 million shares.

Following periods of volatility in the market price of a company's securities, a securities class action litigation may be instituted against that company. Regardless of their merit, these types of lawsuits generally result in substantial legal fees and management's attention and resources being diverted from the operations of a business.

Provisions of our charter, and bylaws may make it more difficult for someone to acquire control of us or replace current management even if doing so would benefit our stockholders, which may lower the price an acquirer or investor would pay for our stock.

Provisions of our certificate of incorporation and bylaws, both as amended, may make it more difficult for someone to acquire control of us or replace our current management. These provisions include:

- the ability of our Board of Directors to amend our bylaws without stockholder approval;
- the inability of stockholders to call special meetings;
- the ability of members of the Board of Directors to fill vacancies on the Board of Directors;
- the inability of stockholders to act by written consent, unless such consent is unanimous; and
- the establishment of advance notice requirements for the nomination of candidates for election to our Board of Directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

These provisions may make it more difficult for stockholders to take certain corporate actions and could delay, discourage or prevent someone from acquiring our business or replacing our current management, even if doing so would benefit our stockholders. These provisions could limit the price that certain investors might be willing to pay for shares of our common stock.

Our failure to establish and maintain effective internal control over financial reporting could result in material misstatements in our financial statements, our failure to meet our reporting obligations and cause investors to lose confidence in our reported financial information, which in turn could cause the trading price of our common stock to decline.

The results of our periodic management evaluations and annual auditor attestation reports regarding the effectiveness of our internal control over financial reporting are required by the Sarbanes-Oxley Act of 2002. Any failure to maintain enhanced monitoring controls and improved detection and communication of financial misstatements across all levels of the organization could result in (i) material weaknesses, (ii) material misstatements in our financial statements, requiring restatements of our previously-filed financial statements, and (iii) cause us to fail to meet our timely reporting and debt compliance obligations.

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These outcomes could cause us to lose public confidence, and could cause the trading price of our common stock to decline. For further information regarding our controls and procedures, see Item 9A. Controls and Procedures.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We lease 12,000 square feet for our principal executive office in Henderson, Nevada under a non-cancelable operating lease expiring October 31, 2021, and we lease 56,000 square feet for our administrative and research and development facility in Irvine, California under a non-cancelable operating lease expiring July 31, 2022. We also lease administrative space in Westlake Village, California; Westminster, Colorado; and Mumbai, India. We believe that these leased facilities are adequate to meet our current and planned business needs.

ITEM 3. LEGAL PROCEEDINGS

From time-to-time, we are involved with various legal matters arising from the ordinary course of operating our publicly-traded pharmaceutical business. These legal matters may include product liability claims, intellectual property claims, employment practices claims, shareholder claims, among other general claims. We record liability provisions to our financial statements for such matters when it is both: (1) probable that a payment will be made to the claimant, and (2) we can reasonably estimate the payment amount, given all available information.

Our legal accrual assessments are performed at least quarterly, and are adjusted to reflect the impact of any settlement negotiations, judicial and administrative rulings, advice of legal counsel, and other information and events pertaining to each particular case. Although litigation is inherently unpredictable, we do not believe that individually or in the aggregate, these claims will have a material adverse effect on our consolidated results of operations, cash flows, or financial condition.

Certain of our legal proceedings are discussed in Note 17(g), "Financial Commitments & Contingencies and License Agreements," to our accompanying Consolidated Financial Statements.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II.

ITEM 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is traded on the NASDAQ Global Select Market under the symbol “SPPI.”

On February 21, 2019, the closing price of our common stock on the NASDAQ Global Select Market was $11.57 per share, and there were 156 holders of record of our common stock.

During the year ended December 31, 2018, we purchased and retired an aggregate of 3,463,873 shares of common stock that were surrendered by our employees and members of our Board of Directors (at a weighted average price of $18.05 per share) to (i) satisfy the tax withholdings at the time of vesting for restricted stock awards, and at the time of stock option exercises, or (ii) satisfy the exercise price on stock option exercises. The table below presents our purchases of Spectrum's common stock during the year ended December 31, 2018.

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Period	Total Number of Shares Purchased	Average Price Paid Per Share
First Quarter	3,463,873	$ 18.05
Second Quarter	—	—
Third Quarter	—	—
Fourth Quarter	—	—
Year Ended December 31, 2018	3,463,873	$ 18.05

Stock Performance Graph (1)

The graph below compares the cumulative total stockholder return on $100 invested, assuming the reinvestment of all dividends, on December 31, 2013, the last trading day before our 2014 fiscal year, through the end of fiscal 2018 with the cumulative total return on $100 invested for the same period in the Russell 2000 index and our Peer Group.

During the first quarter of 2017, we re-engaged an independent executive compensation firm, Exequity, who performed an evaluation of our peer group companies. Exequity identified and selected a comparably sized, industry-affiliated peer group of companies operating within the biotechnology or pharmaceutical industries.

As of December 31, 2018, our Peer Group consists of the following publicly-traded companies:

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- AMAG Pharmaceuticals, Inc.
- Amphastar Pharmaceuticals, Inc.
- Eagle Pharmaceuticals, Inc.
- Enanta Pharmaceuticals, Inc.
- Fluidigm Corporation
- Genomic Health, Inc.
- Halozyme Therapeutics, Inc.
- Harvard Bioscience, Inc.
- Infinity Pharmaceuticals, Inc.
- Luminex Corporation
- Merrimack Pharmaceuticals, Inc.
- MiMedx Group, Inc.
- NewLink Genetics Corporation
- Pernix Therapeutics Holdings, Inc.
- Supernus Pharmaceuticals, Inc.
- Vanda Pharmaceuticals Inc.
- VIVUS, Inc.

	12/31/2014	12/31/2015	12/31/2016	12/31/2017	12/31/2018
Spectrum Pharmaceuticals, Inc.	$ 78	$ 68	$ 50	$ 214	$ 99
Russell 2000	$ 105	$ 100	$ 122	$ 139	$ 124
Peer Group	$ 114	$ 109	$ 93	$ 105	$ 99

(1) The information in this section is not "soliciting material," is not deemed "filed" with the SEC and is not to be incorporated by reference in any filing of the Company under the Securities Act or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.

Dividend Policy

We have not paid dividends on our common stock during the most two recent fiscal years. We currently intend to retain all earnings, if any, for use in the expansion of our business and do not anticipate paying any dividends in the foreseeable future. However, the payment of dividends, if any, will be at the discretion of the Board of Directors and subject to compliance at such time with any applicable restrictions contained in our various agreements and applicable law.

ITEM 6. SELECTED FINANCIAL DATA

The following selected consolidated financial data has been derived from our audited Consolidated Financial Statements. The audited Consolidated Financial Statements for the fiscal years ended December 31, 2018, 2017, and 2016 are included elsewhere in this Annual Report on Form 10-K.

The information set forth below should be read in conjunction with Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations and the Consolidated Financial Statements and Notes thereto in Item 8. Financial Statements and Supplementary Data. The information set forth below is not necessarily indicative of our future financial condition or future results of operations.

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Selected Statement of Operations Data:	Year ended December 31, 2018	2017	2016	2015	2014
	(In thousands, except per share data)				
Total revenues*	$109,333	$128,367	$146,444	$162,556	$186,830
Operating costs and expenses:					
Cost of sales (excludes amortization of intangible assets)	26,756	42,859	27,953	27,689	27,037
Cost of service revenue	—	4,359	7,890	—	—
Selling, general and administrative	90,700	84,267	88,418	88,064	98,339
Research and development	94,956	65,895	59,123	51,073	70,116
Amortization of intangible assets	28,098	27,647	25,946	38,319	24,288
Loss from operations	(131,177)	(96,660)	(62,886)	(42,589)	(32,950)
Change in fair value of contingent consideration related to acquisitions	1,927	(4,957)	(649)	676	987
Other income (expense), net	9,240	(6,409)	(8,548)	(10,323)	(12,951)
Loss before income taxes	(120,010)	(108,026)	(72,083)	(52,236)	(44,914)
Benefit (provision) for income taxes	(1)	16,778	2,313	(406)	(2,186)
Net loss	$(120,011)	$(91,248)	$(69,770)	$(52,642)	$(47,100)
Net loss per share—basic	$(1.16)	$(1.07)	$(0.96)	$(0.81)	$(0.73)
Net loss per share—diluted	$(1.16)	$(1.07)	$(0.96)	$(0.81)	$(0.73)

* See Note 2(i) for a discussion of our adoption of ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606), effective beginning on January 1, 2018.

Selected Balance Sheet Data:	As of December 31, 2018	2017	2016	2015	2014
	(In thousands)				
Cash, cash equivalents and marketable securities	$203,988	$227,571	$158,469	$139,986	$133,248
Working capital surplus (current assets minus current liabilities)	$164,214	$167,997	$151,137	$114,282	$113,030
Total assets	$390,886	$487,439	$428,768	$419,049	$490,033
Long term obligations, less current portion	$21,150	$26,351	$127,229	$129,849	$126,040
Total stockholders' equity	$283,262	$351,339	$236,026	$212,857	$254,554

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with "Selected Financial Data" and our consolidated financial statements and the related notes included in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of various factors including the risks we discuss in Item 1A. Risk Factors and elsewhere in this Annual Report on Form 10-K.

OVERVIEW

Our Business

We are a biopharma company, with a primary strategy comprised of acquiring, developing, and commercializing a broad and diverse pipeline of clinical and commercial products. We have an in-house clinical development organization with regulatory and data management capabilities, in addition to commercial infrastructure and a field-based sales force for our marketed products. Currently, we have seven approved oncology/hematology products (FUSILEV, KHAPZORY, FOLOTYN, ZEVALIN, MARQIBO, BELEODAQ, and EVOMELA) that target different types of cancer including: NHL, mCRC, ALL, and MM.

We also have two drugs in late-stage development:

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- Poziotinib, a novel pan-HER inhibitor under investigation for NSCLC tumors with either EGFR or HER2 exon-20 insertion mutations; and
- ROLONTIS, a novel long-acting GCSF analog for chemotherapy-induced neutropenia.

See Item 1. Business, for our discussion of:

- Company Overview
- Cancer Background and Market Size
- Product Portfolio
- Manufacturing
- Sales and Marketing
- Customers
- Competition
- Research and Development

Recent Highlights of Our Business, Product Development Initiatives, and Regulatory Approvals

During the year ended December 31, 2018 and through the filing date of this Annual Report on Form 10-K, we made a strategic shift in our business through executing an agreement to sell the distribution rights to our legacy commercialized drug portfolio. We also continued to make meaningful progress in the advancement of our product pipeline, as summarized below:

Execution of Asset Purchase Agreement for our Commercialized Drug Portfolio:

On January 17, 2019, we entered into a definitive asset purchase agreement for the sale of our FDA-approved product portfolio of FUSILEV, KHAPZORY, FOLOTYN, ZEVALIN, MARQIBO, BELEODAQ, and EVOMELA to Acrotech. Upon the closing of the Acrotech Transaction, we are entitled to receive up to $160 million in an upfront cash payment (of which $4 million will be held in escrow for six months). In addition, we expect a purchase price adjustment for certain ongoing research and development activities of the commercialized product portfolio. We are also entitled to receive an aggregate $140 million upon Acrotech's achievement of certain regulatory and sales-based milestones relating to this product portfolio. We plan to reduce our staff by approximately 90 employees, the majority of which we expect to transition to Acrotech.

Poziotinib, an irreversible tyrosine kinase inhibitor:

In September 2018, we announced preliminary poziotinib data from the University of Texas, MD Anderson Cancer Center ("MD Anderson") Phase 2 non-small cell lung cancer ("NSCLC") study which were released during an oral presentation at the IASLC 19th World Conference on Lung Cancer. The MD Anderson study is the single largest data set of patients with an exon 20 mutation in EGFR or HER2. This Phase 2 study demonstrated high anti-tumor activity for poziotinib in metastatic, heavily pretreated EGFR exon 20 mutant NSCLC, a group for which no targeted agents have proved to be effective to date. This data is summarized below:

- In 44 evaluable patients with EGFR exon-20 mutations, the confirmed overall response rate (ORR) was 43% and disease control rate was 90%. Median progression free survival (PFS) was 5.5 months (ITT).
- In evaluable patients with HER2 exon-20 mutations, the confirmed overall response rate (ORR) was 42% and disease control rate was 83%. Median progression free survival (PFS) was 5.1 months (ITT).
- EGFR-related toxicities (including rash, diarrhea, and paronychia) were manageable and required dose reductions in 60% of patients. Discontinuation due to poor tolerance was rare (approximately 3% of patients).

On January 2, 2019 we announced full enrollment of cohort 1 (N=87) for previously treated NSCLC patients with EGFR exon 20 insertion mutations with sites across the U.S., Europe, and Canada. The EGFR previously treated cohort is part of the ZENITH20 trial - an open-label, multi-center, global Phase 2 trial evaluating NSCLC patients

with EGFR or HER2 exon 20 insertion mutations. Results from this cohort are expected to be released during the second half of 2019.

ROLONTIS, a novel long-acting G-CSF:

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Top-Line Results of our ADVANCE and RECOVER Studies

In February 2018 and June 2018, we announced that the top line results of our pivotal Phase 3 studies (ADVANCE and RECOVER) demonstrated that it was non-inferior to the current standard of care, and had a similar safety profile.

BLA Submission

We submitted our Biologics License Application ("BLA") with the FDA in late December 2018. Due to the recent federal government shutdown, the BLA was officially received by the FDA on January 28, 2019. Once this BLA is accepted by the FDA, our Prescription Drug User Fee Act date is expected to be set for 10 months thereafter.

CHARACTERISTICS OF OUR REVENUE AND EXPENSES

The below summarizes the nature of our revenue and operating expense line items within our Consolidated Statements of Operations:

Revenue

The majority of our revenue is derived from sales of our drug products to large pharmaceutical wholesalers and distributors, which we recognize upon title transfer (which is typically at time of delivery), provided our other revenue recognition criteria have been met.

To a lesser extent we also derive revenue from (i) upfront license fees, milestone receipts from our licensees' sales or regulatory achievements, and royalties from out-licensing our licensees' sales in applicable territories, and (ii) service revenue from third-parties under certain arrangements for our research and development activities, sales and marketing activities, clinical trial management, and supply chain services conducted for the benefit of third parties.

We are subject to normal inflationary trends and anticipate that any increased costs would be passed on to our customers. However, inflation has not, and is not expected to, have a material effect on our business.

Our revenue recognition criteria are described in greater detail below and in Note 2(i) to the accompanying Consolidated Financial Statements.

Cost of Sales (excluding amortization of intangible assets)

Cost of sales includes production and packaging materials, contract manufacturer fees, allocated personnel costs (including stock-based compensation expense), shipping expenses, and royalty fees.

Cost of Service Revenue

Cost of service revenue includes: (i) allocation of compensation of our sales personnel, and other reimbursable costs, for the marketing of certain products at the direction of its beneficial owner, and (ii) reimbursable costs and services provided to our licensees in connection with their clinical, regulatory, and commercial activities within their territories.

Selling, General and Administrative

Selling, general and administrative expenses primarily consist of compensation (including stock-based compensation) and benefits for our sales force and personnel that support our sales and marketing operations, and our general operations such as information technology, executive management, financial accounting, and human resources. It also includes costs attributable to marketing our products to our customers and prospective customers, patent and legal fees, financial statement audit fees, insurance coverage fees, bad debt expense, personnel recruiting fees, and other professional services.

Research and Development

Our research and development activities primarily relate to the clinical development and testing of new drugs, and conducting studies in order to gain regulatory approval for the commercialization of our drug products. These expenses consist of compensation (including stock-based compensation) and benefits for research and development and clinical and regulatory personnel, materials and supplies, consultants, and regulatory and clinical payments related to studies. In addition, we include within research and development expense, technology transfer costs and manufacture qualification costs– prior to FDA approval of the product, its formulation, and/or its manufacturing sites.

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CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation and presentation of financial statements in conformity with generally accepted accounting principles in the United States of America, or GAAP, requires management to establish policies and make estimates and assumptions that affect (i) the amounts of assets and liabilities as of the date presented on the accompanying Consolidated Balance Sheets and (ii) the amounts of revenue and expenses for each year presented in the accompanying Consolidated Statements of Operations.

Our management believes its estimates and assumptions are supportable, reasonable, and consistently applied. Nonetheless, estimates are inherently uncertain. As a result, our financial position and operating results could materially differ from the amounts reported within the accompanying Consolidated Financial Statements if management's estimates require prospective adjustment. Our critical accounting policies and estimates arise in conjunction with the following accounts:

- Revenue recognition
- Inventories – lower of cost or net realizable value
- Fair value of acquired assets and assumed liabilities
- Goodwill and intangible assets – impairment evaluations
- Income taxes
- Stock-based compensation
- Litigation accruals

Revenue Recognition

Impact of the Adoption of the New Revenue Recognition Standard: ASU No. 2014-09, Revenue from Contracts with Customers ("Topic 606"), became effective for us on January 1, 2018. Our disclosure within the below sections reflects our updated accounting policies that are affected by this new standard. We applied the "modified retrospective" transition method for open contracts for the implementation of Topic 606; this resulted in the recognition of an aggregate $4.7 million, net of tax, decrease to our January 1, 2018 "accumulated deficit" on our accompanying Consolidated Balance Sheets for the cumulative impact of applying this new standard. We made no adjustments to our previously-reported total revenues, as those periods continue to be presented in accordance with our historical accounting practices under Topic 605, Revenue Recognition ("Topic 605"). See Notes 4, 5, and 20 to the accompanying Consolidated Financial Statements, for additional disclosures in accordance with Topic 606.

Required Elements of Our Revenue Recognition: Revenue from our (a) product sales, (b) out-license arrangements, and (c) service arrangements is recognized under Topic 606 in a manner that reasonably reflects the delivery of our goods and/or services to customers in return for expected consideration and includes the following elements:

(1) we ensure that we have an executed contract(s) with our customer that we believe is legally enforceable;
(2) we identify the "performance obligations" in the respective contract;
(3) we determine the "transaction price" for each performance obligation in the respective contract;
(4) we allocate the transaction price to each performance obligation; and
(5) we recognize revenue only when we satisfy each performance obligation.

These five elements, as applied to each of our revenue categories, are summarized below:

(a) Product Sales: We sell our products to pharmaceutical wholesalers/distributors (i.e., our customers), except for our U.S. sales of ZEVALIN, and limited sales of EVOMELA, in which case the end-user (i.e., clinic or hospital) is our customer. Our wholesalers/distributors in turn sell our products directly to clinics, hospitals, and private oncology-based practices. Revenue from our product sales is recognized as physical delivery of product occurs (when our customer obtains control of the product), in return for agreed-upon consideration.

Our gross product sales (i.e., delivered units multiplied by the contractual price per unit) are reduced by our corresponding gross-to-net ("GTN") estimates using the "expected value" method, resulting in our reported "product sales, net" in the accompanying Consolidated Statements of Operations, reflecting the amount we ultimately expect to realize in net cash proceeds, taking into account our current period gross sales and related cash receipts, and the subsequent

cash disbursements on these sales that we estimate for the various GTN categories discussed below. These estimates are based upon information received from external sources (such as written or oral information obtained from our customers with respect to their period-

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end inventory levels and sales to end-users during the period), in combination with management's informed judgments. Due to the inherent uncertainty of these estimates, the actual amount incurred (of some, or all) of product returns, government chargebacks, prompt pay discounts, commercial rebates, Medicaid rebates, and distribution, data, and GPO administrative fees may be materially above or below the amount estimated, then requiring prospective adjustments to our reported net product sales.

These GTN estimate categories are each discussed below:

Product Returns Allowances: Our FUSILEV, MARQIBO, and BELEODAQ customers are contractually permitted to return purchased products beginning at its expiration date and within six months thereafter. Our EVOMELA customers are permitted to return purchased product beginning at six months prior to its expiration date, and within 12 months thereafter (as well as for overstock inventory, as determined by end-users). ZEVALIN and FOLOTYN returns for expiry are not contractually permitted. Returns outside of this aforementioned criteria are not customarily allowed. We estimate expected product returns for our allowance based on our historical return rates. Returned product is typically destroyed, since substantially all returns are due to expiry and cannot be resold.

Government Chargebacks: Our products are subject to pricing limits under certain federal government programs (e.g., Medicare and 340B Drug Pricing Program). Qualifying entities (i.e., end-users) purchase products from our customers at their qualifying discounted price. The chargeback amount we incur represents the difference between our contractual sales price to our customer, and the end-user's applicable discounted purchase price under the government program. There may be significant lag time between our reported net product sales and our receipt of the corresponding government chargeback claims from our customers.

Prompt Pay Discounts: Discounts for prompt payment are estimated at the time of sale, based on our eligible customers' prompt payment history and the contractual discount percentage.

Commercial Rebates: Commercial rebates are based on (i) our estimates of end-user purchases through a group purchasing organization ("GPO"), (ii) the corresponding contractual rebate percentage tier we expect each GPO to achieve, and (iii) our estimates of the impact of any prospective rebate program changes made by us.

Medicaid Rebates: Our products are subject to state government-managed Medicaid programs, whereby rebates are issued to participating state governments. These rebates arise when a patient treated with our product is covered under Medicaid, resulting in a discounted price for our product under the applicable Medicaid program. Our Medicaid rebate accrual calculations require us to project the magnitude of our sales, by state, that will be subject to these rebates. There is a significant time lag in us receiving rebate notices from each state (generally several months or longer after our sale is recognized). Our estimates are based on our historical claim levels by state, as supplemented by management's judgment.

Distribution, Data, and GPO Administrative Fees: Distribution, data, and GPO administrative fees are paid to authorized wholesalers/distributors of our products (except for U.S. sales of ZEVALIN) for various commercial services including: contract administration, inventory management, delivery of end-user sales data, and product returns processing. These fees are based on a contractually-determined percentage of our applicable sales.

(b) License Fees: Our out-license arrangements allow licensees to market our product(s) in certain territories for a specific term (representing the out-license of "functional intellectual property"). These arrangements may include one or more of the following forms of consideration: (i) upfront license fees, (ii) sales royalties, (iii) sales milestone-achievement fees, and (iv) regulatory milestone-achievement fees. We recognize revenue for each based on the contractual terms that establish our right to collect payment once the performance obligation is achieved, as follows:

(1) Upfront License Fees: We determine whether upfront license fees are earned at the time of contract execution (i.e., when rights transfer to the customer) or over the actual (or implied) contractual period of the out-license. As part of this determination, we evaluate whether we have any other requirements to provide substantive services that are inseparable from the performance obligation of the license transfer. Our customers' "distinct" rights to licensed "functional intellectual property" at the time of contract execution results in concurrent revenue recognition of all upfront license fees (assuming that there are no other performance obligations at contract execution that are inseparable from this license transfer).

(2) Royalties: Under the “sales-or-usage-based royalty exception” we recognize revenue in the same period that our licensees complete product sales in their territory for which we are contractually entitled to a percentage-based royalty receipt.

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(3) Sales Milestones: Under the "sales-or-usage-based royalty exception" we recognize revenue in full within the period that our licensees achieve annual or aggregate product sales levels in their territories for which we are contractually entitled to a specified lump-sum receipt.

(4) Regulatory Milestones: Under the terms of the respective out-license, regulatory achievements may either be our responsibility, or that of our licensee.

- When our licensee is responsible for the achievement of the regulatory milestone, we recognize revenue in full (for the contractual amount due from our licensee) in the period that the approval occurs (i.e., when the "performance obligation" is satisfied by our customer) under the "most likely amount" method. This revenue recognition remains "constrained" (i.e., not recognized) until regulatory approval occurs, given its inherent uncertainty and the requirement of a significant revenue reversal not being probable if achievement does not occur. At each reporting period, we re-evaluate the probability of milestone achievement and the associated revenue constraint; any resulting adjustments would be recorded on a cumulative catch-up basis, thus reflected in our financial statements in the period of adjustment.

When we are responsible for the achievement of a regulatory milestone, the "relative selling price method" is applied for purposes of allocating the transaction price to our performance obligations. In such case, we consider (i) the extent of our effort to achieve the milestone and/or the enhancement of the value of the delivered item(s) as a result of milestone achievement and (ii) if the milestone payment is reasonable relative to all of the deliverables and payment terms (including other potential milestone consideration) within the arrangement. We have historically assessed the contractual value of these milestones upon their achievement to be identical to the allocation of value of our

- performance obligations and thus representing the "transaction price" for each milestone at contract inception. We recognize this revenue in the period that the regulatory approval occurs (i.e., when we complete the "performance obligation") under the "most likely amount" method, and revenue recognition is otherwise "constrained" until regulatory approval occurs, given its inherent uncertainty and the requirement of a significant revenue reversal not being probable if achievement does not occur. At each reporting period, we re-evaluate the probability of milestone achievement and the associated revenue constraint; any resulting adjustments would be recorded on a cumulative catch-up basis, thus reflected in our financial statements in the period of adjustment.

(c) Service Revenue: We receive fees under certain arrangements for (i) sales and marketing services, (ii) supply chain services, (iii) research and development services, and (iv) clinical trial management services.

Our rights to receive payment for these services may be established by (1) a fixed-fee schedule that covers the term of the arrangement, so long as we meet ongoing performance obligations, (2) our completion of product delivery in our capacity as a procurement agent, (3) the successful completion of a phase of drug development, (4) favorable results from a clinical trial, and/or (5) regulatory approval events.

We consider whether revenue associated with these service arrangements is reportable each period, based on our completed services or deliverables (i.e., satisfied "performance obligations") during the reporting period, and the terms of the arrangement that contractually result in fixed payments due to us. The promised service(s) within these arrangements are distinct and explicitly stated within each contract, and our customer benefits from the separable service(s) delivery/completion. Further, the nature of the promise to our customer as stated within the respective contract is to deliver each named service individually (not a transfer of combined items to which the promised goods or services are inputs), and thus are separable for revenue recognition.

Inventories – Lower of Cost or Net Realizable Value

We value our inventory at the lower of (i) the actual cost of its purchase or manufacture, or (ii) its net realizable value. Inventory cost is determined on the first-in, first-out method. We regularly review our inventory quantities in process of manufacture and on hand. When appropriate, we record a provision for obsolete and excess inventory to derive its new cost basis, which takes into account our sales forecast by product and corresponding expiry dates of each product

lot.

Manufacturing costs of drug products that are pending FDA approval are fully expensed through “research and development,” on the accompanying Consolidated Statements of Operations.

Fair Value of Acquired Assets and Assumed Liabilities

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The accounting for business combinations and asset acquisitions requires extensive use of estimates and judgments to measure the fair value of the identifiable tangible and intangible assets acquired, including in-process research and development, and liabilities assumed. Additionally, we must determine whether the acquisition meets the criteria for business combination accounting (rather than asset acquisition accounting), because in a business combination, the excess of the purchase price over the fair value of net assets acquired can only be recognized as "goodwill."

The fair value of acquired tangible and identifiable intangible assets and liabilities assumed, are based on their estimated fair values at the acquisition date and requires extensive use of accounting estimates, judgments, and assumptions, including but not limited to the following: (i) the likelihood, timing, and costs to complete the in-process projects; (ii) the probability of achieving regulatory approvals; (iii) the cash flows to be derived from the acquired assets, and (iv) the application of appropriate discount rates.

For each acquisition, we engage an independent third-party valuation specialist to assist management in determining the fair value of in-process research and development, identifiable intangible assets, and any contingent consideration.

In connection with certain of our acquisitions, we must record a contingent consideration liability for cash or stock payments upon the completion of certain future performance milestones. In these cases, a liability is recorded on the acquisition date for an estimate of the acquisition date fair value of the contingent consideration by applying the income approach utilizing variable inputs such as probability of achievement and risk-free adjusted discount rates. Any change in the fair value of the contingent consideration subsequent to the acquisition date is recognized in earnings.

Goodwill and Intangible Assets – Impairment Evaluations

Our goodwill represents the excess of our business acquisition cost over the estimated fair value of the net assets acquired in the corresponding transaction. Goodwill has an indefinite accounting life and is therefore not amortized. Instead, goodwill is evaluated for impairment on an annual basis (as of each October 1st), unless we identify impairment indicators that would require earlier testing.

We evaluate the recoverability of indefinite-lived intangible assets at least annually, or whenever events or changes in our business indicate that an intangible asset's (whether indefinite or definite-lived) carrying amount may not be recoverable. Such circumstances could include, but are not limited to the following:

(a) a significant decrease in the market value of an asset;

(b) a significant adverse change in the extent or manner in which an asset is used; or

(c) an accumulation of costs significantly in excess of the amount originally expected for the acquisition of an asset.

Intangible assets with finite useful lives are amortized over their estimated useful lives on a straight-line basis. We review these assets for potential impairment if/when facts or circumstances suggest that the carrying value of these assets may not be recoverable.

Income Taxes

Deferred tax assets and liabilities are recorded based on the estimated future tax effects of temporary differences between the tax basis of assets and liabilities and amounts reported in the financial statements, as well as operating losses and tax credit carry forwards using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Realization of deferred tax assets is dependent upon future earnings, the timing and amount of which are uncertain.

We have recorded a valuation allowance to reduce our deferred tax assets, because we believe that, based upon a weighting of positive and negative factors, it is more likely than not that these deferred tax assets will not be realized. If/when we were to determine that our deferred tax assets are realizable, an adjustment to the corresponding valuation allowance would increase our net income in the period that such determination was made.

In the event that we are assessed interest and/or penalties from taxing authorities that have not been previously accrued, such amounts would be included in "(provision) benefit for income taxes" within the Consolidated Statements of Operations in the period the notice was received.

Stock-Based Compensation

Stock-based compensation expense for equity awards granted to our employees and members of our Board of Directors is recognized on a straight-line basis over each award's vesting period. Recognized compensation expense is net of an estimated forfeiture rate, representing the percentage of awards that are expected to be forfeited prior to vesting, though is ultimately

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adjusted for actual forfeitures. We use the Black-Scholes option pricing model to determine the fair value of stock options (as of the date of grant) that have service conditions for vesting. We use the Monte Carlo valuation model to value equity awards (as of the date of grant) that have combined market conditions and service conditions for vesting. The recognition of stock-based compensation expense and the initial calculation of stock option fair value requires uncertain assumptions, including (a) the pre-vesting forfeiture rate of the award, (b) the expected term that the stock option will remain outstanding, (c) our stock price volatility over the expected term (and that of our designated peer group with respect to certain market-based awards), and (d) the prevailing risk-free interest rate for the period matching the expected term.

With regard to (a)-(d): We estimate forfeiture rates based on our employees' overall forfeiture history, which we believe will be representative of future results. We estimate the expected term of stock options granted based on our employees' historical exercise patterns, which we believe will be representative of their future behavior. We estimate the volatility of our common stock on the date of grant based on the historical volatility of our common stock for a look-back period that corresponds with the expected term. We estimate the risk-free interest rate based upon the U.S. Department of the Treasury yields in effect at award grant, for a period equaling the expected term of the stock option.

Litigation Accruals

From time-to-time, we are involved with various legal matters arising from the ordinary course of operating our publicly-traded pharmaceutical business. These legal matters may include product liability claims, intellectual property claims, employment practices claims, shareholder claims, among other general claims. We accrue for these contingent liabilities when it is both: (1) probable that a payment will be made to the claimant, and (2) we can reasonably estimate the payment amount, given all available information.

RESULTS OF OPERATIONS

Operations Overview – 2018, 2017, and 2016

	Year Ended December 31,								
	2018			2017			2016		
	($ in thousands)								
Total revenues	$109,333	100.0	%	$128,367	100.0	%	$146,444	100.0	%
Operating costs and expenses:									
Cost of sales (excludes amortization of intangible assets)	26,756	24.5	%	42,859	33.4	%	27,953	19.1	%
Cost of service revenue	—	—	%	4,359	3.4	%	7,890	5.4	%
Selling, general and administrative	90,700	83.0	%	84,267	65.6	%	88,418	60.4	%
Research and development	94,956	86.9	%	65,895	51.3	%	59,123	40.4	%
Amortization of intangible assets	28,098	25.7	%	27,647	21.5	%	25,946	17.7	%
Total operating costs and expenses	240,510	220.0	%	225,027	175.3	%	209,330	142.9	%
Loss from operations	(131,177)	(120.0)%		(96,660)	(75.3)%		(62,886)	(42.9)%	
Interest expense, net	(340)	(0.3)%		(6,798)	(5.3)%		(9,435)	(6.4)%	
Change in fair value of contingent consideration related to acquisitions	1,927	1.8	%	(4,957)	(3.9)%		(649)	(0.4)%	
Other income, net	9,580	8.8	%	389	0.3	%	887	0.6	%
Loss before income taxes	(120,010)	(109.8)%		(108,026)	(84.2)%		(72,083)	(49.2)%	
(Provision) benefit for income taxes	(1)	—	%	16,778	13.1	%	2,313	1.6	%
Net loss	$(120,011)	(109.8)%		$(91,248)	(71.1)%		$(69,770)	(47.6)%	

YEAR ENDED DECEMBER 31, 2018 VERSUS DECEMBER 31, 2017

Total Revenues

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	Year Ended December 31,			
	2018	2017	$ Change	% Change
	($ in millions)			
Product sales, net:				
FOLOTYN	$ 48.0	$ 43.0	$ 5.0	11.6 %
EVOMELA	28.3	35.2	(6.9)	(19.6)%
BELEODAQ	12.3	12.4	(0.1)	(0.8)%
ZEVALIN	7.0	11.8	(4.8)	(40.7)%
MARQIBO	5.5	6.6	(1.1)	(16.7)%
FUSILEV**	2.4	7.3	(4.9)	(67.1)%
KHAPZORY	0.9	—	0.9	— %
	104.5	116.2	*(11.7)	(10.1)%
License fees and service revenue	4.9	12.2	(7.3)	(59.8)%
Total revenues	$ 109.4 *	$ 128.4	$ (19.0)	(14.8)%

* Does not agree to the face of the accompanying Consolidated Statements of Operations for the year ended December 31, 2018 by an immaterial amount due to rounding.

** Effective December 2018, FUSILEV has been discontinued and we are no longer selling this product. We have since transitioned to marketing KHAPZORY for identical indications as FUSILEV.

Product sales, net. To derive net product sales, gross product revenues in each period are reduced by management's latest estimated provisions for (i) product returns, (ii) government chargebacks, (iii) prompt pay discounts, (iv) commercial rebates, (v) Medicaid rebates, and (vi) distribution, data, and GPO administrative fees. Management considers various factors in the determination of these provisions, which are described in more detail within “Critical Accounting Policies and Estimates” above.

FOLOTYN revenue increased $5.0 million due to an increase in our average net sales price per unit, partially offset by a decrease in units sold in the current year.

EVOMELA revenue decreased $6.9 million due to a decrease in our average net sales price per unit in the current year, partially offset by an increase in unit sales.

BELEODAQ revenue decreased $0.1 million due to a decrease in units sold, partially offset by an increase in our average net sales price per unit in the current year.

ZEVALIN revenue decreased $4.8 million due to a decrease in both units sold, and our average net sales price per unit.

MARQIBO revenue decreased $1.1 million due to a decrease in units sold during the period, partially offset by an increase in our average net sales price per unit.

FUSILEV revenue decreased $4.9 million as a result of both the decrease in the number of units sold and our average net sales price per unit, due to the competitive generic levo-leucovorin products, beginning in 2015 (see Note 3(f)) to our accompanying Consolidated Financial Statements). As noted above, effective December 2018, FUSILEV has been discontinued and we are no longer selling this product. We have since transitioned to marketing KHAPZORY for identical indications as FUSILEV.

KHAPZORY revenue of $0.9 million in the current year is due to its commercial launch during the fourth quarter of 2018.

License fees and service revenue. Our license fees and service revenue in 2018 decreased by $7.3 million primarily due to the following: (i) $4.7 million of non-recurring service revenue from our expired co-promotion arrangement with Eagle Pharmaceuticals, Inc. ("Eagle") in 2017 (see Note 14 to our accompanying Consolidated Financial Statements); and (ii) $4 million decrease in FOLOTYN royalties, primarily related to the non-recurrence of $5 million of regulatory and commercial milestone achievements of our licensee within Japan in 2017 (see Note 17(b)(vii) to our accompanying Consolidated Financial Statements). This decrease was partially offset by (i) $1 million milestone associated with our licensee's November 2018 Canadian approval of FOLOTYN (see Note 17(b)(xv)), and (ii) $0.8 million increase of ZEVALIN license fees within the Asia

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territory. See Note 5 to our accompanying Consolidated Financial Statements for a tabular comparative summary, by source, of these license fees and service revenue amounts.

Operating Expenses

	Year Ended December 31,			
	2018	2017	$ Change	% Change
	($ in millions)			
Operating expenses:				
Cost of sales (excludes amortization intangible assets)	$ 26.8	$ 42.9	$ (16.1)	(37.5)%
Cost of service revenue	—	4.4	(4.4)	— %
Selling, general and administrative	90.7	84.3	6.4	7.6 %
Research and development	95.0	65.9	29.1	44.2 %
Amortization of intangible assets	28.1	27.6	0.5	1.8 %
Total operating costs and expenses	$ 240.5	$ 225.0	$ 15.5	6.9 %

Cost of Sales. Cost of sales decreased $16.1 million in 2018, primarily due to our product sales decrease, as well as the sales mix in each year.

Cost of Service Revenue. Cost of service revenue substantially relates to our allocated commercial and marketing expenses (from “selling, general, and administrative” expenses) for our 2017 promotion and sale of Eagle’s products by our sales force. We ceased marketing these products beginning July 1, 2017 (see Note 14 to the accompanying Consolidated Financial Statements).

Selling, General and Administrative. Selling, general and administrative expenses increased $6.4 million in 2018, primarily due to (i) the non-recurrence of certain marketing cost allocations out of this account; in the prior year, an aggregate $4.2 million was reclassified from this account and presented within “cost of service revenue” (see above for Eagle); (ii) $3.3 million increase in legal expenses primarily associated with the termination of our former chief executive officer in December 2017, and our corporate development initiatives; (iii) $2.2 million increase in various marketing activities, including the forthcoming commercial launch of ROLONTIS upon FDA approval; (iv) $2.1 million increase in payroll tax expenses primarily related to stock option exercises during the year by our former chief executive officer; and (v) $1.7 million increase in various other expenses to further support our current operations and planned business growth. These increases were partially offset by a $7 million decrease in personnel and benefit-related costs as compared to prior year, largely attributable to the contractual amounts due to our former chief executive officer upon his termination in December 2017.

Research and Development. Research and development expenses increased $29.1 million in 2018 due to several factors, including: (i) $19.1 million increase in product manufacturing costs related to the planned commercial launch of ROLONTIS; (ii) $0.9 million increase in clinical activities; (iii) $2.9 million increase in pre-FDA approval manufacturing costs associated with the launch of KHAPZORY in the fourth quarter of 2018; (iv) $0.9 million increase in product development costs for BELEODAQ; (v) $0.8 million in technical transfer costs associated with ZEVALIN production at a new site; (vi) $0.8 million increase in manufacture validation costs for EVOMELA production at a new site; and (vii) $5.2 million increase in personnel-related costs to drive these various clinical, manufacture validation, and product development initiatives. These increases were partially offset by a $2.7 million decrease in product manufacturing costs associated with QAPZOLA, as we refine our product development priorities.

Amortization and Impairment Charges of Intangible Assets. Amortization expense, recorded on a straight-line basis, increased in 2018 due to the capitalization of KHAPZORY distribution rights and its incremental amortization in the current year (see Note 3(g)).

Total Other Income (Expense)

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	Year Ended December 31,			
	2018	2017	$ Change	% Change
	($ in millions)			
Total other income (expense)	$ 11.2	$ (11.4)	$ 22.6	198.2 %

Total other income (expense) increased by $22.6 million due to multiple offsetting components including: (i) $10.5 million increase in unrealized gain on our CASI Pharmaceuticals, Inc. equity securities, which are now recorded within “other income (expense), net” rather than “other comprehensive (loss) income” due to our adoption of ASU 2016-01 (see Note 3(a) to our accompanying Consolidated Financial Statements); (ii) $7.3 million aggregate decrease of interest and principal retirement expense related to our 2018 Convertible Notes (see Note 15 to our accompanying Consolidated Financial Statements); and (iii) $6.9 million decrease in the fair value of contingent consideration related to our MARQIBO product (see Note 10(a) to our accompanying Consolidated Financial Statements). These net increases to other income was partially offset by $2 million increase in executive deferred compensation expense (see Note 17(f) to our accompanying Consolidated Financial Statements).

(Provision) benefit for Income Taxes

	Year Ended December 31,			
	2018	2017	$ Change	% Change
	($ in millions)			
(Provision) benefit for income taxes	$ —	$ 16.8	$ (16.8)	(100.0)%

Our provision for income taxes was a nominal $1 thousand for 2018. Our $16.8 million benefit for income taxes in 2017 principally relates to tax benefits allocated to continuing operations as a result of unrealized gains in "other comprehensive income (loss)". During 2017, we had unrealized gains from the change in value of our available-for-sale securities that are reported within "other comprehensive income (loss)" of $25.8 million, while we also reported a pretax "loss from continuing operations" of $108 million. These gains in "other comprehensive income (loss)" resulted in our recording a tax benefit of $9.7 million to continuing operations and an offsetting tax charge to "other comprehensive income (loss)" of $9.7 million (this did not recur in the current year with our January 1, 2018 adoption of ASU 2016-01, Recognition and Measurement of Financial Assets and Liabilities). The other portion of our 2017 benefit for income taxes relates to the re-measurement of deferred taxes and our updated assessment of the realizability of deferred tax assets, as part of the enactment of the Tax Jobs and Cuts Act.

YEAR ENDED DECEMBER 31, 2017 VERSUS DECEMBER 31, 2016

Total Revenues

	Year Ended December 31,			
	2017	2016	$ Change	% Change
	($ in millions)			
Product sales, net:				
FOLOTYN	43.0	46.2	(3.2)	(6.9)%
EVOMELA	35.2	16.2	19.0	117.3 %
BELEODAQ	12.4	13.4	(1.0)	(7.5)%
ZEVALIN	11.8	10.7	1.1	10.3 %
MARQIBO	6.6	7.2	(0.6)	(8.3)%
FUSILEV	7.3	34.8	(27.5)	(79.0)%
	116.2 *	128.6 *	(12.4)	(9.6)%
License fees and service revenue	12.2	17.8	(5.6)	(31.5)%
Total revenues	$ 128.4	$ 146.4	$ (18.0)	(12.3)%

* Does not agree to the face of the accompanying Consolidated Statements of Operations for the years ended December 31, 2017 and 2016, respectively, by an immaterial amount due to rounding.

Product sales, net. To derive net product sales, gross product revenues in each period are reduced by management's latest estimated provisions for (i) product returns, (ii) government chargebacks, (iii) prompt pay discounts, (iv) commercial

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rebates, (v) Medicaid rebates, and (vi) distribution, data, and GPO administrative fees. Management considers various factors in the determination of these provisions, which are described in more detail within “Critical Accounting Policies and Estimates” above.

FOLOTYN revenue decreased $3.2 million in 2017 compared to 2016 as a result of a decrease in the numbers of units sold in the year, partially offset by an increase in our net average sales price per unit.

EVOMELA revenue increased significantly by $19.0 million during 2017 compared to 2016 as a result of an increase in the number of units sold, partially offset by a decrease in our average net sales price per unit. The commercial launch of this product commenced in April 2016.

BELEODAQ revenue decreased $1.0 million in 2017 compared to 2016 primarily as a result of a decrease in the number of units sold in the current year, and also as a result of a decrease in our average net sales price per unit.

ZEVALIN revenue increased $1.1 million in 2017 compared to 2016 primarily as a result of an overall increase in units sold and an increase in the net average price per unit in our ex-U.S territories.

MARQIBO revenue decreased $0.6 million in 2017 compared to 2016 as a result of a decline in the number of units sold in the year, partially offset by an increase in our net average sales price per unit.

FUSILEV revenue decreased $27.5 million in 2017 compared to 2016 as a result of the continued significant decline in both our net average sales price and unit sales due to the competitive launch of generic levo-leucovorin products beginning in April 2015 (see Note 3(g) to the accompanying Consolidated Financial Statements).

License fees and service revenue. Our license fees and service revenue in 2017 decreased by $5.6 million primarily due to the following: (i) an upfront receipt of $6 million in 2016 for the out-license of ZEVALIN, FOLOTYN, BELEODAQ, and MARQIBO (see Note 13 to the accompanying Consolidated Financial Statements) which did not reoccur in 2017, (ii) $4.3 million decrease in fees from our co-promotion with Eagle (see Note 14 to the accompanying Consolidated Financial Statements) as our sales force is no longer marketing Eagle's products as of July 1, 2017, and (iii) $0.5 million decrease in our sales of ZEVALIN to Asia and certain other territories, excluding China (see Note 12 to the accompanying Consolidated Financial Statements). These decreases were partially offset by the recognition in 2017 of (i) $3.0 million contractual milestone for FOLOTYN approval in Japan, (ii) $2.0 million contractual milestone receipt for the first commercial sale of FOLOTYN in Japan (see Note 17(b)(vii) to the accompanying Consolidated Financial Statements), and (iii) $0.3 million of regulatory service revenue that was provided for the benefit of our licensee.

Operating Expenses

	Year Ended December 31,			
	2017	2016	$ Change	% Change
	($ in millions)			
Operating expenses:				
Cost of sales (excludes amortization and impairment of intangible assets)	$ 42.9	$ 28.0	$ 14.9	53.2 %
Cost of service revenue	4.4	7.9	(3.5)	(44.3)%
Selling, general and administrative	84.3	88.4	(4.1)	(4.6)%
Research and development	65.9	59.1	6.8	11.5 %
Amortization and impairment charges of intangible assets	27.6	25.9	1.7	6.6 %
Total operating costs and expenses	$ 225.0	$ 209.3	$ 15.7	7.5 %

Cost of Sales. Despite our decreased product revenue in 2017, cost of sales increased $14.9 million in 2017 compared to 2016, resulting in a gross margin decrease. This increase in cost of sales was primarily due to (i) changes to our product sales mix and (ii) royalty expense for FOLOTYN regulatory and commercial milestone achievements (see Note 17(b)(vii) to the accompanying Consolidated Financial Statements), partially offset by our FUSILEV royalty settlement also recognized in 2017 (see Note 17(b)(v) to the accompanying Consolidated Financial Statements).

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Cost of Service Revenue. Cost of service revenue substantially relates to our allocated commercial and marketing expenses (from "selling, general, and administrative" expenses) for promotion and sale of Eagle's products by our sales force. Our cost of service revenue decreased $3.5 million in 2017 compared to 2016 because we ceased marketing these products beginning July 1, 2017 (see Note 14 to the accompanying Consolidated Financial Statements).

Selling, General and Administrative. Selling, general and administrative expenses decreased $4.1 million largely driven by a $12.3 million decrease in non-recurring legal expenses and settlements related to shareholder litigation and FOLOTYN patent matters in 2016, and $2.4 million of non-recurring contract termination fees in 2016. These overall reductions were partially offset by (i) one-time severance and legal expenses of $7.1 million associated with the termination of our former chief executive officer in December 2017, and (ii) $3.7 million increase related to reimbursable expenses from Eagle as the agreement expired under its terms on June 30, 2017 (see Note 14).

Research and Development. Research and development expenses increased in 2017 by $6.8 million compared to the prior year due to various items primarily including (i) $7.1 million increase in clinical initiatives and activities primarily related to ROLONTIS and POZIOTINIB, and (ii) $1.2 million FDA filing fee associated with the NDA for KHAPZORY, and a corresponding $0.3 million milestone payment to a licensor. These increases were partially offset by decreased expense associated with ROLONTIS, attributable to a non-recurring $2.7 million clinical milestone fee in 2016 (see Note 17(b)(xiii) to the accompanying Consolidated Financial Statements).

Amortization and Impairment Charges of Intangible Assets. Amortization expense increased $1.7 million in 2017 compared to 2016 due to a prospectively-applied adjustment in June 2016 of the amortization period of our FOLOTYN distribution rights (to November 2022 from March 2025), representing the period through which we expect to have patent protection from generic competition (see Note 3(g) to the accompanying Consolidated Financial Statements). As a result, in 2017 we incurred a full-year of increased amortization expense related to this adjustment. Amortization expense otherwise remained consistent with the prior year period as we continue to recognize expense on a straight-line basis for the distribution rights to our commercialized products.

Total Other Expenses

	Year Ended December 31,			
	2017	2016	$ Change	% Change
	($ in millions)			
Total other expenses	$ (11.4)	$ (9.2)	$ (2.2)	(23.9)%

Total other expenses increased $2.2 million in 2017 compared to 2016 due to multiple offsetting components, including (i) $0.8 million loss on our 2018 Convertible Notes repurchase of $69.5 million (see Note 15 to the accompanying Consolidated Financial Statements), (ii) $0.6 million increase in foreign currency exchange rate translation adjustment (i.e. unrealized loss), and (iii) $5.0 million increase in the fair value of contingent consideration related to our MARQIBO product (see Note 10(a) to the accompanying Consolidated Financial Statements), offset by a $0.8 million decrease in the fair value of contingent consideration related to our EVOMELA product (see Note 10(b) to the accompanying Consolidated Financial Statements) that is recognized through "other (expense) income" for its quarterly re-measurement. In 2017, we increased our revenue projections for in development indications of MARQIBO, and this led to an overall increase in the contingent consideration liability and corresponding expense. These expense increases were partially offset by (i) $2.6 million decrease in interest expense on our 2018 Convertible Notes as a result of our December 2016 and October 2017 repurchases of $10 million and $69.5 million principal of these notes, respectively (see Note 15 to the accompanying Consolidated Financial Statements), and (ii) a $0.9 million decrease in executive deferred compensation expense as a result of increases in the fair value of plan assets (see Note 17(f)) to the accompanying Consolidated Financial Statements).

Benefit for Income Taxes

	Year Ended December 31,

	2017	2016	$ Change	% Change
	($ in millions)			
Benefit for income taxes	$ 16.8	$ 2.3	$ 14.5	>100.0 %

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Our $16.8 million benefit for income taxes in 2017 principally relates to tax benefits allocated to continuing operations as a result of unrealized gains in "other comprehensive income (loss)". During 2017, we had unrealized gains from the change in value of our available-for-sale securities that are reported within "other comprehensive income (loss)" of $25.8 million, while we also reported a pretax "loss from continuing operations" of $108 million. The gains in "other comprehensive income (loss)" resulted in our recording a tax benefit of $9.7 million to continuing operations and an offsetting tax charge to "other comprehensive income (loss)" of $9.7 million. The remaining benefit for 2017 income taxes relates to the re-measurement of deferred taxes and changes in judgment regarding the realizability of deferred tax assets, resulting from tax changes enacted as part of the Tax Jobs and Cuts Act.
Our 2016 benefit for income taxes of $2.3 million is primarily due to unrealized gains from the change in value of our available-for-sale securities while we also reported a pretax operating loss in the same period.
LIQUIDITY AND CAPITAL RESOURCES

	December 31,		
	2018	2017	2016
	(in thousands, except financial metrics data)		
Cash, cash equivalents and marketable securities	$203,988	$227,571	$158,469
Accounts receivable, net	$29,873	$32,260	$39,782
Total current assets	$250,688	$277,746	$216,650
Total current liabilities	$86,474	$109,749	$65,513
Working capital surplus (a)	$164,214	$167,997	$151,137
Current ratio (b)	2.9	2.5	3.3

(a) Total current assets at period end minus total current liabilities at period end.
(b) Total current assets at period end divided by total current liabilities at period end.
Net Cash Used In Operating Activities
Cash used in operating activities was $62.4 million in 2018, as compared to $38.9 million and $40.5 million in 2017 and 2016, respectively.
For the years ended December 31, 2018, 2017**7.6 Vacancies on the Board of Supervisors.**

Vacancies on the Board of Supervisors may be filled only as follows:

(a) If any Supervisor is removed, resigns or is otherwise unable to serve as a member of the Board of Supervisors, or if the size of the Board of Supervisors is increased thereby creating a vacancy, then the vacancy shall be filled by a majority of the members of the Board of Supervisors then serving.

(b) A Supervisor elected pursuant to this Section 7.6 to fill a vacancy shall be elected for the unexpired term of his predecessor in office or, in connection with an increase in the size of the Board of Supervisors, his term shall expire at the next Tri-Annual Meeting, at which time his successor shall be elected, or he shall be re-elected, as the case may be.

7.7 Meetings; Committees; Chairman.

(a) Regular meetings of the Board of Supervisors shall be held at such times and places as shall be designated from time to time by resolution of the Board of Supervisors. Notice of such regular meetings shall not be required. Special meetings of the Board of Supervisors may be called by the Chairman of the Board of Supervisors or the Chief Executive Officer and shall be called by the Secretary upon the written request of two members of the Board of Supervisors, on at least 48 hours prior written notice (which written notice may take the form of e-mail or other electronic communication) to the other members. Any such notice, or waiver thereof, need not state the purpose of such meeting except as may otherwise be required by law. Attendance of a member of the Board of Supervisors at a meeting (including pursuant to the penultimate sentence of this Section 7.7(a)) shall constitute a waiver of notice of such meeting, except where such member attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Any action required or permitted to be taken at a meeting of the Board of Supervisors may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by all the members of the Board of Supervisors. Members of the Board

of Supervisors may participate in and hold meetings by means of conference telephone, videoconference or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meetings shall constitute presence in person at the meeting. The Board of Supervisors may establish any additional rules governing the conduct of its meetings that are not inconsistent with the provisions of this Agreement.

(b) The Board of Supervisors shall appoint the Audit Committee to consist solely of three or more of the Supervisors then in office who satisfy the independence requirements for audit committee members under the Exchange Act and the Rules and Regulations thereunder, and the applicable listing standards of any National Securities Exchange on which the Common Units are listed for trading. The Audit Committee shall perform the functions delegated to it pursuant to the terms of this Agreement and its charter and such other matters as may be delegated to it from time to time by resolution of the Board of Supervisors. The Board of Supervisors, by a majority of the whole Board of Supervisors, may appoint one or more additional committees of the Board of Supervisors to consist of one or more members of the Board of Supervisors, which committee(s) shall have and may exercise such of the powers and authority of the Board of Supervisors (including in respect of Section 7.1) with respect to the management of the business and affairs of the Partnership as may be provided in a resolution of the Board of Supervisors. Any committee designated pursuant to this Section 7.7(b) shall choose its own chairman, shall keep regular minutes of its proceedings and report the same to the Board of Supervisors when requested, shall fix its own rules or procedures and shall meet at such times and at such place or places as may be

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provided by such rules or by resolution of such committee or resolution of the Board of Supervisors. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the taking of any action. Subject to the first sentence of this Section 7.7(b), the Board of Supervisors may designate one or more members of the Board of Supervisors as alternate members of any committee who may replace any absent or disqualified member at any meeting of such committee. Subject to the first sentence of this Section 7.7(b), in the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Supervisors to act at the meeting in the place of the absent or disqualified member.

(c) The Board of Supervisors may elect one of its members as Chairman or Vice Chairman of the Board of Supervisors. The Chairman of the Board of Supervisors, if any, and if present and acting, shall preside at all meetings of the Board of Supervisors. In the absence of the Chairman of the Board of Supervisors, the Vice Chairman of the Board of Supervisors, if any, and if present and acting, shall preside at all meetings of the Board of Supervisors. In the absence of the Chairman of the Board of Supervisors and the Vice Chairman of the Board of Supervisors, the Chief Executive Officer, if present, or if not present, the President, if present, acting and a member of the Board of Supervisors, or any other member of the Board of Supervisors chosen by the Board of Supervisors shall preside.

7.8 Officers.

(a) Generally. The Board of Supervisors, as set forth below, shall appoint agents of the Partnership, referred to as Officers of the Partnership as described in this Section 7.8. Unless provided otherwise by resolution of the Board of Supervisors, the Officers shall have the titles, power, authority and duties described below in this Section 7.8.

(b) Titles and Number. The Officers shall be the Chief Executive Officer, the President, any and all Vice Presidents, the Secretary and any and all Assistant Secretaries and the Treasurer and any and all Assistant Treasurers and any other Officers appointed pursuant to Section 7.8(j). Any person may hold two or more offices.

(c) Appointment and Term of Office. The Officers shall be appointed by the Board of Supervisors at such time and for such terms as the Board of Supervisors shall determine. Any Officer may be removed, with or without Cause, only by the Board of Supervisors. Vacancies in any office may be filled only by the Board of Supervisors.

(d) Chairman and Vice Chairman of the Board of Supervisors. The Board of Supervisors may elect one of its members as the Chairman or Vice Chairman of the Board of Supervisors, provided, however, such Chairman or Vice Chairman shall not be Officers of the Partnership unless otherwise determined by the Board of Supervisors.

(e) Chief Executive Officer. The Board of Supervisors may elect a Chief Executive Officer of the Partnership. The Chief Executive Officer shall be responsible for the general and active management and direction of the Partnership and shall see that all orders and resolutions of the Board of Supervisors are carried into effect. He shall have the power and authority to sign all contracts, certificates and other instruments of the Partnership, which may be authorized by the Board of Supervisors. He shall have such powers, duties and authority as from time to time may be assigned to him by this Agreement or by the Board of Supervisors.

(f) President. The Board of Supervisors may elect a President of the Partnership. Subject to the limitations imposed by this Agreement, any employment agreement, any employee plan or any determination of the Board of Supervisors, the President, subject to the direction of the Board of Supervisors and the Chief Executive Officer, shall be responsible for the management and direction of the day-to-day business and affairs of the

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Partnership, its other Officers, employees and agents, shall supervise generally the affairs of the Partnership and shall have full authority to execute all documents and take all actions that the Partnership may legally take. The President shall exercise such other powers and perform such other duties as may be assigned to him by this Agreement, the Board of Supervisors or the Chief Executive Officer, including any duties and powers stated in any employment agreement approved by the Board of Supervisors.

(g) Vice Presidents. Each Vice President shall perform such duties and may exercise such powers as may from time to time be assigned to him by the Board of Supervisors, the Chief Executive Officer or the President, including the power to execute documents on behalf of the Partnership within the authorization limits established from time to time by the Board of Supervisors, the Chief Executive Officer or the President.

(h) Secretary and Assistant Secretaries. The Secretary shall record or cause to be recorded in books provided for that purpose the minutes of the meetings or actions of the Board of Supervisors and Partners, shall see that all notices are duly given in accordance with the provisions of this Agreement and as required by law, shall be custodian of all records (other than financial), shall see that the books, reports, statements, certificates and all other documents and records required by law are properly kept and filed, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by this Agreement, the Board of Supervisors, the Chief Executive Officer or the President. The Assistant Secretaries shall exercise the powers of the Secretary during that Officer s absence or inability or refusal to act.

(i) Treasurer and Assistant Treasurers. The Treasurer shall keep or cause to be kept the books of account of the Partnership and shall render statements of the financial affairs of the Partnership in such form and as often as required by this Agreement, the Board of Supervisors, the Chief Executive Officer or the President. The Treasurer, subject to the order of the Board of Supervisors, shall have the custody of all funds and securities of the Partnership. The Treasurer shall perform all other duties commonly incident to his office and shall perform such other duties and have such other powers as this Agreement, the Board of Supervisors, the Chief Executive Officer or the President, shall designate from time to time. The Assistant Treasurers shall exercise the power of the Treasurer during that Officer s absence or inability or refusal to act. Each of the Assistant Treasurers shall possess the same power as the Treasurer to sign all certificates, contracts, obligations and other instruments of the Partnership. If no Treasurer or Assistant Treasurer is appointed and serving or in the absence of the appointed Treasurer and Assistant Treasurer, the Vice President and Chief Financial Officer, or such other Officer as the Board of Supervisors shall select, shall have the powers and duties conferred upon the Treasurer.

(j) Other Officers and Agents. The Board of Supervisors may appoint such other Officers and agents as may from time to time appear to be necessary or advisable in the conduct of the affairs of the Partnership, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Supervisors.

(k) Powers of Attorney. The Board of Supervisors may grant powers of attorney or other authority as appropriate to establish and evidence the authority of the Officers and other Persons.

(l) Officers Delegation of Authority. Unless otherwise provided by resolution of the Board of Supervisors, no Officer shall have the power or authority to delegate to any Person such Officer s rights and powers as an Officer to manage the business and affairs of the Partnership.

7.9 Compensation.

The Officers shall receive such compensation for their services as may be designated by the Board of Supervisors or a committee thereof. In addition, the Officers shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service hereunder. The members of the Board of Supervisors who are not employees of the Partnership or its Affiliates shall receive such compensation for their services as members of the Board of Supervisors or members of a committee of the Board of Supervisors as the Board of Supervisors shall determine. In addition, the members of the Board of Supervisors shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service hereunder.

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7.10 Restrictions on General Partner s and Board of Supervisors Authority.

(a) Except as provided in Articles XII and XIV, and below in this Section 7.10, neither the General Partner nor the Board of Supervisors may sell, exchange or otherwise dispose of all or substantially all of the Partnership s assets in a single transaction or a series of related transactions or approve on behalf of the Partnership the sale, exchange or other disposition of all or substantially all of the assets of the Operating Partnership, without the approval of the holders of at least a majority of the Outstanding Common Units; provided, however, that this provision shall not preclude or limit (i) the Board of Supervisors ability (without the approval of any Unitholder) to mortgage, pledge, hypothecate or grant a security interest in any part of or all or substantially all of the assets of ~~the Partnership Group and~~any Group Member (including any general partner interest or limited partner interest in any Group Member, other than any Limited Partner Interest), or (ii) the General Partner s ability (without the approval of any Unitholder) to mortgage, pledge, hypothecate or grant a security interest in any part of or all or substantially all of its general partnership interest or limited partnership interest, in whole or in part, in any Group Member, other than any Limited Partner Interest, and this provision shall not apply to any forced sale of any ~~or~~part of or all or substantially all of the assets ~~of the Partnership~~or partnership interest of any Group Member pursuant to the foreclosure of, or other realization upon, any such ~~encumbrance~~mortgage, pledge, hypothecation or grant of security interest. Without the approval of the holders of at least a majority of the Outstanding Common Units, neither the General Partner nor the Board of Supervisors shall, on behalf of the Partnership, (i) consent to any amendment to the Operating Partnership Agreement or, except as expressly permitted by Section 7.16(d), take any action permitted to be taken by a partner of the Operating Partnership, in either case, that would have a material adverse effect on the Partnership as a partner of the Operating Partnership, or (ii) except as permitted under Sections 4.6, 11.1 and 11.2, elect or cause the Partnership to elect a successor general partner of the Operating Partnership; provided, however, that nothing in this Agreement shall prevent the Board of Supervisors, acting on behalf of the Partnership (without the approval of any Unitholder), or the General Partner (without the approval of any Unitholder), from proposing, consenting to or approving any amendment to the Operating Partnership Agreement (to the extent such proposal, consent or approval of the Board of Supervisors or the General Partner, as the case may be, is required at that time) or from taking any action permitted to be taken by a partner of the Operating Partnership, in each case in connection with any transaction by or involving the Operating Partnership with respect to the incurrence, assumption or guarantee of, or other contracting for, Indebtedness, the issuance of evidences of Indebtedness, or the mortgage, pledge, hypothecation or granting of a security interest in any part of or all or substantially all the assets of the Operating Partnership in association with the incurrence, assumption or guarantee of, or other contracting for, Indebtedness.

(b) The Board of Supervisors may not cause the Partnership to incur any Indebtedness that is recourse to the General Partner or any of its Affiliates without the approval of the General Partner, which approval may be given or withheld in the General Partner s sole discretion.

7.11 Reimbursement of the General Partner; Employee Benefit Plans.

(a) Except as provided in this Section 7.11 and elsewhere in this Agreement or in the Operating Partnership Agreement, the General Partner shall not be compensated for its services as general partner of any Group Member.

(b) The General Partner shall be reimbursed on a monthly basis, or such other basis as the Board of Supervisors may determine, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership (including salary, bonus, incentive compensation and other amounts paid to any Person to perform services for the Partnership or for the General Partner or the Board of Supervisors in the discharge of its duties to the Partnership), and (ii) all other necessary or appropriate expenses allocable to the Partnership or otherwise reasonably incurred by the General Partner in connection with operating the Partnership s business (including expenses allocated to the General Partner by its Affiliates). Reimbursements pursuant to this Section 7.11 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.14.

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(c) The Board of Supervisors, without the approval of the Limited Partners (who shall have no right to vote in respect thereof) except as may otherwise be required by the National Securities Exchange on which the Common Units may be listed for trading, may propose and adopt on behalf of the Partnership employee benefit plans, employee programs and employee practices (including plans, programs and practices involving the issuance of Units), or issue Partnership Securities maintained or sponsored by the Partnership, the General Partner or any of their Affiliates in each case for the benefit of the members of the Board of Supervisors, employees of the Partnership or the Operating Partnership, any Group Member or any Affiliate, or any of them, in respect of services performed, directly or indirectly, for the benefit of the Partnership Group.

7.12 Outside Activities of the General Partner.

(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 of the Partnership, the Operating Partnership, and any other partnership of which the Partnership or the Operating Partnership is, directly or indirectly, a partner (it being understood that the General Partner shall not be required to be the general partner of the Operating Partnership or any other partnership of which the Partnership or the Operating Partnership is, directly or indirectly, a partner), and to undertake activities that are ancillary or related thereto (including being a Limited Partner in the Partnership), and (ii) shall not enter into or conduct any business or incur any debts or liabilities except in connection with or incidental to (A) its performance of the activities required or authorized by this Agreement or the Operating Partnership Agreement or described in or contemplated by the Proxy Statement and (B) the acquisition, ownership or ~~disposition~~Transfer of Partnership Interests or partnership interests in the Operating Partnership or any other partnership of which the Partnership or the Operating Partnership is, directly or indirectly, a partner; provided that notwithstanding the foregoing, employees of the General Partner may perform limited services for other Affiliates of the General Partner in addition to the Partnership and the Operating Partnership (it being understood that full time employees of the General Partner shall devote substantially all their employment services to the Partnership and the Operating Partnership).

(b) Except as described in Section 7.12(a), each Indemnitee (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, independently or with others, whether in the businesses engaged in by the Partnership or the Operating Partnership or anticipated to be engaged in by the Partnership, the Operating Partnership or otherwise, including, ~~without limitation,~~ in the case of any Affiliates of the General Partner, business interests and activities in direct competition with the business and activities of the Partnership or the Operating Partnership, and none of the same shall constitute a breach of this Agreement or any duty to the Partnership, the Operating Partnership or any Partner or Assignee. Neither the Partnership, the Operating Partnership, any Limited Partner nor any other Person shall have any rights by virtue of this Agreement, the Operating Partnership Agreement or the partnership relationship established hereby or thereby in any business ventures of any Indemnitee and such Indemnitees shall have no obligation to offer any interest in any such business ventures to the Partnership, the Operating Partnership, any Limited Partner or any other Person. The General Partner and any Affiliates of the General Partner may acquire Units or other Partnership Securities, and, except as otherwise provided in this Agreement, shall be entitled to exercise all rights of an Assignee, Limited Partner or holder of another Partnership Security, as applicable, relating to such Units or Partnership Securities, as the case may be.

(c) Subject to the terms of Sections 7.12(a) and 7.12(b) but otherwise notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any of the Indemnitees (other than the General Partner) in accordance with Section 7.12(b) is hereby approved by the Partnership and all Partners and (ii) it shall be deemed not to be a breach of the General Partner s fiduciary duties or any other obligation of any type whatsoever of the General Partner for the General Partner to permit its Affiliates to engage, or for any such Affiliate to engage, in business interests and activities in preference to or to the exclusion of the Partnership.

(d) The term Affiliates when used in this Section 7.12 with respect to the General Partner shall not include any Group Member.

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7.13 Loans from the General Partner; Contracts with Affiliates; Certain Restrictions on the General Partner.

(a) The General Partner or any Affiliate of the General Partner may lend to any Group Member, and any Group Member may borrow from the General Partner and any Affiliate of the General Partner, 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 less favorable on the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arms-length basis (without reference to the lending party s financial abilities or guarantees). 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 7.13(a) and Section 7.13(b), the term Group Member shall include any Affiliate of the Group Member that is controlled by the Group Member. No Group Member may lend funds to the General Partner or any of its Affiliates (other than another 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 established by the Board of Supervisors; provided, however, that the Partnership may not charge a Group Member interest at a rate greater than the rate that would be charged to such Group Member (without reference to the General Partner s financial abilities or guarantees), by unrelated lenders on comparable loans. The foregoing authority shall be exercised by the Board of Supervisors and shall not create any right or benefit in favor of any Group Member or any other Person.

(c) The General Partner may itself, or may enter into an agreement with any of its Affiliates to, render services to a Group Member. Any services rendered to a Group Member by the General Partner or any of its Affiliates shall be on terms that are fair and reasonable to the Partnership; provided, however, that the requirements of this Section 7.13(c) shall be deemed satisfied as to (i) any transaction approved by Special Approval, (ii) any transaction, the terms of which are no less favorable to the Partnership Group than those generally being provided to or available from unrelated third parties or (iii) any transaction that, 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 Group), is equitable to the Partnership Group. The provisions of Section 7.11 shall apply to the rendering of services described in this Section 7.13(c).

(d) The Partnership may ~~transfer~~Transfer assets to joint ventures, other partnerships, corporations, limited liability companies or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions as are consistent with this Agreement and applicable law.

(e) Neither the General Partner nor any of its Affiliates shall ~~sell, transfer or convey~~Transfer any property to, or purchase any property from, the Partnership, directly or indirectly, except pursuant to transactions that are fair and reasonable to the Partnership; provided, however, that the requirements of this Section 7.13(e) shall be deemed to be satisfied as to (i) ~~the transactions effected pursuant to the Exchange Agreement, (ii)~~ any transaction pursuant to Section 4.6(b), (~~iii~~ii) any transaction approved by Special Approval, (~~iv~~iii) any transaction, the terms of which are no less favorable to the Partnership than those generally being provided to or available from unrelated third parties, or (~~v~~iv) any transaction that, 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), is equitable to the Partnership. With respect to any contribution of assets to the Partnership in exchange for Units, the Audit Committee, in determining whether the appropriate number of Units are being issued, shall take into account, among other things, the fair market value of the assets, the liquidated and contingent liabilities assumed, the tax basis in the assets, the extent to which tax-only allocations to the transferor will protect the existing partners of the Partnership against a low tax basis, and such other factors as the Audit Committee deems relevant under the circumstances.

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(f) The General Partner and its Affiliates will have no obligation to 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, nor shall there be any obligation on the part of the General Partner or its Affiliates to enter into such contracts.

7.14 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 from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees, expenses and other disbursements), judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, 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, provided, that in each case the Indemnitee acted in good faith and in a manner that such Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Partnership and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that the Indemnitee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 7.14 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, expenses and other disbursements) incurred by an Indemnitee who is indemnified pursuant to Section 7.14(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined by a final, non-appealable order of a court of competent jurisdiction that the Indemnitee is not entitled to be indemnified as authorized in this Section 7.14.

(c) The indemnification provided by this Section 7.14 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 Common Units, as a matter of law or otherwise, both as to actions in the Indemnitee s capacity as an Indemnitee and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

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

(e) For purposes of this Section 7.14, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute fines within the meaning of Section 7.14(a); and action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is in, or not opposed to, the best interests of the Partnership.

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(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 7.14 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 7.14 are for the benefit of the Indemnitees, their heirs, successors, assigns 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 7.14 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 7.14 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.

7.15 Liability of Indemnitees.

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership, the Limited Partners, the Assignees or any other Persons who have acquired interests in the Units, for losses sustained or liabilities incurred as a result of errors in judgment or any act or omission if such Indemnitee acted in good faith pursuant to authority granted in this Agreement.

(b) To the maximum extent permitted by law, the General Partner and its Affiliates shall not be responsible for any act or omission by the Board of Supervisors, any member of the Board of Supervisors, or any Officers of the Partnership.

(c) To the maximum extent permitted by law, the members of the Board of Supervisors and the Officers of the Partnership shall not be responsible for any act or omission by the General Partner and its Affiliates.

(d) Subject to its obligations and duties set forth in Section 7.1(a), the Board of Supervisors 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 the Officers or other agents of the Partnership, and, to the maximum extent permitted by law, the Board of Supervisors shall not be responsible for any misconduct or negligence on the part of any such Officer or agent appointed by the Board of Supervisors in good faith.

(e) It will not constitute a breach of fiduciary or other duty for an Officer or member of the Board of Supervisors to engage attorneys, accountants, engineers and other advisors on behalf of the Partnership, its Board of Supervisors, or any committee thereof, even though such persons may also be retained from time to time by the General Partner or any of its Affiliates, and such persons may be engaged with respect to any matter in which the interests of the Partnership and the General Partner or any of its Affiliates may differ, or may be engaged by both the Partnership and the General Partner or any of its Affiliates with respect to a matter, as long as such Officer or member of the Board of Supervisors reasonably believes that any conflict between the Partnership and the General Partner or any of its Affiliates with respect to such matter is not material.

(f) Any amendment, modification or repeal of this Section 7.15 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability to the Partnership and the Limited Partners, of the General Partner, its directors, officers and employees and any other Indemnitees under this Section 7.15 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.

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7.16 Resolution of Conflicts of Interest.

(a) Unless otherwise expressly provided in this Agreement or the Operating Partnership Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its Affiliates, or any Officer or member of the Board of Supervisors, on the one hand, and the Partnership, the Operating Partnership, any Partner or any Assignee, on the other, any resolution or course of action 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 the Operating Partnership Agreement, of any agreement contemplated herein or therein, or of any duty stated or implied by law or equity, if the resolution or course of action is, or by operation of this Agreement is deemed to be, fair and reasonable to the Partnership. The Board of Supervisors shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of a resolution of such conflict or course of action. Any conflict of interest and any resolution of such conflict of interest shall be conclusively deemed fair and reasonable to the Partnership if such conflict of interest or resolution is (i) approved by Special Approval (as long as the material facts known to the General Partner or any of its Affiliates or such Officer or member of the Board of Supervisors regarding any proposed transaction were disclosed to the Audit Committee at the time it gave its approval), (ii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iii) fair 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 Board of Supervisors may also adopt a resolution or course of action that has not received Special Approval. The Board of Supervisors (including the Audit Committee in connection with Special Approval) shall be authorized in connection with its determination of what is fair and reasonable to the Partnership and in connection with its resolution of any conflict of interest to consider (A) the relative interests of any party to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interest; (B) any customary or accepted industry practices and any customary or historical dealings with a particular Person; (C) any applicable generally accepted accounting practices or principles; and (D) such additional factors as the Board of Supervisors (including the Audit Committee) determines in its discretion to be relevant, reasonable or appropriate under the circumstances. Nothing contained in this Agreement, however, is intended to nor shall it be construed to require the Board of Supervisors (including the Audit Committee) to consider the interests of any Person other than the Partnership. In the absence of bad faith by the Board of Supervisors, the resolution, action or terms so made, taken or provided by the Board of Supervisors with respect to such matter shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or, to the extent permitted by law, under the Delaware Act or any other law, rule or regulation or existing in equity or otherwise.

(b) Whenever this Agreement or any other agreement contemplated hereby provides that the Board of Supervisors is permitted or required to make a decision (i) in its sole discretion or discretion or that it deems necessary or appropriate or necessary or advisable or under a grant of similar authority or latitude, except as otherwise provided herein, the Board of Supervisors shall make such decision in its sole discretion (regardless of whether there is a reference to sole discretion or discretion) unless another express standard is provided for, or (ii) in good faith or under another express standard, the Board of Supervisors shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement, the Operating Partnership Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or in equity or otherwise. In addition, any actions taken by the Board of Supervisors consistent with the standards of reasonable discretion set forth in the definition of Available Cash shall not constitute a breach of any duty of the Board of Supervisors to the Partnership or the Limited Partners. The Board of Supervisors shall have no duty, express or implied, to sell or otherwise dispose of any asset of the Partnership Group.

(c) Whenever a particular transaction, arrangement or resolution of a conflict of interest is required under this Agreement to be fair and reasonable to any Person, the fair and reasonable nature of such transaction, arrangement or resolution shall be considered in the context of all similar or related transactions.

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(d) The Limited Partners hereby authorize the Board of Supervisors on behalf of the Partnership as a partner of a Group Member, to approve of actions by the general partner or the Board of Supervisors of such Group Member similar to those actions permitted to be taken by the Board of Supervisors pursuant to this Section 7.16.

7.17 Other Matters Concerning the General Partner and the Board of Supervisors.

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

(b) The General Partner and the Board of Supervisors may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by either of them, and any act taken or omitted to be taken in reliance upon the opinion (including an Opinion of Counsel) of such Persons as to matters that the General Partner or the Board of Supervisors 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 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 duly authorized officers, a duly appointed attorney or attorneys-in-fact or the duly authorized Officers of the Partnership.

(d) The Board of Supervisors shall have the right, in respect of any of its powers or obligations hereunder, to act through any of the duly authorized Officers of the Partnership or a duly appointed attorney or attorneys-in-fact.

(e) Any standard of care and duty imposed by this Agreement or under the Delaware Act or any applicable law, rule or regulation or in equity or otherwise shall be modified, waived or limited, to the maximum extent permitted by law, as required to permit the General Partner and the Board of Supervisors to act under this Agreement or any other agreement contemplated by this Agreement and to make any decision pursuant to the authority prescribed in this Agreement, so long as such action is reasonably believed by the General Partner or the Board of Supervisors to be in, or not inconsistent with, the best interests of the Partnership.

(f) The General Partner or other holder of Partnership Securities that have voting rights, when voting its interest in the Partnership on any matter shall not be acting in a fiduciary capacity and therefore shall be entitled to consider only such interests and factors as it desires and shall have no duty or obligation to give any consideration to any interest of, or factors affecting, the Partnership or any Limited Partner.

7.18 Purchase or Sale of Units.

The Partnership may purchase or otherwise acquire Units. As long as Units are held by any Group Member, such Units shall not be considered Outstanding for any purpose, except as otherwise provided herein. The General Partner or any Affiliate of the General Partner may also purchase or otherwise acquire and sell or otherwise dispose of Common Units for its own account, subject to the provisions of Articles IV and X.

7.19 [Deleted.]

7.20 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 Board of Supervisors and any Officer of the Partnership authorized by the Board of Supervisors to act on behalf of and in the name of the Partnership (including the General Partner, acting pursuant

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to the direction of the Board of Supervisors in accordance with Section 7.1(a)) 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 contracts on behalf of the Partnership, and such Person shall be entitled to deal with the Board of Supervisors or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)) as if it were the Partnership s sole party in interest, both legally and beneficially. Each Limited Partner hereby waives, to the maximum extent permitted by law, any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the Board of Supervisors or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)) in connection with any such dealing. In no event shall any Person dealing with the Board of Supervisors or its representatives or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)) be obligated to ascertain that the terms of the Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the Board of Supervisors or its representatives or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)). Each and every certificate, document or other instrument executed on behalf of the Partnership by the Board of Supervisors or its representatives or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)) 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

8.1 Records and Accounting.

The Partnership 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 Limited 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 and Assignees of Units or other Partnership Securities, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, 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.

8.2 Fiscal Year.

The fiscal year of the Partnership shall be a 52-53 week fiscal year concluding on the last Saturday in September.

8.3 Reports.

(a) As soon as practicable, but in no event later than 120 days after the close of each fiscal year of the Partnership, the Board of Supervisors shall cause to be mailed or furnished to each Record Holder of a Unit as of a date selected by the Board of Supervisors in its discretion, an annual report containing financial statements of the Partnership for such fiscal year of the Partnership, presented in accordance with U.S. generally accepted accounting principles, including a balance sheet and statements of operations, Partners equity and cash flows, such statements to be audited by a firm of independent public accountants selected by the Board of Supervisors.

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(b) To the extent required by applicable law, regulation or rule of any National Securities Exchange on which the Units are listed for trading, or as the Board of Supervisors determines to be necessary or appropriate, as soon as practicable, but in no event later than 90 days after the close of each Quarter except the last Quarter of each year, the Board of Supervisors shall cause to be mailed or furnished to each Record Holder of a Unit, as of a date selected by the Board of Supervisors in its discretion, a report containing unaudited financial statements of the Partnership and such other information so required, or as the Board of Supervisors determines to be necessary or appropriate.

(c) For purposes of this Section 8.3, a report containing audited or unaudited financial statements of the Partnership shall be deemed to have been furnished to each Record Holder of a Unit when that report has been filed by the Partnership with the U.S. Securities and Exchange Commission pursuant to the Exchange Act or the regulations promulgated thereunder.

ARTICLE IX TAX MATTERS

9.1 Tax Returns and Information.

The Partnership shall timely file all returns of the Partnership that are required for federal, state and local income tax purposes on the basis of the accrual method and a taxable year ending on December 31. The tax information reasonably required by Record Holders for federal and state income tax reporting purposes with respect to a taxable year shall be furnished to them within 90 days of the close of the calendar year in which the Partnership s taxable year ends. The classification, realization and recognition of income, gain, losses and deductions and other items shall be on the accrual method of accounting for federal income tax purposes.

9.2 Tax Elections.

(a) The Partnership has made 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 such election upon the Board of Supervisors determination that such revocation is in the best interests of the Limited Partners. For the purposes of computing the adjustments under Section 743(b) of the Code, the Board of Supervisors shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of Units will be deemed to be the lowest quoted closing price of the Units on any National Securities Exchange on which such Units are traded during the calendar month in which such ~~transfer~~Transfer is deemed to occur pursuant to Section 6.2(g) without regard to the actual price paid by such transferee.

(b) The Partnership has elected to deduct expenses incurred in organizing the Partnership ratably over a sixty-month period as provided in Section 709 of the Code.

(c) Except as otherwise provided herein, the Board of Supervisors shall determine whether the Partnership should make any other elections permitted by the Code.

9.3 Tax Controversies.

Subject to the provisions hereof, the General Partner is designated as the Tax Matters Partner (as defined in Section 6231(a)(7) of the Code) and is authorized and required to represent the Partnership (at the Partnership s expense) in connection with all examinations of the Partnership s affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner to conduct such proceedings.

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9.4 Withholding.

Notwithstanding any other provision of this Agreement, the Board of Supervisors is authorized to take any action that it determines in its discretion to be necessary or appropriate to cause the Partnership and the Operating Partnership to comply with any withholding requirements established under the Code or any other federal, state or local law including, ~~without limitation,~~ pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. 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 or Assignee (including, ~~without limitation,~~ by reason of Section 1446 of the Code), the amount withheld may be treated as a distribution of cash pursuant to Section 6.3 in the amount of such withholding from such Partner.

ARTICLE X

ADMISSION OF PARTNERS

10.1 Current Partners.

The General Partner and the Limited Partners who are Record Holders of the Outstanding Common Units are the current Partners of the Partnership as of the date of this Agreement.

10.2 Admission of Substituted Limited Partners.

By ~~transfer~~Transfer of a Unit representing a Limited Partner Interest in accordance with Article IV, the transferor shall be deemed to have given the transferee the right to seek admission as a Substituted Limited Partner subject to the conditions of, and in the manner permitted under, this Agreement. A transferor of a Certificate representing a Limited Partner Interest shall, however, only have the authority to convey to a purchaser or other transferee who does not execute and deliver a Transfer Application (a) the right to negotiate such Certificate to a purchaser or other transferee and (b) the right to ~~transfer~~Transfer the right to request admission as a Substituted Limited Partner to such purchaser or other transferee in respect of the ~~transferred~~Transferred Units. Each transferee of a Unit representing a Limited Partner Interest (including any nominee holder or an agent acquiring such Unit for the account of another Person) who executes and delivers a Transfer Application shall, by virtue of such execution and delivery, be an Assignee and be deemed to have applied to become a Substituted Limited Partner with respect to the Units so ~~transferred~~Transferred to such Person. Such Assignee shall become a Substituted Limited Partner (x) at such time as the Board of Supervisors consents thereto, which consent may be given or withheld in the Board of Supervisors discretion, and (y) when any such admission is shown on the books and records of the Partnership. If such consent is withheld, such transferee shall be an Assignee. An Assignee shall have an interest in the Partnership equivalent to that of a Limited Partner with respect to allocations and distributions, including liquidating distributions, of the Partnership. With respect to voting rights attributable to Units that are held by Assignees, the General Partner shall be deemed to be the Limited Partner with respect thereto and shall, in exercising the voting rights in respect of such Units on any matter, vote such Units at the written direction of the Assignee who is the Record Holder of such Units. If no such written direction is received, such Units will not be voted. An Assignee shall have no other rights of a Limited Partner.

10.3 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 General Partner pursuant to Section 11.1 or 11.2 or the ~~transfer~~Transfer of the General Partner Interest pursuant to Section 4.6; provided, however, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.6 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to

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the terms hereof, carry on the business of the Partnership without dissolution. The admission of a successor General Partner shall not be deemed to have affected in any manner the irrevocable delegation of all management powers over the business and affairs of the Partnership to the Board of Supervisors pursuant to Section 7.1(a).

10.4 Admission of Additional Limited Partners.

(a) A Person (other than the General Partner or a Substituted Limited Partner) who makes a Capital Contribution to the Partnership in accordance with this Agreement shall be admitted to the Partnership as an Additional Limited Partner only upon furnishing to the Board of Supervisors (i) evidence of acceptance in form satisfactory to the Board of Supervisors of all of the terms and conditions of this Agreement, including the granting of the power of attorney granted in Section 2.6, and (ii) such other documents or instruments as may be required in the discretion of the Board of Supervisors to effect such Person s admission as an Additional Limited Partner.

(b) Notwithstanding anything to the contrary in this Section 10.4, no Person shall be admitted as an Additional Limited Partner without the consent of the Board of Supervisors, which consent may be given or withheld in the Board of Supervisors discretion. The admission of any Person as an Additional Limited Partner shall become effective on the date upon which the name of such Person is recorded as such in the books and records of the Partnership, following the consent of the Board of Supervisors to such admission.

10.5 Amendment of Agreement and Certificate of Limited Partnership.

To effect the admission to the Partnership of any Partner, the Board of Supervisors shall take all steps necessary and 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, and the Chief Executive Officer and President may for this purpose, among others, exercise the power of attorney granted pursuant to Section 2.6.

ARTICLE XI

WITHDRAWAL OR REMOVAL OF PARTNERS

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 (of which event the General Partner shall give written notice to the other Partners) ~~(and it shall be deemed that the General Partner has withdrawn pursuant to this Section 11.1(a)(i) if the General Partner voluntarily withdraws as general partner of the Operating Partnership)~~;

(ii) the General Partner ~~transfers~~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)-(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;

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(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;

(vi) ~~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 or formation; or~~[Intentionally Deleted];

(vii) (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 or formation; (B) in the event the General Partner is a partnership or limited liability company, 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), ~~(vi)~~ or (vii)(A), (vii)(B), (vii)(C) or (vii)(E) occurs, the withdrawing General Partner shall give notice to the Limited 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 March 5, 1996 and ending at 12:00 midnight, Eastern Standard Time, on September 30, 2006, the General Partner voluntarily withdraws; 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 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 or of a limited partner of the Operating Partnership or cause the Partnership or the Operating Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes; (ii) at any time after 12:00 midnight, Eastern Standard Time, on September 30, 2006,~~ the General Partner voluntarily withdraws by giving at least 90 days advance notice to the Limited Partners, such withdrawal to take effect on the date specified in such notice; (~~iii) at any time that~~ii) 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~~iii) the General Partner voluntarily withdraws by giving at least 90 days advance notice of its intention to withdraw to the Limited 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 Common 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 of the other Group Members for which it acts as general partner.~~ If the General Partner gives a notice of withdrawal pursuant to Section 11.1(a)(i), the holders of at least a majority of the Outstanding Common Units, may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner ~~shall automatically become the successor general partner of the other Group Members, and~~ is hereby authorized to, and shall, continue the business of the Partnership ~~and the other Group Members~~ without dissolution. If prior to the effective date of the General Partner s withdrawal, a successor is not selected by the Limited Partners as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with and subject to Section 12.1. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.3.

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11.2 Removal of the General Partner.

The General Partner may be removed (i) if such removal is approved by the holders of at least a majority of the Outstanding Common Units; provided, however, that the Limited Partner Interests held by a General Partner shall not be voted on or considered for purposes of this Section 11.2 or (ii) by the Board of Supervisors if the General Partner or its members fail to ~~transfer~~Transfer their interests as required by Section 4.6(b). Any such action by such holders for removal of the General Partner must also provide for the election of a successor General Partner by the holders of at least a majority of the Outstanding Common Units. Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Section 10.3. ~~The removal of the General Partner shall also automatically constitute the removal of the General Partner as general partner of the other Group Members for which it acts as general partner.~~ 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 10.3, automatically become the successor general partner of the other Group Members, and~~ is hereby authorized to, and shall, continue the business of the Partnership ~~and the other Group Members~~ without dissolution. The right of the holders of Outstanding Common Units to remove the General Partner shall not exist or be exercised unless the Partnership has received an opinion 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 10.3.

11.3 Interest of Departing Partner and Successor General Partner; Delegation of Authority to the Board of Supervisors by Successor General Partner.

(a) In the event of (i) withdrawal of the General Partner under circumstances where such withdrawal does not violate this Agreement, (ii) removal of the General Partner by the holders of Outstanding Common Units or by the Board of Supervisors pursuant to Section 11.2, if a successor General Partner is elected in accordance with the terms of Section 11.1 or 11.2, the successor shall purchase from the Departing Partner its General Partner Interest ~~and its partnership interest as the general partner in the other Group Members, if applicable,~~ for consideration of $10.

(b) [Deleted.]

(c) [Deleted.]

(d) Any successor General Partner will be deemed to have delegated irrevocably to the Board of Supervisors all management powers over the business and affairs of the Partnership to the same extent that the General Partner delegated such management powers to the Board of Supervisors pursuant to Section 7.1 of this Agreement.

11.4 [Deleted.]

11.5 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 Common Units becomes a Record Holder of the Common Units so ~~transferred~~Transferred, such ~~transferring~~Transferring Limited Partner shall cease to be a Limited Partner with respect to the Common Units so ~~transferred~~Transferred.

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ARTICLE XII

DISSOLUTION AND LIQUIDATION

12.1 Dissolution.

The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited 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 Sections 10.3, 11.1, 11.2 or this Section 12.1, the Partnership shall not be dissolved and such successor General Partner is hereby authorized to and shall continue the business of the Partnership. The Partnership shall dissolve, and its affairs shall be wound up, upon:

(a) the expiration of its term as provided in Section 2.7;

(b) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 11.1(b) or 11.2 and such successor is admitted to the Partnership pursuant to Section 10.3, or for Events of Withdrawal of the General Partner for which the appointment of a successor General Partner is not provided for hereunder, unless the Partnership is continued without dissolution in accordance with the Delaware Act;

(c) an election to dissolve the Partnership by the General Partner that is approved by the holders of at least a majority of the Outstanding Common Units;

(d) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act;

(e) the sale of all or substantially all of the assets and properties of the Partnership Group; or

(f) at any time that there are no limited partners of the Partnership, unless the Partnership is continued without dissolution pursuant to the Delaware Act.

12.2 [Deleted].

12.3 Liquidator.

Upon dissolution of the Partnership, the Board of Supervisors shall select one or more Persons to act as Liquidator. The Liquidator 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. The Liquidator 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 Board of Supervisors 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 7.10(a)) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided for herein.

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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 the Liquidator determines to be in the best interest of the Partners, subject to Section 17-804 of the Delaware Act and the following:

(a) Disposition of Assets. 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. Under certain circumstances and subject to certain limitations, the Liquidator may defer liquidation or distribution of the Partnership s assets for a reasonable time or distribute assets to the Partners in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) Discharge of Liabilities. Liabilities of the Partnership include amounts owed to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent 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) Liquidation Distributions. 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, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.4(c)) for the taxable year 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 such distribution shall be made by the end of such taxable year (or, if later, within 90 days after said date of such occurrence).

12.5 Cancellation of Certificate of Limited Partnership.

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

12.6 Return of Capital 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 Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

12.7 Waiver of Partition.

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

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. The General Partner shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable year of the Partnership during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

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ARTICLE XIII

AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS; RECORD DATE

13.1 Amendment to be Adopted Solely by the Board of Supervisors.

Each Limited Partner and the General Partner agree that the Board of Supervisors, without the approval of any Partner or Assignee, may amend any provision of this Agreement, and may authorize any Officer (pursuant to the powers of attorney granted in Section 2.6) to execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;

(c) a change that, in the discretion of the Board of Supervisors, is necessary or advisable 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 neither the Partnership nor the Operating Partnership will be treated as an association taxable as a corporation or otherwise taxed as an entity for federal income tax purposes;

(d) a change that, in the discretion of the Board of Supervisors, (i) does not adversely affect the Limited Partners in any material respect, (ii) is necessary or advisable 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 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 the Units are or will be listed for trading, compliance with any of which the Board of Supervisors determines in its discretion to be in the best interests of the Partnership and the Limited Partners, (iii) is necessary or advisable in connection with action taken by the Partnership pursuant to Section 5.10, or (iv) is required to effect the intent expressed in the Proxy 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 year of the Partnership and any changes that, in the discretion of the Board of Supervisors, are necessary or advisable as a result of a change in the fiscal year or taxable year of the Partnership including, if the Board of Supervisors shall so determine, a change in the definition of Quarter and the dates on which distributions are to be made by the Partnership;

(f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Partnership or the members of the Board of Supervisors or the Officers, 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, in the discretion of the Board of Supervisors, is necessary or advisable in connection with the authorization of issuance of any class or series of Partnership Securities pursuant to Section 5.6;

(h) any amendment expressly permitted in this Agreement to be made by the Board of Supervisors acting alone;

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

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(j) an amendment that, in the discretion of the Board of Supervisors, is necessary or advisable to reflect, account for and deal with appropriately the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity other than the Operating Partnership, in connection with the conduct by the Partnership of activities permitted by the terms of Section 2.4;

(k) an amendment that, in the discretion of the Board of Supervisors, is necessary or advisable to effect or continue the irrevocable delegation by the General Partner to the Board of Supervisors of all management powers over the business and affairs of the Partnership;

(l) an amendment that the Board of Supervisors in good faith deems necessary or advisable in connection with a financing transaction, including (i) to incur new Indebtedness, (ii) to refinance, amend, defease, redeem or prepay, in whole or in part, any existing Indebtedness, or (iii) to secure, guaranty or support (as obligor, surety, credit enhancer or otherwise), in whole or in part, any Indebtedness; provided, however, that no provision of this Agreement may be amended pursuant to this Section 13.1(l) that would otherwise require approval under this Agreement other than by holders of a majority of the Outstanding Common Units unless such approval is obtained; or

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

13.2 Amendment Procedures.

Except as provided in Sections 13.1 and 13.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed only by or with the consent of the Board of Supervisors. A proposed amendment shall be effective upon its approval by the holders of at least a majority of the Outstanding Common Units, unless a greater or different percentage is required under this Agreement or by Delaware law. Amendments to, or actions to repeal or adopt provisions inconsistent with Section 7.3 (other than the first sentence thereof), Section 14.6 and the definitions in Section 1.1 to the extent used therein, shall require the approval of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the Outstanding Common Units. ~~Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such~~If an amendment is proposed, the Board of Supervisors shall seek the ~~written~~ approval ~~of~~thereof from the requisite percentage of Outstanding Common Units or ~~call a meeting of the Limited Partners to consider and vote on such proposed amendment.~~Outstanding Units, as the case may be, pursuant to Section 13.4 or Section 13.11. The Board of Supervisors shall notify all Record Holders upon final adoption of any such proposed amendments.

13.3 Amendment Requirements.

(a) Notwithstanding the provisions of Sections 13.1 and 13.2, no provisions of this Agreement that establishes a percentage of Outstanding Common Units required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of reducing such voting percentage unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Common Units whose aggregate Outstanding Common Units constitute 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 Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3(c), (ii) enlarge the obligations of, restrict 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 may be given or withheld in its sole discretion, (iii) change Section 12.1(a) or (c), or (iv) change the term of the Partnership or, except as set forth in Section 12.1(c), give any Person the right to dissolve the Partnership.

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(c) Except as provided in Section 14.3, and except as otherwise provided, and without limitation of the Board of Supervisor s authority to adopt amendments to this Agreement as contemplated in 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 Partnership Interests of the class affected.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 7.10(a) or 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 Outstanding Common Units unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner or any limited partner of the other Group Members under applicable law.

(e) This Section 13.3 shall only be amended with the approval of the holders of at least 90% of the Outstanding Common Units.

13.4 Tri-Annual and Special Meetings.

All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII and, in the case of Tri-Annual Meetings, in the manner provided in Sections 7.2(a)(i) and 7.3 and this Article XIII. Tri-Annual Meetings to elect the Supervisors and to transact such other business as may be properly brought before the Tri--Annual Meeting shall be held on such date and at such time and place as the Board of Supervisors may specify in the notice of the meeting, which shall be delivered to each Limited Partner at least 10 and not more than 60 days prior to such meeting. Special meetings of the Limited Partners may be called by the Board of Supervisors or by Limited Partners owning 20% or more of the Outstanding ~~Common~~ Units of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the Board of Supervisors one or more requests in writing stating that the signing Limited 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 Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the Board of Supervisors shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A meeting shall be held at a time and place determined by the Board of Supervisors on a date not less than 10 days nor more than 60 days after the mailing of notice of the meeting. The Chairman of the Board of Supervisors, if any, and if present and acting, shall preside at all meetings of the Limited Partners. In the absence of the Chairman of the Board of Supervisors, the Chief Executive Officer, as chosen by the Board of Supervisors, shall preside, and in their absence, the President shall preside. 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.

13.5 Notice of a Meeting.

Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders 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.

13.6 Record Date.

For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11, the Board of Supervisors may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities

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Exchange on which the Units are listed for trading, in which case the rule, regulation, guideline or requirement of such exchange shall govern) or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the Board of Supervisors to give such approval.

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.

13.8 Waiver of Notice; Approval of Meeting; Approval of Minutes.

The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, Limited Partners representing such quorum who were present in person or by proxy and entitled to vote, sign a written waiver of notice or an approval of the holding of the meeting or an approval of the minutes thereof. All waivers and approvals shall be filed with the Partnership records or made a part of the minutes of the meeting. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Partner does not approve, at the beginning of the meeting, of the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.

13.9 Quorum.

The holders of a majority of the Outstanding Units of the class or classes for which a meeting has been called represented in person or by proxy shall constitute a quorum at a meeting of Limited Partners of such class or classes unless any such action by the Limited Partners requires approval by holders of a greater percentage of such Units, in which case the quorum shall be such greater percentage (excluding, in either case, if such are to be excluded from the vote, Outstanding Units owned by the General Partner and its Affiliates). At any meeting of the Limited Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of Limited Partners holding Outstanding Units that in the aggregate represent a majority of the Outstanding Units entitled to vote and be present in person or by proxy at such meeting shall be deemed to constitute the act of all Limited 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 Limited Partners holding Outstanding Units that in the aggregate represent at least such greater or different percentage shall be required. The Limited 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 Limited Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Outstanding Units specified in this Agreement. In the absence of a quorum any meeting of Limited Partners may be adjourned from time to time by the affirmative vote of holders of at least a majority of the Outstanding Units represented either in person or by proxy, but no other business may be transacted, except as provided in Section 13.7.

13.10 Conduct of a Meeting.

The Chairman of the Board of Supervisors, or in his absence, the Vice Chairman or, in his absence, the Chief Executive Officer, or in his absence, the President, or in his absence, any Vice President, shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of

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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 presiding Officer shall designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the Board of Supervisors. The Board of Supervisors may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

13.11 Action Without a Meeting.

If authorized by the Board of Supervisors, any action that may be taken at a meeting of the Limited Partners may be taken without a meeting if an approval in writing setting forth the action so taken is signed by Partners owning not less than the minimum percentage of the Outstanding Units that would be necessary to authorize or take such action at a meeting at which all the Limited Partners were present and voted (unless such provision conflicts with any rule, regular guideline or requirement of any National Securities Exchange on which the Units are listed for trading, in which case the rule, regulation, guideline or requirement of such exchange shall govern). Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The Board of Supervisors may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the Board of Supervisors. If a ballot returned to the Partnership does not vote all of the Units held by the Limited Partner, the Partnership shall be deemed to have failed to receive a ballot for the Units that were not voted. If approval of the taking of any action by the Limited Partners is solicited by any Person other than by or on behalf of the Board of Supervisors, the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the Board of Supervisors, (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are deposited with the Partnership and (c) an Opinion of Counsel is delivered to the Board of Supervisors 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.

13.12 Voting and Other Rights.

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

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

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ARTICLE XIV MERGERS AND BUSINESS COMBINATIONS WITH INTERESTED UNITHOLDERS

14.1 Authority.

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

14.2 Procedure for Merger or Consolidation.

Merger or consolidation of the Partnership pursuant to this Article XIV requires the prior approval of the Board of Supervisors. If the Board of Supervisors shall determine, in the exercise of its discretion, to consent to the merger or consolidation, the Board of Supervisors shall approve the Merger Agreement, which shall set forth:

(a) The names and jurisdictions of formation or organization of each of the business entities proposing to merge or consolidate;

(b) The name and jurisdictions of formation or organization of the business entity that is to survive the proposed merger or consolidation (the Surviving Business Entity);

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

(d) The manner and basis of exchanging or converting the equity securities 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, the cash, property or general or limited partner interests, rights, securities or obligations of any limited partnership, corporation, trust or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their general or limited partner interests, securities or rights, and (ii) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;

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

(f) 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 specified in the certificate of merger); and

(g) Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or appropriate by the Board of Supervisors.

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14.3 Approval by Limited Partners of Merger or Consolidation.

(a) The Board of Supervisors, upon its approval of the Merger Agreement, shall direct that the Merger Agreement and the merger or consolidation contemplated thereby, be submitted to a vote of Limited Partners, whether at a special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement shall be included in or enclosed with the notice of a special meeting or the written consent.

(b) Except as otherwise provided by Section 14.6, the Merger Agreement and the merger or consolidation contemplated thereby shall be approved upon receiving the affirmative vote or consent of the holders of at least a majority of the Outstanding Common Units unless the Merger Agreement contains any provision that, if contained in an amendment to this Agreement, the provisions of this Agreement or the Delaware Act would require the vote or consent of a greater percentage of the Outstanding Common Units or of any class of Limited Partners, in which case such greater percentage vote or consent shall be required for approval of the Merger Agreement and the merger or consolidation contemplated thereby.

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

14.4 Certificate of Merger.

Upon the required approval by the Board of Supervisors and the Limited Partners of a Merger Agreement, a certificate of merger shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

14.5 Effect of Merger.

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

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

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

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

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

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

14.6 Business Combinations with Interested Unitholders.

(a) The approval of the Board of Supervisors and the affirmative vote at a Tri-Annual Meeting or special meeting of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the Outstanding Common Units (excluding Partnership Interests Beneficially Owned by an Interested Unitholder or any Affiliate or Associate of an Interested Unitholder) shall be required to approve any Business Combination.

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(b) The Board of Supervisors shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Section 14.6, including, ~~without limitation,~~ (a) whether a Person is an Interested Shareholder, (b) the number of Units or other Partnership Interests Beneficially Owned by any Person, (c) whether a Person is an Affiliate or Associate of another, and (d) the fair market value of the Partnership Securities or securities of any Subsidiary of the Partnership, and the good faith determination of the Board of Supervisors on such matters shall be conclusive and binding for all the purposes of this Section 14.6.

ARTICLE XV

[Deleted.]

ARTICLE XVI GENERAL PROVISIONS

16.1 Addresses and Notices.

Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner or Assignee 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 or Assignee at the address described below. Any notice, payment or report to be given or made to a Partner or Assignee 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 Unit 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 Unit or the Partnership Interest of a General Partner by reason of any assignment or otherwise. 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 Board of Supervisors, 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 addressed to a Record Holder at the address of such Record Holder appearing on the books and records of the Transfer Agent or the Partnership is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it, such notice, payment or report and 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) if they are available for the Partner or Assignee 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 and Assignees. 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 Board of Supervisors may rely and shall be protected in relying on any notice or other document from a Partner, Assignee or other Person if believed by it to be genuine.

16.2 Further Action.

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

16.3 Binding Effect.

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

16.4 Integration.

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

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16.5 Creditors.

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

16.6 Waiver.

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

16.7 Counterparts.

This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a Unit (other than a General Partner Unit), upon accepting the Certificate evidencing such Unit or executing and delivering a Transfer Application as herein described, independently of the signature of any other party.

16.8 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) To the fullest extent permitted by law, each of the Partners and each Person holding any beneficial interest in the Partnership (whether through a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing or otherwise):

(i) irrevocably agrees that any claims, suits, actions or proceedings (A) arising out of or relating in any way to this Agreement (including any claims, suits or actions to interpret, apply or enforce the provisions of this Agreement or the duties, obligations or liabilities among Partners or other Persons or of Partners or other Persons to the Partnership, or the rights or powers of, or restrictions on, the Partners or other Persons or the Partnership), (B) asserting a claim of breach of a fiduciary duty owed by any member of the Board of Supervisors, director, officer, or other employee of the Partnership or the General Partner, or owed by the General Partner, to the Partnership or the Partners or other Persons, (C) asserting a claim arising pursuant to any provision of the Delaware Act, or (D) asserting a claim governed by the internal affairs doctrine, in each case shall be exclusively brought in the Court of Chancery of the State of Delaware, regardless of whether such claims, suits, actions or proceedings sound in contract, tort, fraud or otherwise, are based on common law, statutory, equitable, legal or other grounds, or are derivative or direct claims, or, in the event the Court of Chancery lacks subject matter jurisdiction over any such claim, suit, action or proceeding, then in any other state or federal court located in the State of Delaware;

(ii) irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware in connection with any such claim, suit, action or proceeding or in the event the Court of Chancery lacks subject matter jurisdiction over any such claim, suit, action or proceeding, any other state or federal court located in the State of Delaware;

(iii) agrees not to, and waives any right to, assert in any such claim, suit, action or proceeding that (A) it is not personally subject to the jurisdiction of the Court of Chancery of the State of Delaware or, in the event the Court of Chancery lacks subject matter jurisdiction over any such claim, suit, action or proceeding, any other state or federal court located in the State of Delaware, or of any other court to which such claim, suit, action or proceeding 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;

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

(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 clause (v) hereof shall affect or limit any right to serve process in any other manner permitted by law.

16.9 Invalidity of Provisions.

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

16.10 Consent of Partners.

Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

16.11 Miscellaneous.

If this Agreement and the Operating Partnership Agreement are approved by the holders of at least a majority of the Outstanding Common Units, then the effectiveness of this Agreement and the Operating Partnership Agreement shall be deemed to have occurred simultaneously.

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

GENERAL PARTNER:

SUBURBAN ENERGY SERVICES GROUP LLC

BY: ~~/s/ MARK A. ALEXANDER~~
NAME: ~~Mark Alexander~~Michael J. Dunn, Jr.

TITLE: Member

LIMITED PARTNERS

All Limited Partners now and hereafter admitted as Limited Partners of the Partnership, pursuant to powers of attorney now and hereafter executed in favor of, and granted and delivered to, the Chief Executive Officer of the Partnership.

By: ~~Mark A. Alexander~~Michael J. Dunn, Jr., Chief Executive Officer of Suburban Propane Partners, L.P., as attorney-in-fact for all Limited Partners pursuant to the Power of Attorney Granted pursuant to Section 2.6

~~/s/ MARK A. ALEXANDER~~
~~Mark A. Alexander~~

Michael J. Dunn, Jr.

Attorney-in-Fact

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Exhibit A to the ~~Third~~Fourth Amended and

Restated Agreement of Limited Partnership of

Suburban Propane Partners, L.P.

Certificate Evidencing Common Units

Representing Limited Partner Interests

Suburban Propane Partners, L.P.

No. Common Units

In accordance with Section 4.1 of the ~~Third~~Fourth Amended and Restated Agreement of Limited Partnership of Suburban Propane Partners, L.P., as amended, supplemented or restated from time to time (the "Partnership Agreement"), SUBURBAN PROPANE PARTNERS, L.P., 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 and accompanied by a properly executed application for transfer of the Common Units represented by this Certificate. 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 One Suburban Plaza, 240 Route 10 West, Whippany, New Jersey 07981-0206. Capitalized terms used herein but not defined shall have the meaning given them in the Partnership Agreement.

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, (iii) granted the powers of attorney provided for in the Partnership Agreement and (iv) 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 and Registrar. This Certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

Dated:_____ SUBURBAN PROPANE PARTNERS, L.P.
Countersigned and Registered by:

Computershare Trust Company, N.A

as Transfer Agent and Registrar By:
[Chief Executive Officer] [President]

[Vice President]

By:_____ By: _____
Authorized Signature [Secretary] [Assistant Secretary]

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[Reverse of Certificate]

ABBREVIATIONS

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

TEN COM as tenants in common	UNIF GIFT MIN ACT Custodian
TEN ENT as tenants by the entireties	**(Cust.)** **(Minor)**
JT TEN as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act _____ **State**

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

ASSIGNMENT OF COMMON UNITS

in

SUBURBAN PROPANE PARTNERS, L.P.

IMPORTANT NOTICE REGARDING INVESTOR RESPONSIBILITIES

DUE TO TAX SHELTER STATUS OF SUBURBAN PROPANE PARTNERS, L.P.

You have acquired an interest in Suburban Propane Partners, L.P., One Suburban Plaza, 240 Route 10 West, Whippany, New Jersey 07981-0206, whose taxpayer identification number is 22-3410353. The Internal Revenue Service has issued Suburban Propane Partners, L.P. the following tax shelter registration number: .

YOU MUST REPORT THIS REGISTRATION NUMBER TO THE INTERNAL REVENUE SERVICE IF YOU CLAIM ANY DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOME BY REASON OF YOUR INVESTMENT IN SUBURBAN PROPANE PARTNERS, L.P.

You must report the registration number as well as the name and taxpayer identification number of SUBURBAN PROPANE PARTNERS, L.P on Form 8271. FORM 8271 MUST BE ATTACHED TO THE RETURN ON WHICH YOU CLAIM THE DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOME BY REASON OF YOUR INVESTMENT IN SUBURBAN PROPANE PARTNERS, L.P.

If you transfer your interest in Suburban Propane Partners, L.P. to another Person, you are required by the Internal Revenue Service to keep a list containing (a) that Person s name, address and taxpayer identification number, (b) the date on which you transferred the interest and (c) the name, address and tax shelter registration number of Suburban Propane Partners, L.P. If you do not want to keep such a list, you must (1) send the information specified above to the Partnership, which will keep the list for this tax shelter, and (2) give a copy of this notice to the Person to whom you transfer your interest. Your failure to comply with any of the above--described responsibilities could result in the imposition of a penalty under Section 6707(b) or 6708(a) of the Internal Revenue Code of 1986, as amended, unless such failure is shown to be due to reasonable cause.

ISSUANCE OF A REGISTRATION NUMBER DOES NOT INDICATE THAT THIS INVESTMENT OR THE CLAIMED TAX BENEFITS HAVE BEEN REVIEWED, EXAMINED, OR APPROVED BY THE INTERNAL REVENUE SERVICE.

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FOR VALUE RECEIVED,

conveys, sells and transfers unto

hereby assigns,

(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 Suburban Propane Partners, L.P.

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.

SIGNATURE(S) MUST BE GUARANTEED BY A MEMBER FIRM OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. OR BY A COMMERCIAL BANK OR TRUST COMPANY.

(Signature)

(Signature)
Signature(s) Guaranteed

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 and an Application for Transfer of Common Units has been executed by a transferee either (a) on the form set forth below or (b) on a separate application that the Partnership will furnish on request without charge. A transferor of the Common Units shall have no duty to the transferee with respect to execution of the transfer application in order for such transferee to obtain registration of the transfer of the Common Units.

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APPLICATION FOR TRANSFER OF COMMON UNITS

The undersigned (Assignee) hereby applies for transfer to the name of the Assignee of the Common Units evidenced hereby.

The Assignee (a) requests admission as a Substituted Limited Partner and agrees to comply with and be bound by, and hereby executes, the ~~Third~~Fourth Amended and Restated Agreement of Limited Partnership of Suburban Propane Partners, L.P. (the Partnership), as amended, supplemented or restated to the date hereof (the Partnership Agreement), (b) represents and warrants that the Assignee has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (c) appoints, the Chief Executive Officer and the President of the Partnership and, if a Liquidator shall be appointed, the Liquidator of the Partnership as the Assignee s attorney-in-fact to execute, swear to, acknowledge and file any document, including, without limitation, the Partnership Agreement and any amendment thereto, and the Certificate of Limited Partnership of the Partnership and any amendment thereto, necessary or appropriate for the Assignee s admission as a Substituted Limited Partner and as a party to the Partnership Agreement, (d) gives the power of attorney provided for in the Partnership Agreement, and (e) makes the waivers and gives the consents and approvals contained in the Partnership Agreement. Capitalized terms not defined herein have the meanings assigned to such terms in the Partnership Agreement.

Date: _____

Social Security or other identifying number of Assignee

Signature of Assignee

Purchase Price including commissions, if any

Name and Address of Assignee

Type of Entity (check one):

¨Individual ¨Partnership ¨Corporation
¨Trust ¨Other (specify) _____

Nationality (check one):

¨U.S. Citizen, Resident or Domestic Entity

¨Foreign Corporation ¨Non-resident Alien

If the U.S. Citizen, Resident or Domestic Entity box is checked, the following certification must be completed.

Under Section 1445(e) of the Internal Revenue Code of 1986, as amended (the Code), the partnership must withhold tax with respect to certain transfers of property if a holder of an interest in the Partnership is a foreign person. To inform the Partnership that no withholding is required with respect to the undersigned interestholder s interest in it, the undersigned hereby certifies the following (or, if applicable, certifies the following on behalf of the interestholder).

Complete Either A or B:

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A. Individual Interestholder

1. I am not a non-resident alien for purposes of U.S. income taxation.

2. My U.S. taxpayer identification number (Social Security Number) is

3. My home address is

B. Partnership, Corporation or Other Interestholder

1. _____ is not a foreign
Name of Interestholder

corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Treasury Regulations).

2. The interestholder s U.S. employer identification number is

3. The interestholder s office address and place of incorporation (if applicable) is

The interestholder agrees to notify the Partnership within sixty (60) days of the date the interestholder becomes a foreign person.

The interestholder understands that this certificate may be disclosed to the Internal Revenue Service by the Partnership and that any false statement contained herein could be punishable by fine, imprisonment or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete and, if applicable, I further declare that I have authority to sign this document on behalf of

Name of Interestholder

Signature and Date

Title (if applicable)

Note: If the Assignee is a broker, dealer, bank, trust company, clearing corporation, other nominee holder or an agent of any of the foregoing, and is holding for the account of any other person, this application should be completed by an officer thereof or, in the case of a broker or dealer, by a registered representative who is a member of a registered national securities exchange or a member of the National Association of

Securities Dealers, Inc., or, in the case of any other nominee holder, a person performing a similar function. If the Assignee is a broker, dealer, bank, trust company, clearing corporation, other nominee owner or an agent of any of the foregoing, the above certification as to any person for whom the Assignee will hold the Common Units shall be made to the best of the Assignee s knowledge.

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Appendix B

~~THIRD~~FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF SUBURBAN PROPANE, L.P.

~~(as amended on June 24, 2009)~~

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~~THIRD~~FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF SUBURBAN PROPANE, L.P.

THIS ~~THIRD~~FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF SUBURBAN PROPANE, L.P. dated as of ~~October 19, 2006, as amended on June 24, 2009,~~[ ], 2012 (this "Agreement" or "Partnership Agreement"), is entered into by and among Suburban Energy Services Group LLC, a Delaware limited liability company, as the General Partner, Suburban Propane Partners, L.P., a Delaware limited partnership, as a Limited Partner, and Suburban LP Holding, LLC, a Delaware limited liability company, as a Limited Partner, together with any other Persons who become Partners in the Partnership or parties hereto as provided herein. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

R E C I T A L S:

WHEREAS, Suburban Propane GP, Inc., a Delaware corporation and the initial general partner of the Partnership (the "Initial General Partner"), and certain other parties organized the Partnership as a Delaware limited partnership pursuant to an Amended and Restated Agreement of Limited Partnership dated as of March 4, 1996 (the "Original Agreement"); and~~WHEREAS~~, which was subsequently amended and restated by the Second Amended and Restated ~~Agreement of~~ Limited Partnership ~~of the Partnership,~~Agreement dated as of May 26, 1999 ~~amended and restated the Original Agreement in its entirety, (the "Second Restated Agreement"); a~~nd the Third Amended and Restated Limited Partnership Agreement dated as of October 19, 2006 (the "Third Partnership Agreement"), as amended through June 24, 2009;

~~WHEREAS, the Partnership, the MLP and the General Partner have entered into an Exchange Agreement, dated as of July 27, 2006 (the "Exchange Agreement"); and the MLP, Suburban LP, Suburban LP Holding, Inc., and the General Partner have entered into a First Amendmc~~nt ~~and Assignment Agreement amending the Second Restated Agreement, dated as of the date hereof (the "OLP Amendment"); a~~nd

WHEREAS, pursuant to ~~the OLP Amendment, inter alia Suburban LP has been admitted to the Partnership as a Limited Partner; and~~Section 13.2 of the Third Partnership Agreement, the amendments to the Third Partnership Agreement of the type contained herein may be proposed only by or with the consent of the Board of Supervisors or the General Partner, and the Board of Supervisors has consented to such amendments to the Third Partnership Agreement;

WHEREAS, pursuant to Section 13.2 of the Third Partnership Agreement, such proposed amendments to the Third Partnership Agreement shall be effective upon approval by all the Limited Partners, and all the Limited Partners have approved such proposed amendments to the Third Partnership Agreement;

WHEREAS, in connection with the transactions contemplated by the Exchange Agreement, the OLP Amendment and the MLPthe board of supervisors of Suburban Propane Partners, L.P., a Delaware limited partnership (the "MLP") has consented to such proposed amendments to the Third Partnership Agreement; and

WHEREAS, the holders of at least a majority of the Outstanding Common Units (as defined ~~herein), the Second Restated Agreement was amended and restated in its entirety by~~in the Third Amended and Restated Agreement of Limited Partnership of the ~~Partnership~~MLP, dated as of October 19, ~~2006 (the "Third Restated Agreement"); a~~nd2006, as further amended as of July 31, 2007 (the "Third MLP Agreement")) of the MLP have approved such proposed amendments to the Third Partnership Agreement;

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~~WHEREAS, the Third Restated Agreement is being further amended to permit the General Partner to pledge its Partnership Interest in the Partnership solely for the purpose of securing, directly or indirectly, indebtedness of the Partnership or the MLP and to make certain related changes.~~

NOW, THEREFORE, in consideration of the covenants and agreements made herein, the ~~Third Restated~~Partnership Agreement is hereby ~~further amended to permit the General Partner to pledge its Partnership Interest in the Partnership for certain purposes solely for the purpose of securing, directly or indirectly, indebtedness of the Partnership or the MLP and to make certain related changes~~amended and restated in its entirety to read as follows:

ARTICLE XVII

Definitions

17.1 *Definitions.*

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement. Capitalized terms used herein but not otherwise defined shall have the meanings assigned to such terms in the MLP Agreement.

Additional Limited Partner means a Person admitted to the Partnership as a Limited Partner pursuant to Section 10.4 and who is shown as such on the books and records of the Partnership.

Adjusted Capital Account means the Capital Account maintained for each Partner as of the end of each calendar year, (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) 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 calendar year, are reasonably expected to be allocated to such Partner in subsequent years 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 calendar year, are reasonably expected to be made to such Partner in subsequent years 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 year 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(c)(i) or 6.1(c)(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.

Adjusted Property means any property the Carrying Value of which has been adjusted pursuant to Section 5.5(d)(i) or 5.5(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. As used herein, the term control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

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~~, without limitation,~~ 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 as determined by the Board of Supervisors using such reasonable method of valuation as it may adopt. The Board of Supervisors shall, in its discretion, use such method as it

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deems reasonable and 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 t~~his Third Amended and Restated Agreement of Limited Partnership of Suburban Propane, L~~.P.agreement of limited partnership defined in the introductory paragraph hereof, as it may be amended, supplemented or restated from time to time.

Audit Committee means a committee of the Board of Supervisors of the Partnership composed of the same individuals who serve as the audit committee of the MLP.

~~Available Cash, means, with respect to any Quarter ending prior to the Liquidation Da~~te,

~~(a) the sum of (i) all cash and cash equivalents of the Partnership Group on hand at the end of such Quarter, and (ii) all additional cash and cash equivalents of the Partnership Group on hand on the date of determination of Available Cash with respect to such Quarter resulting from borrowings for working capital purposes, in each case subsequent to the end of such Quarter, less~~

~~(b)~~ Available Cash, means, with respect to any Quarter ending prior to the Liquidation Date, (a) the sum of (i) all cash and cash equivalents of the Partnership Group on hand at the end of such Quarter, and (ii) all additional cash and cash equivalents of the Partnership Group on hand on the date of determination of Available Cash with respect to such Quarter resulting from borrowings for working capital purposes, in each case subsequent to the end of such Quarter, less (b) the amount of any cash reserves that is necessary or appropriate in the reasonable discretion of the Board of Supervisors to (i) provide for the proper conduct of the business of the Partnership Group (including reserves for future capital expenditures) subsequent to such Quarter, and (ii) comply with applicable law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which any Group Member is a party or by which it is bound or its assets are subject; *provided*, *however*, that disbursements made by a Group Member or cash reserves established, increased or reduced after the end of such Quarter but on or before the date of determination of Available Cash with respect to such Quarter shall be deemed to have been made, established, increased or reduced, for purposes of determining Available Cash, within such Quarter if the Board of Supervisors so determines.

Notwithstanding the foregoing, Available Cash with respect to the Quarter in which the Liquidation Date occurs and any subsequent Quarter shall equal zero.

Board of Supervisors shall mean the board of supervisors of the Partnership, composed of those individuals who serve as members of the MLP s board of supervisors, to whom the General Partner irrevocably delegates, and in which is vested, pursuant to Section 7.1, and subject to Section 7.9, the power to manage the business and activities of the Partnership. The Board of Supervisors shall constitute a committee within the meaning of Section 17-303(b)(7) of the Delaware Act.

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 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 5.5 and the hypothetical balance of such Partner s Capital Account computed as if it had been maintained strictly in accordance with 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 states of New York or New Jersey shall not be regarded as a Business Day.

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Capital Account means the capital account maintained for a Partner pursuant to Section 5.5.

Capital Contribution means any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Partner contributes or has contributed to the Partnership pursuant to this Agreement (or the Original Agreement) or the Contribution and Conveyance Agreement.

Capitalized Lease Obligations means obligations to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real and/or personal property, which obligations are accounted for as a capital lease on a balance sheet under U.S. GAAP; for the purpose hereof the amount of such obligations shall be the capitalized amount reflected on such balance sheet.

Carrying Value means (a) with respect to a Contributed 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 Contributed Property, and (b) with respect to any other Partnership property, the adjusted basis of such property for 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 Sections 5.5(d)(i) and 5.5(d)(ii) and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Partnership properties, as deemed appropriate by the Board of Supervisors.

Cause means a court of competent jurisdiction has entered a final, non-appealable judgment finding a Person liable for actual fraud, gross negligence or willful or wanton misconduct in its capacity as general partner of the Partnership or as a member of the Board of Supervisors, as the case may be.

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 2.1, as such Certificate of Limited Partnership may be amended, supplemented or restated from time to time.

Code means the 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 future law.

Commission means the United States Securities and Exchange Commission.

Contributed Property means each property or other asset, 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 5.5(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

Contribution and Conveyance Agreement means that certain Contribution, Conveyance and Assumption Agreement, dated as of March 4, 1996, among the Initial General Partner, the MLP, the Partnership and certain other parties, together with the additional conveyance documents and instruments contemplated or referenced thereunder.

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

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

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

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

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

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~~"Exchange Agreement" has the meaning assigned to such term in the Recitals here~~of.

"General Partner" means Suburban Energy Services Group LLC, a Delaware limited liability company, in its capacity as general partner of the Partnership, or any additional or successor general partner of the Partnership admitted to the Partnership as a general partner thereof in accordance with the terms hereof, in its capacity as a general partner of the Partnership.

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

"Indebtedness," as used ~~in Sect~~ionSections 7.1(b), 7.9~~(~~b), and 13.1, means, as applied to any Person, without duplication, any indebtedness (whether on an unsecured or secured basis), exclusive of deferred taxes, (i) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof); (ii) evidenced by bonds, notes, debentures or similar instruments or letters of credit in support of bonds, notes, debentures or similar instruments; (iii) representing the balance deferred and unpaid of the purchase price of any property, if and to the extent such indebtedness would appear as a liability on a balance sheet of such Person prepared in accordance with U.S. GAAP (but excluding trade accounts payable arising in the ordinary course of business that are not overdue by more than 90 days or are being contested by such Person in good faith); (iv) any Capitalized Lease Obligations of such Person; and (v) Indebtedness of others guaranteed by such Person, including~~, without limitation~~, every obligation of such Person (A) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, or (B) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness.

"Indemnitee" means (a) the members of the Board of Supervisors or the members of the board of supervisors of the MLP or any other Group Member, (b) the General Partner, any Departing Partner and any Person who is or was an Affiliate of the General Partner or any Departing Partner, (c) any Person who is or was a member, partner, director, officer, employee, agent or trustee of the MLP, any Group Member, the General Partner or any Departing Partner or any Affiliate or the MLP, any Group Member, the General Partner or any Departing Partner and (e) any Person who is or was serving at the request of the Board of Supervisors, the General Partner or any Departing Partner or any Affiliate of the General Partner or any Departing Partner as a member, partner, director, officer, employee, partner, agent, fiduciary or trustee of another Person, in each case, acting in such capacity; *provided,* that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services.

"Initial General Partner" means Suburban Propane GP, Inc., a Delaware corporation.

"Limited Partner" means, collectively, unless the context otherwise requires, the MLP, Suburban LP, each Substituted Limited Partner, each Additional Limited Partner and any Departing Partner upon the change of its status from General Partner to Limited Partner pursuant to Section 11.3.

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

"Liquidator" means one or more Persons selected by the Board of Supervisors to perform the functions described in Section 12.3.

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

"MLP" ~~means Suburban Propane Partners, L.P., a Delaware limited partnersh~~ip.has the meaning assigned to such term in the Recitals to this Agreement.

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MLP Agreement means the ThirdFourth Amended and Restated Agreement of Limited Partnership of the MLP, as it may be amended, supplemented or restated from time to time.

Net Agreed Value means, (a) in the case of any Contributed Property, the Agreed Value of such property reduced by any liabilities either assumed by the Partnership upon such contribution or to which such property is subject when contributed, and (b) in the case of any property distributed to a Partner by the Partnership, the Partnership s Carrying Value of such property (as adjusted pursuant to Section 5.5(d)(ii)) at the time such property is distributed, reduced by any indebtedness either assumed by such Partner upon such distribution or to which such property is subject at the time of distribution, in either case, as determined under Section 752 of the Code.

Net Income means, for any taxable year, the excess, if any, of the Partnership s items of income and gain for such taxable year over the Partnership s items of loss and deduction for such taxable year. The items included in the calculation of Net Income shall be determined in accordance with Section 5.5(b) and shall not include any items specially allocated under Section 6.1(c).

Net Loss means, for any taxable year, the excess, if any, of the Partnership s items of loss and deduction for such taxable year over the Partnership s items of income and gain for such taxable year. The items included in the calculation of Net Loss shall be determined in accordance with Section 5.5(b) and shall not include any items specially allocated under Section 6.1(c).

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 Sections 6.2(b)(i)(A), 6.2(b)(ii)(A) and 6.2(b)(iii) 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 expenditures (including, without limitation, 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).

OLP Subsidiary means a Subsidiary of the Partnership.

Officers means the Chief Executive Officer, the President, any Vice Presidents, the Secretary, the Treasurer, any Assistant Secretaries or Assistant Treasurers and any other officers of the Partnership appointed by the Board of Supervisors pursuant to Section 7.7.

Opinion of Counsel means a written opinion of counsel (who may be regular counsel to the Partnership or the General Partner or any of their Affiliates) acceptable to the Board of Supervisors in its reasonable discretion.

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

~~Original Partnership Agreement means the Amended and Restated Agreement of Limited Partnership of the MLP dated as of March 4, 1996.~~

Partner Nonrecourse Debt has the meaning set forth in Treasury Regulation Section 1.704 -2(b)(4).

Partner Nonrecourse Debt Minimum Gain has the meaning set forth in Treasury Regulation Section 1.704-2(i)(2).

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Partner Nonrecourse Deductions means any and all items of loss, deduction or expenditure (including, without limitation, 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), are attributable to a Partner Nonrecourse Debt.

Partners means the General Partner and the Limited Partner.

Partnership means Suburban Propane, L.P., a Delaware limited partnership, and any successors thereto.

Partnership Agreement means this agreement of limited partnership defined in the introductory paragraph hereof, as it may be amended, supplemented or restated from time to time.

Partnership Group means the Partnership and the OLP Subsidiaries, treated as a single consolidated entity.

Partnership Interest means the interest of a Partner in the Partnership.

Partnership Minimum Gain means that amount determined in accordance with the principles of Treasury Regulation Section 1.704-2(d).

Percentage Interest means (a) as to the General Partner (in its capacity as General Partner without reference to any limited partner interests held by it) zero, (b) as to the MLP as a Limited Partner, 99.9%, and (c) as to Suburban LP as a Limited Partner, 0.1%.

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

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.

Required Allocations means (a) any limitation imposed on any allocation of Net Losses, and (b) any allocation of an item of income, gain, loss or deduction pursuant to Section 6.1(c)(i), 6.1(c)(ii), 6.1(c)(iii), 6.1(c)(vi) or 6.1(c)(viii).

Residual Gain or Residual Loss means any item of gain or loss, as the case may be, of the Partnership recognized for federal income tax purposes resulting from a sale, exchange or other disposition of a Contributed Property or Adjusted Property, to the extent such item of gain or loss is not allocated pursuant to Section 6.2(b)(i)(A) or 6.2(b)(ii)(A), respectively, to eliminate Book-Tax Disparities.

Securities Act means the Securities Act of 1933, 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 Audit 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) is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries of such Person or a combination thereof, or (c) any other Person (other than a corporation or a partnership) in which such Person, one or more Subsidiaries of such Person, or a combination thereof, directly or indirectly, at the date of determination, has (i) at least a majority ownership interest or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person.

Substituted Limited Partner means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 10.2 in place of and with all the rights of a Limited Partner.

Suburban LP means Suburban LP Holding, LLC, a Delaware limited liability company.

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

Third MLP Agreement has the meaning assigned to such term in the Recitals to this Agreement.

Third Partnership Agreement has the meaning assigned to such term in the Recitals to this Agreement.

Transfer has the meaning assigned to such term in Section 4.1(a).

Unitholder has the meaning set forth in the MLP Agreement.

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 5.5(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.5(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 5.5(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 5.5(d)).

U.S. GAAP means United States Generally Accepted Accounting Principles consistently applied.

Withdrawal Opinion of Counsel ~~has the meaning assigned to such term in Section 11.1~~(b).means an Opinion of Counsel providing that a withdrawal of the General Partner from the Partnership upon an Event of Withdrawal (following the selection of the successor General Partner) would not result in the loss of the limited liability of any Limited Partner or of any limited partner of the MLP, limited partner of any Group Member or cause the MLP or the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes.

17.2 *Construction.*

Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; and (c) include or includes means includes, without limitation, and including means including, without limitation.

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ARTICLE XVIII

Organization

18.1 *Formation.*

The Initial General Partner and the MLP previously formed the Partnership as a limited partnership upon the filing on December 19, 1995 of the Certificate of Limited Partnership with the Secretary of State of the State of Delaware pursuant to the provisions of the Delaware Act. ~~The General Partner and the Limited Partners hereby amend the Third Restated Agreement to permit the General Partner to pledge its Partnership Interest in the Partnership solely for the purpose of securing, directly or indirectly, indebtedness of the Partnership or the MLP and to make certain related changes. This amendment shall become effective on the date of this Agreement.~~ Except as expressly provided to the contrary in this Agreement, the rights 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.

The Initial 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 and the General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents as may be determined by the Board of Supervisors to be reasonable and 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 that such action is determined by the Board of Supervisors to be reasonable and 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 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~~, including in connection with the Exchange Agreement and the transactions contemplated thereby~~. Subject to the provisions of Section 3.4(a), the Partnership 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 Limited Partner.

18.2 *Name.*

The name of the Partnership shall be Suburban Propane, L.P. The Partnership s business may be conducted under any other name or names deemed necessary or appropriate by the Board of Supervisors, including, if consented to by the General Partner in its sole discretion, the name of the General Partner. The words Limited Partnership, L.P., 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 Board of Supervisors in its discretion may change the name of the Partnership at any time and from time to time and shall notify the Limited Partners of such change in the next regular communication to the Limited Partners.

18.3 *Registered Office; Registered Agent; Principal Office; Other Offices.*

Unless and until changed by the Board of Supervisors or the Chief Executive Officer, the registered office of the Partnership in the State of Delaware shall be located at Corporation Trust Center, 1209 Orange Street, New Castle County, Wilmington, Delaware 19801, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be The Corporation Trust Company. The principal office of the Partnership shall be located at One Suburban Plaza, 240 Route 10 West, Whippany, New Jersey 07981 0206 or such other place as the Board of Supervisors may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the Board of Supervisors deems necessary or appropriate. The address of the General Partner shall be One Suburban Plaza, 240 Route 10 West, Whippany, New Jersey 07981-0106 or such other place as the General Partner may from time to time designate by notice to the Limited Partners.

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18.4 *Purpose and Business.*

The purpose and nature of the business to be conducted by the Partnership shall be to (a) acquire, manage and operate the assets and properties held by the Partnership, (b) engage directly in, or enter into or form any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the Board of Supervisors and which may lawfully 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 (c) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to any Group Member, the MLP or any Subsidiary of the MLP. The Board of Supervisors has no obligation or duty to the Partnership or the Limited Partners to propose or approve, and in its discretion may decline to propose or approve, the conduct by the Partnership of any business.

18.5 *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.

18.6 *Power of Attorney.*

(a) The Limited Partners hereby constitute and appoint the Chief Executive Officer and President of the Partnership and, if a Liquidator shall have been selected pursuant to Section 12.3, the Liquidator, severally (and any successor to the Liquidator by merger, ~~transfer~~Transfer, assignment, election or otherwise) and each of their authorized officers and attorneys in fact, as the case may be, with full power of substitution, as his true and lawful agent and attorney-in-fact, with full power and authority in his name, place and stead, to:

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including this Agreement and the Certificate of Limited Partnership and all amendments or restatements thereof) that the Board of Supervisors or the Liquidator deems necessary or appropriate to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (B) all certificates, documents and other instruments that the Board of Supervisors or the Liquidator deems necessary or appropriate to reflect, in accordance with its terms, any amendment, change, modification or restatement of this Agreement; (C) all certificates, documents and other instruments (including conveyances and a certificate of cancellation) that the Board of Supervisors or the Liquidator deems necessary or appropriate to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement; (D) all certificates, documents and other instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article IV, X, XI or XII; (E) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of any class or series of Partnership Interests; and (F) all certificates, documents and other instruments (including agreements and a certificate of merger) relating to a merger or consolidation of the Partnership pursuant to Article XIV; and

(ii) execute, swear to, acknowledge, deliver, file and record all ballots, consents, approvals, waivers, certificates, documents and other instruments necessary or appropriate, in the discretion of the Board of Supervisors or the Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Partners hereunder or is consistent with the terms of this Agreement or is necessary or appropriate, in the discretion of the Board of Supervisors or the Liquidator, to effectuate the terms or intent of this Agreement; *provided,* that when the approval of the Limited Partners is required by any provision of this Agreement, the Chief Executive Officer and President of the Partnership and the Liquidator may exercise the power of attorney made in this Section 2.6(a)(ii) only after the necessary consent or approval of the Limited Partners is obtained.

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Nothing contained in this Section 2.6(a) shall be construed as authorizing the Board of Supervisors to amend this Agreement except in accordance with Article XIII or as may be otherwise expressly provided for in this Agreement.

(b) The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and, to the maximum extent permitted by law, not be affected by the subsequent death, incompetency, disability, incapacity, dissolution, bankruptcy or termination of the Limited Partners and the ~~transfer~~Transfer of all or any portion of the Limited Partner s Partnership Interest and shall extend to the Limited Partner s heirs, successors, assigns and personal representatives. The Limited Partners hereby agree to be bound by any representation made by the Chief Executive Officer or President of the Partnership or the Liquidator acting in good faith pursuant to such power of attorney; and the Limited Partners hereby waive, to the maximum extent permitted by law, any and all defenses that may be available to contest, negate or disaffirm the action of the Chief Executive Officer or President of the Partnership or the Liquidator taken in good faith under such power of attorney. The Limited Partners shall execute and deliver to the Chief Executive Officer or President of the Partnership or the Liquidator, within 15 days after receipt of the request therefor, such further designation, powers of attorney and other instruments as the Chief Executive Officer or President of the Partnership or the Liquidator deems necessary to effectuate this Agreement and the purposes of the Partnership.

18.7 *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 close of Partnership business on September 30, 2085, or until the earlier dissolution of the Partnership in accordance with the provisions of Article XII.

18.8 *Title to Partnership Assets.*

Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner or one or more nominees, as the Board of Supervisors 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 nominees shall be held by the General Partner 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 Board of Supervisors determines that the expense and difficulty of conveyancing makes ~~transfer~~Transfer of record title to the Partnership impracticable) to be vested in the Partnership as soon as reasonably practicable; *provided, further,* that, prior to an event of withdrawal of the General Partner or as soon thereafter as practicable, the General Partner shall use reasonable efforts to effect the ~~transfer~~Transfer of record title to the Partnership and, prior to any such ~~transfer~~Transfer, will provide for the use of such assets in a manner satisfactory to the Board of Supervisors. 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 XIX

Rights of the Limited Partners

19.1 *Limitation of Liability.*

The Limited Partners shall have no liability under this Agreement except as expressly provided in this Agreement or the Delaware Act.

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19.2 *Management of Business.*

No Limited Partner (other than the General Partner, or any of its Affiliates or any member, officer, director, employee, partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, member of the board of supervisors or directors, employee or agent of a Group Member, in its capacity as such, if such Person shall also be a Limited Partner) shall participate in the operation, management or control (within the meaning of Section 17-303(a) 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 member, officer, director, employee, partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, member of the board of supervisors or directors, member, partner, employee or agent of a Group Member, the MLP or any Subsidiary of the MLP, 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.

19.3 *Rights of Limited Partners Relating to the Partnership.*

(a) In addition to other rights provided by this Agreement or by applicable law, and except as limited by Section 3.3(b), each of the Limited Partners shall have the right, for a purpose reasonably related to such Limited Partner s interest as a limited partner in the Partnership, upon reasonable demand and at the Limited Partner s own expense:

(i) to obtain true and full information regarding the status of the business and financial condition of the Partnership;

(ii) promptly after becoming available, to obtain a copy of the Partnership s federal, state and local tax returns for each year, *provided*, *however*, that only the requesting Limited Partner s Schedule K-1 will be included therewith;

(iii) to have furnished to it, upon notification to the Partnership, a current list of the name and last known business, residence or mailing address of each Partner;

(iv) to have furnished to it, upon notification to the Partnership, a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto, together with a copy 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;

(v) to obtain true and full information regarding the amount of cash and a description and statement of the Net Agreed Value of any other Capital Contribution by each Partner and which each Partner has agreed to contribute in the future, and the date on which each became a Partner; and

(vi) to obtain such other information regarding the affairs of the Partnership as is just and reasonable.

(b) The Board of Supervisors may keep confidential from the Limited Partners, for such period of time as the Board of Supervisors deems reasonable, (i) any information that the Board of Supervisors reasonably believes to be in the nature of trade secrets or (ii) other information the disclosure of which the Board of Supervisors in good faith believes (A) is not in the best interests of the Partnership Group, (B) could damage the Partnership Group or (C) that any Group Member is required by law or by agreements with third parties to keep confidential (other than agreements with Affiliates the primary purpose of which is to circumvent the obligations set forth in this Section 3.3).

19.4 *Outside Activities of the Limited Partners.*

Subject to the provisions of Section 7.11, which shall continue to be applicable to the Persons referred to therein, regardless of whether such Person shall also be a Limited Partner, any Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities in direct competition with the Partnership Group.

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ARTICLE XX

Transfer of Partnership Interests

20.1 *Transfer Generally.*

(a) ~~The term "transfer," when used in this Agreement with respect to a Partnership Interest, shall be deemed to refer to a transaction by whic~~h a ~~Partner assigns its Partnership Interest to another Person, and includes a~~When used in this Agreement, the term "Transfer" means a transfer, sale, assignment, conveyance, gift, pledge, encumbrance, hypothecation, mortgage, exchange or ~~any~~ other disposition ~~by law or otherwise~~, in whole or in part. The term "Transfer" also includes a grant of a proxy or other authorization to a third party to exercise voting or other rights with respect to any Group Member.

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

(c) Nothing contained in this Agreement shall be construed to prevent a ~~disposition~~Transfer by any securityholder of the General Partner of any or all of the issued and outstanding equity interests in the General Partner.

(d) Any ~~transfer~~Transfer of a Partnership Interest shall be subject to all mortgages, pledges, hypothecations and security interests, if any, encumbering such Partnership Interest.

20.2 *Transfer of the General Partner s Partnership Interest.*

If the General Partner ~~transfers its partnership interest as~~is also at that time the general partner of the MLP and it Transfers its general partnership interest in the MLP to any Person in accordance with the provisions of the MLP Agreement, then, upon the request of the Board of Supervisors, the General Partner shall contemporaneously therewith, ~~transfer~~ Transfer all, but not less than all, of its Partnership Interest as the general partner of the Partnership to such Person for consideration of $10, and the Limited ~~Partner~~Partners hereby expressly ~~consents~~consent to such ~~transfer~~Transfer. Except (i~~a~~) in connection with any pledge of (or any related foreclosure on) the General Partner s Partnership Interest as the general partner of the Partnership solely for the purpose of securing, directly or indirectly, indebtedness of the Partnership or the MLP, or (~~ii~~b) as set forth in the immediately preceding sentence, the General Partner may not ~~transfer~~Transfer all or any part of its Partnership Interest as the general partner of the Partnership. Any transferee of the Partnership Interests of the General Partner pursuant to this Section 4.2 shall be deemed to be a successor to the General Partner for purposes of this Agreement.

20.3 *Transfer of the Limited Partners Partnership Interests .*

Any Limited Partner may ~~transfer~~Transfer all, but not less than all, of its Partnership Interest as a limited partner of the Partnership in connection with the merger, consolidation or other combination of any of the Limited Partners with or into any other Person or the ~~transfer~~Transfer by any of the Limited Partners of all or substantially all of its assets to another Person, and following any such ~~transfer~~Transfer such Person may become a Substituted Limited Partner pursuant to Article X. Except as set forth in the immediately preceding sentence ~~or pursuant to the Exchange Agreement,~~ or in connection with any pledge of (or any related foreclosure on) the Limited Partner s Partnership Interest as a limited partner of the Partnership solely for the purpose of securing, directly or indirectly, indebtedness of the Partnership or the MLP, a Limited Partner may not ~~transfer~~Transfer all or any part of its Partnership Interest or withdraw from the Partnership.

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20.4 *Restrictions on Transfers.*

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

(b) The Board of Supervisors may impose restrictions on the ~~transfer~~Transfer of Partnership Interests if a subsequent Opinion of Counsel determines that such restrictions are necessary to avoid a significant risk of the Partnership or the MLP becoming taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes. The restrictions may be imposed by making such amendments to this Agreement as the Board of Supervisors may determine to be necessary or appropriate to impose such restrictions.

ARTICLE XXI

Contributions and Initial Transfers

21.1 *Organizational Contributions.*

In connection with the formation of the Partnership under the Delaware Act, the Initial General Partner made an initial Capital Contribution to the Partnership and was admitted as the general partner of the Partnership, and the MLP made an initial Capital Contribution to the Partnership and was admitted as a limited partner of the Partnership.

21.2 [Intentionally Deleted.]

21.3 *Additional Capital Contributions.*

With the consent of the Board of Supervisors, any Limited Partner may, but shall not be obliged to, make additional Capital Contributions to the Partnership. Except as provided in Section 12.8, the General Partner shall not be obligated, nor permitted, to make any additional Capital Contributions to the Partnership in its capacity as the General Partner of the Partnership.

21.4 *Interest and Withdrawal.*

No interest shall be paid by the Partnership on Capital Contributions, and no Partner shall be entitled to withdraw or a return of any part of its Capital Contributions or to receive any distribution from the Partnership, except as provided in Articles VI, XI and XII.

21.5 *Capital Accounts.*

(a) The Partnership shall maintain for each 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 pursuant to this Agreement (or any previous partnership agreement of the Partnership) and (ii) all items of Partnership income and gain (including~~, without limitation,~~ income and gain exempt from tax) computed in accordance with Section 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1, and decreased by (x) the amount of cash or the Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Partnership Interest pursuant to

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this Agreement (or any previous partnership agreement of the Partnership) and (y) all items of Partnership deduction and loss computed in accordance with Section 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1. ~~Immediately following the consummation of the transactions contemplated in the Exchange Agreement, the~~The General Partner s initial Capital Account ~~shall b~~eas of the date hereof is zero.

(b) For purposes of computing the amount of any item of income, gain, loss or deduction which 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 federal income tax purposes (including~~, without limitation,~~ any method of depreciation, cost recovery or amortization used for that purpose), *provided*, that:

(i) Solely for purposes of this Section 5.5, the Partnership shall be treated as owning directly its proportionate share (as determined by the Board of Supervisors) of all property owned by any OLP Subsidiary that is classified as a partnership for federal income tax purposes.

(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 which 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 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 -2(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) 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 5.5(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 (A) as if the adjusted basis of such property were equal to the Carrying Value of such property immediately following such adjustment and (B) using a rate of depreciation, cost recovery or amortization derived from the same method and useful life (or, if applicable, the remaining useful life) as is applied for federal income tax purposes; *provided, however,* that, if the asset has a zero adjusted basis for federal income tax purposes, depreciation, cost recovery or amortization deductions shall be determined using any reasonable method that the Board of Supervisors may adopt.

(vi) If the Partnership s adjusted basis in a depreciable or cost recovery property is reduced for federal income tax purposes pursuant to Section 48(q)(1) or 48(q)(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 year 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 48(q)(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.

(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~~Transferred.

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(d) (i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of additional Partnership Interests for cash or Contributed Property, the Capital Account of all Partners 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, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such issuance and had been allocated to the Partners at such time pursuant to Section 6.1. In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and fair market value of all Partnership assets (including~~, without limitation,~~ cash or cash equivalents) immediately prior to the issuance of additional Partnership Interests shall be determined by the Board of Supervisors using such reasonable method of valuation as it may adopt; *provided, however,* that the Board of Supervisors, in arriving at such valuation, must take fully into account the fair market value of the Partnership Interests of all Partners at such time. The Board of Supervisors shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines in its discretion to be reasonable) to arrive at a fair market value for individual properties.

(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, as if such Unrealized Gain or Unrealized Loss had been recognized in a sale of 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 determining such Unrealized Gain or Unrealized Loss the aggregate cash amount and fair market value of all Partnership assets (including~~, without limitation,~~ cash or cash equivalents) immediately prior to a distribution shall (A) in the case of an actual distribution which is not made pursuant to Section 12.4, be determined and allocated in the same manner as that provided in Section 5.5(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 12.4, be determined and allocated by the Liquidator using such reasonable method of valuation as it may adopt.

21.6 *Loans from Partners.*

Loans by a Partner to the Partnership shall not constitute Capital Contributions. If any Partner shall advance funds to the Partnership in excess of the amounts required hereunder to be contributed by it to the capital of the Partnership, the making of such excess advances shall not result in any increase in the amount of the Capital Account of such Partner. The amount of any such excess advances shall be a debt obligation of the Partnership to such Partner and shall be payable or collectible only out of the Partnership assets in accordance with the terms and conditions upon which such advances are made.

21.7 *No Preemptive Rights.*

No Person shall have any preemptive, preferential or other similar rights with respect to (a) additional Capital Contributions; (b) issuance or sale of any class or series of Partnership Interests, whether unissued, held in treasury by the Partnership or hereafter created; (c) issuance of any obligations, evidences of indebtedness or other securities of the Partnership convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any such Partnership Interests; (d) issuance of any right of subscription to or right to receive, or any warrant or option for the purchase of, any such Partnership Interests; or (e) issuance or sale of any other securities that may be issued or sold by the Partnership.

21.8 *Fully Paid and Non-Assessable Nature of Limited Partner Partnership Interests.*

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

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ARTICLE XXII

Allocations and Distributions

22.1 *Allocations for Capital Account Purposes.*

(a) *General*. In maintaining the Capital Accounts that determine the rights of the Partners among themselves, the Partnership s items of income, gain, loss and deduction (computed in accordance with Section 5.5(b)), shall be allocated among the Partners in accordance with their relative Percentage Interests, except as otherwise provided below.

(b) *Limitation on Losses*. Any deduction otherwise allocable to a Limited Partner that would create or add to a deficit in its Adjusted Capital Account shall instead be allocated to the General Partner. Thereafter, any income that would otherwise be allocable to such Limited Partner shall be allocated to the General Partner until the aggregate amount so allocated under this sentence equals the aggregate deductions previously allocated to the General Partner under the preceding sentence.

(c) *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(c), 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(c) with respect to such taxable period (other than an allocation pursuant to Sections 6.1(c)(v) and 6.1(c)(vi)). This Section 6.1(c)(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.l(c)(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(c), 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(c), other than Section 6.1(c)(i) and other than an allocation pursuant to Sections 6.1(c)(v) and 6.1(c)(vi), with respect to such taxable period. This Section 6.1(c)(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) *Qualified Income Offset*. In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704 -1(b)(2)(ii)(d)(4), 1.704 -1(b)(2)(ii)(d)(5), or 1.704 -1(b)(2)(ii)(d)(6), items of Partnership 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 unless such deficit balance is otherwise eliminated pursuant to Section 6.1(c)(i) or (ii).

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(iv) *Gross Income Allocations*. In the event any Partner has a deficit balance in its Capital Account at the end of any Partnership 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(c)(iv) shall be made only if and to the extent that such Partner would have a deficit balance in its Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if this Section 6.1(c)(iv) were not in this Agreement.

(v) *Nonrecourse Deductions*. Nonrecourse Deductions for any taxable period shall be allocated to the Partners in accordance with their respective Percentage Interests. If the Board of Supervisors determines in its good faith discretion that the Partnership s Nonrecourse Deductions must 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 Board of Supervisors is authorized, upon notice to the Limited Partners, to revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

(vi) *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.

(vii) *Nonrecourse Liabilities*. For purposes of Treasury Regulation Section 1.752 -3(a)(3), the Partners agree that Nonrecourse Liabilities of the Partnership in excess of the sum of (A) the amount of Partnership Minimum Gain and (B) the total amount of Nonrecourse Built-in Gain shall be allocated among the Partners in accordance with their respective Percentage Interests.

(viii) *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(c) 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.

(ix) *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 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. Allocations pursuant to this Section 6.1(c)(ix)(A) shall only be made with respect to Required Allocations to the extent the Board of Supervisors reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the Partners. Further, allocations pursuant to this Section 6.1(c)(ix)(A) shall be deferred with respect to allocations pursuant to clauses (1) and (2) hereof to the extent the Board of Supervisors reasonably determines that such allocations are likely to be offset by subsequent Required Allocations.

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(B) The Board of Supervisors shall have reasonable discretion, with respect to each taxable period, to (1) apply the provisions of Section 6.1(c)(ix)(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(c)(ix)(A) among the Partners in a manner that is likely to minimize such economic distortions.

22.2 *Allocations for Tax Purposes.*

(a) *General*. Except as otherwise provided herein, for 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) *Contributed Property*. In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation, amortization and cost recovery deductions shall be allocated for federal income tax purposes among the Partners as follows:

(i) (A) In the case of a Contributed Property, such items attributable thereto shall be allocated among the Partners in the manner provided under Section 704(c) of the Code that takes into account the variation between the Agreed Value of such property and its adjusted basis at the time of contribution; and (B) any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the Partners in the same manner as its correlative item of book gain or loss is allocated pursuant to Section 6.1.

(ii) (A) In the case of an Adjusted Property, such items shall (1) first, be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 5.5(d)(i) or (ii), and (2) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 6.2(b)(i)(A); and (B) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Partners in the same manner as its correlative item of book gain or loss is allocated pursuant to Section 6.1.

(iii) The Board of Supervisors shall apply the principles of Treasury Regulation Section 1.704 -3(d) to eliminate Book-Tax Disparities.

(c) *Discretionary Allocation Authority*. For the proper administration of the Partnership and for the preservation of uniformity of the Units of the MLP (or any class or classes thereof), the Board of Supervisors shall have sole discretion to (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (ii) make special allocations for federal income tax purposes of income (including~~, without limitation,~~ gross income) or deductions; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code or (y) otherwise to preserve or achieve uniformity of the Units of the MLP (or any class or classes thereof). The Board of Supervisors may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.2(c) 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 Units issued and outstanding or the Partnership, and if such allocations are consistent with the principles of Section 704 of the Code.

(d) *Discretionary Amortization Authority*. The Board of Supervisors in its discretion 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 Partnership s common basis of such property, despite any inconsistency of such approach with Treasury Regulation Section 1.167(c)-1(a)(6). If the Board of Supervisors determines that such reporting position cannot reasonably be taken, the Board of Supervisors may adopt depreciation and amortization conventions under which

all purchasers acquiring Units of the MLP 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 Board of Supervisors chooses not to utilize such aggregate method, the Board of Supervisors may use any other reasonable depreciation and amortization conventions to preserve the uniformity of the intrinsic tax characteristics of any Units that would not have a material adverse effect on any Limited Partner or the holders of any class or classes of Units.

(e) *Recapture Income*. Any gain allocated to the Partners upon the sale or other taxable disposition of any Partnership asset shall, to the extent possible, after taking into account other required allocations of gain pursuant to this Section 6.2, be characterized as Recapture Income in the same proportions and to the same extent as such Partners (or their predecessors in interest) have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

(f) *Effect of Section 754 Election*. All items of income, gain, loss, deduction and credit recognized by the Partnership for 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 which may be made by the Partnership; *provided, however,* that such allocations, once made, shall be adjusted as necessary or appropriate to take into account those adjustments permitted or required by Sections 734 and 743 of the Code.

(g) *Proration*. The Board of Supervisors may adopt such methods of allocation of income, gain, loss or deduction between a transferor and a transferee of a Partnership Interest as it determines necessary, to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.

22.3 [Intentionally Deleted.]

22.4 *General Distributions.*

(a) Within 45 days following the end of each Quarter commencing with the Quarter ending on June 29, 1996, an amount equal to 100% of Available Cash with respect to such Quarter shall be distributed in accordance with this Article VI by the Partnership to the Partners in accordance with their respective Percentage Interests. The immediately preceding sentence shall not require any distribution of cash if and to the extent such distribution would be prohibited by applicable law or by any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Partnership is a party or by which it is bound or its assets are subject. All distributions required to be made under this Agreement shall be made subject to Sections 17 -607 or 17-804 of the Delaware Act.

(b) In the event of the dissolution and liquidation of the Partnership, all receipts received during or after the Quarter in which the Liquidation Date occurs, except as otherwise provided in (a)(ii) of the definition of Available Cash, shall be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.4.

(c) The Board of Supervisors shall have the discretion to 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 Available Cash to such Partners.

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ARTICLE XXIII

Management and Operation of Business

23.1 *Management.*

(a) Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be vested exclusively in the Board of Supervisors, and subject to the direction of the Board of Supervisors and in accordance with the provisions of Section 7.7, the Officers. Neither the General Partner (except as otherwise expressly provided in this Agreement) nor any Limited Partner shall have any management power or control over the business and affairs of the Partnership. Thus, except as otherwise expressly provided in this Agreement, the business and affairs of the Partnership shall be managed by or under the direction of the Board of Supervisors, and the day-to-day activities of the Partnership shall be conducted on the Partnership s behalf by the Officers, who shall be agents of the Partnership. In order to enable the Board of Supervisors to manage the business and affairs of the Partnership, the General Partner, except as otherwise expressly provided in this Agreement, hereby irrevocably delegates to the Board of Supervisors all management powers over the business and affairs of the Partnership that it may now or hereafter possess under applicable law. The General Partner further agrees to take any and all action necessary and appropriate, in the sole discretion of the Board of Supervisors, to effect any duly authorized actions by the Board of Supervisors or any Officer, including executing or filing any agreements, instruments or certificates, delivering all documents, providing all information and taking or refraining from taking action as may be necessary or appropriate to achieve the effective delegation of power described in this Section 7.1(a). Each of the Partners and each Person who may acquire an interest in a Partnership Interest hereby approves, consents to, ratifies and confirms such delegation. The delegation by the General Partner to the Board of Supervisors of management powers over the business and affairs of the Partnership pursuant to the provisions of this Agreement shall not cause the General Partner to cease to be a general partner of the Partnership nor shall it cause the Board of Supervisors or any member thereof to be a general partner of the Partnership or to have or be subject to the liabilities of a general partner of the Partnership. Except as otherwise specifically provided in Sections 7.13, 7.14, 7.15 and 7.16, the authority, functions, duties and responsibilities of the Board of Supervisors and of the Officers shall be identical to the authority, functions, duties and responsibilities of the board of directors and officers, respectively, of a corporation organized under the Delaware General Corporation Law.

(b) Consistent with the management powers delegated to the Board of Supervisors pursuant to the provisions of this Agreement, the Board of Supervisors shall have the powers now or hereafter granted a general partner of a limited partnership under the Delaware Act or any other applicable law and, except as otherwise expressly provided in this Agreement, shall have full power and authority to do all things and on such terms as it may deem 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 or incurrence of Indebtedness, the assumption or guarantee of, or other contracting for, ~~indebtedness~~Indebtedness and other liabilities, the issuance of evidences of ~~indebtedness~~Indebtedness 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;

(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 any Group Member, the lending of funds to other Persons (including the MLP or any Subsidiary of the MLP), the repayment of obligations of any Group Member, the MLP or any Subsidiary of the MLP and the making of capital contributions to any Group Member, the MLP or any Subsidiary of the MLP.

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(v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including instruments that limit the liability of the Partnership under contractual arrangements to all or particular assets of the Partnership, with the other party to the contract to have no recourse against the General Partner or its assets other than its interest in the Partnership, even if 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 who are Officers) 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 such insurance for the benefit of the Partnership Group and the Partners (including the assets of the Partnership) as it deems necessary or appropriate,

(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 relationships;

(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 and the incurring of legal expense and the settlement of claims and litigation; and

(xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law.

(c) Notwithstanding any other provision of this Agreement and the MLP Agreement, and to the fullest extent permitted by applicable law, each of the Partners hereby (i) approves, consents to, ratifies and confirms the General Partner s delegation of management powers to the Board of Supervisors pursuant to paragraph (a) of this Section 7.1~~; (ii) approves, consents to, ratifies and confirms the execution, delivery and performance by the parties thereto of the Exchange Agreement and the other agreements executed in connection therewith relating to the Partnership; (iii) agrees that the Partnership (through any duly authorized Officer of the Partnership) is authorized to execute, deliver and perform the agreements referred to in clause (ii) of this sentence and the other agreements, acts, transactions and matters described in or contemplated by the Proxy Statement without any further act, approval or vote of the Partners; and (iv~~ and (ii) agrees that the execution, delivery or performance by the General Partner, the MLP, the Board of Supervisors or any member thereof, any duly authorized Officer of the Partnership, any Group Member or any Affiliate of any of them, of this Agreement or any agreement authorized or permitted under this Agreement, shall not constitute a breach by any such Person of any duty that any of such Persons may owe the Partnership, a Limited Partner or any other Persons under this Agreement (or any other agreements) or of any duty stated or implied by law or equity.

23.2 *The Board of Supervisors; Appointment; Manner of Acting.*

(a) The Board of Supervisors shall consist of those individuals who serve as members of the board of supervisors of the MLP.

(b) Each member of the Board of Supervisors shall have one vote. The vote of the majority of the members of the Board of Supervisors present at a meeting at which a quorum is present shall be the act of the Board of Supervisors. A majority of the number of members of the Board of Supervisors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Supervisors, but if less than a quorum is present at a meeting, a majority of the members of the Board of Supervisors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

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23.3 *Removal of Members of the Board of Supervisors.*

Any member of the Board of Supervisors may be removed with or without Cause, by the affirmative vote of the majority of the members of the ~~Board~~board of ~~Supervisors~~supervisors of the MLP, but only if such person is also removed as a member of the MLP ~~s Board~~board of ~~Supervisors~~supervisors; *provided, however,* that his or her successor on the MLP s board of supervisors is elected in the manner set forth in the MLP Agreement. If an individual who is a member of the board of supervisors of the MLP is removed from such board, such individual will automatically be removed from the Board of Supervisors.

23.4 *Resignations of Members of the Board of Supervisors.*

Any member of the Board of Supervisors may resign at any time by giving written notice to the Board of Supervisors. Such resignation shall take effect at the time specified therein, but only if such person also resigns from the MLP s board of supervisors. If an individual who is a member of the board of supervisors of the MLP resigns from such board, such individual will automatically be deemed to have resigned from the Board of Supervisors.

23.5 *Vacancies on the Board of Supervisors.*

If any Supervisor is removed, resigns or is otherwise unable to serve as a member of the Board of Supervisors, or if the size of the Board of Supervisors is increased, thereby creating a vacancy, the ~~Board~~board of ~~Supervisors~~supervisors of the MLP shall in its sole discretion, appoint an individual to fill the vacancy for the unexpired term of such Supervisor s predecessor in office, or, in connection with an increase in the size of the Board of Supervisors, for the term of such individual on the ~~Board~~board of ~~Supervisors~~supervisors of the MLP, who is the same individual appointed to fill the corresponding vacancy on the MLP s board of supervisors,

23.6 *Meetings; Committees; Chairman.*

(a) Regular meetings of the Board of Supervisors shall be held at such times and places as shall be designated from time to time by resolution of the Board of Supervisors. Notice of such regular meetings shall not be required. Special meetings of the Board of Supervisors may be called by written request of a majority of the members of the Board of Supervisors, on at least 48 hours prior written notice to the other members (which written notice may take the form of e-mail or other electronic communication). Any such notice, or waiver thereof, need not state the purpose of such meeting except as may otherwise be required by law. Attendance of a member of the Board of Supervisors at a meeting (including pursuant to the penultimate sentence of this Section 7.6(a)) shall constitute a waiver of notice of such meeting, except where such member attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Any action required or permitted to be taken at a meeting of the Board of Supervisors may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by all the members of the Board of Supervisors. Members of the Board of Supervisors may participate in and hold meetings by means of conference telephone, videoconference or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meetings shall constitute presence in person at the meeting. The Board of Supervisors may establish any additional rules governing the conduct of its meetings that are not inconsistent with the provisions of this Agreement.

(b) The Board of Supervisors shall appoint the Audit Committee to consist solely of the individuals who serve as the audit committee of the MLP. The Audit Committee shall perform the functions delegated to it pursuant to the terms of this Agreement and its charter and such other matters as may be delegated to it from time to time by resolution of the Board of Supervisors. The Board of Supervisors, by a majority of the whole Board of Supervisors, may appoint one or more additional committees of the Board of Supervisors to consist of one or more members of the Board of Supervisors, which committee(s) shall have and may exercise such of the powers

and authority of the Board of Supervisors (including in respect of Section 7.1) with respect to the management of the business and affairs of the Partnership as may be provided in a resolution of the Board of Supervisors. Any committee designated pursuant to this Section 7.6(b) shall choose its own chairman, shall keep regular minutes of its proceedings and report the same to the Board of Supervisors when requested, shall fix its own rules or procedures and shall meet at such times and at such place or places as may be provided by such rules or by resolution of such committee or resolution of the Board of Supervisors. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the taking of any action. Subject to the first sentence of this Section 7.6(b), the Board of Supervisors may designate one or more members of the Board of Supervisors as alternate members of any committee who may replace any absent or disqualified member at any meeting of such committee. Subject to the first sentence of this Section 7.6(b), in the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Supervisors to act at the meeting in the place of the absent or disqualified member.

(c) The Board of Supervisors may elect one of its members as Chairman or Vice Chairman of the Board of Supervisors. The Chairman of the Board of Supervisors, if any, and if present and acting, shall preside at all meetings of the Board of Supervisors. In the absence of the Chairman of the Board of Supervisors, the Vice Chairman of the Board of Supervisors, if any, and if present and acting, shall preside at all meetings of the Board of Supervisors. In the absence of the Chairman of the Board of Supervisors and the Vice Chairman of the Board of Supervisors, the Chief Executive Officer, if present, or if not present, the President, if present, acting and a member of the Board of Supervisors, or any other member of the Board of Supervisors chosen by the Board of Supervisors shall preside.

23.7 *Officers.*

(a) *Generally*. The Board of Supervisors, as set forth below, shall appoint agents of the Partnership, referred to as Officers of the Partnership as described in this Section 7.7. Unless provided otherwise by resolution of the Board of Supervisors, (i) the officers of the MLP shall hold the same position as Officers of the Partnership and (ii) the Officers shall have the titles, power, authority and duties described below in this Section 7.7.

(b) *Titles and Number*. The Officers shall be the Chief Executive Officer, the President, any and all Vice Presidents, the Secretary and any and all Assistant Secretaries and the Treasurer and any and all Assistant Treasurers and any other Officers appointed pursuant to Section 7.7(j). Any person may hold two or more offices.

(c) *Appointment and Term of Office*. The Officers shall be appointed by the Board of Supervisors at such time and for such terms as the Board of Supervisors shall determine. Any Officer may be removed, with or without Cause, only by the Board of Supervisors. Vacancies in any office may be filled only by the Board of Supervisors.

(d) *Chairman and Vice Chairman of the Board of Supervisors*. The Board of Supervisors may elect one of its members as the Chairman or Vice Chairman of the Board of Supervisors, *provided*, *however*, the Chairman and Vice-Chairman shall not be Officers of the Partnership unless determined otherwise by the Board of Supervisors.

(e) *Chief Executive Officer*. The Board of Supervisors may elect a Chief Executive Officer of the Partnership. The Chief Executive Officer shall be responsible for the general and active management and direction of the Partnership and shall see that all orders and resolutions of the Board of Supervisors are carried into effect. He shall have the power and authority to sign all contracts, certificates and other instruments of the Partnership, which may be authorized by the Board of Supervisors. He shall have such powers, duties and authority as from time to time may be assigned to him/her by this Agreement or by the Board of Supervisors.

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(f) *President*. The Board of Supervisors may elect a President of the Partnership. Subject to the limitations imposed by this Agreement, any employment agreement, any employee plan or any determination of the Board of Supervisors, the President, subject to the direction of the Board of Supervisors and the Chief Executive Officer shall be responsible for the management and direction of the day-to-day business and affairs of the Partnership, its other Officers, employees and agents, shall supervise generally the affairs of the Partnership and shall have full authority to execute all documents and take all actions that the Partnership may legally take. The President shall exercise such other powers and perform such other duties as may be assigned to him by this Agreement, the Board of Supervisors or the Chief Executive Officer, including any duties and powers stated in any employment agreement approved by the Board of Supervisors.

(g) *Vice Presidents*. Each Vice President shall perform such duties and may exercise such powers as may from time to time be assigned to him by the Board of Supervisors, the Chief Executive Officer or the President, including the power to execute documents on behalf of the Partnership, within the authorization limits established from time to time by the Board of Supervisors, the Chief Executive Officer or the President.

(h) *Secretary and Assistant Secretaries*. The Secretary shall record or cause to be recorded in books provided for that purpose the minutes of the meetings or actions of the Board of Supervisors and Partners, shall see that all notices are duly given in accordance with the provisions of this Agreement and as required by law, shall be custodian of all records (other than financial), shall see that the books, reports, statements, certificates and all other documents and records required by law are properly kept and filed, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by this Agreement, the Board of Supervisors, the Chief Executive Officer or the President. The Assistant Secretaries shall exercise the powers of the Secretary during that Officer s absence or inability or refusal to act.

(i) *Treasurer and Assistant Treasurers*. The Treasurer shall keep or cause to be kept the books of account of the Partnership and shall render statements of the financial affairs of the Partnership in such form and as often as required by this Agreement, the Board of Supervisors, the Chief Executive Officer or the President. The Treasurer, subject to the order of the Board of Supervisors, shall have the custody of all funds and securities of the Partnership. The Treasurer shall perform all other duties commonly incident to his office and shall perform such other duties and have such other powers as this Agreement, the Board of Supervisors, the Chief Executive Officer or the President, shall designate from time to time. The Assistant Treasurers shall exercise the power of the Treasurer during that Officer s absence or inability or refusal to act. Each of the Assistant Treasurers shall possess the same power as the Treasurer to sign all certificates, contracts, obligations and other instruments of the Partnership. If no Treasurer or Assistant Treasurer is appointed and serving or in the absence of the appointed Treasurer and Assistant Treasurer, the Vice President and Chief Financial Officer, or such other Officer as the Board of Supervisors shall select, shall have the powers and duties conferred upon the Treasurer.

(j) *Other Officers and Agents*. The Board of Supervisors may appoint such other Officers and agents as may from time to time appear to be necessary or advisable in the conduct of the affairs of the Partnership, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Supervisors.

(k) *Powers of Attorney*. The Board of Supervisors may grant powers of attorney or other authority as appropriate to establish and evidence the authority of the Officers and other Persons.

(l) *Officers Delegation of Authority*. Unless otherwise provided by resolution of the Board of Supervisors, no Officer shall have the power or authority to delegate to any Person such Officer s rights and powers as an Officer to manage the business and affairs of the Partnership.

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23.8 *Compensation.*

The Officers shall receive such compensation for their services as may be designated by the Board of Supervisors or a committee thereof. In addition, the Officers shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service hereunder. The members of the Board of Supervisors who are not employees of the Partnership or its Affiliates shall receive such compensation for their services as members of the Board of Supervisors or members of a committee of the Board of Supervisors as the Board of Supervisors shall determine. In addition, the members of the Board of Supervisors shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service hereunder.

23.9 *Restrictions on General Partner s and Board of Supervisors Authority.*

(a) Except as provided in Articles XII and XIV, and below in this Section 7.9, neither the General Partner nor the Board of Supervisors may sell, exchange or otherwise dispose of all or substantially all of the Partnership s assets in a single transaction or a series of related transactions without written approval of the specific act by the Limited Partners or by other written instrument executed and delivered by the Limited Partners subsequent to the date of this Agreement; *provided, however*, that this provision shall not preclude or limit either the General Partner s or(i) the Board of Supervisors ability (without approval of any Partner) to mortgage, pledge, hypothecate or grant a security interest in any part of or all or substantially all of the assets of the Partnership Group or, in the case of the General Partner, its general partner interest in the Partnership, andany Group Member (including any general partner interest or limited partner interest in any Group Member), or (ii) the General Partner s ability (without the approval of any Partner) to mortgage, pledge, hypothecate or grant a security interest in any part of or all or substantially all of its general partnership interest or limited partnership interest, in whole or in part, in any Group Member, and this provision shall not apply to any forced sale of any orpart of or all or substantially all of the Partnership s assets or the General Partner s general partnerpartnership interest in the Partnershipof any Group Member pursuant to the foreclosure of, or other realization upon, any such encumbrancemortgage, pledge, hypothecation or grant of security interest. For the avoidance of doubt, nothing in this Agreement shall prevent the Board of Supervisors, acting on behalf of the MLP (without the approval of any Unitholder), or the General Partner (without the approval of any other Partner or any Unitholder), from proposing, consenting to or approving any amendment to this Agreement (to the extent such proposal, consent or approval of the Board of Supervisors or the General Partner, as the case may be, is required at that time) or from taking any action permitted to be taken by a partner of the Partnership, in each case in connection with any transaction by or involving the Partnership with respect to the incurrence, assumption or guarantee of, or other contracting for, Indebtedness, the issuance of evidences of Indebtedness, or the mortgage, pledge, hypothecation or granting of a security interest in any part of or all or substantially all the assets of the Partnership in association with the incurrence, assumption or guarantee of, or other contracting for, Indebtedness.

(b) The Board of Supervisors may not cause the Partnership to incur any Indebtedness that is recourse to the General Partner or any of its Affiliates without the approval of the General Partner, which approval may be given or withheld in the General Partner s sole discretion.

23.10 *Reimbursement of the General Partner; Employee Benefit Plans.*

(a) Except as provided in this Section 7.10 and elsewhere in this Agreement or in the MLP Agreement, the General Partner shall not be compensated for its services as general partner of any Group Member.

(b) The General Partner shall be reimbursed on a monthly basis, or such other basis as the Board of Supervisors may determine, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership (including salary, bonus, incentive compensation and other amounts paid to any Person to perform services for the Partnership or for the General Partner or the Board of Supervisors in the discharge of its duties to the Partnership) and (ii) all other necessary or appropriate expenses allocable to the Partnership or otherwise reasonably incurred by the General Partner in connection with operating the Partnership s business (including

expenses allocated to the General Partner by its Affiliates). Reimbursements pursuant to this Section 7.10 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.13.

(c) The Board of Supervisors, in its sole discretion and without the approval of the Limited Partners (who shall have no right to vote in respect thereof), may propose and adopt on behalf of the Partnership employee benefit plans, employee programs and employee practices for the benefit of the members of the Board of Supervisors, employees of the Partnership, any Group Member or any Affiliate, or any of them, in respect of services performed, directly or indirectly, for the benefit of the Partnership Group.

23.11 *Outside Activities of the General Partner.*

(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 of the Partnership and the MLP, and any other partnership of which the Partnership or the MLP is, directly or indirectly, a partner (it being understood that the General Partner shall not be required to be the general partner of the MLP or any other partnership of which the Partnership or the MLP is, directly or indirectly, a partner) and to undertake activities that are ancillary or related thereto (including being a limited partner in the MLP), and (ii) shall not enter into or conduct any business or incur any debts or liabilities except in connection with or incidental to (A) its performance of the activities required or authorized by this Agreement or the MLP Agreement and (B) the acquisition, ownership or ~~disposition~~Transfer of Partnership Interests or partnership interests in the MLP or any other partnership of which the Partnership or the MLP is, directly or indirectly, a partner; *provided, however,* that notwithstanding the foregoing, employees of the General Partner may perform limited services for other Affiliates of the General Partner in addition to the Partnership and the MLP (it being understood that full time employees of the General Partner shall devote substantially all their employment services to the Partnership and the MLP).

(b) Except as described in Section 7.11(a), each Indemnitee (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, independently or with others, whether in the businesses engaged in by or anticipated to be engaged in by the Partnership, the MLP, any Subsidiary of the MLP, any Group Member or otherwise, including~~, without limitation,~~ in the case of any Affiliates of the General Partner, business interests and activities in direct competition with the business and activities of the MLP, any Subsidiary of the MLP or any Group Member, and none of the same shall constitute a breach of this Agreement or the MLP Agreement or any duty to the MLP, any Subsidiary of the MLP, any Group Member or any Partner existing hereunder, under the MLP Agreement, at law, in equity or otherwise. Neither the MLP, any Subsidiary of the MLP, any Group Member, any Limited Partner nor any other Person shall have any rights by virtue of this Agreement, the MLP Agreement or the partnership relationship established hereby or thereby in any business ventures of any Indemnitee and such Indemnitees shall have no obligation to offer any interest in any such business ventures to the MLP, any Subsidiary of the MLP, any Group Member, any Limited Partner or any other Person. The General Partner and any Affiliates of the General Partner may acquire Partnership Interests, and except as otherwise provided in this Agreement, shall be entitled to exercise all rights of a Limited Partner relating to such Partnership Interests.

(c) Subject to the terms of Sections 7.11(a) and 7.11(b) but otherwise notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any of the Indemnitees (other than the General Partner) in accordance with Section 7.11(b) is hereby approved by the Partnership and all Partners and (ii) it shall be deemed not to be a breach of the General Partner s fiduciary duties or any other obligation of any type whatsoever of the General Partner for the General Partner to permit its Affiliates to engage, or for any such Affiliate to engage, in business interests and activities in preference to or to the exclusion of the Partnership.

(d) The term Affiliates when used in this Section 7.11 with respect to the General Partner shall not include the MLP, any Subsidiary of the MLP, or any Group Member.

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23.12 *Loans from the General Partner; Contracts with Affiliates; Certain Restrictions on the General Partner.*

(a) The General Partner or any Affiliate of the General Partner may lend to any Group Member, and any Group Member may borrow from the General Partner and any Affiliate of the General Partner, 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 less favorable on the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arms-length basis (without reference to the lending party s financial abilities or guarantees). 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 7.12(a) and Section 7.12(b), the term Group Member shall include any Affiliate of the Group Member that is controlled by the Group Member. No Group Member may lend funds to the General Partner or any of its Affiliates; *provided, however,* that notwithstanding the foregoing, any Group Member may lend funds to the MLP, any Subsidiary of the MLP or another Group Member.

(b) The Partnership may lend or contribute to the MLP, any Subsidiary of the MLP, or any Group Member, and any Group Member may borrow from the MLP, any Subsidiary of the MLP or the Partnership, funds on terms and conditions established by the Board of Supervisors; *provided, however,* that the Partnership may not charge the MLP, any Subsidiary of the MLP or a Group Member interest at a rate greater than the rate that would be charged to the MLP, any Subsidiary of the MLP or such Group Member (without reference to the General Partner s financial abilities or guarantees), by unrelated lenders on comparable loans. The foregoing authority shall be exercised by the Board of Supervisors and shall not create any right or benefit in favor of the MLP, any Subsidiary of the MLP, any Group Member or any other Person.

(c) The General Partner may itself, or may enter into an agreement with any of its Affiliates to, render services to a Group Member. Any services rendered to a Group Member by the General Partner or any of its Affiliates shall be on terms that are fair and reasonable to the Partnership; *provided, however,* that the requirements of this Section 7.12(c) shall be deemed satisfied as to (i) any transaction approved by Special Approval, (ii) any transaction, the terms of which are no less favorable to the Partnership Group than those generally being provided to or available from unrelated third parties or (iii) any transaction that, 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 Group), is equitable to the Partnership Group. The provisions of Section 7.10 shall apply to the rendering of services described in this Section 7.12(c).

(d) The Partnership may ~~transfer~~Transfer assets to joint ventures, other partnerships, corporations, limited liability companies or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions as are consistent with this Agreement and applicable law.

(e) Neither the General Partner nor any of its Affiliates shall ~~sell, transfer or convey~~Transfer any property to, or purchase any property from, the Partnership, directly or indirectly, except pursuant to transactions that are fair and reasonable to the Partnership; *provided, however,* that the requirements of this Section 7.12(e) shall be deemed to be satisfied as to (i) ~~the transactions effected pursuant to the Exchange Agreement, (ii)~~ any transaction approved by Special Approval, (~~iii~~ii) any transaction, the terms of which are no less favorable to the Partnership than those generally being provided to or available from unrelated third parties, or (~~iv~~iii) any transaction that, 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), is equitable to the Partnership.

(f) The General Partner and its Affiliates will have no obligation to 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, nor shall there be any obligation on the part of the General Partner or its Affiliates to enter into such contracts.

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23.13 *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 from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees, expenses and other disbursements), judgments, fines, penalties, interest, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, 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, *provided,* that in each case the Indemnitee acted in good faith and in a manner that such Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Partnership and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that the Indemnitee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 7.13 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, expenses and other disbursements) incurred by an Indemnitee who is indemnified pursuant to Section 7.13(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined by a final, non-appealable order of a court of competent jurisdiction that the Indemnitee is not entitled to be indemnified as authorized in this Section 7.13.

(c) The indemnification provided by this Section 7.13 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, both as to actions in the Indemnitee s capacity as an Indemnitee and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

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

(e) For purposes of this Section 7.13, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute fines within the meaning of Section 7.13(a); and action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is in, or not opposed to, the best interests of the Partnership.

(f) In no event may an Indemnitee subject any Limited Partner 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 7.13 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.

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(h) The provisions of this Section 7.13 are for the benefit of the Indemnitees, their heirs, successors, assigns 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 7.13 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 7.13 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.

23.14 *Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership, any Limited Partner or any other Persons who have acquired interests in the Partnership, for losses sustained or liabilities incurred as a result of errors in judgment or any act or omission if such Indemnitee acted in good faith pursuant to authority granted in this Agreement.

(b) To the maximum extent permitted by law, the General Partner and its Affiliates shall not be responsible for any act or omission by the Board of Supervisors, any member of the Board of Supervisors, or any Officers of the Partnership.

(c) To the maximum extent permitted by law, the members of the Board of Supervisors and the Officers of the Partnership shall not be responsible for any act or omission by the General Partner and its Affiliates.

(d) Subject to its obligations and duties set forth in Section 7.1(a), the Board of Supervisors 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 the Officers or other agents of the Partnership, and, to the maximum extent permitted by law, the Board of Supervisors shall not be responsible for any misconduct or negligence on the part of any such Officer or agent appointed by the Board of Supervisors in good faith.

(e) It will not constitute a breach of fiduciary or other duty for an Officer or member of the Board of Supervisors to engage attorneys, accountants, engineers and other advisors on behalf of the Partnership, its Board of Supervisors, or any committee thereof, even though such persons may also be retained from time to time by the General Partner or any of its Affiliates, and such persons may be engaged with respect to any matter in which the interests of the Partnership and the General Partner or any of its Affiliates may differ, or may be engaged by both the Partnership and the General Partner or any of its Affiliates with respect to a matter, as long as such Officer or member of the Board of Supervisors reasonably believes that any conflict between the Partnership and the General Partner or any of its Affiliates with respect to such matter is not material; and

(f) Any amendment, modification or repeal of this Section 7.14 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability to the Partnership and the Limited Partner, of the General Partner, its directors, officers and employees and any other Indemnitees under this Section 7.14 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.

23.15 *Resolution of Conflicts of Interest.*

(a) Unless otherwise expressly provided in this Agreement or the MLP Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its Affiliates, or any Officer or member of the Board of Supervisors, on the one hand, and the Partnership, the MLP, or any Partner, on the other, any resolution or course of action in respect of such conflict of interest shall be permitted and deemed approved by

the Limited Partners, and shall not constitute a breach of this Agreement, of the MLP Agreement, or of any agreement contemplated herein or therein, or of any duty stated or implied by law or equity, if the resolution or course of action is, or by operation of this Agreement is deemed to be, fair and reasonable to the Partnership. The Board of Supervisors shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of a resolution of such conflict or course of action. Any conflict of interest and any resolution of such conflict of interest shall be conclusively deemed fair and reasonable to the Partnership if such conflict of interest or resolution is (i) approved by Special Approval (as long as the material facts known to the General Partner or any of its Affiliates or such Officer or member of the Board of Supervisors regarding any proposed transaction were disclosed to the Audit Committee at the time it gave its approval), (ii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iii) fair 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 Board of Supervisors may also adopt a resolution or course of action that has not received Special Approval. The Board of Supervisors (including the Audit Committee in connection with Special Approval) shall be authorized in connection with its determination of what is fair and reasonable to the Partnership and in connection with its resolution of any conflict of interest to consider (A) the relative interests of any party to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interest; (B) any customary or accepted industry practices and any customary or historical dealings with a particular Person; (C) any applicable generally accepted accounting practices or principles; and (D) such additional factors as the Board of Supervisors (including the Audit Committee) determines in its discretion to be relevant, reasonable or appropriate under the circumstances. Nothing contained in this Agreement, however, is intended to nor shall it be construed to require the Board of Supervisors (including the Audit Committee) to consider the interests of any Person other than the Partnership. In the absence of bad faith by the Board of Supervisors, the resolution, action or terms so made, taken or provided by the Board of Supervisors with respect to such matter shall not constitute a breach of this Agreement, the MLP Agreement or any other agreement contemplated herein or therein or a breach of any standard of care or duty imposed herein or therein or, to the extent permitted by law, under the Delaware Act or any other law, rule or regulation or existing in equity or otherwise.

(b) Whenever this Agreement or any other agreement contemplated hereby provides that the Board of Supervisors is permitted or required to make a decision (i) in its sole discretion, or discretion or that it deems necessary or appropriate or necessary or advisable or under a grant of similar authority or latitude, except as otherwise provided herein, the Board of Supervisors shall make such decision in its sole discretion (regardless of whether there is a reference to sole discretion or discretion) unless another express standard is provided for or (ii) in good faith or under another express standard, the Board of Supervisors shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement, the MLP Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or in equity or otherwise. In addition, any actions taken by the Board of Supervisors consistent with the standards of reasonable discretion set forth in the definition of Available Cash shall not constitute a breach of any duty of the Board of Supervisors to the Partnership, the Limited Partners or any partner of the MLP. The Board of Supervisors shall have no duty, express or implied, to sell or otherwise dispose of any asset of the Partnership Group.

(c) Whenever a particular transaction, arrangement or resolution of a conflict of interest is required under this Agreement to be fair and reasonable to any Person, the fair and reasonable nature of such transaction, arrangement or resolution shall be considered in the context of all similar or related transactions.

(d) The Limited Partners hereby authorize the Board of Supervisors on behalf of the Partnership as a partner of a Group Member, to approve of actions by the General Partner or the board of supervisors of such Group Member similar to those actions permitted to be taken by the Board of Supervisors pursuant to this Section 7.15.

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23.16 *Other Matters Concerning the General Partner and the Board of Supervisors.*

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

(b) The General Partner and the Board of Supervisors may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by either of them, and any act taken or omitted to be taken in reliance upon the opinion (including an Opinion of Counsel) of such Persons as to matters that the General Partner or the Board of Supervisors 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 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 duly authorized officers, a duly appointed attorney or attorneys-in-fact or the duly authorized Officers of the Partnership.

(d) The Board of Supervisors shall have the right, in respect of any of its powers or obligations hereunder, to act through any of the duly authorized Officers of the Partnership or a duly appointed attorney or attorneys-in-fact.

(e) Any standard of care and duty imposed by this Agreement or under the Delaware Act or any applicable law, rule or regulation, or in equity or otherwise shall be modified, waived or limited, to the maximum extent permitted by law, as required to permit the General Partner and the Board of Supervisors to act under this Agreement or any other agreement contemplated by this Agreement and to make any decision pursuant to the authority prescribed in this Agreement, so long as such action is reasonably believed by the General Partner or the Board of Supervisors to be in, or not inconsistent with, the best interests of the Partnership.

23.17 *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 Board of Supervisors and any Officer of the Partnership authorized by the Board of Supervisors to act on behalf of and in the name of the Partnership (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)) 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 contracts on behalf of the Partnership, and such Person shall be entitled to deal with the Board of Supervisors or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)) as if it were the Partnership s sole party in interest, both legally and beneficially. The Limited Partner hereby waives, to the maximum extent permitted by law, any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the Board of Supervisors or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)) in connection with any such dealing. In no event shall any Person dealing with the Board of Supervisors or its representatives or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)) be obligated to ascertain that the terms of the Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the Board of Supervisors or its representatives or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1(a)). Each and every certificate, document or other instrument executed on behalf of the Partnership by the Board of Supervisors or its representatives or any such Officer (including the General Partner, acting pursuant to the direction of the Board of Supervisors in accordance with Section 7.1 (a)) or 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

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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 XXIV

Books, Records, Accounting and Reports

24.1 *Records and Accounting.*

The Partnership 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 Limited Partners any information required to be provided pursuant to Section 3.3(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, 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.

24.2 *Fiscal Year.*

The fiscal year of the Partnership shall be a 52-53 week fiscal year concluding on the last Saturday in September.

ARTICLE XXV

Tax Matters

25.1 *Tax Returns and Information.*

The Partnership shall timely file all returns of the Partnership that are required for federal, state and local income tax purposes on the basis of the accrual method and a taxable year ending on December 31. The tax information reasonably required by the Partners for federal and state income tax reporting purposes with respect to a taxable year shall be furnished to them within 90 days of the close of the calendar year in which the Partnership s taxable year ends. The classification, realization and recognition of income, gain, losses and deductions and other items shall be on the accrual method of accounting for federal income tax purposes.

25.2 *Tax Elections.*

(a) The Partnership has made 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 such election upon the Board of Supervisors determination that such revocation is in the best interests of the Limited Partners.

(b) The Partnership has elected to deduct expenses incurred in organizing the Partnership ratably over a sixty-month period as provided in Section 709 of the Code.

(c) Except as otherwise provided herein, the Board of Supervisors shall determine whether the Partnership should make any other elections permitted by the Code.

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25.3 *Tax Controversies.*

Subject to the provisions hereof, the General Partner is designated as the Tax Matters Partner (as defined in Section 6231(a)(7) of the Code) and is authorized and required to represent the Partnership (at the Partnership s expense) in connection with all examinations of the Partnership s affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner to conduct such proceedings.

25.4 *Withholding.*

Notwithstanding any other provision of this Agreement, the Board of Supervisors is authorized to take any action that it determines in its discretion to be necessary or appropriate to cause the Partnership to comply with any withholding requirements established under the Code or any other federal, state or local law including~~, without limitation,~~ pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. 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~~, without limitation,~~ by reason of Section 1446 of the Code), the amount withheld may be treated as a distribution of cash pursuant to Section 6.4 in the amount of such withholding from such Partner.

ARTICLE XXVI

Admission of Partners

26.1 *Current Partners.*

The General Partner and the MLP and Suburban LP, each as a Limited Partner, are the current Partners of the Partnership as of the date of this Agreement.

26.2 *Admission of Substituted Limited Partners.*

Any Person that is the successor in interest to a Limited Partner as described in Section 4.3 shall be admitted to the Partnership as a Limited Partner upon (a) furnishing to the Board of Supervisors (i) written acceptance of all of the terms and conditions of this Agreement and (ii) such other documents or instruments as may be required by law to effect its admission as a Limited Partner in the Partnership and (b) except in the case of the foreclosure of a pledge referred to in Section 4.3, obtaining the consent of the Board of Supervisors, which consent may be given or withheld in the Board of Supervisors sole discretion. Such Person shall be admitted to the Partnership as a Limited Partner effective immediately prior to the ~~transfer~~Transfer of the Partnership Interest, and the business of the Partnership shall continue without dissolution.

26.3 *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 s Partnership Interest as a general partner in the Partnership pursuant to Section 4.2 shall, subject to compliance with the terms of Section 11.3, if applicable, be admitted to the Partnership as the General Partner, effective simultaneously with the withdrawal or removal of the General Partner pursuant to Section 11.1 ~~or 11.2~~ or the ~~transfer~~Transfer of the General Partner s Partnership Interest as a general partner in the Partnership pursuant to Section 4.2; *provided, however,* that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.2, if applicable, has occurred and such successor has executed and delivered written acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required by law to effect such admission. Any such successor is hereby authorized to and shall, subject to the terms hereof, carry on the business of the Partnership without dissolution. The admission of a successor General Partner shall not be deemed to have affected in any manner the irrevocable delegation of all management powers over the business and affairs of the Partnership to the Board of Supervisors pursuant to Section 7.1(a). At no time shall the Partnership have more than one general partner.

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26.4 *Admission of Additional Limited Partners.*

(a) A Person (other than the General Partner, the MLP or a Substituted Limited Partner) who makes a Capital Contribution to the Partnership in accordance with this Agreement shall be admitted to the Partnership as an Additional Limited Partner only upon (A) furnishing to the Board of Supervisors (i) evidence of acceptance in form satisfactory to the Board of Supervisors of all of the terms and conditions of this Agreement, including the granting of the power of attorney granted in Section 2.6, and (ii) such other documents or instruments as may be required in the discretion of the Board of Supervisors to effect such Person s admission as an Additional Limited Partner and (B) if at such time, any of the Partnership Interest of the Limited Partners are pledged to secure indebtedness of the Partnership or the MLP, such Additional Limited Partner granting a similar pledge of its Partnership Interest to the holders of such indebtedness.

(b) Notwithstanding anything to the contrary in this Section 10.4, no Person shall be admitted as an Additional Limited Partner without the consent of the Board of Supervisors, which consent may be given or withheld in the Board of Supervisors discretion. The admission of any Person as an Additional Limited Partner shall become effective on the date upon which the name of such Person is recorded as such in the books and records of the Partnership, following the consent of the Board of Supervisors to such admission.

26.5 *Amendment of Agreement and Certificate of Limited Partnership.*

To effect the admission to the Partnership of any Partner, the Board of Supervisors shall take all steps necessary and 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, and the Chief Executive Officer and President may for this purpose, among others, exercise the power of attorney granted pursuant to Section 2.6.

ARTICLE XXVII

Withdrawal or Removal of Partners

27.1 *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 (of which event the General Partner shall give written notice to the Limited Partners);

(ii) the General Partner ~~transfers~~Transfers all of its rights as General Partner pursuant to Section 4.2 (including by means of a foreclosure of a pledge, security interest or similar lien thereon); *provided*, *however*, that the pledge (but not any related foreclosure) referred to in Section 4.2 shall not be deemed an Event of Withdrawal;

(iii) ~~the General Partner is removed pursuant to Section 11.2;~~[Intentionally Deleted];

(iv) the general partner of the MLP withdraws from, or is removed as the general partner of, the MLP;[Intentionally Deleted];

(v) 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)-(C) of this Section 11.1(a)(v); 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;

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(vi) 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;

(vii) ~~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 or formation; or~~[Intentionally Deleted];

(viii) (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 or formation; (B) in the event the General Partner is a partnership or a limited liability company, 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) (with respect to withdrawal),~~ (v), (vi)~~, (vii)~~ or (viii) (A), (viii)(B), (viii)(C) or (viii)(E) occurs, the withdrawing General Partner shall give notice to the Limited 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 March 5, 1996 and ending at 12:00 midnight, Eastern Standard Time, on September 30, 2006, the General Partner voluntarily withdraws by giving at least 90 days advance notice of its intention to withdraw to the Limited Partners; *provided* that prior to the effective date of such withdrawal, the Limited Partners approve such withdrawal and the General Partner delivers to the Partnership an Opinion of Counsel (~~ Withdrawal Opinion of Counsel ~~) that such withdra~~wal ~~(following the selection of the successor General Partner) would not result in the loss of the limited liability of any Limited Partner or of any limited partner of the MLP, limited partner of any Group Member or cause the MLP or the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes; (ii) at any time after 12:00 midnight, Eastern Standard Time, on September 30, 2006,~~ the General Partner voluntarily withdraws by giving at least 90 days advance notice to the Limited Partners, such withdrawal to take effect on the date specified in such notice; or ~~(iii) at any time that~~(ii) the General Partner ceases to be the General Partner pursuant to Section 11.1 (a)(ii)~~, (iii) or (iv). If the General Partner gives a notice of withdrawal pursuant to Section 11.1 (a)(i) or Section 11.1 (a)(i) of the MLP Agreement, the Limited Partners may, prior to the effective date of such withdrawal or removal, elect a successor General Partner that is hereby authorized to and shall continue the business of the Partnership without dissolution; *provided, however,* that such successor shall be the same Person, if any, that is elected by the limited partners of the MLP pursuant to Section 11.1 of the MLP Agreement as the successor to the General Partner in its capacity as general partner of the MLP.~~ . If, prior to the effective date of the General Partner s withdrawal, a successor is not selected by the Limited 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. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.3.

27.2 ~~*Removal of the General Partner.*~~[Intentionally Deleted.]

~~The General Partner shall be removed if such General Partner is removed as a general partner of the MLP pursuant to Section 11.2 of the MLP Agreement. Such removal shall be effective concurrently with the effectiveness of the removal of such General Partner as the general partner of the MLP pursuant to the terms of the MLP Agreement. If a successor General Partner is elected in connection with the removal of such General Partner as a general partner of the MLP, such successor General Partner shall, upon admission pursuant to Article~~

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~~X, automatically become a successor General Partner of the Partnership and is hereby authorized to and shall continue the business of the Partnership without dissolution. The admission of any such successor General Partner to the Partnership shall be subject to the provisions of Section 10.3.~~

27.3 *Interest of Departing Partner and Successor General Partner; Delegation of Authority to the Board of Supervisors by Successor General Partner.*

(a) The Partnership Interest of a Departing Partner departing as a result of withdrawal or removal pursuant to Section 11.1 ~~or 11.2~~ shall be purchased by the successor to the Departing Partner for cash in the manner specified in the MLP Agreement for consideration of $10. Such purchase shall be a condition to the admission to the Partnership of the successor as the General Partner. Any successor General Partner shall indemnify the Departing Partner as to all debts and liabilities of the Partnership arising on or after the effective date of the withdrawal or removal of the Departing Partner. In the event of a foreclosure referred to in Section 4.2, the successor General Partner shall have no obligations under this Section 11.3(a) to the Departing Partner.

(b) The Departing Partner shall be entitled to receive all reimbursements due such Departing Partner pursuant to Section 7.10, including any employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by such Departing Partner for the benefit of the Partnership or the other Group Members.

(c) Any successor General Partner will be deemed to have delegated irrevocably to the Board of Supervisors all management powers over the business and affairs of the Partnership to the same extent that the General Partner delegated such management powers to the Board of Supervisors pursuant to Section 7.1 of this Agreement.

27.4 *Withdrawal of the Limited Partner.*

Without the prior written consent of the General Partner, which may be granted or withheld in its sole discretion, and except as provided in Section 10.1, no Limited Partner shall have the right to withdraw from the Partnership.

ARTICLE XXVIII

Dissolution and Liquidation

28.1 *Dissolution.*

The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited 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 10.3, 11.1 ~~or 11.2~~ or this Section 12.1, the Partnership shall not be dissolved and such successor General Partner is hereby authorized to and shall continue the business of the Partnership. The Partnership shall dissolve, and its affairs shall be wound up, upon:

(a) the expiration of its term as provided in Section 2.7;

(b) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 11.1(b) or 11.2 and such successor is admitted to the Partnership pursuant to Section 10.3; or for Events of Withdrawal of the General Partner for which the appointment of a successor General Partner is not provided for hereunder, unless the Partnership is continued without dissolution in accordance with the Delaware Act;

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(c) an election to dissolve the Partnership by the General Partner that is approved by all of the Limited Partners;

(d) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act;

(e) the sale of all or substantially all of the assets and properties of the Partnership Group;

(f) the dissolution of the MLP; or

(g) at any time that there are no limited partners of the Partnership, unless the Partnership is continued without dissolution pursuant to the Delaware Act.

28.2 [Intentionally ~~omitted]~~.Deleted.]

28.3 *Liquidator.*

Upon dissolution of the Partnership, the Board of Supervisors shall select one or more Persons to act as Liquidator. The Liquidator shall be entitled to receive such compensation for its services as may be approved by all of the Limited Partners. The Liquidator 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 the all of Limited Partners. 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 the all of Limited Partners. 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 Board of Supervisors 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 7.9(a)) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided for herein.

28.4 *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 the Liquidator determines to be in the best interest of the Partners, subject to Section 17-804 of the Delaware Act and the following:

(a) *Disposition of Assets.* 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. Under certain circumstances and subject to certain limitations, the Liquidator may defer liquidation or distribution of the Partnership s assets for a reasonable time or distribute assets to the Partners in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) *Discharge of Liabilities.* Liabilities of the Partnership include amounts owed to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent 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) *Liquidation Distributions.* 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, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital

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Account adjustments (other than those made by reason of distributions pursuant to this Section 12.4(c)) for the taxable year 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 such distribution shall be made by the end of such taxable year (or, if later, within 90 days after said date of such occurrence).

28.5 *Cancellation of Certificate of Limited Partnership.*

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

28.6 *Return of Capital 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 any Limited Partner, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

28.7 *Waiver of Partition.*

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

28.8 *Capital Account Restoration.*

No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership. The General Partner shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable year of the Partnership during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

ARTICLE XXIX

Amendment of Partnership Agreement

29.1 *Amendment to be Adopted Solely by the Board of Supervisors.*

The Limited Partners agree that the Board of Supervisors, without the approval of any Partner, may amend any provision of this Agreement, and may authorize any Officer (pursuant to the powers of attorney granted in Section 2.6) to execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;

(c) a change that, in the discretion of the Board of Supervisors, is necessary or advisable 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 neither the Partnership nor the MLP will be treated as an association taxable as a corporation or otherwise be taxed as an entity for federal income tax purposes;

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(d) a change that, in the discretion of the Board of Supervisors, (i) does not adversely affect the Limited Partners in any material respect, (ii) is necessary or advisable to 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), compliance with any of which the Board of Supervisors determines in its discretion to be in the best interests of the Partnership and the Limited Partners, (iii) is required to effect the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement or (iv) is required to conform the provisions of this Agreement with the provisions of the MLP Agreement as the provisions of the MLP Agreement may be amended, supplemented or restated from time to time.

(e) a change in the fiscal year or taxable year of the Partnership and any changes that, in the discretion of the Board of Supervisors, are necessary or advisable as a result of a change in the fiscal year or taxable year of the Partnership including, if the Board of Supervisors shall so determine, a change in the definition of Quarter and the dates on which distributions are to be made by the Partnership;

(f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Partnership or the members of the Board of Supervisors or the Officers, 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) any amendment expressly permitted in this Agreement to be made by the Board of Supervisors acting alone;

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

(i) an amendment that, in the discretion of the Board of Supervisors, is necessary or advisable to reflect, account for and deal with appropriately 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;

(j) an amendment that, in the discretion of the Board of Supervisors, is necessary or advisable to effect or continue the irrevocable delegation by the General Partner to the Board of Supervisors of all management powers over the business and affairs of the Partnership;

(k) an amendment that the Board of Supervisors in good faith deems necessary or advisable in connection with a financing transaction, including (i) to incur new Indebtedness, (ii) to refinance, amend, defease, redeem or prepay, in whole or in part, any existing Indebtedness, or (iii) to secure, guaranty or support (as obligor, surety, credit enhancer or otherwise), in whole or in part, any Indebtedness; or

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

29.2 *Amendment Procedures.*

Except with respect to amendments of the type described in Section 13.1, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed only by or with the consent of the Board of Supervisors or the General Partner. A proposed amendment shall be effective upon its approval by all of the Limited Partners.

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ARTICLE XXX

Merger

30.1 *Authority.*

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

30.2 *Procedure for Merger or Consolidation.*

Merger or consolidation of the Partnership pursuant to this Article XIV requires the prior approval of the Board of Supervisors. If the Board of Supervisors shall determine, in the exercise of its discretion, to consent to the merger or consolidation, the Board of Supervisors shall approve the Merger Agreement, which shall set forth:

(a) The names and jurisdictions of formation or organization of each of the business entities proposing to merge or consolidate;

(b) The name and jurisdictions of formation or organization of the business entity that is to survive the proposed merger or consolidation (the Surviving Business Entity);

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

(d) The manner and basis of exchanging or converting the equity securities 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, the cash, property or general or limited partner interests, rights, securities or obligations of any limited partnership, corporation, trust or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their general or limited partner interests, securities or rights, and (ii) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;

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

(f) 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 filed no later than the time of the filing of the certificate of merger and stated therein); and

(g) Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or appropriate by the Board of Supervisors.

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30.3 *Approval by Limited Partners of Mergers or Consolidations.*

(a) The Board of Supervisors, upon its approval of the Merger Agreement, shall direct that the Merger Agreement and the merger or consolidation contemplated thereby be submitted to the Limited Partners for their approval.

(b) The Merger Agreement and the merger or consolidation contemplated thereby shall be approved upon receiving the approval of all of the Limited Partners.

(c) After such approval by the Limited Partners, and at any time prior to the filing of the certificate of merger pursuant to Section 14.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement .

30.4 *Certificate of Merger.*

Upon the required approval by the Board of Supervisors and the Limited Partners of a Merger Agreement, a certificate of merger shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

30.5 *Effect of Merger.*

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

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

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

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

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

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

ARTICLE XXXI

General Provisions

31.1 *Addresses and Notices.*

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 received by it at the principal office of the Partnership referred to in Section 2.3.

31.2 *References.*

Except as specifically provided as otherwise, references to Articles and Sections are to Articles and Sections of this Agreement.

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31.3 *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.

31.4 *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.

31.5 *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.

31.6 *Creditors.*

None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership. This Section 15.6 is not intended to limit the rights of a creditor of the Partnership to enforce its security interest in the General Partner s Partnership Interest or a Limited Partner s Partnership Interest and, in connection with any related foreclosure, to be admitted as a successor General Partner or a Substitute Limited Partner in the Partnership.

31.7 *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.

31.8 *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, independently of the signature of any other party.

31.9 *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) To the fullest extent permitted by law, each of the Partners and each Person holding any beneficial interest in the Partnership (whether through a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing or otherwise):

(i) irrevocably agrees that any claims, suits, actions or proceedings (A) arising out of or relating in any way to this Agreement (including any claims, suits or actions to interpret, apply or enforce the provisions of this Agreement or the duties, obligations or liabilities among Partners or other Persons or of Partners or other Persons to the Partnership, or the rights or powers of, or restrictions on, the Partners or other Persons or the Partnership), (B) asserting a claim of breach of a fiduciary duty owed by any member of the Board of Supervisors, director, officer, or other employee of the Partnership or the General Partner, or owed by the General Partner, to the Partnership or the Partners or other Persons, (C) asserting a claim arising pursuant to any provision of the Delaware Act,. or (D) asserting a claim governed by the internal affairs doctrine, in

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each case shall be exclusively brought in the Court of Chancery of the State of Delaware, regardless of whether such claims, suits, actions or proceedings sound in contract, tort, fraud or otherwise, are based on common law, statutory, equitable, legal or other grounds, or are derivative or direct claims, or, in the event the Court of Chancery lacks subject matter jurisdiction over any such claim, suit, action or proceeding, then in any other state or federal court located in the State of Delaware;

(ii) irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware in connection with any such claim, suit, action or proceeding or, in the event the Court of Chancery lacks subject matter jurisdiction over any such claim, suit, action or proceeding, any other state or federal court located in the State of Delaware;

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

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

(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 clause (v) hereof shall affect or limit any right to serve process in any other manner permitted by law.

31.10 *Invalidity of Provisions.*

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

31.11 *Miscellaneous.*

If this Agreement and the MLP Agreement are approved by the holders of at least a majority of the Outstanding Common Units, then the effectiveness of this Agreement and the MLP Agreement shall be deemed to have occurred simultaneously.

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

LIMITED PARTNERS:

SUBURBAN PROPANE PARTNERS, L.P.

By: ~~/s/ MARK A. ALEXANDER~~

Name: ~~Mark A. Alexander~~Michael J. Dunn, Jr.

Title: President and Chief Executive Officer

SUBURBAN LP HOLDING, LLC.

By: ~~/s/ MARK A. ALEXANDER~~

Name: ~~Mark A. Alexander~~Michael J. Dunn, Jr.

Title: President

GENERAL PARTNER:

SUBURBAN ENERGY SERVICES GROUP LLC

By: ~~/s/ MARK A. ALEXANDER~~

~~Name: Mark A. Alexander~~ Michael J. Dunn, Jr.

Title: Member

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X

Using a **black ink** pen, mark your votes with an **X** as shown in this example. Please do not write outside the designated areas.

Electronic Voting Instructions

You can vote by Internet or telephone!

Available 24 hours a day, 7 days a week!

Instead of mailing your proxy, you may choose one of the two voting methods outlined below to vote your proxy.

VALIDATION DETAILS ARE LOCATED BELOW IN THE TITLE BAR.

Proxies submitted by the Internet or telephone must be received by 1:00 a.m., Central Time, on May 1, 2012.

Vote by Internet

Log on to the Internet and go to

www.investorvote.com/SPH

Follow the steps outlined on the secured website.

Vote by telephone

Call toll free 1-800-652-VOTE (8683) within the USA, US

territories & Canada any time on a touch tone telephone.

There is **NO CHARGE** to you for the call.

Follow the instructions provided by the recorded message.

q **IF YOU HAVE NOT VOTED VIA THE INTERNET OR TELEPHONE, FOLD ALONG THE PERFORATION, DETACH AND RETURN THE BOTTOM PORTION IN THE ENCLOSED ENVELOPE.** q

A Proposals **The Board recommends a vote FOR all nominees and FOR Proposals 2, 3, 4 and 5.**

1. Election of Supervisors:

	For	Withhold		For	Withhold		For	Withhold
01 - Harold R. Logan, Jr. (3-year term)	..	..	02 - John Hoyt Stookey (3-year term)	..	..	03 - Dudley C. Mecum (3-year term)	..	..
04 - John D. Collins (3-year term)	..	..	05 - Jane Swift (3-year term)	..	..	06 - Michael J. Dunn, Jr. (3-year term)	..	..

	For	Against	Abstain
2. To approve amendments to the Existing Partnership Agreements to potentially facilitate third party financing transactions.	..	..	..
3. To approve amendments to the Existing Partnership Agreements to provide Delaware courts as the exclusive forum.	..	..	..
4. Say on Pay - An advisory vote on the approval of executive compensation.	..	..	..
5. Approval of the adjournment of the Tri-Annual Meeting, if necessary, to solicit proxies.	..	..	..

B Non-Voting Items

Change of Address Please print new address below.

Comments Please print your comments below

Meeting Attendance Mark the box to the right if you plan to attend the Annual Meeting. ..

C Authorized Signatures **This section must be completed for your vote to be counted.** **Date and Sign Below**

Please sign exactly as name(s) appears hereon. Joint owners should each sign. When signing as attorney, executor, administrator, corporate officer, trustee guardian, or custodian, please give full title.

Date (mm/dd/yyyy)	Please print date below.	Signature 1	Please keep signature within the box.	Signature 2	Please keep signature within the box.
/ /					

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q **IF YOU HAVE NOT VOTED VIA THE INTERNET OR TELEPHONE, FOLD ALONG THE PERFORATION, DETACH AND RETURN THE BOTTOM PORTION IN THE ENCLOSED ENVELOPE.** q

Proxy Suburban Propane Partners, L.P.

Notice of 2012 Tri-Annual Meeting of Unitholders

240 Route 10 West, Whippany, NJ 07981

Proxy Solicited by Board of Supervisors for Tri-Annual Meeting May 1, 2012

Paul Abel and Michael Stivala, or any of them, each with the power of substitution, are hereby authorized to represent and vote the common units of the undersigned, with all the powers which the undersigned would possess if personally present, at the Tri-Annual Meeting of Unitholders of Suburban Propane Partners, L.P. to be held on May 1, 2012 or at any postponement or adjournment thereof.

Common units represented by this proxy will be voted as directed by the unitholder. If no such directions are indicated, the Proxies will have authority to vote FOR all nominees and FOR Proposals 2, 3, 4 and 5.

In their discretion, the Proxies are authorized to vote upon such other business as may properly come before the meeting.

(Items to be voted appear on reverse side.)