Docket #0001 Date Filed: 10/28/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
EMERGE ENERGY SERVICES LP, et al., [1]	)	Case No. 19-11563 (KBO)
	)	
	)	(Jointly Administered)
Debtors.	)	
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MIDWEST FRAC AND SANDS LLC,	)	
	)	
Plaintiff,	)	
	)	Adv. Case No. 19-____ (KBO)
v.	)	
	)	
SUPERIOR SILICA SANDS LLC and HPS INVESTMENT PARTNERS, LLC,	)	
	)	
Defendants.	)	

COMPLAINT

Pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 and 7001(2), the Plaintiff, Midwest Frac and Sands LLC. ("Midwest" or "Plaintiff") by and through its undersigned counsel, asserts as follows as its complaint against the Defendants, Superior Silica Sands LLC ("Superior" or "Debtor") and HPS Investment Partners, LLC ("HPS"):

GENERAL STATEMENT

1. Midwest is a mining company with interests in various mine properties. Midwest sold a mine to Superior in 2014 and retained certain rights to the property pursuant to the purchase agreement. In this proceeding, Midwest seeks determinations that it is a secured creditor whose interests in property are (i) valid and unavoidable interests in the property in question and (ii)

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors' address is: 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

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superior to the liens, if any, held by HPS and its principals against the same property such that Midwest's interests constitute (x) "Senior Liens" or "Prior Permitted Liens" within the meaning of the final order approving DIP financing and the DIP financing agreement in this case and (y) "Other Secured Claims" within the meaning of the Debtors' proposed amended chapter 11 plan.

JURISDICTION AND VENUE

2. The above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), including Superior Silica Sands, LLC ("Superior"), each filed for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on July 15, 2019 (the "Petition Date"). Each of the Debtors have continued to operate their respective businesses and manage their respective properties as debtors-in-possession in accordance with 11 U.S.C. §§ 1107(a) and 1108.

3. This adversary proceeding has been filed pursuant to Fed. R. Bankr. P. 7001(2) and (9).

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334(b), and this is a core proceeding under 28 U.S.C. § 157(b)(2).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

6. Pursuant to Local Rule 7008-1, Midwest consents to the entry of final orders or judgments in this proceeding if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PARTIES AND GENERAL BACKGROUND

7. Midwest is a Wisconsin limited liability company with its principal place of business in Almena, Wisconsin.

8. Superior is a Texas limited liability company with its principal place of business at 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas, 76109.

9. HPS is a Delaware limited liability company whose principal place of business, upon information and belief, is located at 40 West 57th Street, 33rd Floor, New York, New York 10019. HPS serves as the agent for the PrePetition Lenders and the DIP Lenders (all as are identified below).

10. The Debtors, through the operations of Superior, engage in the mining, processing, and distribution of silica sand for use in hydraulic fracturing (or "fracking") of oil and gas wells. Superior has silica mining facilities in Wisconsin, Texas, and Oklahoma.

11. Midwest is mining company. In 2014, Midwest entered into a purchase and sale agreement (the "Purchase Contract") under which Midwest sold certain real estate (the "Mine") to Superior. A copy of the Purchase Contract is attached as Exhibit 1 and incorporated by reference.

12. Under the Purchase Contract, the total purchase price for the Mine was $24,000,000.00. Superior was to pay $11,000,000.00 of the purchase price at closing. The balance of $13,000,000.00 was to be paid through royalties on the sand Superior removed from Mine (the "Royalty").

13. Section 11(b) of the Purchase Contract provides as follows:

> [I]n the event that the Purchaser is in default of this Agreement beyond all applicable notice and cure periods due to a failure to pay the Royalty, Annual Minimum Royalty or Interest Payment, as contemplated by Section 5, [Midwest] shall have the right, after providing [Superior] with an additional written notice, to repurchase the Land and Equipment from Purchaser if Purchaser fails to cure such default within thirty (30) days after receipt of the aforementioned additional notice . . . In the event [Superior] fails to cure such default within such thirty (30) day period, [Superior] shall sell the Land to [Midwest] pursuant to the terms and conditions set forth in Section 14 and [Superior] shall sell the Equipment to [Midwest] for its fair market value in its AS-IS, WHERE IS, condition.

14. Section 14 of the Purchase Contract provides as follows:

> Once [Superior] has determined, in its sole and absolute discretion, that the Premises is no longer viable for its Sand mining and processing activities,

> [Superior] shall notify [Midwest] in writing (the "Purchase Option Notice") of the same and [Midwest] shall have an option to purchase all of the Land (not a portion thereof) back from [Superior] for One Thousand and No/100 U.S. Dollars ($1,000.00) per acre; provided, that this purchase option and the $1,000.00 per acre purchase price shall not include any machinery, equipment or Trade Fixtures, including, without limitation, the Wet Plant and Conveyor Systems (collectively, the "Equipment"), which will remain the property of [Superior] to be removed and/or disposed of in its sole discretion, whether the Equipment is attached, unattached, or deemed a fixture. [Midwest] shall have thirty (30) days after receipt of the Purchase Option Notice (the "Option Period") to elect in writing to purchase all of the Land from [Superior] for the purchase price set forth above. [Midwest]'s failure to elect in writing to purchase all of the Land within the Option Period shall be deemed [Midwest]'s election not to purchase the Land and the purchase option set fort in this Section shall terminate and be of no further force or effect. If [Midwest] elects in writing to purchase all of the Land within the Option Period, [Midwest] shall purchase the Land for the purchase price noted above within thirty (30) days after the end of the Option Period on an AS IS, WHERE IS basis and upon such other terms and conditions as are mutually acceptable to Seller and Purchaser. This Section shall survive the Closing.

15. On February 22, 2019, Midwest delivered a default letter to Superior (the "Default Notice") identifying that Superior had failed to pay royalty payments due under the Purchase Contract. A copy of the Default Notice is attached as Exhibit 2 and incorporated by reference.

16. Superior failed to respond to the Default Notice or to cure the defaults identified within that notice.

17. On June 18, 2019, Midwest delivered to Superior a notice of material default and exercise of repurchase right (the "Repurchase Notice") in which it advised Superior of its exercise of the rights contained in Section 11 of the Purchase Contract to repurchase the Land and Equipment as a result of Superior's defaults. A copy of the Repurchase Notice is attached as Exhibit 3 and incorporated by reference.

18. On June 21, 2019, Midwest initiated the legal action styled *Midwest Frac and Sands LLC v. Superior Silica Sands LLC*, Barron County Case No. 19-CV-207 (the "Litigation"). In the

Litigation, Midwest asserted its legal rights under the Purchase Contract to the Land and Equipment as defined therein.

19. On June 21, 2019, Midwest filed a lis pendens with the Barron County Register of Deeds indicating that it had commenced the Litigation.

20. As reflected in the Default Notice, the Repurchase Notice, and the Litigation, Superior has failed to pay the amounts due under the Purchase Contract despite demand.

21. Superior breached its agreements with Midwest by failing to pay the Royalty and other obligations due under the Purchase Contract.

22. As reflected in Midwest's timely filed proof of claim, it is owed $5,346,220.88 by Superior as a result of Superior's breach of its obligations under the Purchase Contract.

THE BANKRUPTCY FILING AND POSTURE OF THE CASE

23. On the Petition Date, the Debtors filed a variety of first-day motions, including a Motion (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 Authorizing the Debtors to (A) Obtain Senior Secured Priming Superpriority Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief [Doc. No. 20] (the "Financing Motion").

24. In the Financing Motion, Superior and the other Debtors asserted that they were parties to certain first and second lien obligations with HPS Investment Partners LLC as administrative and collateral agent on behalf of the "First Lien Prepetition Lenders" and the "Second Lien Prepetition Noteholders." Financing Motion, ¶ 5.

25. In the Financing Motion, Superior and the other Debtors (except for Emerge Energy Services GP LLC and Emerge Energy Services Finance Corporation) asserted they owed the First Lien Prepetition Lenders "not less than $66,710,000, plus accrued and unpaid interest and fees with respect thereto." Id.

26. In the Financing Motion, Superior and the other Debtors (except for Emerge Energy Services GP LLC and Emerge Energy Services Finance Corporation) asserted they owed the Second Lien Prepetition Noteholders "not less than $215,755,307, plus accrued and unpaid interest and fees with respect thereto." Id.

27. In the Financing Motion, Superior and the other Debtors asserted that the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders (collectively, the "Prepetition Lenders") were secured creditors holding liens on the "Prepetition Collateral" identified in the respective loan documents. Financing Motion, ¶ 6.

28. In the Financing Motion, the Debtors asserted that the Prepetition Collateral "comprises substantially all of the Debtors' assets." [Emphasis added]. Financing Motion, ¶ 7.

29. In the Financing Motion, the Debtors sought approval of debtor-in-possession financing from the PrePetition Lenders who would, as to the post-petition loans, be identified as the DIP Lenders.

30. The final order granting the Financing Motion and approving the DIP financing agreement (the "Final DIP Order") provided that HPS, on behalf of the DIP Lenders, would receive junior liens on any collateral that was subject to "valid, perfected and unavoidable liens senior to the Prepetition Liens in existence immediately prior to the Petition Date." Final DIP Order, ¶ 13(a)(iii).

31. The DIP Financing Agreement, as approved, recognizes the possible existence of "Prior Permitted Liens" which would include certain valid, perfected, and unavoidable liens in favor of third parties. See § 7.2 of the DIP financing agreement and definitions of "Permitted Encumbrances" and "Prior Permitted Liens."

32. Under the Final DIP Order, the Debtors' stipulations as to the validity and priority of the liens of the PrePetition Lenders are not binding upon Midwest for a period of 75 days after entry of the interim order approving DIP financing (the "Challenge Period") so as to permit certain "Challenges" to be lodged. These Challenges would include objections to the stipulated valuation of assets as well as issues of lien priority. Final DIP Order, ¶ 26.

33. Under the Final DIP Order, the Debtors' stipulations as to the validity and priority of Prepetition Liens in the Prepetition Collateral are subject to Challenge if brought within the Challenge Period.

34. Midwest's complaint in this case constitutes a Challenge within the meaning of the Final DIP Order and has been brought within the Challenge Period in timely fashion.

35. On September 11, 2019, the Debtors filed their First Amended Joint Plan of Reorganization for Emerge Energy Services LP and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code [Doc. No. 362] (the "Plan").

36. The Plan defines "Secured Claim" as a Claim that is secured by a Lien on property in which any of the Debtors' Estates have an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code. Plan Art. I.C.

37. The Plan defines "Other Secured Claim" as "any Secured Claim other than an Administrative Claim, DIP Credit Agreement Claim, Secured Tax Claim, or Prepetition Debt Claim." Id.

38. The Plan, as currently proposed, classifies Other Secured Claim as "Class 2." Plan Art. III.B.2.

39. The Plan provides that each holder of an allowed class 2 claim shall receive, at the election of the Debtors or Reorganized Debtors:

> (A) Cash equal to the amount of such Allowed Class 2 Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 2 Claim shall have agreed in writing; (C) the Collateral securing such Allowed Class 2 Claim; or (D) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code.

COUNT I:
DETERMINATION OF THE VALIDITY, PRIORITY, AND EXTENT OF MIDWEST'S INTEREST IN REAL ESTATE AND PERSONAL PROPERTY

40. Midwest asserts and realleges the allegations of paragraphs 1-39 above.

41. Under the Purchase Contract, Midwest holds an interest in the Land and Equipment as described therein. That interest was intended to secure repayment of the amounts due to Midwest from Superior.

42. At all relevant times, Superior was a publicly traded company and it filed various documents regarding the Purchase Contract with the Securities and Exchange Commission.

43. At all relevant times, Superior's lenders, including HPS and its predecessors in interest, had notice, whether actual or constructive, of the Purchase Contract and its terms.

44. Under Wisconsin law, Midwest's interests in the Land and Equipment, as defined in the Purchase Contract, constitute interests in property which are prior and superior to those of HPS.

45. Under Wisconsin law, Midwest's interests in the Land and Equipment, as defined in the Purchase Contract, are superior to any interest of HPS or the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders, as those terms are defined in the Final DIP Order.

46. Midwest's interests in the Land and Equipment, as defined in the Purchase Contract, constitute a "Senior Lien" for purposes of the Final DIP Order.

47. Any interest of HPS or the DIP Lenders in the Land and Equipment, as defined in the Purchase Contract, which was created as a result of the Final DIP Order is junior to Midwest's interests in that property.

48. Under 11 U.S.C. § 506(a), Midwest holds a secured claim to the extent "of the value of such creditor's interest in the estate's interest in such property."

49. Under 11 U.S.C. § 506(a), such value "shall be determined in light of the purpose of the valuation and the proposed disposition of the use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

50. Based upon information and belief, Superior intends to retain the Mine (i.e., the Land and Equipment as defined in the Purchase Contract).

51. Based upon information and belief, Superior seeks to find that for purposes of the Plan, Midwest's Allowed Class 2 Claim in relation to the Mine is substantially less than the outstanding balance of Midwest's claim.

52. The Debtors' proposed valuation of these assets, and correspondingly of Midwest's secured claim, is inconsistent with the proposed disposition and use of the property securing the claim.

53. Given the foregoing, there is an actual controversy between Midwest and the Defendants as to the validity, priority, and extent of Midwest's interest in the Mine.

54. A judicial determination of the validity, extent, and priority of Midwest's interest in these assets is necessary to the proper administration of these estates.

COUNT II:
DETERMINATION OF SETOFF OR EQUITABLE RIGHTS

55. Midwest asserts and realleges paragraphs 1-54 above.

56. Midwest holds setoff or equitable rights against Superior for the amounts due under the Purchase Contract.

57. Midwest asserted its rights in the Litigation and the lis pendens recorded with the Barron County Register of Deeds.

58. Midwest's setoff or equitable rights constitute an interest in the Mine (i.e., the Land and Equipment, as defined in the Purchase Contract) which is superior to the interests of HPS or the DIP Lenders.

59. A judicial determination of the validity, extent, and priority of Midwest's setoff or equitable rights in these assets is necessary to the property administration of these estates.

COUNT III:
DECLARATORY JUDGMENT

60. Midwest asserts and realleges paragraphs 1-59 above.

61. Midwest's interest in the Land and Equipment, as defined in the Purchase Contact, lien constitutes a valid and unavoidable prepetition interest in Superior's property.

62. Midwest's interest in these assets is a "Senior Lien" within the meaning of the Final DIP Order.

63. Any liens granted to HPS or the DIP Lenders pursuant to the Final DIP Order are junior to Midwest's interest in these assets.

64. A judicial determination and declaration of the respective rights of the parties is essential to the proper administration of these estates.

65. A judicial determination and declaration of the priority, validity, and extent of Midwest's property interest, together with a determination of the value of Midwest's interest in the interest of the Debtors in such property, is required to determine the appropriate treatment of Midwest's Allowed Class 2 Claim for purposes of the Plan.

WHEREFORE, Midwest requests entry of judgment against the Defendants as follows:

A. Declaring that (i) Midwest's interest in the Land and Equipment, as defined in the Purchase Contract, is a valid and unavoidable prepetition interest in property of Superior; (ii) neither HPS nor the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders held a superior interest or lien in such property; and (iii) Midwest's interest in such property is a "Senior Lien" within the meaning of the Final DIP Order and any lien of the DIP Lenders is junior and subordinate to that lien;

B. Determining the extent of Midwest's interest in the Land and Equipment, as defined in the Purchase Contract, in accordance with 11 U.S.C. § 506(a);

C. Awarding such other and further relief as the Court deems equitable and proper.

Date: October 28, 2019
Wilmington, DE

SULLIVAN · HAZELTINE · ALLINSON LLC

/s/ E.E. Allinson III

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Attorneys for Midwest Frac and Sands LLC

Exhibit 1

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE is made as of this _____ day of _____, 2014 between MIDWEST FRAC AND SANDS LLC, a Wisconsin limited liability company, having an address of 57 17 ¼ Avenue, Turtle Lake, Wisconsin 54889 ("**Seller**"), and SUPERIOR SILICA SANDS LLC, a Texas limited liability company, having an address at 6000 Western Place, Suite 465, Fort Worth Texas 76107 ("**Purchaser**").

R E C I T A L S:

A. Seller is the owner of the Premises (as hereinafter defined), which is generally located in Barron County, Wisconsin.

B. Purchaser is desirous of purchasing from Seller the Premises, and Seller is desirous of selling same to Purchaser, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed by Purchaser and Seller, the parties hereto, each intending to be legally bound, do hereby covenant and agree as follows:

1. Recitals. All of the recitals set forth above are materially true and accurate and are incorporated herein by reference.

2. Definitions. In addition to the terms defined elsewhere in this Agreement, as used herein and in the Exhibits annexed hereto, the following terms shall have the following meanings, unless otherwise defined herein:

(a) Agreement: This Agreement of Purchase and Sale and any written amendments or modifications hereof duly executed by all of the parties hereto.

(b) Business Day: Any day of the year in which commercial banks are not required or authorized to close in Barron County, Wisconsin.

(c) Effective Date: The date on which Seller and Purchaser have executed this Agreement, as evidenced by the day and year first above written.

(d) Frac Sand: shall mean Sand (as hereinafter defined) which has been processed through the Wet Plant (as hereinafter defined), loaded onto trucks for transport to Purchaser's dry plant, and that Purchaser considers finished, saleable product, as determined by Purchaser in its sole discretion.

(e) Purchaser's Representatives: Collectively, Purchaser's employees, agents, directors, officers, affiliates, partners, brokers or other representatives, including, without limitation, contractors, engineers, appraisers, attorneys, accountants, consultants, financial advisors, investors and lenders.

(f) Rolling Stock: shall mean the equipment and vehicles listed on Exhibit F.

(g) Sand: shall mean all silica sand and other nonmetallic minerals, including, without limitation, Frac Sand, but excluding clay and topsoil.

(h) Surviving Obligations: Collectively: (i) any indemnities and any other obligations under this Agreement on the part of Purchaser or Seller which are specifically stated to survive the termination of this Agreement and/or Closing, and (ii) those costs, expenses, and payments specifically stated herein to be the responsibility of Purchaser or Seller, respectively, it being the intention of the parties that the parties shall nonetheless be and remain liable for their respective obligations under (i) and (ii) notwithstanding the termination of this Agreement for any reason and/or Closing of the transaction contemplated herein.

3. Sale and Purchase of Premises. Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, at the price and upon the terms, provisions and conditions set forth in this Agreement, all that certain real property (known as Parcel Identification No.s 004-1900-20-000, 004-2000-16-000 and 004-2000-17-000) located in Barron County, Wisconsin, as more particularly described on Exhibit A (the "**Land**"), together with (i) all buildings, and other improvements situated on the Land (collectively, the "**Improvements**"), including, but not limited to, an office building, the wet plant (the "**Wet Plant**"), all conveyors and conveyor systems (the "**Conveyor Systems**"), and all of Seller's trade fixtures (the "**Trade Fixtures**") located on the Land as of the Effective Date; provided, however, no Rolling Stock is included in this transaction; (ii) all Sand including, but not limited to, Frac Sand whether still located in the Land or mined and stockpiled thereon; (iii) all right, title and interest of Seller in and to all easements, rights of way, reservations, privileges, appurtenances, and other estates pertaining to the Land; (iv) any and all permits and licenses necessary to own and operate the mine and processing facilities located on the Land (the "**Permits**"); and (v) all right, title and interest of Seller, if any, in and to all strips and gores, all alleys adjoining the Land to the center line thereof (the Land and all of the foregoing items listed in clauses (i) - (v) above being hereinafter sometimes collectively referred to as the "**Premises**").

4. Purchase Price and Method of Payment of Purchase Price.

Subject to adjustment in accordance with the terms and conditions set forth herein, the "**Purchase Price**" shall be Twenty Four Million and No/100 U.S. Dollars ($24,000,000.00), which shall be paid as follows:

(a) an initial refundable deposit equal to Eleven Million and No/100 U.S. Dollars ($11,000,000.00), less all outstanding monies owed by Seller to Purchaser at that time (which shall include, but not be limited to, $202,184.64 owed by Seller to Purchaser pursuant to the Dry Sand Tolling Agreement, as hereinafter defined), shall be escrowed with the Title Company (as hereinafter defined) no later than June 15, 2014 (the "**Deposit**"). Notwithstanding any deduction from the initial $11,000,000.00 Deposit for amounts owed by Seller to Purchaser, the Purchaser shall get an $11,000,000.00 credit at Closing for the Deposit. The Deposit shall be held in an interest-bearing money market account under Federal Tax I.D. No. 90-0389-889. Any

interest earned on the Deposit shall be for the benefit of Purchaser. At Closing, the Deposit (together with any interest earned thereon) shall be applied to the Purchase Price; and

(b) the remaining Thirteen Million and No/100 U.S. Dollars ($13,000,000.00) (the "**Amount Owed**"), will be paid in accordance with the terms and conditions of Section 5.

(c) The Purchase Price is provided as consideration for: (i) Seller's execution of this Agreement and agreement to sell the Premises to Purchaser in accordance with the terms and conditions set forth herein; (ii) Seller's agreement to (x) file a voluntary dismissal of Seller's current legal action (the "**Action**") against Barron County with regard to the upgrade and maintenance fees on certain Barron County roads (which Seller hereby agrees to do on or before the Closing Date), (y) Seller's ongoing agreement not to refile such Action or any similar action while Purchaser still owns the Premises and (z) Seller's agreement to pay all such upgrade and maintenance fees attributable to Seller's ownership and/or operation of the Premises prior to the Closing (provided, that Purchaser hereby agrees to pay all such upgrade and maintenance fees attributable to Purchaser's ownership and/or operation of the Premises after the Closing); (iii) Seller's execution of that certain Non-Competition Agreement with Purchaser to be dated as of the Closing Date; (iv) Seller's execution of that certain Letter Agreement with Purchaser to be dated as of the Closing Date; (v) Seller's execution of that certain Termination Agreement to be dated as of the Closing Date; and (vi) Seller's sale of the Wet Plant, the Conveyor Systems, and all of Seller's Trade Fixtures located on the Land as of the Effective Date. This Section 4 shall survive Closing.

(d) The parties hereto acknowledge and agree that Purchaser has retained an independent, third party appraiser (the "**Appraiser**") to appraise the assets (both tangible and intangible) to be sold by Seller and acquired by Purchaser pursuant to this Agreement (the "**Assets**"). In connection therewith, it is the parties' current belief that the Assets constituting personal property should be valued at approximately $1,500,000.00 and the parties agree to provide the Appraiser with all information and documentation in support of such belief. Notwithstanding the aforementioned, the Purchase Price shall be allocated between the Assets as determined by the Appraiser.

5. Payment of Amount Owed. The Amount Owed shall be satisfied by the Royalty and Annual Minimum Payment on a dollar per dollar basis as set forth below:

(a) Royalty. Purchaser shall pay Seller a royalty of Two and 50/100 U.S. Dollars ($2.50) (the "**Royalty**") for each ton of Frac Sand. The Royalty shall be $2.50 until Purchaser has made total Royalty payments, including any Annual Minimum Payments (as defined below) equal to the Amount Owed. After Purchaser has made Royalty payments, including any Annual Minimum Payments, equal to the Amount Owed, the Royalty shall be reduced to One and No/100 U.S. Dollars ($1.00) per ton of Frac Sand until Seller exercises its option to purchase as set forth in Section 14.

(b) Time and Annual Minimum Payment. The Royalty shall be paid 60 days after the last day of each month that the Frac Sand is removed from the Land and shall be applied to reduce the Amount Owed. After the Effective Date, in the event that the Royalty does not total Two Million and No/100 U.S. Dollars ($2,000,000.00) on an annual basis (any partial years

to be prorated), then Purchaser shall pay Seller the difference between the actual amount of the Royalty and $2,000,000.00 (the "**Annual Minimum Payment**"). The Annual Minimum Payment shall be applied to reduce the Amount Owed. After the Purchaser has paid the Amount Owed, Purchaser shall no longer be required to make an Annual Minimum Payment.

(c) Interest Payment. At the end of each calendar year (provided that any partial year shall be prorated), Purchaser shall pay Seller a payment (the "**Interest Payment**") equal to the Amount Owed, less all Royalties and Annual Minimum Payments paid by Purchaser to Seller, and multiplied by .0375, effectively paying Seller 3.75% interest per annum on any unpaid portion of the Amount Owed. Once Purchaser has paid Seller Royalties and Annual Minimum Payments totaling the Amount Owed or Purchaser has provided the Purchase Option Notice (as defined below) to Seller, Purchaser shall no longer be required to make the Interest Payment.

(d) Method of Payment. Until notified otherwise in writing, the monthly Payment shall be paid to Seller and shall be paid by check or by wire transfer delivered in the usual course of business to Seller at P.O. Box 366, 632 US Highway 8, Turtle Lake, Wisconsin 54889, or at and to such financial institution as Seller may from time to time designate by written notice to Purchaser. Any financial institution or institutions so designated to receive either wire transfers or checks shall be deemed the agent of Seller for the purpose of receipting, receiving, and collecting the Payment.

(e) Weighing. All Frac Sand removed from the Land shall be weighed by Purchaser on loader scales at the Wet Plant. All Royalty will be paid upon certified scale measurements.

(f) Commingling. Purchaser has the right to commingle the Sand from the Premises with outside Sand so long as the Sand from the Premises is first weighed and accounted for purposes of the Royalty.

(g) Audits. Purchaser shall retain, until completion of an audit and reconciliation, all production records, invoices, and other records needed to audit the calculation of Royalty for at least two (2) years. Purchaser shall allow Seller reasonable access to all books and records relating to the tonnage of Frac Sand removed from the Premises, and provide copies of such records upon reasonable request by Seller at Seller's sole cost and expense. If an audit, by an auditor mutually agreeable to both parties, establishes that Purchaser underpaid Royalty, Purchaser shall pay for the net shortfall in Royalty payments, applicable interest, and Seller's audit costs; provided, however, that Purchaser shall have no liability for such audit until the audit reveals a discrepancy of more than five percent (5%) and then Purchaser's liability for such audit costs is limited to the amount of the net shortfall in Royalty payments.

(h) No Production Requirements. Seller acknowledges that Purchaser shall be under no duty to commence operations or to recover or remove any Sand from the Premises. Seller acknowledges and agrees that there are no minimum mining or production requirements contemplated herein. Purchaser shall at all times have the right to choose whether or not to mine or process the Sand in its sole and absolute discretion and shall in no event be required to deplete any reserve or stockpile located on the Premises. Notwithstanding anything set forth in this

subsection (h), Purchaser shall remain obligated to make the Annual Minimum Payment pursuant to Section 5(b).

(i) This Section 5 shall survive Closing.

6. Inspection and Due Diligence Period.

(a) During the period (the "**Inspection Period**") commencing with the Effective Date and expiring upon the Closing Date (as hereinafter defined), Purchaser and Purchaser's Representatives shall have full access to examine and inspect the Premises. Purchaser and/or Purchaser's Representatives may make surveys, perform soil tests, environmental audits, engineering tests, and other investigations and tests as Purchaser in its sole discretion deems advisable (collectively, the "**Inspection**"), subject to the terms and conditions set forth herein.

(b) The Inspection and all other due diligence activities shall be conducted by Purchaser and/or Purchaser's Representatives at Purchaser's sole cost and expense.

(c) Purchaser shall promptly repair any damage to the Premises resulting from the Inspection and shall promptly replace and refill any portion of the Premises used for any inspections or tests, except Purchaser shall not be required to repair damage solely caused by the negligence or willful misconduct of Seller.

(d) Purchaser shall comply with all laws applicable to the Inspection.

(e) Purchaser agrees to keep the Premises free of any lien or encumbrance arising by or through Purchaser, including, without limitation, liens for services, labor or materials furnished in connection with the Inspection, and to cause any such liens or encumbrances to be timely removed.

(f) Once Purchaser sends written notice to Seller that Purchaser has completed its due diligence of the Premises and is prepared to close this transaction in accordance with this Agreement (subject to all terms and conditions set forth herein), Seller shall, from that date forward, not deplete, remove, transfer or sell any Sand and Frac Sand on, about or derived from the Premises other than to Purchaser.

(g) If prior to the expiration of the Inspection Period, Purchaser, for any reason whatsoever, has determined not to complete the purchase of the Premises, Purchaser shall notify Seller in writing of its decision to terminate this Agreement. Upon such written notice, this Agreement shall terminate and the Deposit and accrued interest shall be returned to Purchaser.

7. Adjustments to Purchase Price, Prorations and Apportionments.

(a) Except as otherwise set forth below, the following shall be prorated and apportioned between Seller and Purchaser as of midnight of the day preceding the Closing Date:

(i) all real estate taxes for the year in which Closing occurs.

(b) In addition to the items to be apportioned in accordance with Section 7(a), at Closing, Seller shall be responsible for:

(i) all real estate taxes for the years prior to Closing; and

(ii) utilities, including, without limitation, water, sewer, telephone, electricity and gas, on the basis of the most recently issued bills therefor.

(c) Seller shall pay, or will have paid, all special assessments and liens for public improvements or similar liens which are, as of the Closing Date, certified liens and Purchaser shall assume payment of all special assessments and liens or public improvements or similar liens which are, as of the Closing Date, pending liens, unless such special assessments are payable in installments in which case Seller shall be responsible for all installments accruing prior to the Closing Date, and Purchaser shall be responsible for all of the installments accruing on or after the Closing Date.

8. Closing.

(a) Closing Date and Place. The closing hereunder (the "**Closing**") shall be conducted through an escrow with the title insurance company issuing Purchaser title insurance for the Premises (the "**Title Company**") on or before 2:00 p.m. Daylight Savings Time on the day that all conditions to Closing, as set forth herein, have been satisfied in Purchaser's sole discretion; provided, that the Closing shall occur no later than July 15, 2014, unless such delay is caused in whole or in part by Seller, in which case the July 15, 2014, date may be extended a reasonable amount of time to account for any such Seller delay ("**Closing Date**").

(b) Seller's Documents. At or prior to the Closing, Seller shall execute, acknowledge and/or deliver, as applicable, the following items to the Title Company (collectively, the "**Seller's Documents**"):

(i) a warranty deed with English covenants of title (the "**Deed**"), attached hereto as Exhibit B and which is made a part hereof, in recordable form, which shall be effective to vest in Purchaser good and marketable fee simple title to the Premises, subject only to the Permitted Encumbrances (as hereinafter defined);

(ii) a "**FIRPTA**" affidavit attesting to facts pertaining to Seller's name, address, tax identification number and non-foreign status as required by Section 1445 of the Internal Revenue Code and regulations;

(iii) an affidavit reasonably sufficient in form and content to cause the Title Company to delete the standard printed exceptions from the Title Policies (as hereinafter defined);

(iv) a closing statement (the "**Closing Statement**") reflecting all credits, prorations, apportionments and adjustments contemplated hereunder;

(v) an executed Non-Competition Agreement with Purchaser dated of even date therewith and as set forth in Exhibit C hereto;

(vi) an executed Letter Agreement as set forth in Exhibit D;

(vii) an executed Bill of Sale and Assignment of Permits as set forth in Exhibit E;

(viii) evidence of Seller's dismissal of the Action;

(ix) any and all documents necessary to effectuate the transfer of the Permits;

(x) an executed Termination Agreement as set forth in Exhibit G;

(xi) any documents required to be obtained by the Title Company in connection with the Closing, including, without limitation, Schedule B, Section I requirements of the Title Commitments (as that term is hereinafter defined), that are within the purview of Seller's responsibilities hereunder, or otherwise to comply with any state or federal law; and

(xii) all other documents Seller is required to deliver pursuant to the provisions of this Agreement or that Purchaser may reasonably request.

(c) Purchaser's Documents. At or prior to Closing, Purchaser shall execute, acknowledge and/or deliver, as applicable, the following items to Title Company (collectively, the "**Purchaser's Documents**"):

(i) the Purchase Price in accordance with Section 4 hereof;

(ii) the Closing Statement;

(iii) an executed Non-Competition Agreement dated of even date therewith and as set forth in Exhibit C hereto;

(iv) an executed Letter Agreement as set forth in Exhibit D;

(v) an executed Bill of Sale and Assignment of Permits as set forth in Exhibit E;

(vi) an executed Termination Agreement as set forth in Exhibit G; and

(vii) all other documents Purchaser is required to deliver pursuant to the provisions of this Agreement or that Seller may reasonably request.

(d) Closing Expenses.

(i) At Closing, Seller shall pay all costs regarding the satisfaction and discharge of any liens or encumbrances required to be discharged to deliver good and marketable fee simple title to Purchaser free and clear of all liens, except Permitted Encumbrances, one-half of any recordation or transfer taxes or fees in connection with the delivery and recordation of the Deed, and Seller's attorneys fees.

(ii) At Closing, Purchaser shall pay one-half of any recordation or transfer taxes or fees in connection with the delivery and recordation of the Deed, all costs of the Inspection and other due diligence activities of Purchaser, the cost of the Title Commitments, the Title Policies, the Survey (as hereinafter defined), and Purchaser's attorneys' fees.

(e) Conditions Precedent to Closing.

(i) Purchaser's obligation to close hereunder is subject to the representations and warranties of Seller contained herein being true and correct in all respects as of the Closing Date and subject to Seller's right to cure as set forth hereafter. Purchaser shall notify Seller in writing of any breach of any representation or warranty of Seller whereupon Seller shall have up to thirty (30) days from Seller's receipt of Purchaser's notice to cure such breach.

(ii) Purchaser's obligation to close hereunder shall also be subject to Purchaser (x) obtaining all third party and governmental consents, approvals, permits and the like that Purchaser deems, in its sole discretion, necessary for the development and operation of the Premises and (y) being satisfied, in Purchaser's sole and absolute discretion, with the findings of the Inspection.

9. Condition of Title.

(a) On or prior to the end of the Inspection Period, Purchaser shall obtain and provide Seller with a copy of one or more title insurance commitments (the "**Title Commitments**") agreeing to issue to Purchaser, upon recording of the Deed, one or more standard ALTA owner's title insurance policies (the "**Title Policies**") in an amount equal to the Purchase Price for the Premises, subject only to taxes for the year of Closing and subsequent years, pre-printed standard exceptions. The cost of the Title Policies shall be borne by Purchaser.

(b) If the Title Commitments, or any update thereto, shall disclose the existence of any liens, encumbrances or other defects or exceptions that could be expected to adversely affect the Purchaser's development and operation of the Premises as envisioned by Purchaser in Purchaser's sole discretion (collectively, the "**New Title Matters**"), then Purchaser shall give Seller written notice (i) as to such matters disclosed in the Title Commitments, by the end of the Inspection Period, and (ii) as to such matters disclosed in any such update to the Title Commitments, within three (3) days after Purchaser's receipt of such update (each, a "**Purchaser's Title Notice**"), specifying any New Title Matters which Purchaser finds objectionable ("**Objections**"), if any. Purchaser hereby waives any right Purchaser may have to raise as an objection to title or as a ground for Purchaser's refusal to close this transaction, any New Title Matters which Purchaser does not list as an Objection in a timely delivered Purchaser's Title Notice, such New Title Matters thereafter being deemed to be "**Permitted Encumbrances**"; provided, that notwithstanding the aforementioned to the contrary, Permitted Encumbrances shall not include any monetary lien encumbering the Premises, all of which shall be satisfied and released by Seller prior to Closing. Seller shall have up to the Closing Date to cure such Objections. In the event Seller elects (the "**Election**") not to cure all of the Objections

by the Closing Date or otherwise arrange for title insurance insuring against enforcement of such Objections against, or collection of same out of, the Premises, Purchaser shall have only the right (i) to terminate this Agreement by giving written notice (the "**Written Notice**") thereof to Seller, whereupon the Title Company will return the Deposit, and any accrued interest, to Purchaser, neither party hereto thereafter having any further rights or obligations hereunder, except for the Surviving Obligations, or (ii) to waive the Objections and consummate the purchase of the Premises, with or without (depending on the agreement between the parties) any abatement or reduction of the Purchase Price, subject to the Objections which shall be deemed to be Permitted Encumbrances. Notwithstanding the foregoing, if Seller has commenced curing the Objections and is diligently prosecuting the same, then Purchaser, upon written request by Seller, shall extend the cure period for such time as may be required for Seller to cure the same, in no event to exceed thirty (30) days. Should Seller elect to cure and be unsuccessful, Purchaser may elect to terminate this Agreement or to waive the Objections and proceed to close under the provisions as stated herein with or without any abatement or reduction of the Purchase Price.

(c) Purchaser may obtain a survey of the Premises (the "**Survey**"). The cost of the Survey shall be borne by Purchaser. Purchaser shall notify Seller, in writing, as to matters that could be expected to adversely affect the Purchaser's development and operation of the Premises as determined by Purchaser in its sole discretion that are disclosed on the Surveys and Purchaser finds objectionable, by the end of the Inspection Period, and such objections shall be deemed Objections and dealt with as such in accordance with the provisions of Section 9(b) hereof.

10. Representations, Warranties, Covenants and Acknowledgments.

(a) Seller represents and warrants to Purchaser as follows:

(i) Seller is a duly formed and validly existing limited liability company organized under the laws of the State of Wisconsin;

(ii) Seller has the full legal right, power and authority to execute and deliver this Agreement and all of Seller's Documents, to consummate the transactions contemplated hereby, and to perform its obligations hereunder and under all of Seller's Documents;

(iii) This Agreement and Seller's Documents do not and will not contravene any provision of any judgment, order, decree, writ or injunction issued against Seller, or any provision of any laws applicable to Seller. The consummation of the transactions contemplated hereby will not result in a breach or constitute a default or event of default by Seller under any agreement to which Seller or any of its assets are subject or bound and will not result in a violation of any laws applicable to Seller;

(iv) Seller has not received any notices (a) of any claims against the Premises, (b) from any governmental authority of any violation of any laws, ordinances or other governmental regulations applicable to the Premises, or (c) of any special assessments, improvement bonds or any pending condemnation proceedings respecting any portion of the Premises;

(v) Seller has reclaimed to the extent possible, and in compliance with applicable reclamation laws, ordinances and requirements, existing as of the Effective Date, all areas of the Premises that Seller has mined or conducted business operations;

(vi) No Hazardous Materials (as hereinafter defined) have been generated, disposed of or released on the Premises. Seller has received no written notice that any municipality or any governmental or quasi-governmental authority has determined that there are any violations of environmental statutes, ordinances or regulations affecting the Premises. The term "**Hazardous Materials**" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time prior to the date hereof, and regulations promulgated thereunder prior to the date hereof; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time prior to the date hereof, and regulations promulgated thereunder prior to the date hereof (including petroleum-based products as described therein); (c) other petroleum and petroleum-based products; (d) asbestos in any quantity or form which would be subjected to regulation under any applicable environmental statutes, ordinances or regulations enacted prior to the date hereof affecting the Premises; (e) polychlorinated biphenyls; (f) any substance, the presence of which on the Premises is prohibited by any environmental statute, ordinance or regulation affecting the Premises; and (g) any other substance which, by any environmental statute, ordinance or regulation affecting the Premises, require special handling in its collection, storage, treatment or disposal; and

(vii) Seller or its affiliate is not a person or entity with whom Purchaser is restricted or prohibited from doing business by any trade embargo, economic sanction, anti-money laundering laws, anti-terrorism laws, or national security laws (including but not limited to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, commonly known as the "**Patriot Act**") or other prohibition of United States laws, regulations, or executive orders of the President of the United States.

(b) Purchaser warrants and represents to Seller as follows:

(i) Purchaser is a duly formed and validly existing limited liability company organized under the laws of the State of Texas;

(ii) Purchaser has the full legal right, power, authority and financial ability to execute and deliver this Agreement and all of Purchaser's Documents, to consummate the transactions contemplated hereby, and to perform its obligations hereunder and under all of Purchaser's Documents; and

(iii) This Agreement and Purchaser's Documents do not and will not contravene any provision of the organizational documents of Purchaser, any judgment, order, decree, writ or injunction issued against Purchaser, or any provision of any laws applicable to Purchaser. The consummation of the transactions contemplated hereby will not result in a breach or constitute a default or event of default by Purchaser under any

agreement to which Purchaser or any of its assets are subject or bound and will not result in a violation of any laws applicable to Purchaser.

(c) The representations and warranties of Purchaser and Seller set forth in this Section 10 shall be true, accurate and correct in all respects upon the execution of this Agreement and at Closing. The representations and warranties in this Section shall survive Closing.

11. Remedies Upon Default of Purchaser.

(a) If Purchaser is in default under this Agreement after providing Purchaser with written notice of such default and a reasonable opportunity to cure the same, Seller may terminate this Agreement by notice to Purchaser. If Seller elects to terminate this Agreement, then this Agreement shall be terminated, the Deposit and any accrued interest returned to Purchaser, and Purchaser shall pay Seller One Thousand and No/100 U.S. Dollars ($1,000.00), as full and agreed upon liquidated damages, consideration for the execution of this Agreement and in full settlement of all claims whereupon the parties hereto shall be relieved of all obligations hereunder, except for the Surviving Obligations, it being agreed that the actual damages suffered by Seller shall be impossible to ascertain and the payment of the aforementioned $1,000 amount shall be the sole liability of Purchaser by reason of any default hereunder. Except as set forth in the immediately preceding sentence, Seller hereby expressly waives, relinquishes and releases any other right or remedy available to them at law, in equity or otherwise by reason of Purchaser's default hereunder or Purchaser's failure or refusal to perform its obligations hereunder. This provision shall survive any termination of this Agreement.

(b) Notwithstanding anything set forth in Subsection (a) above to the contrary, in the event that Purchaser is in default of this Agreement beyond all applicable notice and cure periods due to a failure to pay the Royalty, Annual Minimum Royalty or Interest Payment, as contemplated in Section 5, Seller shall have the right, after providing Purchaser with an additional written notice, to repurchase the Land and Equipment from Purchaser if Purchaser fails to cure such default within thirty (30) days after receipt of the aforementioned additional notice. Such additional notice shall state (i) at the top of such notice in bold and capitalized letters "**NOTICE OF MATERIAL DEFAULT AND EXERCISE OF REPURCHASE RIGHT**", and (ii) in the body of such notice that Seller intends to repurchase the Land and Equipment should Purchaser fail to cure such default within thirty (30) days after receipt of this additional notice. In the event that Purchaser fails to cure such default within such thirty (30) day period, Purchaser shall sell the Land to Seller pursuant to the terms and conditions set forth in Section 14 and Purchaser shall sell the Equipment to Seller for its fair market value in its AS-IS, WHERE IS condition.

12. Remedies on Default of Seller. If Seller fails to close the transaction contemplated by this Agreement for any reason other than Purchaser's default, Purchaser may, in addition to other remedies available to Purchasers at law or in equity, either (i) seek specific performance, or (ii) elect to terminate this Agreement, whereupon the Title Company shall return the Deposit and any accrued interest, and each of the parties shall be relieved of all further liability to the other hereunder, except for the Surviving Obligations. This provision shall survive the Closing or termination of this Agreement.

13. Risk of Loss; Eminent Domain.

(a) If, prior to the Closing, all or any portion of the Premises is damaged by fire, vandalism, acts of God or other casualty or cause, the risk of such loss shall be borne by Seller, and Purchaser shall have the option to terminate this Agreement upon written notice to Seller given not later than fifteen (15) days after Purchaser's receipt of Seller's notice.

(b) If, prior to Closing, all or any "significant" portion (as hereinafter defined) of the Premises is taken by eminent domain (or is the subject of a pending or contemplated taking which has not been consummated), Seller shall notify Purchaser of such fact and Purchaser shall have the option to terminate this Agreement upon written notice to Seller given not later than fifteen (15) days after Purchaser's receipt of Seller's notice. If Purchaser does not elect to so terminate this Agreement or if an "insignificant" portion ("insignificant" is herein deemed to be any taking which is not "significant") of the Premises is taken by eminent domain or condemnation, Purchaser shall proceed to Closing as provided in this Agreement without abatement of or adjustment to the Purchase Price and, at Closing, Seller shall assign and turn over all compensation and damages awarded or the right to receive same with respect to such taking, condemnation or eminent domain. A "significant portion" means any portion of the Premises that would prevent Purchaser from developing and operating the same in Purchaser's sole discretion.

(c) If this Agreement is terminated pursuant to this Section 13, the Title Company shall return the Deposit and any accrued interest to Purchaser, and the parties hereto shall be released from all further obligations and liabilities hereunder, except for the Surviving Obligations.

14. Purchase Option. Once Purchaser has determined, in its sole and absolute discretion, that the Premises is no longer viable for its Sand mining and processing activities, Purchaser shall notify Seller in writing (the "**Purchase Option Notice**") of the same and Seller shall have an option to purchase all of the Land (not a portion thereof) back from Purchaser for One Thousand and No/100 U.S. Dollars ($1,000.00) per acre; provided, that this purchase option and the $1,000.00 per acre purchase price shall not include any machinery, equipment or Trade Fixtures, including, without limitation, the Wet Plant and Conveyor Systems (collectively, the "**Equipment**"), which will remain the property of Purchaser to be removed and/or disposed of in its sole discretion, whether the Equipment is attached, unattached, or deemed a fixture. Seller shall have thirty (30) days after receipt of the Purchase Option Notice (the "**Option Period**") to elect in writing to purchase all of the Land from the Purchaser for the purchase price set forth above. Seller's failure to elect in writing to purchase all of the Land within the Option Period shall be deemed Seller's election not to purchase the Land and the purchase option set forth in this Section shall terminate and be of no further force or effect. If Seller elects in writing to purchase all of the Land within the Option Period, Seller shall purchase the Land for the purchase price noted above within thirty (30) days after the end of the Option Period on an AS IS, WHERE IS basis and upon such other terms and conditions as are mutually acceptable to Seller and Purchaser. This Section shall survive Closing.

15. Rights of Title Company as Escrow Agent. If there is any dispute as to whether the Title Company is obligated to deliver any monies and/or documents which it now or

hereafter holds, including, without limitation, the Deposit and accrued interest (collectively, the "**Escrowed Property**") or as to whom any Escrowed Property are to be delivered, the Title Company shall not be obligated to make any delivery, but, in such event, may hold same until receipt by the Title Company of an authorization, in writing, signed by all of the parties having an interest in such dispute directing the disposition of same; or, in the absence of such authorization, the Title Company may hold any Escrowed Property until the final determination of the rights of the parties in an appropriate proceeding. Within three (3) Business Days after receipt by the Title Company of a copy of a final judgment or order of a court of competent jurisdiction, certified by the clerk of such court or other appropriate official, the Escrowed Property shall be delivered as set forth in such judgment or order. A judgment or order under this Agreement shall not be deemed to be final until the time within which to take an appeal therefrom has expired and no appeal has been taken, or until the entry of a judgment or order from which no appeal may be taken. If such written authorization is not given or proceeding for such determination is not begun and diligently continued, the Title Company shall have the right to bring an appropriate action or proceeding for leave to deposit the Escrowed Property in court, pending such determination. In the event that the Title Company places any Escrowed Property in the registry of the governing court in and for Barron County, Wisconsin and files an action naming the parties hereto, the Title Company shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. If, without gross negligence on the part of the Title Company, the Title Company shall become a party to any controversy or litigation with respect to the Escrowed Property or any other matter respecting this Agreement, Seller and Purchaser shall jointly and severally hold the Title Company harmless from any damages or losses incurred by the Title Company by reason of or in connection with such controversy or litigation. The provisions of this Section shall survive the Closing or termination of this Agreement.

16. Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

17. Governing Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State in which the Premises is located.

18. Waiver. Except as otherwise provided herein, the failure of Seller or Purchaser to insist upon or enforce any of their respective rights hereunder shall not constitute a waiver thereof.

19. Construction. Each party hereto acknowledges that all parties hereto have participated equally in the drafting of this Agreement and that accordingly, no court construing this Agreement shall construe it more stringently against one party than the other.

20. Captions. The captions used herein have been included for convenience of reference only and shall not be deemed to vary the content of this Agreement or limit the provisions or scope of any section or paragraph hereof.

21. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or entity may require.

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

23. Broker. Purchaser and Seller represent and warrant to each other that they have not dealt with or engaged any broker(s) in connection with the transactions described herein. Each party hereto agrees to indemnify, defend and hold the other harmless from and against any and all claims, causes of action, losses, costs, expenses, damages or liabilities, including reasonable attorneys' fees and disbursements, which the other may sustain, incur or be exposed to, by reason of any claim or claims by any broker, finder or other person, for fees, commissions or other compensation arising out of the transactions contemplated in this Agreement if such claim or claims are based in whole or in part on dealings, discussions or agreements with the indemnifying party. The obligations and representations contained in this Section 23 shall survive the termination of this Agreement and the Closing.

24. Merger. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby. All prior statements, understandings, letters of intent, representations and agreements between the parties, oral or written, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between Seller and Purchaser in connection with this transaction and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement.

25. No Modification. No term or provision of this Agreement may be changed or waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

26. Exhibits. All of the Exhibits annexed hereto are incorporated herein by reference and form a part of this Agreement.

27. Date of Performance. If the date of the performance of any term, provision or condition of this Agreement shall happen to fall on a Saturday, Sunday or other non-Business Day, the date for the performance of such term, provision or condition shall be extended to the next succeeding Business Day immediately thereafter occurring.

28. Third Parties. This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status.

29. Premises Information and Confidentiality. The terms and conditions of this Agreement, the transactions contemplated hereby and any information discovered during the Inspections are confidential and shall not be communicated or otherwise provided to third

parties (other than the respective legal counsel, employees, lenders and financial advisors) by any party hereto, or its agents or employees, without the prior written consent of the other party except as may be required by law, including but not limited to disclosures required by the Securities and Exchange Commission. The obligations and covenants of Seller under this Section 29 shall survive Closing and the termination of this Agreement.

30. Notices. All notices, elections, consents, approvals, demands, objections, requests or other communications which Seller or Purchaser may be required or desire to give pursuant to, under or by virtue of this Agreement must be in writing and sent by (a) first class U.S. certified mail, return receipt requested, with postage prepaid, or (b) a nationally recognized express mail service or courier (next day delivery), addressed to the respective party at the address for each first set forth above. Seller or Purchaser may designate another addressee or change its address for notices and other communications hereunder by a notice given to the other in the manner provided in this Section 30. A notice or other communication shall be deemed to have been properly sent and given when received by the addressee.

When sending any notice to the Purchaser, send a copy of said notice to:

Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Attn: J.C. Chenault, V

31. Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which shall constitute one and the same Agreement. This Agreement may be executed via facsimile or electronic mail counterpart and an electronic signature page shall be deemed an original for purposes of this Agreement. Seller and Purchaser hereby agree to have original signature pages executed and delivered as soon as possible after the execution of this Agreement.

32. Exclusivity. Between the Effective Date and Closing, Seller may not (i) market its rights, title and interests in the Premises or any portion thereof to any other person or entity, (ii) accept or pursue any other offers for Seller's right, title and interest in and to the Premises or any portion thereof, or (iii) sell the Premises, or any portion thereof, to any other person or entity.

33. 1031 Exchange. Buyer or Seller may elect to exchange for other real estate of a like kind in accordance with Section 1031 of the Internal Revenue Code of 1986 as amended (the "Code"). To the extent possible, the provisions of this Section shall be interpreted consistently with this intent. To exercise any rights under this Section, the party electing to exchange shall provide the other with a written statement stating its intent to enter into an exchange at least five (5) days prior to Closing. Either party's election to exchange, rather than sell or buy, for other real estate of a like kind shall be at no cost or liability to the other. The electing party agrees to indemnify and save harmless the non-electing party from any liability, cost, expense, damage or obligation incurred by the non-electing party arising from or related

to the electing party's entering into a non-simultaneous exchange and further agrees that such election shall not result in the delay of the date of Closing.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Seller and Purchaser have caused these presents to be executed and delivered, on the date first above written.

SELLER:

MIDWEST FRAC AND SANDS LLC,
a Wisconsin limited liability company

By: _____

Name: Matt Torgerson

Title: President

PURCHASER:

SUPERIOR SILICA SANDS LLC,
a Texas limited liability company

By: _____

Name: _____

Title: _____

ACCEPTANCE BY ESCROW AGENT

The undersigned Title Company hereby accepts the duties of escrow agent under that certain Agreement for Purchase and Sale between MIDWEST FRAC AND SANDS LLC, a Wisconsin limited liability company, as Seller, and SUPERIOR SILICA SANDS LLC, a Texas limited liability, as Purchaser, as first dated above, relating to the property located in Barron County, Wisconsin, as more particularly described in said Agreement, subject to and in accordance with all the terms and conditions thereof, and hereby agrees to notify Seller upon its receipt of the Deposit from Purchaser in accordance with the terms of Section 4(a) of said Agreement.

Dated: _____, 2014

_____

By:

Its Duly Authorized Representative

EXHIBIT A

Legal Description

[Legal Description to be attached based on Purchaser's Survey]

EXHIBIT B

Warranty Deed

Document Number	Document Name
	WARRANTY DEED

THIS DEED, made between MIDWEST FRAC AND SANDS LLC, a Wisconsin limited liability company ("Grantor"), and SUPERIOR SILICA SANDS LLC, a Texas limited liability company ("Grantee,"). Grantor, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, grants and conveys to Grantee with general warranty and English covenants of title, fee simple title to the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in Barron County, State of Wisconsin ("Property").

An approximately _____ acres parcel of land which is a part of the Town of Arland, Barron County, Wisconsin, more particularly described in Exhibit A.

Recording Area

Name and Return Address:
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 E. Byrd Street
Richmond, VA 23219
Attn: J. C. Chenault, V

Parcel Identification Number (PIN):
004-1900-20-000, 004-2000-16-000 and
004-2000-17-000

This is not homestead property.

Grantor warrants that the title to the Property is good, indefeasible in fee simple and free and clear of encumbrances except: All matters of record as of the date hereof and general real estate taxes levied in the year of closing for amounts not yet due and payable.

Dated: _____, 2014

_____(SEAL)

ACKNOWLEDGEMENT
STATE OF _____)
) ss.
_____COUNTY)

Personally came before me on _____, the above-named Matt Torgerson, _____ of MIDWEST FRAC AND SANDS LLC, a Wisconsin limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____
Notary Public, State of Wisconsin
My Commission (is permanent) (expires:_____)

THIS INSTRUMENT DRAFTED BY:
J. C. Chenault, V
Hunton & Williams LLP

Exhibit A

Legal Description

[Legal Description to be attached based on Purchaser's Survey]

EXHIBIT C

Non-Competition Agreement

This NON-COMPETITION AGREEMENT (this "Agreement") is made and entered into as of _____, 2014 (the "Effective Date") by and among Superior Silica Sands LLC, a Texas limited liability company ("Buyer"), Midwest Frac and Sands LLC, a Wisconsin limited liability company ("Seller"), and Matthew Torgerson, an individual currently residing in Wisconsin ("Equityholder" and, together with Seller and the subsidiaries of Seller or other Seller affiliates, the "Restricted Parties").

RECITALS:

WHEREAS, pursuant to that certain Agreement of Purchase and Sale dated as of _____ among Buyer and Seller (the "Purchase Agreement"), Buyer is purchasing assets, including goodwill, of Seller (the "Transaction");

WHEREAS, the Equityholder owns 100% of the outstanding equity interests of Seller and will benefit substantially from the consummation of the Transaction;

WHEREAS, the Purchase Agreement provides for the execution and delivery of this Agreement by Seller as a condition precedent to the obligation of Buyer to consummate the Transaction under the Purchase Agreement and each of the Restricted Parties acknowledges that Buyer would not enter into the Lease Agreement, or consummate the Transaction, without the execution of this Agreement by Seller and Equityholder.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements and covenants contained herein, the parties hereby agree as follows:

ARTICLE 1

1.1 Defined Terms. For purposes of this Agreement, the following terms will have the meanings ascribed to such terms in this Section 1.1:

(a) "Restricted Business" means (a) the sale, marketing, distribution, mining or processing of frac sand in any capacity and (b) the acquisition of mining rights through land leases or otherwise.

(b) "Restricted Period" means the period commencing on the Effective Date and expiring on the 10th anniversary of the Effective Date; provided, however, that the Restricted Period will be extended for a period of time equal to the time period that any Restricted Party violates the terms of this Agreement, such that the Restricted Parties are ultimately foreclosed from engaging in any conduct prohibited by this Agreement for a time period equal to the full Restricted Period.

(c) "Restricted Territory" means the territories listed on Exhibit A attached hereto.

ARTICLE 2

2.1 Covenant Not to Compete. Each of the Restricted Parties hereby grants to Buyer a covenant not to compete (collectively, the "Covenant") on the terms and conditions set forth in this Article 2.

2.2 No Competition with Buyer. Each of the Restricted Parties covenants and agrees that, for and during the Restricted Period, such Restricted Party will not, directly or indirectly, (a) engage in or carry on the Restricted Business in the Restricted Territory whether individually or in partnership or association with any one or more persons, as a principal, partner, shareholder, employee, officer, director, agent, consultant, or in any other capacity or (b) lend money to, guarantee the lending of money to, or otherwise arrange for or promote the financing of any person engaged in the Restricted Business in the Restricted Territory; provided, however, that for the twelve-month period immediately following the date hereof, the Restricted Parties shall have, and Buyer hereby grants to the Restricted Parties, the exclusive right to acquire mining rights (whether through land leases or otherwise) for properties adjacent to the Land (as defined in the Purchase Agreement) solely for the benefit of Buyer.

2.3 No Interference with Buyer. Each of the Restricted Parties covenants and agrees that, for and during the Restricted Period, such Restricted Party will not, directly or indirectly, contact, solicit or communicate with (a) any customer of Buyer or its affiliates (including any person that was a customer of Seller at any time during the 12 month period immediately preceding the Effective Date) for the purpose of (i) offering, selling, licensing or providing the same or substantially similar products or services offered and/or provided to such customer by Seller during the past 12 month period, (ii) influencing such customer's decision on whether to purchase or use such products or services offered by Buyer or its affiliates, or (iii) negatively and adversely interfering with any relationship between Buyer or its affiliates and such customer, or (b) any supplier, licensee, licensor, or other business relation of Buyer or its affiliates (including any person that was a supplier, licensee, licensor or other potential business relation of Seller at any time during the 12 month period immediately preceding the Effective Date) for the purpose of (i) inducing or attempting to induce such person to cease doing business with Buyer or its affiliates, or (ii) in any way interfering with the relationship between any such supplier, licensee, licensor or business relation and Buyer or its affiliates.

2.4 Non-Solicitation of Employees. Each of the Restricted Parties covenants and agrees that, for and during the Restricted Period, such Restricted Party will not employ or take any actions for or on behalf of such Restricted Party or any other person to assist in the employment, solicitation, or recruiting of any individual employed by Buyer or its affiliates; provided, however, that the Restricted Parties may solicit any employees who are discharged by Buyer or its affiliates, and, provided, further, that nothing in this Section 2.4 shall prohibit the Restricted Parties from employing any employees as a result of a general solicitation to the public or general advertising (or from conducting any such general solicitation or general advertising), or from soliciting any individual whose employment with Buyer or its affiliates has been voluntarily terminated for at least 6 months.

2.5 No Violation of Public Policy. Each of the Restricted Parties and Buyer expressly agree and acknowledge that it is not their intention that the Covenant violate any public policy or law. If a court of competent jurisdiction renders a ruling holding that any one or more of the provisions of the Covenant constitute an unreasonable restriction, then the parties specifically agree that the Covenant will not be rendered void but will apply to such extent and as to such time period

and geographic areas as the court may determine constitutes a reasonable restriction under the circumstances.

2.6 Series of Separate Covenants. Without limiting the generality of Section 2.5, the parties specifically intend that the Covenant will be construed as a series of separate covenants for each of the Restricted Parties and for each distinct geographic area contained within the Restricted Territory. Except for its respective geographic coverage, each and every such separate covenant will be deemed identical in terms to the Covenant and if any one or more of such separate covenants are held by a court of competent jurisdiction to be unenforceable, then each such unenforceable covenant will be deemed eliminated from the Covenant to the extent necessary to permit the remaining separate covenants to be enforced.

2.7 Acknowledgement. With respect to this Article 2, Buyer and the each of the Restricted Parties affirm that it is their intention that the each such Restricted Party's activities are restricted for a period of ten years following the Effective Date. The provisions calling for a "look back" of 12 months prior to the Effective Date contained in Section 2.3 are intended solely as a means of identifying employees, customers, or other actual or potential business relationships to which such restrictions apply and is not intended, nor will it, under any circumstances, be construed, to define the length or term of the Restricted Period.

ARTICLE 3

3.1 No Disclosure of Confidential Information. Each of the Restricted Parties covenants and agrees that such Restricted Party will not divulge, communicate, or use to the disadvantage of Buyer or any its affiliates, or for the benefit of any other person, or misuse in any way, any confidential information related to the Restricted Business; provided, however, that the covenants contained in this Section 3.1 shall not apply to the following: (a) confidential disclosures to legal counsel, accounting advisors and financial advisors; (b) disclosures pursuant to the requirements of a governmental o available other than as a result of disclosures made in breach hereof.

ARTICLE 4

4.1 Consideration. The consideration for the Covenant is Buyer's entering into and performing its obligations under the Lease Agreement and related agreements, including, without limitation, the consummation of the Transaction.

ARTICLE 5

5.1 Indemnification of Buyer. Seller and the Equityholder, jointly and severally, will indemnify and hold harmless the Buyer and its directors, managers, officers, employees, agents, equity holders and affiliates (collectively, the "Buyer Indemnified Parties") from and against any and all losses, liabilities, claims, damages, expenses (including reasonable attorneys' fees or other professional fees and expenses and court costs), fines, encumbrances, taxes, or other costs or expenses incurred or suffered by the Buyer Indemnified Parties arising out of, relating to or resulting from the nonfulfillment, nonperformance or other breach of this Agreement.

5.2 Equitable Remedies. Each of the Restricted Parties expressly acknowledges and agrees that (a) a remedy at law, including indemnification pursuant to Section 5.1, in the event of an actual or threatened breach of this Agreement by such Restricted Party is not adequate and Buyer

will be entitled in the event of such a breach to an injunction and other equitable remedies as a matter of right, and (b) recourse to any remedy whether at law or in equity will not constitute an exclusive election of remedies by Buyer that precludes Buyer from seeking other remedies or any combination of remedies as Buyer may determine to be appropriate under the circumstances surrounding such actual or threatened breach. Buyer will be entitled to seek immediate injunctive relief from each of the Restricted Parties for a breach or threatened breach of Article 2 or Article 3 hereof by such Restricted Party. In the event that a court will award injunctive relief to Buyer, the Restricted Period will not run during any period of time during which such Restricted Party will have been in violation of the Covenant.

ARTICLE 6

6.1 Successors and Assigns. This Agreement will be binding upon and will inure to the benefit of Buyer and the Restricted Parties and their respective successors, permitted assigns, and legal representatives of every kind, character or nature. Notwithstanding the foregoing, none of the parties hereto may assign such party's rights or obligations under this Agreement, by operation of law or otherwise except that Buyer may collaterally assign any or all of its rights and obligations hereunder to any provider of debt financing to it or any of its affiliates. Any attempted assignment in violation of this Section 6.1 will be void.

6.2 Governing Law. This Agreement will be governed by and construed in accordance with the laws of Wisconsin, without giving effect to its principles of conflicts of law.

6.3 Jurisdiction and Venue. The parties agree that any action, special proceeding, or other proceeding with respect to this Agreement will be brought exclusively in the federal or state courts of Texas. Buyer and the Restricted Parties irrevocably consent to the exclusive jurisdiction of the federal and state courts of Texas and waive any objection which any such party may now or hereafter have to the bringing of any proceeding in connection with this Agreement in such courts. Buyer and the Restricted Parties acknowledge and agree that any service of legal process by mail in the manner provided for notices under this Agreement constitutes proper legal service of process under applicable law in any proceeding under or in respect to this Agreement.

6.4 Entire Agreement. This Agreement and the Lease Agreement constitute the full and entire understanding and agreement between Buyer and the Restricted Parties with respect to the subject matter hereof and supersede any and all prior agreements, arrangements and understandings, both written and oral, with respect to the subject matter hereof.

6.5 Attorneys' Fees and Costs. In the event that any legal proceeding concerning the enforcement and interpretation of the provisions of this Agreement is instituted, the prevailing party in such proceeding will be entitled to recover its reasonable attorneys' fees related to such proceeding, in addition to any other relief to which it may be entitled.

6.6 Language; Construction. The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction is to be applied against any party. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.7 Waivers. The failure of a party at any time or times to require performance of any provision hereof or claim damages with respect thereto will in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term or covenant contained in this Agreement will be effective unless in writing, and no waiver in any one or more instances will be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term or covenant.

6.8 Notices. All notices, demands, or other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and shall be: (a) delivered personally, (b) sent by facsimile transmission (with confirmation of receipt) or (c) sent via a nationally recognized overnight courier to the recipient for next business day delivery. Such notices, demands and other communications will be sent to the address indicated below:

If to Buyer, to: 6000 Western Place
Suite #465
Fort Worth, TX. 76107
Attn: Rick Shearer, President and CEO

with a copy to: Superior Silica Sands
1400 Civic Place, Suite 250
Southlake, Texas 76092
Attn: General Counsel

If to Seller or Equityholder, to: 632 U.S. Highway 8
Turtle Lake, Wisconsin 54889
Attn: Matt Torgerson

with a copy to:

6.9 Amendment. This Agreement may be amended, modified or supplemented only in writing signed by Buyer, Seller and Equityholder.

6.10 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, by original, facsimile or .pdf file signatures, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

6.11 Consultation with Independent Counsel. The parties to this Agreement acknowledge that they have (a) read this Agreement and consulted with legal counsel of their independent choice concerning the Covenant and each of the other provisions of this Agreement, (b) discussed and reviewed the Covenant and the other provisions of this Agreement with their counsel, and (c) been fully advised of the legal significance of the Covenant and the other provisions of this Agreement.

[*Signatures on following page]*

IN WITNESS WHEREOF, the parties hereto have caused this Non-Competition Agreement to be executed effective as of the date first set forth above.

SUPERIOR SILICA SANDS LLC

By: _____
Name: _____
Title: _____

MIDWEST FRAC AND SANDS LLC

By: _____
Name: _____
Title: _____

_____
Matthew Torgerson, individually

Exhibit A

Restricted Territories[1]

[to come]

[1] Please provide list of all states, provinces and other territories where Midwest has operations or sales.

EXHIBIT D

Letter Agreement

[On Superior Silica Sands LLC Letterhead]

_____, 2014

Matthew Torgerson
Midwest Frac and Sands LLC
632 U.S. Highway 8
Turtle Lake, Wisconsin 54889

Dear Matt:

This Letter Agreement is intended to memorialize certain agreements and understandings we have reached with respect to the transactions contemplated by that certain Agreement of Purchase and Sale dated as of _____ (the "Agreement"), by and between Superior Silica Sands LLC ("SSS") and Midwest Frac and Sands LLC ("Midwest").

In consideration of the premises and the mutual covenants set forth in this Letter Agreement and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

(a) SSS agrees to offer employment to all of Midwest's employees engaged in Midwest's business operations on the Land (as defined in the Agreement), upon such employment terms and conditions as may be determined by SSS. Each Midwest employee that is offered and accepts employment by SSS is referred to herein as a "Hired Employee." Any employment of the Hired Employees will be "at will" and may be terminated by SSS or by such employee at any time for any reason (subject to any written commitments to the contrary made by SSS and any requirements under applicable law). Nothing in this Letter Agreement shall be deemed to prevent or restrict in any way the right of SSS to terminate, reassign, promote or demote any of the Hired Employees or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(b) Midwest shall have the right of first negotiation with respect to the provision of the following trucking services to SSS: (i) a maximum of fifteen Midwest trucks to transport Frac Sand (as defined in the Agreement) from SSS's dry plant located in Arland, Wisconsin to SSS's transload facility located in North Branch, Minnesota and (ii) a maximum of six Midwest quad-axle trucks to transport washed sand from the Wet Plant (as defined in the Agreement) to SSS's dry plant locations. The parties shall negotiate in good faith regarding such trucking services and Midwest will be chosen by SSS to provide such trucking services so long as the pricing and other terms offered by Midwest are deemed competitive with local market rates by SSS in its sole discretion. Notwithstanding the foregoing, SSS shall not be under any obligation to accept any offer by, or to make any counteroffer to, Midwest with respect to such trucking services.

(c) This Letter Agreement may be amended, modified or supplemented only by written agreement of the parties hereto.

(d) This Letter Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except neither this Letter Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by any party hereto without the prior written consent of the other party hereto. Nothing in this Letter Agreement, expressed or implied, is intended or shall be construed to confer upon any person other than the parties hereto and any such successors and permitted assigns any rights, remedy or claim under or by reason of this Letter Agreement or any provisions contained herein.

(e) All fees and expenses (including all fees of legal counsel and accountants) incurred by any party in connection with the negotiation and execution of this Letter Agreement and the other agreements contemplated herein shall be borne by the party incurring such fees and expenses.

(f) This Letter Agreement shall be governed by and construed in accordance with the laws of the State of Texas (without regard to its conflicts of law doctrines).

(g) THE PARTIES HERETO CONSENT TO THE EXERCISE OF NON-EXCLUSIVE JURISDICTION, FORUM AND VENUE BY THE COURTS OF THE STATE OF TEXAS FOR ANY ACTION ARISING OUT OF THIS LETTER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LETTER AGREEMENT.

(h) This Letter Agreement may be executed in two or more counterparts (including by facsimile or portable document format (.pdf)), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(i) This Letter Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein. This Letter Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(j) If any one or more provisions contained in this Letter Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Letter Agreement, and any such provision shall be enforced to the greatest extent permitted by law.

(k) The parties hereto agree to keep the terms and conditions of this Letter Agreement confidential and not to disclose to any other party the terms, conditions or existence hereof.

[Remainder of page intentionally left blank]

Very truly yours,

SUPERIOR SILICA SANDS LLC

By: _____
Name: Rick Shearer
Title: President and Chief Executive Officer

Accepted and agreed to as of
the date first written above:

MIDWEST FRAC AND SANDS LLC

By: _____
Name: Matthew Torgerson
Title: _____

EXHIBIT E

Bill of Sale and Assignment of Permits

BILL OF SALE AND ASSIGNMENT OF PERMITS

MIDWEST FRAC AND SANDS LLC, a Wisconsin limited liability company ("Grantor"), for and in consideration of the sum of Eleven Million and No/100 Dollars ($11,000,000.00) and other good and valuable consideration to it in hand paid by SUPERIOR SILICA SANDS LLC, a Texas limited liability company ("Grantee"), the receipt and sufficiency of which are hereby acknowledged, has granted, sold, assigned, transferred, conveyed, and delivered and does by these presents grant, sell, assign, transfer, convey and deliver unto Grantee, all of Grantor's rights, titles, and interests in and to the following described properties located in, affixed to, or arising or used in connection with the land in Barron County, State of Wisconsin, more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "Land") or the improvements located thereon (the "Improvements"):

(a) the Wet Plant;

(b) the Conveyor Systems;

(c) all Sand and Frac Sand already extracted and stockpiled thereon;

(d) All appliances, fixtures, equipment, machinery, furniture, carpet, drapes and other personal property, if any, owned by Grantor and located on the Land; and

(e) To the extent assignable without the consent of third parties, Grantor's right, title and interest in the Permits pertaining to the Land and the Business Operations.

This instrument is being furnished by Grantor to Grantee pursuant to that certain Purchase and Sale Agreement (as may have been amended, modified and assigned, the "Agreement") dated effective as of even date therewith (the "Effective Date"), made and entered into by and between Grantor, as Seller, and Grantee, as Purchaser. All capitalized words and phrases utilized herein and not defined shall have the meaning ascribed to them in the Agreement.

Grantor and Grantee hereby covenant and agree as follows:

(i) This instrument shall bind and inure to the benefit of the parties and their respective successors, legal representatives and assigns.

(ii) Neither this instrument nor any term, provision, or condition hereof may be changed, amended or modified, and no obligation, duty or liability or any party hereby may be released, discharged or waived, except in a writing signed by all parties hereto.

(iii) This instrument may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement; but in making proof of this instrument, it shall not be necessary to produce or account for more than one such counterpart. Further, this instrument may be executed by facsimile or by portable document format (.pdf)

signature, such that execution of this instrument by facsimile or by portable document format (.pdf) signature shall be deemed effective for all purposes as though this instrument was executed as an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Bill of Sale and Assignment of Permits to be effective on the Effective Date.

GRANTOR:

MIDWEST FRAC AND SANDS LLC,
a Wisconsin limited liability company

By: _____

Name: Matt Torgerson

Title:_____

GRANTEE:

SUPERIOR SILICA SANDS LLC,
a Texas limited liability company

By: _____

Name:_____

Title:_____

Exhibit A

Legal Description

[Legal Description to be attached based on Purchaser's Survey]

EXHIBIT F

Rolling Stock List

1) Two (2) John Deere 844 Loaders;
2) Hitachi 450 Excavator;
3) Two (2) Caterpillar D400E Off Road Trucks;
4) Caterpillar D5 Dozer;
5) and concrete equipment and trailers belonging to Matt Torgerson.

EXHIBIT G

Termination Agreement

TERMINATION AGREEMENT

This Termination Agreement (this "**Agreement**") is entered into this _____ day of _____ 2014 (the "**Effective Date**"), by and between MIDWEST FRAC AND SANDS LLC, a Wisconsin limited liability company, having an address of 57 17 ¼ Avenue, Turtle Lake, Wisconsin 54889 ("**Midwest**"), and SUPERIOR SILICA SANDS LLC, a Texas limited liability company, having an address at 6000 Western Place, Suite 465, Fort Worth Texas 76107 ("**SSS**"). SSS and Midwest shall be hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**," as the context may require. Any capitalized term used in this Agreement that is not defined in this Agreement has the meaning set forth in the Tolling Agreement (as hereinafter defined) or the Supply Agreement (as hereinafter defined) as the context requires.

RECITALS

WHEREAS, Midwest and SSS entered into that certain Dry Sand Tolling Agreement dated July___, 2012 (the "**Tolling Agreement**"), whereby SSS agreed to convert Midwest's Wet Sand to Dry Sand;

WHEREAS, Midwest and SSS entered into that certain Wet Sand Supply Agreement dated July 17, 2012 (the "**Supply Agreement**"), whereby Midwest agreed to supply and deliver Wet Sand to SSS;

WHEREAS, the Parties have entered into that certain Agreement of Purchase and Sale, dated of even date therewith, related to the sale of Midwest's mine site and wet plant and in connection therewith (the "**Purchase Agreement**"); and

WHEREAS, the Parties have agreed that it is in their mutual best interests to terminate the Supply Agreement and the Tolling Agreement, including, but not limited to, any and all arrangements, services, and obligations to be performed and all liabilities arising from such agreements, as more particularly set forth further herein.

AGREEMENT

In consideration of the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions herein, the Parties hereby covenant and agree as follows:

1. Midwest and SSS hereby agree to terminate the Supply Agreement and the Tolling Agreement on the Effective Date and fully release each other from all obligations contained therein and liabilities arising therefrom as consideration for the execution by the Parties of the Purchase Agreement.

2. The Parties agree to pay and/or settle with each other all invoices, accounts payable, accounts receivables, and all other obligations, whether monetary or non-monetary,

owing between them under the Tolling Agreement and the Supply Agreement on or before the Effective Date.

3. Midwest and SSS each represent and warrant that it has not assigned to any other person any of its rights, title or interest in, to or under the Tolling Agreement and the Supply Agreement and that it has the right, power, authority to enter into this Termination Agreement, to become a Party hereto and to perform its obligations hereunder.

4. The failure of the either Party to demand strict performance of the terms of this Termination Agreement or to exercise any right conferred hereby shall not be construed as a waiver or relinquishment of its rights to assert or rely on any such term or right in the future.

5. This Agreement represents the entire agreement between the Parties. There are no oral or written representations or promises other than what are contained in this Agreement. This Agreement may not be modified except by written consent of the Parties. All questions relating to this Agreement, whether of interpretation, performance, or otherwise, shall be governed by the laws of the State of Wisconsin.

6. This Agreement shall be deemed to have been jointly drafted by counsel for the Parties and shall not be construed for or against any Party on the grounds of authorship.

7. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same document. This Agreement may also be executed by facsimile and/or scanned signature.

[Remainder of Page Intentionally Left Blank;
Signature Pages to Follow]

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the Effective Date.

MIDWEST FRAC AND SANDS LLC,
a Wisconsin limited liability company

By:_____

Name:_____

Its:_____

COMMONWEALTH/STATE OF _____)
)
) To-wit:
CITY/COUNTY OF _____)

I, _____, a Notary Public in and for the jurisdiction aforesaid, hereby certify that _____ personally appeared before me and executed this Agreement as the _____ of MIDWEST FRAC AND SANDS LLC, on behalf of the limited liability company.

Subscribed and sworn to before me in my jurisdiction aforesaid this _____ day of _____, 2014.

_____
Notary Public

My commission expires: _____

SUPERIOR SILICA SANDS LLC,
a Texas limited liability company

By:_____

Name:_____

Its:_____

COMMONWEALTH/STATE OF _____)
)
) To-wit:
CITY/COUNTY OF _____)

I, _____, a Notary Public in and for the jurisdiction aforesaid, hereby certify that _____ personally appeared before me and executed this Agreement as the _____ of SUPERIOR SILICA SANDS LLC, on behalf of the limited liability company.

Subscribed and sworn to before me in my jurisdiction aforesaid this _____ day of _____, 2014.

_____
Notary Public

My commission expires: _____

16916456v1

Exhibit 2

February 22, 2019

Daniel C. Beck
Direct Dial: (612) 6046 738
Direct Fax: (612) 60469 38
dbeck@winthrop.com

VIA U.S. MAIL, CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND VIA FAX, AND EMAIL, WHERE INDICATED

PRIVATE & CONFIDENTIAL
Superior Silica Sands LLC
Attn: Rick Shearer, President and CEO
6000 Western Place, Suite #465
Fort Worth, TX 76107
Emailto:Rick@sssand.com

PRIVATE & CONFIDENTIAL
Superior Silica Sands LLC
Attn: Rick Shearer, President and CEO
5600 Clearfork Main, Suite #400
Fort Worth, TX 76107
VIA FAX at: 817-546-4399
Emailto:Rick@sssand.com

DEFAULT LETTER

Dear Mr. Shearer:

Our law firm has been retained to represent Midwest Frac and Sands LLC ("Midwest Frac") as a result of certain events defaults by Superior Silica Sands LLC ("SSS") under certain agreements between SSS and Midwest Frac. Please let this serve as a formal notice of default.

SSS is in default under that certain Post Closing Agreement between Midwest Frac and SSS dated July 25, 2014 as a result of SSS's failure to pay MidWest Frac the Credit (as that term is defined in the Post Closing Agreement) in the amount of $202,108.30, as required by the terms of the Post Closing Agreement.

SSS is also in default under that certain Agreement of Purchase and Sale dated on or about the same date, executed and delivered by and between Midwest Frac, as Seller, and SSS, as Purchaser (the "Purchase Agreement") because SSS failed to pay MidWest Frac the Annual Minimum Payment (as that term is defined in the Purchase Agreement) for 2018 in the amount of $949,373.99, as required by Section 5 (b) of the Purchase Agreement.

Please be advised that Midwest Frac reserves all of its rights and remedies including, without limitation, the right to provide an additional notice of its rights of repurchase of the Land and the

Equipment (as those terms are defined in the Purchase Agreement) in accordance with and pursuant to the terms of Section 11(b) of the Purchase Agreement.

To avoid any possibility for confusion, please remember that: (i) Midwest Frac does not waive any defaults under the above agreements or any other agreements; (ii) Midwest Frac specifically reserves the right to exercise any and all rights and remedies available to it under the above agreements, other agreements and applicable law; (iii) no action or inaction by Midwest Frac (including the acceptance of payments or other performance) shall operate to waive any defaults under or modify any of the parties agreements; (iv) any delay or omission by Midwest Frac in exercising any right arising from any default shall not impair any such right or be considered to be a waiver of any such default or acquiescence thereto; and (v) there will be no modification of any agreements nor any waiver of any defaults, unless such modification or waiver is reduced to a writing and signed by an authorized representative of MidWest Frac.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Daniel C. Beck

cc: **VIA U.S. MAIL, CERTIFIED MAIL, RETURN RECEIPT REQUESTED**
Superior Silica Sands LLC
Attn: General Counsel
1400 Civic Place, Suite #250
Southlake, TX 76092

Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Attn:J.C. Chenault

Exhibit 3

June 18, 2019

VIA U.S. MAIL, CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND VIA FAX, AND EMAIL, WHERE INDICATED

PRIVATE & CONFIDENTIAL
Superior Silica Sands LLC
Attn: Rick Shearer, President and CEO
5600 Clearfork Main, Suite #400
Fort Worth, TX 76107
VIA FAX at: 817-546-4399
Emailto:Rick@sssand.com

"NOTICE OF MATERIAL DEFAULT AND EXERCISE OF REPURCHASE RIGHT"

Dear Mr. Shearer,

We are informing that pursuant to the Post Closing Agreement between Midwest Frac and Sands (seller) and Superior Silica Sands(purchaser) and the Default Letter sent on February 22, 2019, Midwest Frac and Sands choose to elect to Purchase back all of the land at the previously agreed $1,000.00 per acre that is identified in sections 11(b) and with conditions set forth in section 14. Unless Superior Silica Sands can cure such default they have 30 days to clear all property otherwise this becomes property of Midwest Frac and Sands. Midwest Frac and Sands reserves all of its rights and remedies pursuant to the terms of Section 11(b) of the Purchase Agreement.

To avoid any possibility for confusion, please remember that: (i) Midwest Frac does not waive any defaults under the above agreements or any other agreements; (ii) Midwest Frac specifically reserves the right to exercise any and all rights and remedies available to it under the above agreements, other agreements and applicable law; (iii) no action or inaction by Midwest Frac (including the acceptance of payments or other performance) shall operate to waive any defaults under or modify any of the parties agreements; (iv) any delay or omission by Midwest Frac in exercising any right arising from any default shall not impair any such right or be considered to be a waiver of any such default or acquiescence thereto; and (v) there will be no modification of any agreements nor any waiver of any defaults, unless such modification or waiver is reduced to a writing and signed by an authorized representative of Midwest Frac.

Very Truly yours,

Matt Torgerson

Midwest Frac and Sands LLC

Superior Silica Sands LLC
GENERAL COUNSEL
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