

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, : Case No. 19-11563 (KBO)
: :
Reorganized Debtor.¹ :
: Re: Docket Nos. 876 & 946
: :
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CERTIFICATION OF COUNSEL REGARDING
STIPULATION TO RESOLVE (I) REORGANIZED DEBTOR'S FIRST
(SUBSTANTIVE) OMNIBUS OBJECTION TO, OR MOTION TO RECLASSIFY,
PURPORTED SECURED CLAIMS AND (II) JOINT MOTION OF MARKET &
JOHNSON, INC., AND POWNALL SERVICES LLC, TO ENFORCE PROVISIONS OF
REORGANIZED DEBTORS' CONFIRMED CHAPTER 11 PLAN

The undersigned hereby certifies as follows:

1. On August 16, 2019, Pownall Services LLC ("**Pownall**") filed an adversary complaint (the "**Pownall Adversary**") against debtor Superior Silica Sands LLC ("**SSS**") and HPS Investment Partners, LLC ("**HPS**"), and on October 25, 2019, Market & Johnson, Inc. ("**M&J**"), filed an adversary complaint (the "**M&J Adversary**") and, together with the Pownall Adversary, the "**Adversary Proceedings**") against SSS and HPS.

2. On December 18, 2019, the United States Bankruptcy Court for the District of Delaware (the "**Court**") entered an order [Docket No. 721] confirming the above-captioned reorganized debtor's (the "**Reorganized Debtor**") and its reorganized debtor affiliates' (collectively with the Reorganized Debtor, the "**Reorganized Debtors**") *Second Amended Joint Plan of Reorganization for Emerge Energy Services LP and Its Affiliate Debtors Under Chapter*

¹ The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor's federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor's address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.



11 of the Bankruptcy Code (as may have been amended, modified or supplemented from time to time, the “**Plan**”).² The Plan was substantially consummated and became effective on December 20, 2019.

3. On August 27, 2020, the Reorganized Debtor filed its *First (Substantive) Omnibus Objection to, or Motion to Reclassify, Purported Secured Claims* [Docket No. 876] (the “**Objection**”), to among other claims, certain claims filed by M&J, Pownall, TMT Solutions, Inc., and RB Scott Company, Inc., for themselves and any subcontractors whose claims they assert or may be entitled to assert³ (collectively, the “**Lien Claimants**” and, together with the Reorganized Debtors, collectively, the “**Parties**”).

4. In response to the Objection, the Lien Claimants have asserted that they hold Other Secured Claims against (i) certain real property owned and leased by Reorganized Debtor SSS located in Kingfisher, Oklahoma (the “**Kingfisher Lien Claims**”) and (ii) certain real property owned by the Reorganized Debtors located outside of Kingfisher, Oklahoma (the “**Non-Kingfisher Lien Claims**”) and, together with the Kingfisher Lien Claims, the “**Lien Claimants’ Claims**”).

5. On December 3, 2020, M&J and Pownall filed their *Joint Motion to Enforce Provisions of Reorganized Debtor’s Confirmed Chapter 11 Plan* [Docket No. 946] (the “**Plan Motion**”) and, together with the Adversary Proceedings, the Objection and the Lien Claimants’ Claims, collectively, the “**Dispute**”).

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

³ Without limitation, the subcontractors whose claims are asserted through the named claimants above include Cooper Engineering Company, Inc., and EnDeCo Engineers, Inc., whose claims are included within the claims asserted by Market & Johnson, Inc.

6. The Parties have engaged in discussions regarding the Dispute and have agreed to resolve the Dispute as set forth in that certain *Stipulation to Resolve (I) Reorganized Debtor's First (Substantive) Omnibus Objection to, or Motion to Reclassify, Purported Secured Claims and (II) Joint Motion of Market & Johnson, Inc., and Pownall Services LLC, to Enforce Provisions of Reorganized Debtors' Confirmed Chapter 11 Plan* (the "**Stipulation**").

7. The Parties have prepared a proposed form of order (the "**Proposed Order**"), attached hereto as **Exhibit A**, approving the Stipulation. A copy of the executed Stipulation is attached to the Proposed Order as Exhibit A. The Proposed Order and Stipulation have been circulated to HPS, and HPS does not object to the entry of the Proposed Order approving the Stipulation.

[Remainder of page intentionally left blank; signature page follows]

WHEREFORE, the Reorganized Debtor respectfully requests that the Court enter the Proposed Order, attached hereto as **Exhibit A**, at its earliest convenience.

Dated: October 1, 2021
Wilmington, Delaware

/s/ David T. Queroli

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EXHIBIT A

Proposed Order

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

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| In re: EMERGE ENERGY SERVICES LP, <div style="text-align: center;">Reorganized Debtor.¹</div> | X : : : : : : : : X | Chapter 11 Case No. 19-11563 (KBO) Re: Docket No. |
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**ORDER APPROVING SETTLEMENT OF (I) REORGANIZED DEBTOR’S FIRST
(SUBSTANTIVE) OMNIBUS OBJECTION TO, OR MOTION TO RECLASSIFY,
PURPORTED SECURED CLAIMS AND (II) JOINT MOTION OF MARKET &
JOHNSON, INC., AND POWNALL SERVICES LLC TO ENFORCE PROVISIONS OF
REORGANIZED DEBTOR’S CONFIRMED CHAPTER 11 PLAN**

This matter comes before the Court on (i) the *Reorganized Debtor’s First (Substantive) Omnibus Objection to, or Motion to Reclassify, Purported Secured Claims* (the “**Objection**”), filed by the above-captioned reorganized debtor (the “**Reorganized Debtor**”); and the responses (the “**Responses**”) thereto raised or filed by creditors Market & Johnson, Inc. (“**M&J**”), Pownall Services, LLC (“**Pownall**”), TMT Solutions, Inc., and RB Scott Company, Inc. (collectively, these creditors are hereafter called the “**Lien Claimants**”), (ii) the *Joint Motion to Enforce Provisions of Reorganized Debtor’s Confirmed Chapter 11 Plan* (the “**Plan Motion**”) filed by M&J and Pownall, and (iii) the *Certification of Counsel Regarding Stipulation to Resolve (I) Reorganized Debtor’s First (Substantive) Omnibus Objection to, or Motion to Reclassify, Purported Secured Claims and (II) Joint Motion of Market & Johnson, Inc. and Pownall Services LLC, to Enforce Provisions of Reorganized Debtor’s Confirmed Chapter 11*

¹ The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor’s address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

Plan. The Reorganized Debtor on behalf of itself and Superior Silica Sands, LLC, Emerge Energy Services GP LLC, Emerge Energy Services Operating LLC and Emerge Energy Services Finance Corporation, the reorganized debtors in the chapter 11 cases related to the above-captioned chapter 11 case (collectively and together with the Reorganized Debtor, the “**Reorganized Debtors**”) and the Lien Claimants have filed a stipulation, attached hereto as Exhibit A (the “**Stipulation**”),² to resolve both the Plan Motion and the Objection as to the claims of the Lien Claimants. The Court has reviewed the Objection, the Responses, the Plan Motion, and the Stipulation and finds that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, (iv) notice of the Objection and the Plan Motion was sufficient under the circumstances, and (v) after due deliberation, the Court has determined that the resolution proposed in the Stipulation is in the best interests of the Reorganized Debtors, their estates, and their creditors and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Stipulation is hereby approved in accordance with its terms and is incorporated by reference.
2. The Lien Claimants’ Claims shall be treated and resolved in accordance with the terms and provisions of the Stipulation, including, the allowance of such claims, the classification of such claims and the resolution of such claims, in each case, as provided in the Stipulation.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Stipulation.

3. In conformity with the Confirmed Plan and the Stipulation, the transfer of the Kingfisher Property to the Lien Claimants, or their nominee, by the Reorganized Debtors is free and clear of all Claims, Liens, charges and other encumbrances arising prior to the Petition Date.

4. The Reorganized Debtors' Claims Agent, Kurtzman Carson Consultants LLC, is authorized and directed to make such notations on the claims register as necessary to reflect the treatment of the proofs of claim contained herein and in the Stipulation.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order and the Stipulation.

Exhibit A

(Stipulation)

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

| | | |
|----------------------------------|---|-------------------------|
| In re: |) | |
| |) | Chapter 11 |
| |) | |
| |) | Case No. 19-11563 (KBO) |
| EMERGE ENERGY SERVICES, LP, |) | |
| |) | (Jointly Administered) |
| Reorganized Debtor. ¹ |) | |
| |) | |
| |) | |

**STIPULATION TO RESOLVE (I) REORGANIZED DEBTOR’S FIRST
(SUBSTANTIVE) OMNIBUS OBJECTION TO, OR MOTION TO RECLASSIFY,
PURPORTED SECURED CLAIMS AND (II) JOINT MOTION OF MARKET &
JOHNSON, INC., AND POWNALL SERVICES LLC, TO ENFORCE PROVISIONS OF
REORGANIZED DEBTORS’ CONFIRMED CHAPTER 11 PLAN**

The above-captioned reorganized debtor (the “**Reorganized Debtor**”) on behalf of itself and Superior Silica Sands, LLC (“**SSS**”), Emerge Energy Services GP LLC, Emerge Energy Services Operating LLC and Emerge Energy Services Finance Corporation, the reorganized debtors in the chapter 11 cases related to the above-captioned chapter 11 case (collectively and together with the Reorganized Debtor, the “**Reorganized Debtors**”) and the creditors Market & Johnson, Inc., Pownall Services, LLC, TMT Solutions, Inc., and RB Scott Company, Inc., for themselves and any subcontractors whose claims they assert or may be entitled to assert² (collectively, the “**Lien Claimants**” and together with the Reorganized Debtors, collectively, the “**Parties**”), stipulate and agree as follows:

¹ The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor’s address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

² Without limitation, the subcontractors whose claims are asserted through the named claimants above include Cooper Engineering Company, Inc., and EnDeCo Engineers, Inc., whose claims are included within the claims asserted by Market & Johnson, Inc.

RECITALS

WHEREAS, the Reorganized Debtors filed for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) on July 15, 2019 (the “**Petition Date**”); and

WHEREAS, the Reorganized Debtors own real property, titled in the name of SSS, located in Kingfisher County, Oklahoma (the “**Real Property**”). The Real Property is more specifically described as identified in **Exhibit 1** which is attached and incorporated by reference. The Real Property specifically includes all improvements and appurtenances located on the Real Property as defined under Oklahoma law; and

WHEREAS, SSS is also identified as the Tenant under a lease (the “**Lease**”) for additional real property (the “**Leasehold Property**” and together with the Real Property, collectively, the “**Kingfisher Property**”) which is located adjacent to the Real Property. A true and correct copy of the Lease is attached as **Exhibit 2** and incorporated by reference; and

WHEREAS, the Reorganized Debtors hold a mining permit (the “**Permit**”), for use in conjunction with mining activities conducted on the Real Property and the Leasehold Property, more specifically identified as the Permit to Engage in Non-Coal Mining issued by the Oklahoma Department of Mines dated approximately November 9, 2018, Permit Number L.E.-2662. A true and correct copy of the Permit is attached as **Exhibit 3** and incorporated by reference; and

WHEREAS, the Reorganized Debtors also own other additional real property located outside Kingfisher County, Oklahoma (the “**Non-Kingfisher Property**”); and

WHEREAS, the Reorganized Debtors experienced (i) a levee breach on June 21, 2019, (ii) a stack collapse on October 11, 2019, and (iii) a shed fire on December 22, 2018, all occurring at their operating facility at San Antonio, Texas (the “**San Antonio Incidents**”); and

WHEREAS, on August 16, 2019, Pownall Services LLC (“**Pownall**”) filed an adversary complaint in the adversary proceeding styled *Pownall Services LLC v. Superior Silica Sands LLC and HPS Investment Partners, LLC*, Adv. No. 19-50295 (the “**Pownall Adversary**”); and

WHEREAS, on October 25, 2019, Market & Johnson, Inc. (“**M&J**”), filed an adversary complaint in the adversary proceeding styled *Market & Johnson, Inc., v. Superior Silica Sands LLC and HPS Investment Partners, LLC*, Adv. No. 19-50728 (the “**M&J Adversary**” and together with the Pownall Adversary, the “**Adversary Proceedings**”); and

WHEREAS, on September 16, 2019 and December 23, 2019, the Debtors answered and asserted affirmative defenses in the Pownall Adversary and M&J Adversary, respectively; and

WHEREAS, the Reorganized Debtors’ Second Amended Joint Plan of Reorganization [Doc. No. 682] (the “**Confirmed Plan**”) was confirmed by the Court’s order entered on December 18, 2019 [Doc. No. 721]; and

WHEREAS, the Confirmed Plan defines a “**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”; and

WHEREAS, the Confirmed Plan defines an “**Other Secured Claim**” as “any Secured Claim other than an Administrative Claim, DIP Credit Agreement Claim, Secured Tax Claim, or Prepetition Debt Claim”; and

WHEREAS, the Confirmed Plan classified Other Secured Claims as “**Class 2**”; and

WHEREAS, the Confirmed 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; and

WHEREAS, the Confirmed Plan further provides that “[f]or the avoidance of doubt, any Lien that secures a Class 2 Claim shall be retained against the applicable Collateral until such Class 2 Claim is paid or reserved in full in Cash or Disallowed by order of the Bankruptcy Court”; and

WHEREAS, the Confirmed Plan further provides that “[e]xcept as otherwise expressly provided in this Plan, the Confirmation Order, or any Restructuring Document, pursuant to sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all property and assets of the Estates of the Debtors, including all claims, rights, and Litigation Claims of the Debtors, and any other assets or property acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with this Plan . . . shall vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, and other encumbrances . . .”; and

WHEREAS, the Effective Date of the Confirmed Plan was December 20, 2019; and

WHEREAS, on June 4, 2020, the Court entered an order [Docket No. 847] (the "**Case Closing Order**") closing the Subsidiary Cases (as defined in the Case Closing Order) and leaving the Reorganized Debtor's chapter 11 case open; and

WHEREAS, the Reorganized Debtor filed its *First (Substantive) Omnibus Objection to, or Motion to Reclassify, Purported Secured Claims* [Docket No. 876] (the “**Objection**”) on August 27, 2020; and

WHEREAS, the Lien Claimants have responded to the Objection and asserted certain Other Secured Claims as defined in the Reorganized Debtors’ Confirmed Plan; and

WHEREAS, the Lien Claimants have asserted that they hold Other Secured Claims against both the Real Property (the “**Kingfisher Lien Claims**”) and the Non-Kingfisher Property (the “**Non-Kingfisher Lien Claims**” and together with the Kingfisher Lien Claims, the “**Lien Claimants’ Claims**”); and

WHEREAS, creditors M&J and Pownall filed their *Joint Motion to Enforce Provisions of Reorganized Debtor’s Confirmed Chapter 11 Plan* [Docket No. 946] (the “**Plan Motion**”) on December 3, 2020; and

WHEREAS, on or about August 27, 2021, the Lien Claimants submitted to all relevant regulatory and governmental authorities all applications, documents, and other supporting materials (collectively, the “**Permit Application**”) necessary to seek approval of transfer of the Permit from the Reorganized Debtors to the Lien Claimants or their nominee (the “**Permit Transfer**”); and

WHEREAS, the Lien Claimants understand and have acknowledged that the Reorganized Debtors’ existing surety bond provider in respect of activities at the Kingfisher Property will not consent to continuation of its bond as part of the transfers contemplated hereby; and

WHEREAS, the Lien Claimants have, as a result, obtained all necessary surety bonding from a new provider, or have otherwise provided sufficient financial assurance to the relevant regulator[s]; and

WHEREAS, the Reorganized Debtors and the Lien Claimants have agreed to resolve the Objection as to the Lien Claimants' Claims, the Plan Motion, and the Adversary Proceedings in accordance with the terms of this Stipulation, and agree to the entry of an order approving this Stipulation (the "**Order**") and authorizing the parties to act in reliance upon its terms; provided that as the parties agree no Order is necessary in respect of the Settlement Payment and release of Non-Kingfisher Lien Claims and related liens, the provisions of this Stipulation relating to the Settlement Payment and release of Non-Kingfisher Lien Claims and related liens shall be effective upon the Execution Date;

NOW, THEREFORE, the Reorganized Debtors and the Lien Claimants stipulate and agree as follows:

1. **Incorporation of Recitals.** The Parties acknowledge and stipulate to the foregoing recitals as stipulated facts which are incorporated into the agreed terms of this Stipulation for purposes of interpretation and enforcement.

2. **Dates:**

a. **"Execution Date"** means the date of execution of this Stipulation by the parties hereto.

b. **"Effective Date"** means the date on which the Court enters the Order.

c. **"Kingfisher Transfer Date"** means seven (7) business days after the occurrence of Permit Transfer Approval.

d. **"Kingfisher Termination Date"** means the date that is ninety (90) days after the Execution Date, or such later date as may be agreed by the parties hereto in writing (email being sufficient), if either of the following has not occurred by such date: (i) entry of the Order, or (ii) Permit Transfer Approval.

3. Permit Transfer:

a. Prior to the Execution Date, the Lien Claimants submitted the Permit Application.

b. At all times after the Execution Date, and continuing until the Kingfisher Transfer Date, the Lien Claimants shall use best efforts to obtain full and final approval (“**Permit Transfer Approval**”) of the Permit Transfer.

c. At all times after the Execution Date, and continuing until the Kingfisher Transfer Date, the Reorganized Debtors shall cooperate reasonably with the Lien Claimants as requested by them to support Permit Transfer Approval.

d. The Parties agree and acknowledge that the Permit Transfer represents and constitutes the Reorganized Debtors’ assignment of all of their right, title, interest, and obligation under the Permit to the Lien Claimants (or their assignee) notwithstanding the absence of a separate document evidencing the assignment, and the Lien Claimants agree to accept such assignment contingent upon the approval by the Oklahoma Department of Mines or other regulatory bodies of the transfer of the Permit through the Permit Transfer.

4. Real Property Transfer in Satisfaction of Kingfisher Lien Claims.

a. *Kingfisher Transfer.* Upon the Kingfisher Transfer Date, the Reorganized Debtors will transfer and deliver to the Lien Claimants or their nominee (a) a quitclaim deed to convey the real property without a warranty of title (the “**Deed**”) for the Real Property, in the form attached hereto as **Exhibit 4**, and (b) an assignment of the Lease (the “**Lease Assignment**” and together with the Deed, the “**Kingfisher Transfer Documents**”), in the form attached hereto as **Exhibit 5**. In accordance with the terms of the Confirmed Plan, the transfer of the Kingfisher Property and delivery of the Kingfisher Transfer Documents will (i) constitute full satisfaction of

the Kingfisher Lien Claims and (ii) be free and clear of all prepetition Claims, Liens, charges, and other encumbrances. For the avoidance of doubt, the Order approving this Stipulation shall specifically provide that the transfer is free and clear of all prepetition Claims, Liens, charges and other encumbrances. The Parties agree to cooperate and execute and deliver such other or additional documents as may be necessary to effectuate the transfer of the Kingfisher Property as contemplated by this Stipulation.

b. *Access.* From and after the Execution Date through the Kingfisher Transfer Date, the Lien Claimants shall be entitled to reasonable access to the Kingfisher Property, at their own risk and on four business days' advance notice (email being sufficient), for the purposes of inspection and marketing of the Kingfisher Property. For the avoidance of doubt, the Lien Claimants shall provide notice to the landlord under the Leasehold Property prior to any visit to the Leasehold Property. In addition, prior to entering the Kingfisher Property, the Lien Claimants shall execute and deliver to the Reorganized Debtors a release, substantially in the form attached hereto as **Exhibit 6** (the "**Release**"), which, once signed by a Lien Claimant, shall be effective as to such Lien Claimant through the Kingfisher Transfer Date. If a Lien Claimant fails to execute and deliver (electronic signature and email being sufficient) the Release, such Lien Claimant shall not be entitled to access the Kingfisher Property.

c. *Non-Occurrence of Kingfisher Transfer.* In the event the Kingfisher Transfer Date does not occur prior to the Kingfisher Termination Date or the Lien Claimants do not otherwise waive, in writing (email being sufficient), the requirement of the Permit Transfer Approval, then upon the Kingfisher Termination Date, the terms of this Stipulation shall be null and void as to all matters pertaining to the Kingfisher Lien Claims only and this Stipulation shall remain in effect to all matters pertaining to the Non-Kingfisher Lien Claims. For avoidance of

doubt, occurrence of the Kingfisher Termination Date shall not constitute a termination or revocation of any other provisions of this Stipulation that pertain to the Non-Kingfisher Lien Claims, including, without limitation, paragraphs 5 (Settlement Payment Transfer) and 14 (Mutual Release) below.

5. Settlement Payment Transfer.

a. *Non-Kingfisher Lien Claims.* Each of the Lien Claimants holds or asserts certain Non-Kingfisher Lien Claims. As part of the settlement of the Objection and the Lien Claimants' Non-Kingfisher Lien Claims, the Reorganized Debtors have agreed to pay each Lien Claimant the sum of three and one half percent (3.5%) of the asserted Non-Kingfisher Lien Claims less the True-Up Amount (as defined below). These claims, and the agreed payments to be made by the Reorganized Debtors, prior to accounting for the True-Up Amount (as defined below), are as follows:

| Claimant | Non-Kingfisher Claim Amount | Pro Rata Share | Recovery % | Preliminary Amount |
|---------------|-----------------------------|----------------|------------|--------------------|
| M&J | \$4,850,087.00 ³ | 74.44% | 3.5% | \$169,753.04 |
| Pownall | \$399,575.23 | 6.13% | 3.5% | \$13,985.13 |
| RB Scott | \$68,376.25 | 1.05% | 3.5% | \$2,393.17 |
| TMT Solutions | \$1,197,432.12 | 18.38% | 3.5% | \$41,910.12 |

b. *Settlement of Non-Kingfisher Lien Claims.* Upon the Effective Date, the Reorganized Debtors will transfer the above-listed Preliminary Amounts less each Lien Claimants' Pro Rata Share of the True-Up Amount (the "**Settlement Payment**"). The Reorganized Debtors' payment of the Settlement Payment to each respective Lien Claimant will constitute full and final satisfaction of the Allowed Secured Claims asserted by the Lien Claimants in connection with the

³ As reflected in Market & Johnson's proof of claim, it has asserted an unsecured claim for \$3,952,072.22 for work at the San Antonio Facility for which a lien was not filed. This claim was not subject to the Objection and will remain a general unsecured claim along with the remaining balance of the Lien Claimant's Non-Kingfisher Lien Claims.

Non-Kingfisher Lien Claims, and the Lien Claimants agree to release the liens securing the Non-Kingfisher Lien Claims upon receipt of the Settlement Payment; provided, however, that this treatment shall not affect the Lien Claimants' Excluded Claims and Defenses as provided below. Payment of the compromised recovery amounts identified above shall be made by wire transfer or other immediately available funds within seven (7) days of the entry of the Order. Upon receipt of such payment, the Lien Claimants shall execute and deliver such documents and take any and all actions as are necessary to release the liens securing the Non-Kingfisher Lien Claims in accordance with this Stipulation. Upon payment of the Settlement Payment, the remaining balance of the Non-Kingfisher Lien Claims shall be reclassified as general unsecured claims for purposes of the Confirmed Plan and the Reorganized Debtors' Claims Agent, Kurtzman Carson Consultants LLC, shall be authorized and directed to make such notations on the Claims Register as necessary to accomplish this outcome. For avoidance of doubt, the foregoing Settlement Payment and corresponding satisfaction of the Non-Kingfisher Lien Claims and release of related liens shall be final and non-revocable regardless of the occurrence or non-occurrence of the Kingfisher Transfer Date.

6. True-up and Holdback.

a. *True-up.* The Settlement Payment shall be reduced by documented payments by the Reorganized Debtors of the minimum royalty payment required under the Lease (the "**Carrying Costs**") properly allocable to the period from July 15, 2021 through and including the Kingfisher Transfer Date (the "**True-Up Period**"). While during the True-Up Period the Reorganized Debtors shall pay the Carrying Costs, the Lien Claimants agree that such Carrying Costs, up to a maximum aggregate amount of \$30,000 (the "**Aggregate Cap**") shall be their responsibility and such amounts paid by the Reorganized Debtors (subject to the Aggregate Cap)

(the “**True-Up Amount**”), shall reduce the Settlement Payment upon the occurrence of the Kingfisher Transfer Date.

b. *Holdback.* In order to effectuate the True-up, the Reorganized Debtors are authorized to and shall hold back from the Settlement Payment the Aggregate Cap. Upon the Kingfisher Transfer Date, the Reorganized Debtors shall release to the Lien Claimants the positive difference, if any, between the Aggregate Cap and the True-Up Amount, and shall further deliver to the Lien Claimants proof of payment of the Carrying Costs composing the True-Up Amount.

c. *Non-Occurrence of Kingfisher Transfer Date.* In the event the Kingfisher Transfer Date does not occur prior to Kingfisher Termination Date, the Reorganized Debtors shall retain the Aggregate Cap amount.

7. Transfer Taxation and Recording Fees. The Lien Claimants shall pay any and all transfer, documentary stamp, sales, use or similar taxes and any and all recording fees arising as a result of the transfer of the Kingfisher Property. All real and personal property ad valorem taxes assessed against the Kingfisher Property for the year 2021 shall be prorated as of the Kingfisher Transfer Date. To the extent not already paid to the relevant taxing authorities by such time, the Reorganized Debtors shall deliver their portion of the 2021 real and personal property ad valorem taxes (the “**Prorated 2021 Tax Payment**”) to the Lien Claimants, or their assignee, within seven (7) business days of the Kingfisher Transfer Date (payment by offset of the True-Up Amount being acceptable).

8. Additional Documentation; Cooperation. The parties agree that they shall execute and deliver any and all additional documents and instruments as may be reasonable and necessary to effectuate the terms of this Stipulation, and shall cooperate to effectuate the terms of this Stipulation promptly after entry of the Order.

9. Limited Representations and Warranties of Reorganized Debtors. The Reorganized Debtors represent and warrant to the Lien Claimants that (i) under the Confirmed Plan, they are authorized and able to transfer the Kingfisher Property; (ii) they are current under the Lease and the Permit; (iii) they are not aware of any default under the Lease or the Permit, nor are they aware of any event or circumstance which would, whether by affirmative actions of others or due to the passage of time, constitute an event of default under the Lease or the Permit; (iv) they have not authorized or directed the removal of any of the improvements or other property or items located on the Real Property since the Lien Claimants last inspected the Real Property on March 25, 2021 and (v) until the Kingfisher Transfer Date, they will not authorize or direct the removal of any of the improvements or other property or items located on the Real Property. The Reorganized Debtors agree they will promptly notify the Lien Claimants (email being sufficient) if they become aware that any of the foregoing representations (i) through (v) ceases to be accurate at any time prior to the Kingfisher Transfer Date, or if, prior to the Kingfisher Transfer Date, they receive notice that any improvements or other property or items are or have been removed from the Real Property by third parties.

10. Representations and Warranties of Lien Claimants. To the extent the Lien Claimants designate and identify a nominee to receive title to the Real Property and accept the Kingfisher Transfer Documents, the Lien Claimants and nominee represent and warrant that (i) their respective Kingfisher Lien Claims have been properly assigned to such nominee as provided under applicable nonbankruptcy law; and (ii) such nominee is authorized to enter into the transactions contemplated by this Stipulation. Without prejudice to the Lien Claimants' right to receive the Prorated 2021 Tax Payment, the Lien Claimants agree to pay all real and personal property ad valorem taxes assessed against the Real Property for the year 2021 and subsequent

years. Each of the Lien Claimants represents and warrants that other than to effectuate the terms and purposes of this Stipulation (a) it has not assigned, transferred or subrogated any portion of its Lien Claims to an unaffiliated third party, (b) no unaffiliated person or entity has or claims any interests in the its Lien Claims, and (c) it is the owner of its Lien Claims for purposes of this Stipulation.

11. Transfer of Assets “As-Is”. The Reorganized Debtors and the Lien Claimants agree that the Lien Claimants are taking the Real Property and the Leasehold Property “as is,” “where is,” “with all faults,” and with any and all latent and patent defects and that there is no warranty or representation (except for those described in this Stipulation), express or implied, of any kind or nature (including, without limitation, warranties with respect to marketability, use or fitness for a particular purpose) made by the Reorganized Debtors with respect to the Real Property or the Leasehold Property, and all such representations and warranties are hereby expressly disclaimed and denied. The Lien Claimants acknowledge that they have been given adequate time to conduct whatever examination, evaluations, inspections, reviews, studies or tests of the Real Property and the Leasehold Property and their condition as the Lien Claimants may desire or determine warranted. The Lien Claimants further acknowledge that except as to any representations contained in this Stipulation, upon which they are expressly entitled to rely, they are not relying on any representation, warranty, statement or other assertion with respect to the Real Property or the Leasehold Property or their condition by the Reorganized Debtors or any of their affiliates or any member, manager, officer, director, trustee, agent, employee, attorney, representative or other person acting or purporting to act on behalf of the Reorganized Debtors or any of their affiliates, but the Lien Claimants are relying solely on their own examination, evaluations, inspections, reviews, studies or tests of the Real Property and the Leasehold Property. The Lien Claimants

expressly release and discharge the Reorganized Debtors and their affiliates, and their members, managers, officers, directors, trustees, agents, employees, attorneys, and representatives from any and all obligations, claims, administrative proceedings, judgements, damages, fines, costs, and liabilities arising out of or relating to the physical condition of the Real Property or Leasehold Property or any portion thereof.

12. Dismissal of Adversary Proceedings; Resolution of Objection and Plan Motion.

Upon the Kingfisher Transfer Date, (i) Pownall agrees to the entry of an order dismissing the Pownall Adversary and (ii) M&J agrees to the entry of an order dismissing the M&J Adversary, with the parties bearing their own costs. The entry of the Order on the Effective Date shall act as M&J's and Pownall's withdrawal of the Plan Motion and the Plan Motion shall be deemed withdrawn upon the entry of the Order. The Objection shall be resolved by the entry of the Order insofar as the remaining balance of the Lien Claimants' Non-Kingfisher Lien Claims will be reclassified as general unsecured claims as provided above.

13. Transfer in Satisfaction of Obligations Under Confirmed Plan. The Lien Claimants agree that the transactions contemplated by this Stipulation satisfy the terms of Article III B.2 of the Confirmed Plan, and that this Stipulation constitutes an agreement in writing as to the treatment of the Lien Claimants' Claims, as Holders of Allowed Class 2 Claims, and that the Lien Claimant's Claims are deemed to be Allowed Class 2 Claims only to the extent agreed in this Stipulation.

14. Mutual Release by the Parties. Except as expressly provided in this paragraph 14, in consideration for the mutual agreements set forth herein, and effective upon the entry of the Order, without affecting, waiving, or modifying the Parties' rights, obligations, representations, and warranties under this Stipulation, including, but not limited to, the payment of the Settlement Payment, the transfer of the Kingfisher Property, the Permit Transfer, and the release of the Lien

Claimants' liens and Lien Claimants' claims, the Reorganized Debtors and their respective officers, directors, shareholders, employees, agents, predecessors in interest and assigns and the Lien Claimants and their respective officers, directors, shareholders, employees, agents, predecessors in interest and assigns, on their own behalf and on behalf of all successors and assigns, each forever fully and completely release and forever discharge the other, along with the other's heirs, administrators, agents, executors, and all other persons, firms, partnerships, associations, or corporations who are or might be liable, from any and all claims, demands, damages, actions, causes of action, suits, contracts, agreements, accounts, defenses, offsets, liabilities, or obligations of any kind or character whatsoever, known or unknown, suspected or unsuspected, both at law and in equity, pertaining to, or arising directly or indirectly from, or relating to the Reorganized Debtors, the Reorganized Debtors' chapter 11 cases, any claims filed by, scheduled for, or that may otherwise be asserted by the Lien Claimants, the Adversary Proceedings, including without limitation, the Secured Claims, the Other Secured Claims and any Litigation Claims the Reorganized Debtors may otherwise have retained under the terms of the Confirmed Plan, except and only as follows: (i) the Reorganized Debtors reserve and retain the claims, if any, asserted or assertable against the Lien Claimants who performed services at the operating facility in San Antonio, Texas, in respect of the San Antonio Incidents, solely insofar as such claims are asserted by the Reorganized Debtors' insurer(s) pursuant to such insurer's rights of subrogation in respect of the San Antonio Incidents (the "**Subrogated Claims**"); and (ii) the Lien Claimants reserve and retain any defenses and rights any of them may have against such Subrogated Claims, including, without limitation, any contractual claims or defenses, statutory or equitable defenses (including applicable statutes of limitation), and rights of setoff and recoupment, solely to the extent asserted in defense of the Subrogated Claims (the "**Excluded Claims and Defenses**"). The Parties agree

and acknowledge that their respective reservation and retention of the Subrogated Claims and the Excluded Claims and Defenses from the mutual release otherwise provided in this paragraph shall in no manner be deemed to constitute an admission of the validity or extent of such Subrogated Claims and Excluded Claims and Defenses, and all issues related to such Subrogated Claims and Excluded Claims and Defenses are expressly reserved and excluded from the scope of this paragraph. The Reorganized Debtors and the Lien Claimants further agree and acknowledge that (i) except as to the limited reservations regarding the Subrogated Claims and Excluded Claims and Defenses above, this mutual release is expressly intended to release and resolve all claims and issues between them, (ii) as between the parties hereto, litigation over the Subrogated Claims and the Excluded Claims and Defenses is intended to inure to the benefit of their respective insurers, and not the parties themselves, and (iii) the limited reservation contained in this paragraph shall not be deemed to permit or provide either the Reorganized Debtors or the Lien Claimants to recover in any manner from the other. In the event of the occurrence of the Kingfisher Termination Date, this release shall be null and void as to any and all claims, demands, damages, actions, causes of action, suits, contracts, agreements, accounts, defenses, offsets, liabilities, or obligations relating specifically and exclusively to the Kingfisher Claims, and the parties shall be returned to the status quo ante in regard to such matters.

15. Authorization. Upon entry of the Order, the Reorganized Debtors and the Lien Claimants will be authorized and empowered to take all actions necessary to implement the relief provided in this Stipulation

16. No Liability. The Parties acknowledge that this Stipulation is a compromise of disputed claims against each other and that neither admits, and each expressly denies, any liability on its part.

17. No Adverse Presumption. The Parties further declare that, in making this Stipulation, they rely entirely upon their own judgment, beliefs and interest and the advice of their counsel. Each Party has reviewed this Stipulation and had the opportunity to consult counsel regarding the same, and said Parties acknowledge they each fully understand and voluntarily accept all the provisions contained in this Stipulation. The Parties further agree that this Stipulation was the product of negotiations between the Parties and that any rule of construction that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Stipulation. The language of all parts of this Stipulation shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

18. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements and understandings, written or oral, between the Parties pertaining to the subject matter hereof. No modification of this Stipulation shall be binding or enforceable unless in writing and signed by the Parties. This Stipulations shall be binding upon and inure to the benefit of the Parties, their respective executors, successors, administrators, insurers, and assigns.

19. Governing Law. This Stipulation shall be interpreted and construed in accordance with the provisions of the Bankruptcy Code and, where not inconsistent, the laws of the State of Delaware, without regard to the conflict of laws of the State of Delaware. Each of the Parties hereby irrevocably consents to the jurisdiction of the Court with respect to any action to enforce the terms and provisions of this Stipulation and expressly waives any right to commence any such action in any other forum.

20. Time of Essence. Time is of the essence with respect to the performance of all obligations and as to all dates and times set forth in this Stipulation.

21. Signatures. This Stipulation may be executed in one or more counterparts, including by email and facsimile, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Each person signing this Stipulation represents and warrants that he/she has been duly authorized and has the requisite authority to execute and deliver this Stipulation on behalf of such party and to bind such party to the terms and conditions of this Stipulation.

STIPULATED AND AGREED:

LIEN CLAIMANTS:

MARKET & JOHNSON, INC., a Wisconsin corporation
2350 Galloway Street
Eau Claire WI 54703

By: Chad Ellingson
Chad Ellingson, Chief Financial Officer

Dated: 9/25/2021

POWNALL SERVICES, LLC, a Texas limited liability company
P.O. Box 312
Round Top, TX 78954

By: _____
Harry Pownall, Managing Member

Dated: _____

TMT SOLUTIONS, INC. a Texas corporation
4041 FM 1978
San Marcos, TX 78666

By: _____
Mike Marx, President

Dated: _____

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LIEN CLAIMANTS:

MARKET & JOHNSON, INC., a Wisconsin corporation
2350 Galloway Street
Eau Claire WI 54703

By: _____
Chad Ellingson, Chief Financial Officer

Dated: _____

POWNALL SERVICES, LLC, a Texas limited liability company
P.O. Box 312
Round Top, TX 78954

By:  _____
Harry Pownall, Managing Member

Dated: 9/28/2021

TMT SOLUTIONS, INC. a Texas corporation
4041 FM 1978
San Marcos, TX 78666

By: _____
Mike Marx, President

Dated: _____

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STIPULATED AND AGREED:

LIEN CLAIMANTS:

MARKET & JOHNSON, INC., a Wisconsin corporation
2350 Galloway Street
Eau Claire WI 54703

By: _____
Jason Plante, Vice-President

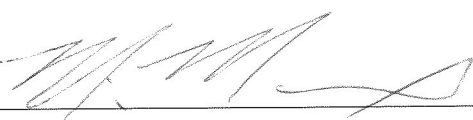
Dated: _____

POWNALL SERVICES, LLC, a Texas limited liability company
P.O. Box 312
Round Top, TX 78954

By: _____
Harry Pownall, Managing Member

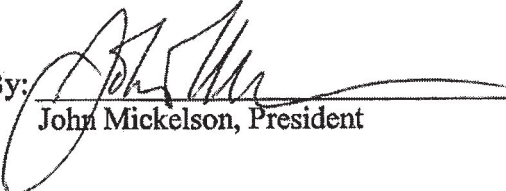
Dated: _____

TMT SOLUTIONS, INC. a Texas corporation
4041 FM 1978
San Marcos, TX 78666

By:  _____

Dated: 9/22/2021

RB SCOTT COMPANY, INC., a Wisconsin corporation
1011 Short Street, Eau Claire, WI 54701

By: 
John Mickelson, President

Dated: 9/24/2021

SUPERIOR SILICA SANDS, LLC
EMERGE ENERGY SERVICES, LP
EMERGE ENERGY SERVICES GP LLC
EMERGE ENERGY SERVICES OPERATING LLC
EMERGE ENERGY SERVICES FINANCE CORPORATION
6500 West Freeway, Suite 800
Fort Worth, TX 76116

Dated: _____

By: _____
Robby Myers, Chief Financial Officer

RB SCOTT COMPANY, INC., a Wisconsin corporation
1011 Short Street, Eau Claire, WI 54701

By: _____
John Mickelson, President

Dated: _____

SUPERIOR SILICA SANDS, LLC
EMERGE ENERGY SERVICES, LP
EMERGE ENERGY SERVICES GP LLC
EMERGE ENERGY SERVICES OPERATING LLC
EMERGE ENERGY SERVICES FINANCE CORPORATION
6500 West Freeway, Suite 800
Fort Worth, TX 76116

Dated: 9/22/2021

By: *Robby Myers*
Robby Myers, Chief Financial Officer

Exhibit 1

Legal Description of Property (Matching Deed Description – See Ex. 4)

The following real property located in Kingfisher County, State of Oklahoma, to-wit:

The South 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corner of said Section 20; thence South $88^{\circ}49'47''$ West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North $00^{\circ}50'44''$ West a distance of 1320.00 feet, thence North $88^{\circ}49'47''$ East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South $00^{\circ}50'44''$ East along said East line a distance of 1320.00 feet to the point of beginning.

Containing 40.00 acres more or less.

Exhibit 2

Lease

[See attached]

ROYALTY LEASE AGREEMENT

THIS ROYALTY LEASE AGREEMENT (this “**Lease**”) is made as of May___, 2018 (the “**Effective Date**”), by and between **LINDA C. BEST TRUST, U/T/A 1-6-2015, a revocable trust with Linda C. Best as trustee (“Landlord”)**, whose address is 613 West Van Buren, Crescent, OK 73028, and **SUPERIOR SILICA SANDS LLC**, a Texas limited liability company (“**Tenant**”), whose address is 5600 Clearfork Main Street, Suite 400, Ft. Worth, TX 76109.

RECITALS

- A. Landlord owns certain real property and improvements located in Kingfisher County, Oklahoma, as legally described on Exhibit A attached hereto and incorporated herein by reference, but excluding all buildings (the “**Land**”). The parties agree that Tenant will be acquiring approximately forty (40) acres of the Land pursuant to an Agreement of Purchase and Sale between Landlord and Tenant dated as of even date herewith (the “**Agreement of Purchase and Sale**”). Upon such acquisition, Tenant’s leasehold and fee estates shall merge and this Lease shall no longer encumber or be applicable to such forty (40) acres.
- B. Landlord and Tenant have agreed to enter into this Lease to enable Tenant to occupy and use the Land during the Term to extract, process, wash/dry, remove, distribute and sell Sand (as hereinafter defined) from the Land on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for valuable consideration, and in consideration of the agreements of the parties hereto, subject to the terms, covenants and agreements hereinafter contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Lease of Premises.

- 1.1 Grant. Except as otherwise provided in this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Land and all improvements located thereon, in “as is,” “where is” condition with all existing defects whether latent or patent, for the purpose of exploring for, developing, mining, recovering, extracting, removing, washing/drying, screening, processing, storing, distributing, selling and transporting Sand and the exclusive right to use so much of the surface of the Land as may be reasonably necessary for conducting and managing Tenant’s use of the Land (collectively the “**Mining Operations**”). Tenant agrees it shall not conduct any Mining Operations within a 1,000 foot radius of Landlord’s existing buildings without the prior written consent of Landlord. In addition, Tenant shall not conduct any operations so as to obstruct or prevent reasonable vehicular access to Landlord’s existing buildings without the prior written consent of Landlord.
- 1.2 Definition of Sand. As used herein, “**Sand**” shall mean all silica sand and other nonmetallic minerals, but excluding clay and topsoil.

- 1.3 Exclusivity. Subject to the approval of appropriate governmental authorities and the provisions of Section 1.4, the rights herein granted to Tenant include the exclusive right of Tenant to use the Land in accordance with the terms and conditions of this Lease, including, without limitation, to:
- 1.3.1 Construct, place, operate, maintain, repair, expand, modify and replace on the Land drill rigs, and conveyors related to the Mining Operations.
 - 1.3.2 Dispose and store on the Land only materials originating from the Land separated from the Sand;
 - 1.3.3 Construct and maintain access roads, and other means of ingress and egress to and from the Land, and to rebuild or repair the same if damaged or destroyed;
 - 1.3.4 Load and unload trucks;
 - 1.3.5 Construct processing and distribution facilities;
 - 1.3.6 Construct and maintain utility lines and facilities necessary to connect to any existing public utility lines for water, electricity and natural gas, and to rebuild or repair the same if damaged or destroyed;
 - 1.3.7 Build ponds as may reasonably necessary to operate on the Land and to comply with any and all storm water and other legal requirements; and
 - 1.3.8 Drill a well and install a well system for water on the Land, provided that no water, whether underground or surface, shall be sold or transported for uses off of the Land without the prior written agreement of both parties.
- 1.4 Rights retained by Landlord. Landlord, its agents, invitees, and representatives shall retain the right to harvest any timber on the Land and to use the Land for agricultural and recreational purposes, including hunting, as long as such uses do not unreasonably interfere with Tenant's activities; and Landlord shall indemnify and hold Tenant harmless from and against all damages and injuries arising from such use caused by Landlord's negligence. Any activities conducted by or on behalf of Landlord or with Landlord's permission on the Land shall be done at such person's or entities' sole risk and Tenant shall not be liable for any damage to person or property associated therewith except to the extent caused by Tenant's negligence, or willful misconduct. Tenant shall provide Landlord with prior written notice of its intention to clear any portion of the Land of timber in connection with its operations so Landlord will have the opportunity to remove the timber in that area. Should Landlord not remove the timber within 60 days after Landlord's receipt of Tenant's written notice, Tenant may cause removal thereof. If Landlord has not timely removed any such timber, Tenant may remove and sell any timber from the Land. Any such removal by Tenant shall be for Landlord's account and the proceeds received by Tenant from the removal and sale of any such timber shall be remitted to Landlord less all expenses incurred by Tenant in connection with any such

removal and sale, including, without limitation, a five percent (5%) administration fee to Tenant for arranging for and supervising the removal of the timber.

- 1.5 Governmental Approval. Tenant shall use commercially reasonable efforts to obtain all approvals and permits from any and all governmental authorities, including without limitation, Kingfisher County, Oklahoma, the Oklahoma Department of Environmental Quality and the State of Oklahoma Department of Mines, necessary for Tenant to engage in the Mining Operations on the Land; provided, that Landlord agrees to reasonably cooperate, with Tenant in connection with the same. If Tenant is unable to obtain all such approvals and permits, in Tenant's sole discretion, Tenant shall be entitled to terminate this Lease.
- 1.6 Signing Bonus. Upon the signing of this Lease, Tenant shall pay to Landlord the sum of Five Thousand and 00/100 Dollars (\$5,000.00) as a signing bonus ("**Signing Bonus**"). The Signing Bonus shall be nonrefundable and in addition to the Annual Minimum Payment provided for in Section 2.7 and will not be credited against any Royalty or any other amount to be paid by Tenant hereunder.
- 1.7 Reimbursement. Upon the signing of this Lease and receipt of a reasonably detailed invoice from Landlord, Tenant shall reimburse Landlord for its attorneys' fees (not to exceed \$5,000.00) in connection with the negotiation of this Lease and the Agreement of Purchase and Sale.

2. **Term/Royalty.**

- 2.1 Term. The "**Initial Term**" of this Lease shall be for a period of twenty five (25) Lease Years in addition to Initial Lease Year (as defined in Section 2.2). If Tenant is not in default of this Lease beyond all applicable notice and cure periods and if the Lease has not been otherwise terminated, this Lease may be renewed by Tenant for up to two (2) consecutive additional terms of five (5) Lease Years (collectively, the "**Renewal Terms**" and each, a "**Renewal Term**") by providing written notification to Landlord of Tenant's intent to exercise its renewal rights. Said notification to renew this Lease shall be given to Landlord not later than 90 days prior to the last day of the Initial Term or the Renewal Term, as applicable. The terms and conditions of this Lease during the Renewal Terms shall be the same as the terms and conditions of this Lease during the Initial Term.

- 2.1.1 Tenant may terminate this Lease during the Term in the event that: (a) the available quantity and/or quality of Sand has been depleted or the cost to mine such Sand does not make the Mining Operations financially viable, in Tenant's sole discretion; (b) the mining, processing, stockpiling, distribution or removal of Sand from the Land is prohibited by applicable Laws, code, ordinance, rule or regulation; (c) any of the permits or governmental approvals necessary for Tenant to conduct the Mining Operations have been terminated or not issued or renewed by the applicable governmental authority; or (d) Tenant's due diligence of the Land identifies an issue that could reasonably be expected, in Tenant's discretion, to impair or interfere with Tenant's use of the Land as

contemplated herein. To so terminate this Lease, Tenant shall provide Landlord written notice of termination. If Tenant terminates this Lease in accordance with this Section 2.1.1, this Lease and Tenant's tenancy created hereunder shall be terminated, and the parties hereto shall be released and relieved of all obligations and liabilities arising hereunder, except those obligations and liabilities that are specifically stated to survive herein.

- 2.1.2 As used herein, "**Term**" means the Initial Term and, if extended, each Renewal Term, and "**during the Term**" and similar phrases refer to the entire period of time this Lease is in effect. Upon expiration of the Term or earlier termination of this Lease, the tenancy of Tenant in the Land shall terminate, and neither party shall have any further obligations or liabilities to the other except for such obligations and liabilities as are expressly stated to survive expiration or termination of this Lease.
- 2.2 Lease Years. The period of time from the Effective Date until December 31 of the year in which the Effective Date occurs is the "**Initial Lease Year**." Each subsequent period from January 1 to December 31 shall be deemed a "**Lease Year**."
- 2.3 Royalty. Tenant shall pay to Landlord, a royalty (the "**Royalty**") for all Sand originating from the Land during the Term of this Lease. The Royalty is earned immediately upon the Sand being transported outside the Land. The Royalty shall be calculated on the basis of One and No/100 Dollar (\$1.00) for each ton (with one (1) ton being equal to two thousand (2,000) pounds) of washed, dried and sorted Sand.
- 2.4 Increases. On January 1, 2020, the Royalty shall increase by 10/100 Dollars (\$0.10) per ton and on every fifth January 1 thereafter, the Royalty shall be increased by a two percent (2%) cumulative escalator. In addition to the aforementioned two percent (2%) cumulative escalator, the Royalty shall increase by an additional 05/100 Dollars (\$0.05) per ton on January 1, 2025.
- 2.5 Annual Minimum Payment. Tenant shall pay to Landlord the amount of \$60,000.00 as a required minimum payment during the Initial Lease Year and each Lease Year, or part thereof (the "**Annual Minimum Payment**"), during the Term of this Lease. The Annual Minimum Payment shall be paid in quarterly installments. For the Initial Lease Year and any other partial years hereunder, payments will be prorated for the period of time to the end of the Initial Lease Year.
- 2.6 **LANDOWNER ACKNOWLEDGES THAT TENANT SHALL BE UNDER NO DUTY DURING THE TERM OF THIS LEASE TO COMMENCE OPERATIONS OR TO RECOVER OR REMOVE ANY SAND FROM THE PROPERTY. TENANT AND LANDOWNER ACKNOWLEDGE AND AGREE THAT THERE ARE NO MINIMUM MINING OR PRODUCTION REQUIREMENTS CONTEMPLATED BY THIS LEASE. TENANT SHALL AT ALL TIMES HAVE THE RIGHT TO CHOOSE WHETHER OR NOT TO MINE IN ITS SOLE AND**

ABSOLUTE DISCRETION AND SHALL IN NO EVENT BE REQUIRED TO DEplete ANY RESERVES LOCATED ON THE PROPERTY.

2.7 [Intentionally Blank]

2.8 Obligation to Pay Annual Minimum Payment. Tenant's obligation to pay the Annual Minimum Payment for each Lease Year shall apply regardless of whether Tenant is obligated to pay any Royalty for that Lease Year.

2.9 Time and Place of Payments.

2.9.1 Quarterly Payments for Annual Minimum Payments. From and after the Effective Date, all quarterly payments of the Annual Minimum Payment shall be paid on or before the 1st day of each February, May, August, and November; provided, however, that the payment of the Annual Minimum Payment for a particular quarter shall be reduced dollar for dollar by the amount of any Royalty paid during that quarter.

2.9.2 Monthly Payments for Royalty Payments. All Royalty payments shall be paid on or before the sixtieth (60th) day following the end of the month for which Sand was removed from the Land.

2.9.3 Method of Payment. Tenant shall make all payments to Landlord at Landlord's address first set forth above or such other place as Landlord shall designate in writing.

2.9.4 Interest. Any payments due hereunder that remain unpaid for more than thirty (30) days shall accrue interest at the rate of 1.5% per month (the "**Interest Rate**"). No acceptance of any partial payment shall affect an accord and satisfaction or waiver by Landlord.

2.10 Audit.

2.10.1 Prior to Removal. All Sand removed from the Land shall be weighed on Advanced Weighing Systems, Inc. equipment or equivalent equipment (the "**Weighing Equipment**") and installed, erected, maintained, and routinely commercially calibrated at least annually on the Land/Project Area by Tenant. Tenant shall provide Landlord with a complete copy of any and all scale calibration reports upon Landlord's written request. All Royalties will be paid based upon certified scale measurements from the Weighing Equipment.

2.10.2 Reports. Upon Landlord's written request, Tenant shall provide summary reports of operations to Landlord. Such reports shall include accurate records of all Sand removed from the Land during such period for which a Royalty is due hereunder, along with Tenant's calculation of the Royalty due thereon. Additionally, Tenant will, upon written request of Landlord, provide Landlord with originals or true copies of production records, scale

tickets, invoices, and other records which support the summary reports (“**Production Records**”) provided by Tenant. Landlord and its agents shall have the privilege, during normal business hours upon at least forty-eight (48) hours prior written notice to examine and copy the Production Records, as well as review the mining, weighing and processing procedures employed by Tenant, for the purpose of verifying the amount of Royalties due and payable hereunder. Tenant shall maintain all Production Records and supporting data for at least three (3) years after the year to which they relate. If during such period there is no Sand removed from the Land for which a Royalty is due hereunder, Tenant must report that to Landlord. Landlord shall have no right to audit Tenant’s books and records related to any Royalty paid, or Sand removed, more than three (3) years after the date to which they relate. If any audit establishes that Tenant underpaid Royalties, Tenant shall pay Landlord the net shortfall in Royalties, applicable interest, and Landlord’s audit costs (if the net shortfall exceeds five percent (5%) of what was so owed over the time period audited); provided, however, that Tenant’s liability for such audit costs is limited to the amount of the net shortfall in royalty payments.

3. **Processing Property.** Landlord acknowledges and agrees that Tenant shall operate, or cause a third party to operate, Sand washing, drying and other processing facilities on property adjacent to the Land (the “**Processing Property**”). Removal of Sand from the Land to the Processing Property shall not trigger Tenant’s royalty obligations set forth herein.
4. **Mining Operations.** Tenant shall conduct its Mining Operations on the Land in accordance with all applicable Laws and the terms and conditions provided herein, including but not limited to the following:
 - 4.1 **General Provisions.** Tenant may clear brush and undergrowth from such portions of the Land as may be reasonably necessary to explore for materials, to locate pits, quarries and stockpile areas, and to enable Tenant to use the Land as provided in this Lease. Tenant shall have the right to make use of all roadways presently existing on the Land and of ingress and egress through, to and from the Land. Subject to rights retained by Landlord, if any, Tenant may use and possess as much of the Land as Tenant may reasonably require during the term of this Lease solely for the purposes and uses permitted under this Lease. In the event any mechanic’s lien shall at any time be filed against the Land or any part thereof by reason of work, labor, services or materials performed or furnished to Tenant or to anyone holding the Land through or under Tenant, Tenant shall forthwith cause the same to be discharged of record, or, to the extent of a dispute related thereto, bond off such lien during the pendency of a proceeding related thereof; provided, that, such lien shall be discharged of record prior to any foreclosure thereof. If Tenant shall fail to cause such lien forthwith to be discharged or bonded off within ninety (90) days after being notified of the filing thereof, then, in addition to any other right or remedy for Landlord, Landlord may, in Landlord’s sole discretion, discharge the same by paying the amount claimed to be due, or by bonding, and the amount so paid by Landlord and all

costs and expenses, including reasonable attorneys' fees incurred by Landlord in procuring the discharge of such lien, shall be due and payable in full by Tenant to Landlord on demand. Tenant shall pay any fee, penalty, or sums that may be due and owing to any governmental entity to allow Tenant's Mining Operations on any of the Land subject to any governmental programs.

- 4.2 Tenant's active mining and/or reclamation operations area shall not exceed one hundred (100) acres of land at any one time exclusive of any area comprised by stock piling, processing and distribution facilities. Prior to the commencement of each Lease Year, Tenant shall provide Landlord with a non-binding mining schedule for such Lease year.
- 4.3 Fencing. Tenant may erect fencing in order to secure Landlord's operations on the Land not presently mined by Tenant and surrounding real property owned or operated by Landlord in accordance with health and safety considerations. All such fencing shall be installed and maintained at the sole cost of Tenant. Tenant shall provide Landlord a key for entrance to the Land.
- 4.4 Additional Operating Provisions. Tenant shall maintain slopes and setbacks on the Land in accordance with the applicable Laws (as hereinafter defined). In no event shall Tenant place overburden material on the Land in such a way as to cause any unlawful contamination to the groundwater of the Land or surrounding real property.
- 4.5 Reclamation Plan. Tenant shall comply with the approved reclamation plan for reclaiming the Land as part of Tenant's Mining Operations approved by the State of Oklahoma Department of Mines or the County of Kingfisher, Oklahoma (the "**Reclamation Plan**"). The Reclamation Plan shall be revised and if necessary updated not less frequently than annually, and a copy of the Plan and a performance bond payable to the Oklahoma Department of Mines shall be provided to Landlord. Tenant shall reclaim to the extent possible, and in compliance with applicable reclamation Laws, ordinances and requirements, whether existing as of the date hereof or at the time of such reclamation, all areas of the Land in which Tenant has stopped Mining Operations within the earlier of the time period required by law or any applicable governing body. Tenant shall complete reclamation in accordance with the Reclamation Plan on the Land within twenty four (24) months following the expiration or earlier termination of the Term. Landlord hereby grants to Tenant an easement, surviving the expiration or termination of this Lease, exclusively for reclamation purposes for said twenty four (24) month period. This provision shall survive any termination or expiration of this Lease.
- 4.6 Commingling. Materials not originating on the Land may be commingled on the Land with Sand removed from the Land. For greater clarification of the foregoing, Tenant has the right to bring third party Sand or other materials to the Land for commingling purposes only but shall not be allowed to store Sand or other materials on the Land for other purposes.
- 4.7 Dust Control. Tenant is required to manage and control dust and other mining by products in accordance with any applicable permits and Laws.

- 4.8 Surveying. All surveys required to carry out the Mining Operations shall be obtained by Tenant, at Tenant's expense. As part of any such surveying, Tenant shall cause property corners to be staked or otherwise marked.
5. **Insurance.** Tenant shall comply with the terms and conditions of Exhibit C, effecting the required insurance coverages and endorsements with insurance companies licensed to do business in Oklahoma and naming Landlord as an additional insured. Tenant shall furnish to Landlord certificates of insurance to the effect that the policy or policies of insurance are in force and that same will not be cancelled without at least thirty (30) days' notice to the other party. Tenant shall bear the cost of all insurance that it is required to maintain under this Lease and under any applicable Laws. Landlord shall carry property casualty insurance on any improvement on the Land and general liability insurance for its activities on the Land and hereby waives and releases, and shall have its insurers waive subrogation against Tenant, any and all claims covered by such insurance against Tenant. Landlord's property insurance shall be at least for the full replacement value of such property and Landlord's general liability insurance shall have a combined single limit of at least \$500,000 per occurrence; provided, that if Landlord is conducting any commercial activities (ex. timbering or farming) on the Land, either Landlord or its contractor must carry several liability insurance with a combined single limit of at least \$2,000,000.00 per occurrence.
6. **Rights of Entry.** Landlord, its agents and representatives, shall have the right, at any and all reasonable times following reasonable advance written notice to Tenant, to enter upon the Land to inspect and survey the Land and Tenant's Mining Operations. In entering upon the Land, Landlord, its agents and representatives shall not interfere with Tenant's activities and Landlord shall indemnify and hold Tenant harmless from and against all damages and injuries arising from such entry resulting from Landlord's negligence. Entry to the property is subject to safety regulations stipulated by any law, rule, regulation, code or order of any governmental authority having jurisdiction.
7. **Overburden, Topsoil and Metallic Minerals.** Landlord retains ownership control of the overburden, topsoil, metallic minerals, gravel or other aggregate originating from the Land; provided, however that, absent a separate written agreement between the parties, neither Tenant nor Landlord shall cause overburden, topsoil, metallic minerals, gravel or other aggregate to be removed from the Land until all reclamation has been completed in accordance with the Reclamation Plan. Nothing in the preceding sentence shall preclude Landlord from removing any trees from the Land as set forth in Section 1.4 herein.
8. **Tenant Defaults.** Any of the following shall be deemed to be a "Default" or "Event of Default" and in such Event of Default, Landlord may, in its sole and absolute discretion, terminate this Lease and/or exercise any and all other available remedies:
- 8.1 Monetary and Non-Monetary Obligations. Tenant shall fail to pay any sums due to Landlord hereunder within thirty (30) days of the date due hereunder and such amount remains unpaid five (5) days after written notice of nonpayment from Landlord. Tenant shall fail to perform any of the other obligations required by Tenant to be performed hereunder and such failure to perform continues for a period of sixty (60) days following

written notice by Landlord to Tenant of such default; provided that if such default renders the Land in violation of any Laws pertaining to health or safety, Tenant shall be obligated to effect a cure as soon as commercially possible, and also provided that, if such default does not create an unsafe condition as provided herein and effecting a cure for such default takes more than sixty (60) days, Tenant shall effect a cure within such time as may be commercially reasonable.

- 8.2 Permits. Subject to the provisions of Section 12, Tenant shall fail (by act or omission of Tenant) to maintain any of the Tenant Permits for the Mining Operations and same are not reinstated within ninety (90) days; provided, that if Tenant has ceased operations, Landlord shall not be entitled to exercise any remedies or terminate this Lease.
- 8.3 Other. If: (i) Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Tenant and is not dismissed within ninety (90) days; (iii) a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Land or of Tenant's interest in this Lease and possession is not restored to Tenant within ninety (90) days; or (iv) substantially all of Tenant's assets located at the Land, or if Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure, which is not discharged within ninety (90) days. If a court of competent jurisdiction determines that any of the acts described in this Section is not a default under this Lease and a trustee is appointed to take possession (or if Tenant remains a debtor-in-possession), and such Trustee or Tenant transfers Tenant's interest under this Lease, then Landlord shall receive, in addition to the royalty payable pursuant to this Lease, the difference between the royalty (or any other consideration) paid in connection with such transfer, assignment or sublease and the royalty payable by Tenant under this Lease.
9. **Transfers on Termination.** Upon expiration or termination of the Term pursuant to the terms hereof, upon Landlord's written request, cost and expense, but without further consideration to Tenant, Tenant shall, to the extent permissible under applicable Laws and not in violation of the Reclamation Plan or any of the Tenant Permits, transfer the Tenant Permits, and Reclamation Permit, and all other permits and or licenses that Tenant otherwise has the right to do so, within an amount of time which is commercially reasonable, assign and convey to Landlord all of Tenant's right, title, and interest in all transferrable Tenant Permits, and any wells, electrical service, roads, drives, and ponds placed by Tenant or at Tenant's request or direction on the Land during the Term; provided, that Tenant shall not be required to transfer the same if Tenant shall remain liable in any way under such permits or plans for Landlord's use thereof. Further, upon Landlord's request and without further consideration to Tenant, Tenant shall promptly provide Landlord with copies of all inspection reports, drilling logs, test results, surveys, geological studies, engineering reports, assessments, or any other similar documentation prepared by or on behalf of Tenant with respect to the Land. This provision shall survive any termination or expiration of this Lease. Also upon expiration or termination of the Term, upon Landlord's written request, any buildings or other permanent structures (but specifically excluding Tenant's trade fixtures) placed on the Land during the Term by the Tenant, or at Tenant's direction, shall be left in place and shall become the property of

Landlord. Landlord shall have 60 days following the expiration or termination of the Term to inspect the buildings and perform any desired environmental assessment. If Landlord does not deliver to Tenant a written request to retain specific buildings or structures prior to the end of said 60 day period, all such buildings or structures shall be removed by Tenant in accordance with the Reclamation Plan.

10. **Taxes and Costs.**

- 10.1 Real Estate Taxes. Tenant shall pay to Landlord before delinquency all real estate taxes on all parcels, or portions thereof, comprising the Land (provided, that Tenant shall have no obligation to pay taxes on any of Landlord's buildings or improvements located thereon) during such times as any portion of each parcel is used for Mining Operations. For clarification purposes, prior to the time Tenant commences Mining Operations on any portion of the Land and after Tenant has completed reclamation of any portion of the Land, Landlord shall be responsible for the real estate taxes associated with such portion of the Land. Landlord shall promptly forward copies of all real estate taxes bills for the Land to Tenant upon receipt of same to facilitate Tenant's payments. Tenant shall be provided all such bills at least thirty (30) days prior to the date such taxes are delinquent and Landlord's failure to provide such bills shall be an absolute defense against Tenant's failure to pay such taxes as required herein. In the event Landlord timely provides such bills to Tenant as required above and Tenant fails to pay such taxes before they become delinquent, Landlord may, in its sole discretion, pay such taxes and shall be entitled to reimbursement by Tenant of the amount actually paid plus interest accruing at the Interest Rate from the date the taxes were due and payable through the date Tenant reimburses Landlord.
- 10.2 Other Taxes. Tenant shall pay before delinquency any and all sales taxes, use taxes, aggregate taxes, file and pay transfer returns, or other taxes which may be due and payable as a result of the Mining Operations. If, at any time during the Term of this Lease, any improvements, personal property, equipment or machinery of Tenant are included within the real property taxes or assessments with respect to the Land, Tenant shall pay the amount of such additional real property taxes or assessments so levied. Landlord will provide Tenant with all such bills at least thirty (30) days prior to the due date for the same.
- 10.3 Notwithstanding the aforementioned, Landlord shall pay all taxes assessed against all improvements on the Land and personal property owned by Landlord.
11. **Utility Access.** Landlord makes no representations or warranties to Tenant regarding the availability of water, electricity or other utilities available to the Land for Tenant's Mining Operations, either as of the date hereof or in the future.
12. **Compliance With Governmental Regulations.** Tenant shall at all times comply with the terms and conditions of all permits and licenses issued and required for the Mining Operations ("Tenant Permits"). In the event that Tenant violates the terms of the permits and licenses, Tenant shall indemnify, defend and hold harmless Landlord from

any actions commenced against Landlord by reason of Tenant's violations and pay any fines or penalties which may be levied against the Land or Landlord resulting therefrom.

Tenant shall abide by all State, Federal, and Local statutes, ordinances, Laws, codes, rules and regulations (the foregoing, along with the Tenant Permits and Reclamation Plan, are referred to collectively herein as "**Laws**") applicable to Tenant's use of the Land, whether in effect as of the date hereof or hereafter enacted. Tenant shall not be in default under this Lease for any violation of Laws unless (i) such violation exposes Landlord or any portion of the Land to any material liability or threat of enforcement proceedings; (ii) Tenant fails to cure the violation to the satisfaction of the appropriate governmental authority within any applicable cure period; and (iii) Tenant fails to pay any penalty imposed within any applicable payment period.

13. **Indemnification.**

- 13.1 Tenant will save and hold harmless Landlord from and against any and all claims, liabilities, losses, fines, penalties, damages, actions, suits, causes of action of every nature, judgments, injuries to (including death of) persons or damage to property, costs and expenses (including, but not limited to, reasonable attorneys' fees and other legal expenses) (collectively, "**Losses**") actually caused by, related to, resulting from, or arising out of: (i) the negligent acts or omissions of Tenant or Tenant's servants, employees, agents, invitees, contractors or subcontractors, in, on, or under the Land; (ii) Tenant's breach of this Lease; provided, that the aforementioned not apply to the extent that such Losses are caused by the negligence or wrongful conduct of Landlord or its servants, employees, agents, invitees, contractors, or subcontractors or to the extent such Loss arises out of Landlord's or its servants', employees', agents', invitees', contractors' or subcontractors' activities on the Land. NOTWITHSTANDING THE AFOREMENTIONED, LANDLORD ACKNOWLEDGES AND AGREES THAT THE MINING ACTIVITIES CONTEMPLATED BY TENANT UNDER THIS LEASE ARE EXTREMELY DANGEROUS AND RESULT IN DANGEROUS CONDITIONS ON THE LAND. AS SUCH, LANDLORD'S ENTRY ONTO AND/OR USE OF ANY PORTION OF THE LAND USED FOR MINING OPERATIONS SHALL BE AT LANDLORD'S SOLE RISK AND LANDLORD HEREBY WAIVES AND RELEASES ALL CLAIMS AGAINST TENANT RELATED TO ANY SUCH ENTRY OR USE.
- 13.2 Landlord will save and hold harmless Tenant from and against any and all claims, liabilities, losses, fines, penalties, damages, actions, suits, causes of action of every nature, judgments, injuries to (including death of) persons or damage to property, costs and expenses (including, but not limited to, reasonable attorneys' fees and other legal expenses) (collectively, "**Losses**") actually caused by, related to, resulting from, or arising out of: (i) the negligent acts or omissions of Landlord or Landlord's servants, employees, agents, invitees, contractors or subcontractors, in, on, or under the Land; (ii) Landlord's breach of this Lease; provided, that the aforementioned not apply to the extent that such Losses are caused by the negligence or wrongful conduct of Tenant or its servants, employees, agents, invitees, contractors, or subcontractors or to the extent such Loss arises out of Landlord's or its servants', employees', agents', invitees', contractors' or subcontractors' activities on the Land.

- 13.3 The indemnity provisions of this Section 13 shall survive the expiration or termination of this Lease.
14. **Possible Release of Land.** Tenant will, at Landlord's written request, release from this Lease those portions of the Land that have been reclaimed as required by the Reclamation Plan, including all governmental approvals confirming the same, and will execute documents in recordable form to document each such release; provided, however, that no portions of the Land shall be so released if such portion is, or will be during the Term, necessary for uses incidental to Mining Operations, including, without limitation, storage of overburden or Sand, and access roads.
15. **Memorandum of Agreement.** Landlord and Tenant shall sign a Memorandum of Agreement in the form of Exhibit D which shall be recorded by Tenant in the office of the Kingfisher County Register of Deeds within five (5) days of the Effective Date. This Lease shall not be recorded. Upon any termination or other expiration of this Lease, Tenant shall, upon Landlord's request, and without charge or cost to Landlord, furnish to Landlord a recordable instrument terminating or otherwise releasing any interest of Tenant in the Land in form and substance reasonably satisfactory to Landlord.
16. **Hazardous Materials.**
 - 16.1 Definition. The terms "**Hazardous Material**" and "**Hazardous Materials**" shall mean and refer to asbestos, radon, urea-formaldehyde, polychlorinated biphenyls ("PCBs"), or substances containing PCBs, nuclear fuel or materials, radioactive materials, explosives, known carcinogens, petroleum products and by-products, and any substance defined as hazardous or toxic or as a contaminant or pollutant in, or the release or disposal of which is regulated by any Environmental Law. The term "**Environmental Law**" shall mean and refer to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. §9601, et seq.; the Federal Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. §6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; all as the same may be from time to time amended, and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation that relates to or deals with human health or the environment, including, without limitation, all regulations promulgated by a regulatory body pursuant to any such statute, law, ordinance or regulation.
 - 16.2 Limitation. Landlord covenants and agrees that, except as otherwise stated in this Lease to the contrary, Tenant shall not be liable for any damage or liability of any kind or for any damage or injury to persons or property from any cause whatsoever arising from the placement, storage, generation, release or disposal of any Hazardous Materials on, in, under or about the Land, except for Hazardous Materials placed, stored, generated, released or disposed of on, in, under, or about the Land by Tenant, its agents, contractors, invitees, guests or permittees in violation of Environmental Law.
 - 16.3 By Tenant. Tenant, on behalf of itself and its successors and assigns, and each of them, hereby agrees to indemnify, defend, protect, save, keep harmless and make whole

Landlord and Landlord's successors, assigns, agents, employees, officers, owners, members, partners, affiliates and contractors, and each of them (collectively, "**Landlord's Indemnitees**"), for, from and against any and all liabilities, obligations, losses, damages, penalties, fees, fines, claims, actions, suits, costs, expenses and disbursements, including reasonable attorneys' fees and expenses, of whatsoever kind and nature imposed on, incurred by Landlord and/or Landlord's Indemnitees in any way relating to or arising out of the placement, storage, generation, release or disposal of any Hazardous Materials on, in, under or about the Land in violation of Law by Tenant. The obligations of Tenant under this Section 16 shall survive the expiration or earlier termination of this Lease.

- 16.4 By Landlord. Landlord, on behalf of itself and its successors and assigns, and each of them, hereby agrees to indemnify, defend, protect, save, keep harmless and make whole Tenant and Tenant's successors, assigns, agents, employees, officers, owners, members, partners, affiliates and contractors, and each of them (collectively, "**Tenant's Indemnitees**"), for, from and against any and all liabilities, obligations, losses, damages, penalties, fees, fines, claims, actions, suits, costs, expenses and disbursements, including reasonable attorneys' fees and expenses, of whatsoever kind and nature imposed on, incurred by or asserted against Tenant and/or Tenant's Indemnitees in any way relating to or arising out of the placement, storage, generation, release or disposal of any Hazardous Materials on, in, under or about the Land prior to the Effective Date or by Landlord or its officers, directors, members, employees, agents, contractors, invitees, guests or permittees, except for Hazardous Materials placed, stored, generated, released or disposed of on, in, under, or about the Land by Tenant, its agents, contractors, invitees, guests or permittees. The obligations of Landlord under this Section 16 shall survive the expiration or earlier termination of this Lease.
17. **Assignment.** All terms and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs, devisees, legatees, beneficiaries, executors and administrators. Tenant may transfer or otherwise assign its interest in this Lease in whole or in part with notice to Landlord but without Landlord's prior written consent. Landlord may transfer or otherwise assign its interest in this Lease in whole or in part with notice to Tenant but without Tenant's prior written consent.
18. **Notices.** Any notice given to the other party under this Lease must be in writing, and sent by United States registered or certified mail, return receipt requested, or via Federal Express or similar overnight courier service, addressed to the following addresses:

If to Landlord:

Linda C. Best Trust, U/T/A 1-6-2015
613 West Van Buren
Crescent, OK 73028
Attn: Linda and Bryan Best

With a copy to: Hartzog Conger Cason & Neville
201 Robert S. Kerr Avenue
Suite 1600
Oklahoma City, OK 73102
Attn: Kenny Davis, Esq.

If to Tenant: Superior Silica Sands LLC
5600 Clearfork Main Street, Suite 400
Ft. Worth, TX 76109
Attn: Richard Shearer

With a copy to: Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
Attn: J.C. Chenault, V, Esq.

All notices will be deemed to have been made when received or rejected. Either party may change its address for the mailing of notices by giving the other party notice of such change of address in the manner provided for herein.

19. **Governing Law.** This Lease shall be governed by the Laws of the State of Oklahoma without regard to any conflict of law rules.
20. **No Liens or Encumbrances.** Subject to Section 4.1, Tenant shall keep Landlord's interest in the Land free and clear of all costs, liens and encumbrances; and Landlord may place and maintain in a conspicuous place upon the Land such notice as shall be lawfully necessary to protect Landlord against all such claims, including, specifically, any and all mechanics' lien claims.
21. **No Relationship other than Landlord and Tenant.** Nothing contained in this Lease shall create between Landlord and Tenant, or be relied upon by others as creating, any relationship of partnership, association, joint venture, employer/employee or otherwise. The sole relationship of Landlord and Tenant under this Lease shall be that of a Landlord/vendor and Tenant/vendee.
22. **Amendment.** This Lease may be amended only by a writing signed by both Landlord and Tenant. If such a written amendment is entered into, such written amendment shall modify only the provisions of this Lease specifically modified and shall be deemed to incorporate by reference, unchanged, all remaining provisions of this Lease.
23. **Entire Agreement.** This Lease and the Exhibits and related agreements contemplated herein contain the entire agreement of Landlord and Tenant and supersede any prior or contemporaneous written or oral agreements among them with respect to the subject matter of this Lease. There are no representations, warranties, agreements, arrangements or understandings, oral or written, between Landlord and Tenant relating to the subject matter contained in this Lease that are not fully expressed in this Lease.

24. **Attorney's Fees.** If any party to this Lease is required to or commences any action or proceeding against the other by reason of any breach or claimed breach of any provision of this Lease, is required to or commences any action or proceeding in any way connected with this Lease or seeks a judicial declaration of rights under this Lease, the party prevailing in such action or proceeding shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees and costs, including, but not limited to, all expert fees, other witness fees and associated expenses, whether or not the proceeding or action proceeds to judgment. The foregoing indemnification obligations shall survive the expiration or termination of this Lease.
25. **Headings and Captions.** The headings and captions at the beginnings of various Sections of this Lease shall not be construed to be substantive part of this Lease or in any way define, limit, expand or affect any provision of this Lease.
26. **Time of the Essence.** With regard to the performance by Landlord and Tenant of their obligations under this Lease, time is expressly made of the essence.
27. **Counterparts.** This Lease may be signed in two (2) or more counterparts, each of which shall constitute an original, but all of which, taken together, shall be one (1) and the same document. For the purposes of this Lease, a facsimile signature or electronically transmitted signature shall be deemed as valid and enforceable as an original.
28. **Nonwaiver of Rights and Breaches.** No failure or delay of Landlord or Tenant in the exercise of any right given to them under this Lease shall constitute a waiver of such right, nor shall any single or partial exercise of any such right preclude other or further exercise of such right or of any other right. The waiver by Landlord or Tenant of any breach of any term or provision of this Lease shall not be deemed to be a waiver of any subsequent breach of any term or provision of this Lease or of any breach of any other provision of this Lease. No waiver under this Lease shall be effective until set forth in writing and executed by the party making the waiver.
29. **Remedies.** In the event of breach of the provisions of this Lease, the nonbreaching party may pursue any remedy provided at law or in equity.
30. **Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
31. **Force Majeure.** In the event either Landlord or Tenant shall be rendered unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed by that party under this Lease, that covenant, agreement, obligation or undertaking, to the extent that it is affected by force majeure, shall be suspended during the continuance of any liability so caused, and the default shall be remedied with all reasonable dispatch. The term "**force majeure**," as employed in this Section, shall mean all things outside of the reasonable control of the party unable to perform, which includes, but is not limited to, acts of God, strikes, lockouts, acts of a

public enemy, war, blockades, riots, epidemics, earthquakes, explosions, or inability by reason of regulation or public authorities not within the control of the party claiming the suspension and which by the exercise of due diligence that party is unable to overcome.

32. **No Merger.** The fee simple estate in the Land shall not merge with the Leasehold or any other estate or interest in the Land, and the parties hereto do hereby express their intent to avoid any merger of such interests or estates.
33. **Rules of Interpretation.** The language used in this Lease shall be deemed to be the language chosen by all parties to express their mutual intent, and no rule of strict construction against either party shall apply to any term, condition, or provision hereof.
34. **Confidentiality.** The terms and conditions of this Lease shall be treated as confidential by Landlord and Tenant and shall not be disclosed to any person, other than to: the individuals who are part of Tenant and their immediate families; the members of the entity which is a part of Tenant; the officers, directors, and management employees of Tenant and its parent companies; and representatives of Landlord and Tenant with a need to know; and in addition thereto Landlord and Tenant's attorneys, accountants, tax consultants and any state and federal taxing authorities. The provisions of this Section do not apply to disclosures made in a court of competent jurisdiction or to a governmental agency, when required by subpoena, court order, law or administrative regulation. The provisions of this Section will continue in full force and effect even after expiration or termination of this Lease.
35. **Financing.** Tenant may, at any time from time to time, without the consent, approval or input from Landlord, enter into a financing arrangement or arrangements resulting in the encumbrance of all or any portion of its interest in this Lease and Tenant's leasehold estate in the Land by deed of trust, mortgage, security instrument, collateral assignment, or otherwise for the purpose of securing money borrowed from a third party. Any rights granted by Tenant shall be subject to the terms and provisions of this Lease, and no lender or other party shall, by virtue thereof, acquire any greater rights hereunder than Tenant has under this Lease. Landlord agrees to sign any and all reasonable documentation related thereto or requested by Tenant's lender(s), including, without limitation, to title affidavits and collateral access agreements.
36. **Title Insurance.** Tenant, at any time during the Term, at Tenant's cost and expense, may purchase a leasehold title insurance policy, insuring it against any loss on account of defect, lien or encumbrance in title, guaranteeing the area and boundaries, and showing good title to the Land, including all mineral rights to be vested in Landlord, free and clear of all defects, liens and encumbrances, easements, restrictions, rights-of-way, roadways, encroachments or other matters of record or other grants which may affect the use of the Land by Tenant. Landlord shall cooperate with Tenant and assist Tenant in obtaining such leasehold title insurance policy, including, without limitation, signing such documents that may be requested by the title company to issue such leasehold title insurance policy.

37. **SNDA.** In the event all or any portion of the Land is encumbered by a deed of trust, mortgage, security instrument, collateral assignment, or otherwise for the purpose of securing money borrowed by Landlord from a third party, Landlord agrees to provide Tenant with a subordination, non-disturbance and attornment agreement between the holder of such encumbrance and Tenant, in form and substance acceptable to Tenant at Tenants cost and expense.
- 37.1 **Conservation Reserve Program.** Conservation Reserve Program. The parties acknowledge that a portion of the Land consisting of the W/2 of Section 29-18N-7W and the E/2 NE/4 of Section 30-18N-7W is enrolled in the USDA Conservation Reserve Program through 9/30/2022 and 9/30/2021 respectively. In the event Tenant begins mining or other activities on said parcels such that Landlord incurs penalties or reimbursement obligations under the Program, Tenant shall indemnify and hold Landlord harmless from any such penalties or obligations and shall pay Landlord the full amount of the resulting amounts owed by Landlord pursuant to the Conservation Reserve Program within 30 days after receiving written notice from Landlord of the existence of said penalties or obligations. Notwithstanding the aforementioned, Tenant's indemnity, hold harmless and reimbursement obligations set forth in this Section shall not exceed \$103,866.60.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Lease on the date hereinabove written.

LANDLORD:

LINDA C. BEST TRUST, U/T/A 1-6-2015,
a revocable trust with Linda C. Best as trustee

By: Linda C Best
Name: Linda C Best
Its: Trustee

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

The foregoing instrument was acknowledged before me on May 11, 2018, by LINDA C. BEST, as the TRUSTEE of Linda C. Best Trust, U/T/A 1-6-2015, a revocable trust with Linda C. Best as trustee, to me known to be the person who executed the foregoing instrument and acknowledged the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Carol Carrier
Notary Public, State of OKLAHOMA
My Commission is permanent. EXPIRES 5-12-18

TENANT:

SUPERIOR SILICA SANDS LLC,
a Texas limited liability company

By: Richard J. Shearer
Name: RICHARD J. SHEARER
Its: PRESIDENT & CEO

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

The foregoing instrument was acknowledged before me on MAY 11, 2018, by RICHARD J. SHEARER as the PRES & CEO of Superior Silica Sands LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Carol Carrier
Notary Public, State of OKLAHOMA
My Commission is permanent. EXPRES 5-12-18

EXHIBIT A

Legal Description

- 1) S2 of NW/4 Section 20, Township 18 North,
Range 7 West
Lay down 80 acres Property Identification No. 0000-20-18N-07W-2-002-00
- 2) SW/4 Section 20, Township 18 North,
Range 7 West
160 acres Property Identification No. 0000-20-18N-07W-3-000-00
- 3) E2 NE/4 Section 30, Township 18 North,
Range 7 West
80 acres Property Identification No. 0000-30-18N-07W-1-001-00
- 4) SW/4 Section 29, Township 18 North,
Range 7 West
160 acres Property Identification No. 0000-29-18N-07W-3-000-00
- 5) NW/4 Section 29, Township 18 North,
Range 7 West
160 acres Property Identification No. 0000-29-18N-07W-2-000-00

EXHIBIT C

Insurance Requirements and Coverage

Tenant shall procure and maintain, until all of its obligations under this Lease have been discharged, the following insurance against claims for injury to persons or damage to property which may arise from or in connection with Tenant's use of the Land.

A. Minimum Scope and Limits of Insurance — Tenant shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability — Occurrence Form

The policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

- General Aggregate
\$10,000,000
- Products – Completed Operations Aggregate
\$10,000,000
- Personal and Advertising Injury
\$5,000,000
- Each Occurrence
\$5,000,000
- Damage to Rented Premises (each occurrence)
\$1,000,000

2. Excess/Umbrella Liability

- General Aggregate \$5,000,000

3. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used by Tenant in connection with use of the Land.

- \$1,000,000 per person and \$5,000,000 per accident for bodily injury and \$1,000,000 for property damage.

4. Worker's Compensation and Employers' Liability

- Workers' Compensation As required by Oklahoma State law
- Employers' Liability As required by Oklahoma State law

5. Pollution

- \$10,000,000 limit/\$25,000 deductible
6. Any other coverages and/or coverage limits as may be required by Law.
- B. Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:
1. Each insurance policy required by this Lease shall provide the required coverage and shall not be suspended, voided or canceled except after such insurer has endeavored to provide thirty (30) days prior written notice to Landlord.
 2. Each insurance policy required by this Lease shall be endorsed to include a waiver of subrogation against Landlord, as applicable.
- C. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Oklahoma and with an "A.M. Best" rating of not less than A-.

Verification of Coverage: Each insurance policy required by this Lease must be in effect at or prior to the Effective Date under this Lease and remain in effect for the duration of the Agreement. Upon request, each party shall furnish the other party with certificates of insurance (ACORD form or equivalent) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal is a material breach of this Lease.

EXHIBIT D

Form of Memorandum of Agreement

[*TO BE REVISED TO CONFORM WITH LOCAL ENFORCEABILITY AND
RECORDABILITY STANDARDS]**

MEMORANDUM OF AGREEMENT

WITNESSETH: This is a Memorandum of that certain Royalty Lease Agreement, described below, wherein Landlord demised and leased and does by these presents demise and lease to Tenant those certain premises hereinafter described:

LANDLORD: **Linda C. Best Trust, U/T/A 1-6-2015,**
a revocable trust with Linda C. Best as trustee

TENANT: **Superior Silica Sands LLC,** a Texas limited
liability company

EFFECTIVE DATE OF LEASE: _____, **2018**

TERM: 25 years, expiring on the 25th anniversary of the
January 1 following Effective Date, subject to all
terms and provisions of the Lease Agreement and
possible extension for up to two (2) consecutive
additional 5-year terms

PREMISES: All land, including, without limitation, Sand and
improvements located thereon, more particularly
described as **Exhibit A** attached hereto

The mailing addresses of
Landlord and Tenant are as follows:

LANDLORD: Linda C. Best Trust, U/T/A 1-6-2015
613 West Van Buren
Crescent, OK. 73028
Attn: Linda and Bryan Best

TENANT: Superior Silica Sands LLC
5600 Clearfork Main Street, Suite 400
Fort Worth, Texas 76109
Attn: Richard Shearer

[Signature Pages to Follow]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement on the date hereinabove written.

LANDLORD:

LINDA C. BEST TRUST, U/T/A 1-6-2015,
a revocable trust with Linda C. Best as trustee

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2018, by _____, as the _____ of Linda C. Best Trust, U/T/A 1-6-2015, a revocable trust with Linda C. Best as trustee, to me known to be the person who executed the foregoing instrument and acknowledged the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, State of _____
My Commission is permanent.

TENANT:

SUPERIOR SILICA SANDS LLC,
a Texas limited liability company

By: _____

Name: _____

Its: _____

STATE OF _____)

) ss:

COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2018, by _____, as the _____ of Superior Silica Sands LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, State of _____

My Commission is permanent.

Exhibit 3

Permit

[See attached]

PERMIT TO ENGAGE IN NON-COAL MINING

The Mining Lands Reclamation Act, 45 O.S. 1981 §721-728

Date NOVEMBER 9, 2018

Permit No. L.E.-2662

Permit is hereby issued to:

SUPERIOR SILICA SANDS, LLC

817/841-8070

Name of Company, Corporation, Partnership, Individual

Telephone No.

5600 CLEARFORK MAIN ST., SUITE 400

FT. WORTH

TX

76109

Street, R.F.D., Box No.

City

State

Zip Code

to mine SAND, GRAVEL, & SOIL by the following method(s) (Please check method(s)).

Underground _____; (Refuse) Surface XX

Auger mining _____; Dredging XX; Hydraulic mining _____

Pumping XX; Quarrying _____; Stripping XX

Permit period is from 11-01-2018 to 10-31-... (LIFE EXPECTANCY)

Total estimated acres to be affected 600

Total estimated acres to be covered by bond 600

Name or number of mine OK BEST MINE

Nearest town DOVER, OK

Section(s) 20, 29, & 30 Township(s) 18N Range(s) 7W

County KINGFISHER

Permit reviewed by

Richard Shore

Administrator of Minerals Division

Title

Approved by

Mary Ann Pritchard or Douglas J. Schooley

☒ Director

☐ Deputy Director

Title

*SEE ATTACHED CONDITIONS.

If, for any reason whatever, you cease to operate at the location shown on this permit, notify the Department of Mines immediately as your liability continues in effect until the Department is notified and/or completed reclamation is approved.

CONDITIONS OF NON-COAL MINING PERMIT

OKLAHOMA DEPARTMENT OF MINES: L.E.-2662

SUPERIOR SILICA SANDS, LLC

**(SECTIONS 20, 29, & 30-TOWNSHIP 18N-RANGE 7W)
(KINGFISHER COUNTY)**

1) Where applicable, upon issuance, a copy of all permits and licenses needed to conduct the mining operation shall be submitted to the Department for identification. Identifications of all permits and licenses shall include local government agencies with jurisdiction over or an interest in the area of the mining operation including, but not limited to planning agencies, water and sewer authorities; and all state and federal government agencies with authority to issue permits and licenses applicable to the proposed mining operation, including all state environmental agencies, U.S. Army Corps of Engineers, U.S. Department of Agriculture Soil Conservation Service district office and federal fish and wildlife agencies.

2) The perimeter of the permitted and bonded area shall be clearly marked by durable and recognizable markers. These markers must be in place no later than **December 10, 2018**.

Oklahoma Department of Mines
2915 N. Classen Blvd., Suite 213
Oklahoma City, OK 73106
405/427-3859

RECEIVED

SEP 25 2018

DEPT. OF MINES

NON-COAL MINING APPLICATION & RECLAMATION PLAN FIELD EVALUATION

The Mining Lands Reclamation Act, 45 O.S. 1981 §721-728

Operator:

Date: 09-04-2018

SUPERIOR SILICA SANDS, LLC
5600 Clearfork Main St. - Suite 400
Fort Worth, TX 76109

The following has been reviewed for Permit # L.E.-2662 (OK Best Mine):

| | Reviewed | Additional information needed* |
|--|----------|--------------------------------|
| Legal Description | ✓ | |
| Reclamation Plan | ✓ | |
| Perimeter Markers in Place | | ✓ |
| Permit Acreage | ✓ | |
| Bonded Acreage Sufficient | ✓ | |
| Blasting Plan Approved (if applicable) | N/A | |

* Comments or Recommendations based on field review:

Legal description is correct. Perimeter markers are not in place. Bonded acreage is sufficient.

Field Evaluation by:

[Signature] 9-18-18
INSPECTOR DATE

Office Review by:

[Signature] 11/9/18
ADMINISTRATOR OF MINERALS DIVISION DATE

Approved by:

Mary Ann Richard
Mary Ann Richard or Douglas J. Schooley

☐ Deputy Director

☒ Director

TITLE

DATE

11/9/18

Exhibit 4

Quitclaim Deed

[See attached]

Return recorded instrument to:

Lawn B. Gardner, Esq.
Christensen Law Group, PLLC
3401 N.W. 63rd Street, Suite 600
Oklahoma City, OK 73116

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That Superior Silica Sands, LLC, a Texas limited liability company (“Grantor”), in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, does hereby quitclaim, grant, bargain, sell, and convey to Retribution Sands, LLC, an Oklahoma limited liability company, with a mailing address of 3401 N.W. 63rd Street, Suite 600, Oklahoma City, OK 73116 (“Grantee”), all rights, title and interests Grantor has in the real property and premises situated in Kingfisher County, Oklahoma, and more particularly described on Exhibit “A” attached hereto and incorporated herein, subject to easements, rights of way and restrictive covenants of record and together with all the improvements thereon and the appurtenances thereunto belonging.

This deed has been executed and delivered in accordance with, and subject to, the terms of the Order Approving Stipulation entered in the bankruptcy case pending in the Bankruptcy Court for the District of Delaware styled *In re Emerge Energy Services, LP, Reorganized Debtor*, Case No. 19-11563 (KBO), a copy of which Order is attached hereto as Exhibit “B” and incorporated herein.

The land herein conveyed is subject to a purchase option in favor of the Linda C. Best Trust, U/T/A 1-6-2015, a revocable trust, as set forth in that certain Special Warranty Deed dated September 24, 2018, and filed in Kingfisher County, Oklahoma on October 1, 2018, Book 3170 - Page 477.

TO HAVE AND TO HOLD said described premises unto Grantee and its successors and assigns forever.

Signed to be effective and delivered as of _____, 2021.

Superior Silica Sands, LLC,
a Texas limited liability company

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, as the _____ of Superior Silica Sands, LLC, a Texas limited liability company, the owner of the real estate described herein.

Notary Public

My Commission Expires:

(SEAL)

EXHIBIT A TO QUITCLAIM DEED
LEGAL DESCRIPTION

The following real property located in Kingfisher County, State of Oklahoma, to-wit:

The South 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corner of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet, thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

Containing 40.00 acres more or less.

EXHIBIT B TO QUITCLAIM DEED
COURT ORDER

[See attached (to be added upon entry of Order)]

Exhibit 5

Lease Assignment

[See attached]

ASSIGNMENT OF ROYALTY LEASE AGREEMENT

This Assignment of Royalty Lease Agreement (the “**Agreement**”) is made effective as of September ____, 2021, by and among **Superior Silica Sands, LLC**, a Texas limited liability company (“**Assignor**”), and **Retribution Sands, LLC**, an Oklahoma limited liability company (“**Assignee**”).

RECITALS:

A. Reference is hereby made to that certain Royalty Lease Agreement dated approximately May 11, 2018, by and between Assignor, as Tenant, and Linda C. Best Trust, U/T/A/ 1-6-2015, a revocable trust with Linda C. Best as Trustee (the “**Landlord**”), pertaining to the lease of real property and improvements located in Kingfisher County, Oklahoma (the “**Lease**”).

B. Pursuant to the *Order Approving Settlement of (I) Reorganized Debtor’s First (Substantive) Omnibus Objection to, or Motion to Reclassify Purported Secured Claims and (II) Joint Motion of Market & Johnson, Inc., and Pownall Services LLC to Enforce Provisions of Reorganized Debtor’s Confirmed Chapter 11 Plan* (the “**Order**”) entered in the bankruptcy case styled *In re Emerge Energy Services LP, et al*, Reorganized Debtors, Case No. 19-11563 (jointly administered) pending in the Bankruptcy Court for the District of Delaware, Assignor desires to assign all of its right, title, interest and obligations under the Lease to Assignee (the “**Assignment**”), and Assignee desires to accept the Assignment and assume the obligations of Assignor thereunder on the terms and conditions contained herein. This Assignment, and various other documents executed and delivered by and between the Parties, are in furtherance of the terms of the Order by which certain real property and related assets, including the Lease and a certain mining and mining related permit (the “**Permit**”) is being transferred by Assignor to Assignee.

C. Section 17 of the Lease provides Assignor may transfer or otherwise assign its interest in the Lease with notice to Landlord but without Landlord’s prior written consent.

AGREEMENT:

1. Assignment and Assumption. In return for the sum of \$10.00 and other valuable consideration, Assignor hereby assigns to Assignee all of Assignor’s right, title, interest and obligations under the Lease, and Assignee hereby accepts the Assignment and, as of the date of this Agreement, Assignee assumes and agrees to fully perform and be bound by all of the terms, covenants, conditions and obligations imposed upon Assignor under the Lease as if Assignee was the original tenant named in the Lease. The Order and its terms are expressly incorporated into this Agreement by reference. The parties expressly agree and acknowledge that this Agreement, and the Assignment, are contingent upon the approval by the Oklahoma Department of Mines or other regulatory bodies of the transfer of the Permit from Assignor to Assignee. In the event the transfer of the Permit is not approved, this Agreement, and the Assignment, shall be null and void and of no further effect.

2. General Provisions.

2.1. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Oklahoma without giving effect to any choice or conflict of law provision or rule (whether of the State of Oklahoma or any other jurisdiction).

2.2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns.

2.3. Amendment. This Agreement may not be altered, modified or amended except by a written instrument signed by both parties.

2.4. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

2.5 Entire Agreement. This Agreement is the entire and final expression of the agreement of the parties hereto with respect to such terms as are included herein and is a complete and inclusive statement of the terms of such agreement. No party hereto shall be bound by any verbal representations altering the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

ASSIGNOR:

Superior Silica Sands, LLC

By: _____

Name: _____

Title: _____

ASSIGNEE:

Retribution Sands, LLC,
an Oklahoma limited liability company

By: M&J Oklahoma, LLC, Manager,
a Wisconsin limited liability company

By: _____
Chad Ellingson, Manager

Exhibit 6

Property Access Release

[See attached]

RELEASE OF
LIABILITY¹

I, THE UNDERSIGNED desire to visit certain properties located in Kingfisher County, Oklahoma (collectively, the "Properties") that are owned, leased, managed and/or operated by Superior Silica Sands LLC its parent and/or affiliates (collectively, "SSS") for the purpose of inspecting and marketing the Properties. I understand that this activity is inherently hazardous, and I agree to act strictly in accordance with any and all rules, policies, and procedures established by SSS's personnel or agents regarding such activity, as well as all federal and state laws and regulations.

IN CONSIDERATION OF THE OPPORTUNITY TO VISIT THE PROPERTIES, I ASSUME ANY AND ALL LIABILITY AND HOLD HARMLESS AND FOREVER RELEASE AND DISCHARGE SSS, ITS MANAGERS, MEMBERS, DIRECTORS, OFFICERS, PARTNERS, OWNERS, SHAREHOLDERS, AGENTS, EMPLOYEES, CONTRACTORS, ATTORNEYS AND REPRESENTATIVES, AS WELL AS THEIR PARENTS, SUBSIDIARIES, AND AFFILIATES, THEIR PREDECESSORS IN INTEREST, THEIR SUCCESSORS IN INTEREST, AND THEIR RESPECTIVE MANAGERS, MEMBERS, DIRECTORS, OFFICERS, PARTNERS, OWNERS, SHAREHOLDERS, AGENTS, EMPLOYEES, CONTRACTORS, ATTORNEYS AND REPRESENTATIVES (COLLECTIVELY, THE "RELEASED PARTIES") OF AND FROM ANY RIGHTS, CAUSES OF ACTION, SUITS, PROCEEDINGS, DEMANDS, DAMAGES, COSTS, EXPENSES, CLAIMS AND ALLEGATIONS OF LIABILITY (COLLECTIVELY, THE "CLAIMS") WHICH I, MY HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS HAVE OR MAY HAVE AGAINST THE RELEASED PARTIES WHICH RESULT FROM, ARISE OUT OF, OR ARE IN CONNECTION WITH, OR IN ANY WAY RELATE TO MY VISIT TO THE PROPERTIES, AND I AGREE TO INDEMNIFY AND HOLD THE RELEASED PARTIES HARMLESS FROM ALL ANY AND ALL CLAIMS MADE BY ME OR ANY OTHER PARTY AGAINST THE RELEASED PARTIES THAT RESULT FROM, ARISE OUT OF, ARE IN CONNECTION WITH, OR ARE IN ANY WAY RELATED TO MY VISIT TO THE PROPERTIES, WHETHER OR NOT SUCH CLAIMS ARE CAUSED BY THE RELEASED PARTIES' ANY ACTIVE, PASSIVE JOINT, CONCURRENT, GROSS OR SOLE NEGLIGENCE, STRICT LIABILITY OR WILLFUL MISCONDUCT.

I UNDERSTAND THAT DANGEROUS CONDITIONS, RISKS AND HAZARDS DO EXIST ON THE PROPERTIES, AND THAT MY PRESENCE ON THE PROPERTIES WILL EXPOSE ME AND/OR MY PERSONAL PROPERTY TO SUCH CONDITIONS, RISKS AND HAZARDS. I HEREBY ASSUME ALL RISK FOR ANY AND ALL PERSONAL INJURIES SUFFERED BY ME, DEATH AND/OR DAMAGE TO ME, OR MY PERSONAL PROPERTY WHICH ARE INCURRED AS A RESULT OF, OR IN ANY WAY CONNECTED WITH, OR ARE RELATED TO MY VISIT TO THE PROPERTIES.

THE UNDERSIGNED AGREES THAT THIS STATEMENT COMPLIES WITH THE REQUIREMENT, KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THIS RELEASE OF LIABILITY HAS PROVISIONS REQUIRING ONE PARTY (THE INDEMNITOR) TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PARTY (THE INDEMNITEE). THE UNDERSIGNED REPRESENTS TO SSS (1) THAT IT HAS CONSULTED AN ATTORNEY CONCERNING THIS RELEASE OF LIABILITY OR, IF THE UNDERSIGNED HAS NOT CONSULTED AN ATTORNEY, THAT THE UNDERSIGNED WAS PROVIDED THE OPPORTUNITY AND HAD THE ABILITY TO SO CONSULT, BUT MADE AN INFORMED DECISION NOT TO DO SO, AND (2) THAT THE UNDERSIGNED FULLY UNDERSTAND HIS/HER/ITS/THEIR RIGHTS AND OBLIGATIONS UNDER THIS RELEASE OF LIABILITY.

The undersigned agrees that any signature received and/or transmitted electronically, expressly including, but not limited to, those transmitted and received via facsimile, e-mail, and portable document format (.pdf), shall be deemed original and binding upon the undersigned for all purposes.

In signing this document, the undersigned acknowledges and represents that (1) the undersigned read and understood this document fully and signs it voluntarily with knowledge of its significance, and (2) the undersigned is over 21 years old and of sound mind.

Signature of Participant: _____ Date: _____
Printed Name: _____

¹ This Release of Liability does not affect any of the existing claims and defenses asserted in *In re Emerge Energy Services, LP*, Case No. 19-11563 (KBO), pending in the United States Bankruptcy Court for the District of Delaware.