

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

----- X  
In re: : Chapter 11  
: :  
HI-CRUSH INC., *et al.*,<sup>1</sup> : Case No. 20-33495 (DRJ)  
: :  
Debtors. : (Jointly Administered)  
: :  
----- X

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
THE DEBTORS TO (I) REJECT CERTAIN RAILCAR LEASE  
AGREEMENTS EFFECTIVE AS OF THE PETITION DATE, AND (II) ENTER  
INTO PROPOSED NEW RAILCAR LEASE AGREEMENTS,  
EFFECTIVE AS OF THE PETITION DATE**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.



Please note that on March 24, 2020, through the entry of General Order 2020-10, the Court invoked the Protocol for Emergency Public Health or Safety Conditions.

It is anticipated that all persons will appear telephonically and also may appear via video at this hearing.

Audio communication will be by use of the Court's regular dial-in number. The dial-in number is +1 (832) 917-1510. You will be responsible for your own long-distance charges. You will be asked to key in the conference room number. Judge Jones' conference room number is 205691.

Parties may participate in electronic hearings by use of an internet connection. The internet site is [www.join.me](http://www.join.me). Persons connecting by mobile device will need to download the free [join.me](http://www.join.me) application.

Once connected to [www.join.me](http://www.join.me), a participant must select "join a meeting". The code for joining this hearing before Judge Jones is "judgejones". The next screen will have a place for the participant's name in the lower left corner. Please complete the name and click "Notify".

Hearing appearances should be made electronically and in advance of the hearing. You may make your electronic appearance by:

- 1) Going to the Southern District of Texas website;
- 2) Selecting "Bankruptcy Court" from the top menu;
- 3) Selecting "Judges' Procedures & Schedules;"
- 4) Selecting "view home page" for Judge David R. Jones;
- 5) Under "Electronic Appearance," select "Click here to submit Electronic Appearance;"
- 6) Select "Hi-Crush Inc., et al." from the list of Electronic Appearance Links; and
- 7) After selecting "Hi-Crush Inc., et al." from the list, complete the required fields and hit the "Submit" button at the bottom of the page.

Submitting your appearance electronically in advance of the hearing will negate the need to make an appearance on the record at the hearing.

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") respectfully state the following in support of this motion (the "**Motion**"):

### RELIEF REQUESTED

1. By this Motion, the Debtors request entry of an order (the "**Order**"), substantially in the form attached hereto, authorizing the Debtors to:

- (a) reject certain railcar lease agreements, as set forth on Exhibit 1 to this Motion, including any agreements, master leases, subleases, riders, schedules, certificates, memoranda, amendments, supplements, guaranties, and any other documents

related to thereto (collectively, the “**Rejected Railcar Leases**”), with Trinity Industries Leasing Company (and its affiliate lessors and assignees under the Rejected Railcar Leases, if any) (“**Trinity**”), MUL Railcars, Inc. (and its affiliate lessors and assignees under the Rejected Railcar Leases) (“**MUL**”), Greenbrier Leasing Company LLC (and its affiliate lessors and assignees<sup>2</sup> under the Rejected Railcar Leases) (“**Greenbrier**”), Chicago Freight Car Leasing Co. (and its affiliate lessors and assignees under the Rejected Railcar Leases, if any) (“**Chicago Freight**” and, together with Trinity, MUL, and Greenbrier, the “**Go-Forward Lessors**”), effective as of the Petition Date (as defined below); and

- (b) enter into new railcar lease agreements (collectively, the “**New Railcar Leases**”) with the Go-Forward Lessors on the terms and conditions set forth in the letter agreements and term sheets attached to this Motion as Exhibit 2 (the “**New Railcar Lease Letter Agreements**”), effective as of the Petition Date.

### JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction to consider this Motion under 28 U.S.C. §1334. This is a core proceeding under 28 U.S.C. § 157, and this Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 362, 363, and 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 7008-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

### BACKGROUND

4. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter**

---

<sup>2</sup> Such assignees include: Bridge Funding Group Inc., Railcar Holding Pass I, Riverside Rail 1 LLC, Railcar Holding Pass II, ITE Rail Fund Levered L.P., CCM Railcar Holdings, and City National Bank FL. Each of such assignees has retained Greenbrier Management Services, LLC to serve as agent under the applicable railcar leases.

**11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of J. Philip McCormick, Jr., Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),<sup>3</sup> which is filed with the Court concurrently herewith, and is fully incorporated herein by reference.

5. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

6. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

## **BASIS FOR RELIEF**

### **B. The Rejected Railcar Leases<sup>4</sup>**

7. As more particularly described in the First Day Declaration, the Debtors operate businesses throughout North America that are primarily engaged in the businesses of mining, processing, and distributing high-quality silica sand — a key input for the hydraulic fracturing of oil and natural gas wells. The Debtors’ ordinary course operations generally involve the mining

---

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>4</sup> By this Motion, the Debtors seek authority to reject certain railcar leases and to enter into new leases with the Go-Forward Lessors. Simultaneously with the filing of this Motion, the Debtors have filed the *Debtors’ First Omnibus Motion for Entry of an Order Authorizing the Debtors to (I) Reject Certain Executory Contracts and Unexpired Leases Effective as of the Dates Specified in the Motion and (II) Abandon any Remaining Personal Property in Connection Therewith* whereby they seek to reject certain additional railcar leases with lessors with whom the Debtors do not intend to enter into new agreements.

of silica sand from open pit environments, the processing of the sand at wet and dry plant facilities designed to separate the sand from unusable materials, and the distribution of sand to customers.

8. At the peak of the Debtors' business, the Debtors required a substantial number of railcars in order to ship northern white sand ("NWS") from their operations in Wisconsin to their customers across North America. To that end, the Debtors have, over time, built a significant fleet of company-leased railcars. As of the Petition Date, the Debtors leased a total of approximately 4,850 railcars.

9. As more particularly described in the First Day Declaration, in the time since the Debtors entered into the Rejected Railcar Leases, there has been a sharp decline in demand for NWS, resulting in a material over-supply of leased railcars. Because the Debtors hold excess, unused railcars, the Debtors incur significant costs associated with the extraneous railcars. These costs include what are now above market, monthly rental rates as well as storage costs, exceeding approximately \$2.3 million per month in the aggregate. Such costs are burdensome to the Debtors' business and their estates, especially during this critical time.

10. Accordingly, in the lead up to the Chapter 11 Cases, the Debtors undertook an analysis of certain of their railcar leases. As a result of this ongoing analysis, the Debtors determined, in conjunction with their advisors, that certain of their railcar leases were on above-market terms that were unfavorable and/or burdensome to the Debtors and unnecessary for the Debtors' business. Accordingly, the Debtors have engaged in arms' length negotiations with the Go-Forward Lessors and, ultimately, reached agreement with such Go-Forward Lessors to reject the Rejected Railcar Leases and enter into the New Railcar Leases.

11. The Debtors have determined that it is in the best interest of the estates to reject the Rejected Railcar Leases, and simultaneously to replace such leases with New Railcar Leases for a substantially reduced fleet of railcars, with the following Go-Forward Lessors:

12. ***Trinity Railcar Leases***. Debtor D & I Silica, LLC (“**D & I**”) is party to Rejected Railcar Leases with Trinity covering approximately 1200 railcars. Debtor Hi-Crush Inc. guarantees D & I’s obligations under some or all such Rejected Railcar Leases.

13. ***MUL Railcar Leases***. Debtor D & I is party to Rejected Railcar Leases with MUL, covering approximately 1020 railcars. Debtor Hi-Crush Inc. guarantees D & I’s obligations under some or all such Rejected Railcar Leases.

14. ***Greenbrier Railcar Leases***. Debtor D & I is party to Rejected Railcar Leases with Greenbrier covering approximately 1,300 railcars. Debtor Hi-Crush Inc. guarantees D & I’s obligations under some or all such Rejected Railcar Leases.

15. ***Chicago Freight Railcar Leases***. Debtor D & I is party to Rejected Railcar Leases covering approximately 400 railcars.<sup>5</sup> Debtor Hi-Crush Inc. guarantees D & I’s obligations under some or all such Rejected Railcar Leases.

### **C. The New Railcar Leases**

16. As described in the First Day Declaration, the Debtors and their advisors have been in constant, parallel, arm’s-length negotiations with all of their lessors, including the Go-Forward Lessors, to re-negotiate the terms of the various railcar leases since at least the first quarter of 2020. In the months leading up to the Chapter 11 Cases, these negotiations picked up in earnest in order

---

<sup>5</sup> Prior to the Petition Date, the Debtors and Chicago Freight mutually agreed to the early termination of leases covering approximately 368 railcars otherwise subject to the Chicago Freight Rejected Railcar Leases.

to reach terms more favorable to the Debtors. As a result of such negotiations, the Debtors and the Go-Forward Lessors have agreed to the relief request herein.

17. Specifically, pursuant to the New Railcar Lease Letter Agreements between the Debtors and the Go-Forward Lessors, each such Go-Forward Lessor has agreed to accept the rejection of their respective Rejected Railcar Leases and to enter into the New Railcar Leases subject to the terms set forth on the terms sheets attached to the respective New Railcar Lease Letter Agreements. The New Railcar Lease Letter Agreements are attached as Exhibit 2 to this Motion. As set forth in the New Railcar Lease Letter Agreements and the term sheets attached thereto, the New Railcar Leases will contain terms that are significantly more favorable for the Debtors than the Rejected Railcar Leases, including among other things, (1) a substantial reduction in the number of railcars the Debtors are contractually obligated to lease, (2) substantially reduced, and substantially more flexible, rent structure for all railcars under lease, and (3) various provisions ensuring the parties' interests are aligned in the event the Debtors' need for railcars meaningfully contracts, or expands, during the term of the New Railcar Leases.<sup>6</sup>

18. By consenting to the rejection of the Rejected Railcar Leases and agreeing to simultaneously enter into the New Railcar Leases, the Go-Forward Lessors have agreed to reduce the burden on the Debtors under the Rejected Railcar Leases and provide for more favorable lease terms in an effort to better serve the Debtors' business needs. Each Go-Forward Lessor supports the relief requested herein.

---

<sup>6</sup> Given the sensitivity of these and other commercial terms, further details are left to the attached New Railcar Lease Letter Agreements, which the Debtors have requested permission to file under seal by the *Debtors' Motion for Entry of an Order Authorizing the Debtors to File the Letter Agreements Under Seal*, filed contemporaneously herewith.

## BASIS FOR RELIEF

### A. The Rejection of the Rejected Railcar Leases is an Appropriate Exercise of the Debtors' Business Judgment

19. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "This provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed." *Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citing *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)); see also *In re Orion Pictures Corp.*, 4 F. 3d 1095, 1098 (2d Cir. 1993) (noting that the purpose of rejection of executory contracts is to permit the debtor in possession to renounce title to and abandon burdensome property).

20. A debtor's rejection of an executory contract or unexpired lease is ordinarily governed by the "business judgment" standard. See *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1989) ("It is well established that 'the question of whether a lease should be rejected . . . is one of business judgment.'") (quoting *Grp. Of Institutional Inv'rs v. Chi., M., St. P & P.R. Co.*, 318 U.S. 523, 550 (1943)); see also *In re Tex. Sheet Metals, Inc.*, 90 B.R. 260, 264 (Bankr. S.D. Tex. 1988) ("The traditional business judgment standard governs the rejection of ordinary executory contracts."). The business judgment standard requires a court to approve a debtor's business decision unless that decision is the product of "bad faith, whim, or caprice." See *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (citing *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 849-50 (Bankr. W.D. Pa. 1987)).

21. In applying the business judgment standard, courts have held that rejection of an executory contract or an unexpired lease is appropriate where such rejection would benefit the estate. See *In re Pisces Energy, LLC*, No. 09-36591-H5-11, 2009 WL 7227880, at \*6 (Bankr. S.D.



Tex. Dec. 21, 2009) (“Courts apply the ‘business judgment test,’ which requires a showing that the proposed course of action will be advantageous to the estate and the decision be based on sound business judgment.”); *see also Orion Pictures*, 4 F.3d at 1098-99 (stating that section 365 of the Bankruptcy Code permits a debtor in possession, subject to court approval, to decide which executory contracts would be beneficial to reject). Upon finding that a debtor exercised its sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and all parties in interest, a court should approve the rejection under section 365(a) of the Bankruptcy Code. *See In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

22. Rejection of the Rejected Railcar Leases is well within the Debtors’ business judgment and is in the best interest of their estates. The Debtors have determined, in the sound exercise of their business judgment, that rejection is proper because (i) the rental rates under the Rejected Railcar Leases are well-above market and it is unlikely that a third party would be willing to assume or purchase the Rejected Railcar Leases under current market conditions and (ii) the current state of the Debtors’ business does not require as extensive a fleet of railcars as the Debtors’ required at the time they entered into the Rejected Railcar Leases. Additionally, the decision to reject the Rejected Railcar Leases was the result of extensive negotiations with all the lessors, including the Go-Forward Lessors, and is a required condition of entering into the New Railcar Leases, which terms are in the best interests of the Debtors’ estates and their creditors, evidencing the Debtors’ exercise of their business judgment.

23. Moreover, absent the relief requested herein, the Debtors may incur administrative expenses arising under the Rejected Railcar Leases. The rejection of the Rejected Railcar Leases

will allow the Debtors to rid themselves of the burdensome leases, thereby minimizing any liability under section 365(d) of the Bankruptcy Code and maximizing the value of their estates for their creditors and, thus, is in the best interests of the Debtors' estates and their creditors. Accordingly, authorizing the Debtors to reject the Rejected Railcar Leases as of the Petition Date (and the further relief requested herein) constitutes an exercise of the Debtors' sound business judgment.

**B. Section 363 of the Bankruptcy Code Supports the Relief Requested Herein**

24. The Debtors believe that entering into the New Railcar Leases are ordinary course transactions and therefore is permitted without Court order pursuant to section 363(c)(1) of the Bankruptcy Code. Alternatively, out of an abundance of caution, the Debtors respectfully request that the Court authorize the Debtors to enter into such agreements pursuant to sections 105(a) and 363(b) of the Bankruptcy Code.

**(i) Entering into the New Railcar Leases is Permitted under Section 363(c)(1)**

25. Section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to "enter into transactions in the ordinary course of business without notice or a hearing, and . . . use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). Section 363 of the Bankruptcy Code is designed to allow a debtor "to continue its daily operations without excessive court or creditor oversight and protect[] secured creditors and others from dissipation of the estate's assets." *U.S. ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592, 599 (Bankr. M.D. Tenn. 1990) (citations omitted); *see also In re Altravasada Land & Cattle Inc.*, 308 B.R. 255, 269 (Bankr. S.D. Tex. 2008) (noting that the debtor in possession did not require notice or hearing to sell the estate's assets in the ordinary course of business); *In re Mr. Gatti's, Inc.*, 164 B.R. 929, 941 (Bankr. W.D. Tex. 1994) ("Section 363(c)(1) allows the trustee or debtor in possession, authorized to operate the debtor's business, to 'use property of the estate in the ordinary course of

business without notice or a hearing.’ Thus, a trustee or debtor in possession may expend unencumbered cash (property of the estate), in the ordinary course of the debtor's business to pay providers of goods and services to the estate.”); *In re Cook & Sons Mining, Inc.*, 2005 WL 2386238, at \*3 (Bankr. E.D. Ky. Sept. 28, 2005) (“Code § 363 is designed to allow a Chapter 11 debtor the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary.”) (quoting *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3rd Cir. 1992)). Moreover, the “‘ordinary course of business’ standard is intended to allow a debtor the flexibility it needs to run its business and respond quickly to changes in the business climate.” *U.S. ex rel. Harrison v. Estate of Deutscher*, 115 B.R. at 598 (quoting *In re Johns-Manville Corp.*, 60 B.R. 612, 617 (Bankr. S.D.N.Y. 1986)). Included within the purview of section 363(c) of the Bankruptcy Code is a debtor’s ability to continue “routine transactions” necessitated by a debtor’s business practices. *See, e.g., Amdura Nat. Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996) (citations omitted) (“A debtor in possession under Chapter 11 is generally authorized to continue operating its business.”); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007) (citations omitted) (noting that courts have shown a reluctance to interfere in a debtor’s making of routine, day-to-day business decisions).

26. The Bankruptcy Code does not define “ordinary course of business.” In determining whether a transaction qualifies as “ordinary course,” however, courts typically use the “horizontal” dimension test (i.e., “the way businesses operate within a given industry”) and the “vertical” dimension test (i.e., whether the transaction is consistent with the reasonable “expectations of creditors”). *See Denton Co. Elec. Coop., Inc. v. Eldorado Ranch, Ltd. (In re Denton Cty. Elec. Coop., Inc.)*, 281 B.R. 876, 882 & n.12 (Bankr. N.D. Tex. 2002) (collecting

cases); *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013) (“In general, under the vertical test, courts look at whether the transaction subjects a hypothetical creditor to a different economic risk than existed when the creditor originally extended credit. Under the horizontal test, in general courts look at whether the transaction was of the sort commonly undertaken by companies in the industry. The primary focus is on the debtor's pre-petition business practices and conduct.”).

27. The Debtors and their competitors regularly enter in railcar lease agreements and storage agreements in the ordinary course of business and the entrance into the New Railcar Leases is thus an ordinary course transaction consistent with the Debtors’ past practices. Thus, the Debtors submit that section 363(c)(1) of the Bankruptcy Code provides sufficient authority for their entry into the New Railcar Leases.

**(ii) Alternatively, Entering into the New Railcar Leases Should be Authorized under Section 363(b)**

28. Even if entry into the New Railcar Leases is not in the ordinary course of the Debtors’ business and otherwise authorized under section 363(c)(1) of the Bankruptcy Code, the Debtors submit that they are still authorized to enter into such leases and agreements under section 363(b) of the Bankruptcy Code because doing so is a sound exercise of the Debtors’ business judgment. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts have indicated that a debtor’s decision to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re BNP Petroleum Corp.*, 642 F. App’x 429, 435 (5th Cir. 2016); *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010); *see also In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“Section 363 also impliedly requires the Court to find that it is

good business judgment for the Debtor to enter into” the transaction.”) (internal citations omitted); *In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) (“for the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (internal citations omitted).

29. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied as long as the proposed action “appears to enhance a debtor’s estate.” *Richmond Leasing*, 762 F.2d at 1309 (5th Cir. 1985) (internal citations and quotations omitted); *see also In re AbitibiBowater*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”); *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”). The business judgment rule “reflects the reality that corporate decisions are better left to those who are close to the facts and have the experience to weigh the significance of those facts in an increasingly complex business environment.” *Brown v. Ferro Corp.*, 763 F.2d 798, 800 n.2 (6th Cir. 1985) (internal citations and quotations omitted). Moreover, “[b]ankruptcy courts should be no more willing to second guess competent, disinterested trustees and debtors-in-possession than other courts are willing to second guess competent, disinterested directors” because the “reorganization or liquidation of a distressed debtor requires as much, if not more, creativity and risk-taking as the management of a healthy entity.” *See In re Engman*, 331 B.R. 277, 299 (Bankr. W.D. Mich. 2005); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8th Cir. 1997) (“[w]here the [debtor’s] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor’s estate.”) (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d at 1309 (5th Cir. 1985)).

30. Entry into the New Railcar Leases is an exercise of sound business judgment. As set forth above, and detailed more fully in the New Railcar Lease Letter Agreements, the New Railcar Leases provide the Debtors with a right-sized fleet of railcars at substantially reduced rates, on a flexible rate structure, with various provisions aligning the incentives of the parties should later events recommend a material change, either upward or downward, in the size of the Debtors' fleet.

31. The Debtors have conducted an analysis of alternative strategies as it relates to reducing their railcar fleet and associated costs, and have concluded that, if the Debtors chose an alternative solution, they would incur significant additional expenses and would not be in the best interests of the Debtors. As such, the Debtors submit that the requested relief represents a sound exercise of the Debtors' business judgment and, to the extent such section is applicable, should be approved under section 363(b) of the Bankruptcy Code.

**C. The Rejection of the Rejected Railcar Leases Effective as of the Petition Date and Entry into the New Railcar Leases Effective as of the Petition Date Is Appropriate Under the Circumstances**

32. Under sections 105(a) and 365(a) of the Bankruptcy Code, bankruptcy courts may grant retroactive rejection of an executory contract or unexpired lease based on a balancing of the equities of the case. *See, e.g., In re Cafeteria Operators, L.P.*, 299 B.R. 384, 394 (Bankr. N.D. Tex. 2003) (granting retroactive relief for contract rejection where debtors were "receiving no benefit" from the lease and the contract counterparties "had unequivocal notice of Debtors' intent to reject prior to the filing of the Motions"); *In re O'Neil Theatres, Inc.*, 257 B.R. 806, 808 (Bankr. E.D. La. 2000) (granting retroactive relief based on the circumstances of the case); *In re Amber's Stores, Inc.*, 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (finding that "nothing precludes a bankruptcy court, based on the equities of the case, from approving" retroactive rejection); *see also In re Joseph C. Spiess Co.*, 145 B.R. 597, 606 (Bankr. N.D. Ill. 1992) ("[A] trustee's rejection

of a lease should be retroactive to the date that the trustee takes affirmative steps to reject said lease.”).

33. The balance of the equities favors rejection effective as of the Petition Date. The Go-Forward Lessors subject to the relief requested herein fully support such relief. Additionally, the Debtors and the Go-Forward Lessors intend to enter into the New Railcar Leases effective as of the Petition Date and, as such, none of the Go-Forward Lessors will be harmed as a result of granting the relief effective as of the Petition Date. Moreover, because the New Railcar Leases provide better terms (including better economic terms) than the Rejected Railcar Leases, authorizing the Debtors to enter into the New Railcar Leases effective as of the Petition Date is beneficial to the Debtors and their estates and creditors. Absent retroactive rejection, the Debtors may incur unnecessary administrative charges and other obligations under the Rejected Railcar Leases without any reciprocal benefits to their estates.

34. Accordingly, the Debtors respectfully submit that it is fair and equitable for the Court to authorize rejection of the Railcar Leases identified on Exhibit 1, and entry into the New Railcar Leases on the terms set forth in the New Railcar Lease Letter Agreements attached hereto as Exhibit 2, effective as of the Petition Date.

**D. Section 105 of the Bankruptcy Code and the Doctrine of Necessity Supports the Relief Requested**

35. Section 105(a) of the Bankruptcy Code gives this Court broad authority under its equitable powers to fashion any order or decree that would preserve or protect the value of the Debtors’ assets. *See In re VII Holdings Co.*, 362 B.R. 663 (Bankr. D. Del. 2007) (Shannon, J.) (*citing In re Combustion Eng’g, Inc.*, 391 F.3d 90 (3d Cir. 2004)). As described in detail above the relief requested herein is necessary to protect the value of the Debtors’ estates.

**E. Section 362 of the Bankruptcy Code Limits the Go-Forward Lessors' Setoff Rights**

36. The Debtors request that, consistent with the limitations imposed by section 362 of the Bankruptcy Code and any other applicable law, if any of the Debtors have deposited amounts with any of the Go-Forward Lessors as a security deposit or pursuant to another similar arrangement, or if any of the Go-Forward Lessors owe any of the Debtors any amount pursuant to the Rejected Railcar Leases or other agreements between the same parties, the Go-Forward Lessors shall not be permitted to setoff or otherwise use the amounts from such deposit or other similar arrangement, or other amount owed to the Debtors, without the prior order of the Court. *See In re Sweet N Sour 7th Ave. Corp.*, 431 B.R. 63, 70-72 (Bankr. S.D.N.Y. 2010) (automatic stay prohibits landlord from exercising right to set off on debtor's security deposit); *In re Communicall Cent., Inc.*, 106 B.R. 540, 545 (Bankr. N.D. Ill. 1989) (landlords are required to move for relief from the automatic stay to exercise right of set off); *In re Inslaw, Inc.*, 81 B.R. 169, 169-70 (Bankr. D.D.C. 1987) (landlord's right to set off may be utilized only after relief from stay is granted); *In re Village Craftsman, Inc.*, 160 B.R. 740, 747 (Bankr. D. NJ, Nov. 3, 1993) (utility's application of debtor's prepetition security deposit to prepetition utility bills was setoff, thus subject to the automatic stay).

**BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

37. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by



Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

### RESERVATION OF RIGHTS

38. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code (other than the Rejected Railcar Leases); or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Order once entered. Nothing contained in the Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

### NOTICE

39. Notice of this Motion will be given to: (i) the United States Trustee for the Southern District of Texas; (ii) the parties included on the Debtors' consolidated list of the holders of the 30 largest unsecured claims against the Debtors; (iii) Simpson Thatcher & Bartlett LLP, as counsel to the agent for the Debtors' prepetition and postpetition secured asset-based revolving credit facility; (iv) U.S. Bank National Association as indenture trustee for the Debtors' prepetition notes; (v) counsel to that certain ad hoc group of holders of prepetition senior notes (the "**Ad Hoc Group**") (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, and (b) Porter Hedges LLP; (vi) Shipman & Goodwin LLP, counsel to the agent under the Debtors' postpetition term loan facility; (vii) the Go-Forward Lessors; (viii) the United States Attorney's Office for the Southern District of Texas; (ix) the Internal Revenue Service; (x) the Securities and Exchange Commission; (xi) the state attorneys

general for states in which the Debtors conduct business; and (xii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

40. A copy of this Motion is available on (i) the Court's website: [www.txs.uscourts.gov](http://www.txs.uscourts.gov), and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at [www.kccllc.net/hicrush](http://www.kccllc.net/hicrush).

*[The Remainder of This Page Left Intentionally Blank]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the proposed Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Signed: July 12, 2020  
Houston, Texas

Respectfully Submitted,

/s/ Timothy A. ("Tad") Davidson II  
Timothy A. ("Tad") Davidson II (TX Bar No. 24012503)  
Ashley L. Harper (TX Bar No. 24065272)  
**HUNTON ANDREWS KURTH LLP**  
600 Travis Street, Suite 4200  
Houston, Texas 77002  
Tel: 713-220-4200  
Fax: 713-220-4285  
Email: taddavidson@HuntonAK.com  
ashleyharper@HuntonAK.com

-and-

George A. Davis (*pro hac vice* admission pending)  
Keith A. Simon (*pro hac vice* admission pending)  
David A. Hammerman (*pro hac vice* admission pending)  
Annemarie V. Reilly (*pro hac vice* admission pending)  
Hugh K. Murtagh (*pro hac vice* admission pending)  
**LATHAM & WATKINS LLP**  
885 Third Avenue  
New York, New York 10022  
Tel: 212-906-1200  
Fax: 212-751-4864  
Email: george.davis@lw.com  
keith.simon@lw.com  
david.hammerman@lw.com  
annemarie.reilly@lw.com  
hugh.murtagh@lw.com

*Proposed Counsel for the Debtors and Debtors in Possession*

**CERTIFICATE OF SERVICE**

I certify that on July 12, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II

**Exhibit 1****Rejected Railcar Leases  
To Be Replaced with New Railcar Leases**

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
<b>Trinity Industries Leasing Company</b>					
1.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Trinity Industries Leasing Company Railroad Car Lease Agreement	September 18, 2013
2.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rider Three (3) to Railroad Car Lease Agreement	April 29, 2013
3.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Amendment No. 2 to Rider Three (3)	September 1, 2016
4.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rider Four (4) to Railroad Car Lease Agreement and Exhibit A Thereto	May 17, 2013
5.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Amendment No. 1 to Rider Four (4)	September 1, 2016

<sup>1</sup> The Rejected Railcar Leases shall include all agreements, master leases, subleases, riders, schedules, certificates, memoranda, amendments, supplements, guaranties, and any other documents related to the lease agreements listed herein.

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
6.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rider Five (5) to Railroad Car Lease Agreement	September 18, 2013
7.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Amendment No. 1 to Rider Five	September 1, 2016
8.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rider Six (6) to Railroad Car Lease Agreement and Exhibit A Thereto	September 18, 2013
9.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Acknowledgement of Assignment	June 19, 2014
10.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rider Seven (7) to Railroad Car Lease Agreement and Exhibit A Thereto	February 26, 2014
11.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Amendment No. 1 to Rider Seven (7)	September 1, 2016
12.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rider Eight (8) to Railroad Car Lease Agreement and Exhibit A Thereto	February 26, 2014

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
13.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Amendment No. 1 to Rider Eight (8)	September 1, 2016
14.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rider Nine (9) to Railroad Car Lease Agreement and Exhibit A Thereto	February 26, 2014
15.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Amendment No. 1 to Rider Nine (9)	September 1, 2016
16.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rental Rate Adjustment – Rider Nine (9)	December 4, 2014
17.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rider Ten (10) to Railroad Car Lease Agreement and Exhibit A Thereto	February 26, 2014
18.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Amendment No. 1 to Rider Ten (10)	September 1, 2016
19.	D & I Silica, LLC	Trinity Industries Leasing Company	Trinity Industries Leasing Company 2525 Stemmons Freeway Dallas, Texas 75207 Attn: Thomas C. Jardine, VP	Rental Rate Adjustment – Rider Ten (10)	August 28, 2014

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
<b>MUL Railcars Leasing, LLC and MUL Greenbrier, LLC</b>					
20.	D & I Silica, LLC	MUL Greenbrier, LLC (as assignee of Greenbrier Leasing Company LLC)	121 SW Morrison Street, Suite 1525, Portland, Oregon, 97204	Schedule No. 1 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing October 1, 2014 and Certificate of Delivery commencing March 1, 2018	April 1, 2014
21.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Schedule No. 4 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing December 1, 2014	April 1, 2014
22.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Notice and Acknowledgement of Assignment	December 8, 2014
23.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Transfer Notice	December 19, 2014
24.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400	Schedule No. 5 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing February 2, 105	April 1, 2014



No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
			Lake Oswego, Oregon 97035		
25.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Notice and Acknowledgement of Assignment	February 24, 2015
26.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Transfer Notice	February 27, 2015
27.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Schedule No. 6 to Lease Agreement dated as of April 1, 2014 Certificate of Acceptance commencing April 1, 2015	April 1, 2014
28.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Lease Rate Adjustment	April 13, 2015
29.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400	Lease Rate Adjustment	July 17, 2015

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
			Lake Oswego, Oregon 97035		
30.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Transfer Notice	November 29, 2017
31.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Schedule No. 11 to Lease Agreement dated as of April 1, 2014 Certificate of Acceptance commencing September 1, 2015	October 1, 2014
32.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Amendment No. 1 to Schedule No. 11	October 1, 2014
33.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Transfer Notice	November 29, 2017
34.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400	Schedule No. 12 to Lease Agreement dated as of April 1, 2014 Certificate of Acceptance commencing October 1, 2015	October 1, 2014

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
			Lake Oswego, Oregon 97035		
35.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Amendment No. 1 to Schedule No. 12	October 1, 2014
36.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Transfer Notice	November 29, 2017
37.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Schedule No. 15 to Lease Agreement dated as of April 1, 2014 Certificate of Acceptance commencing February 1, 2016	October 1, 2014
38.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Amendment No. 1 to Schedule No. 15	October 1, 2014
39.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400	Transfer Notice	February 22, 2019

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
			Lake Oswego, Oregon 97035		
40.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Schedule No. 16 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing January 1, 2016	October 1, 2014
41.	D & I Silica, LLC	MUL Railcars Leasing, LLC (as assignee of Greenbrier Leasing Company LLC)	MUL Railcars Leasing, LLC c/o Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035	Amendment No. 1 to Schedule No. 16	October 1, 2014
42.	D & I Silica, LLC	MUL Greenbrier, LLC	121 SW Morrison Street, Suite 1525, Portland, Oregon, 97204	Schedule No. 1 to Lease Agreement dated as of April 1, 2014	September 13, 2017
<b>Greenbrier Leasing Company LLC</b>					
43.	D & I Silica, LLC	Bridge Capital Leasing, Inc. (as assignee of Greenbrier Leasing Company)	Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035  and  Bridge Capital Leasing, Inc. Attn: Leasing Servicing 7815 NW 148 <sup>th</sup> Street, 3-CMCRE Miami Lakes, FL 33016	Schedule No. 2 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing October 1, 2014	April 1, 2014

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
44.	D & I Silica, LLC	Bridge Capital Leasing, Inc. (as assignee of Greenbrier Leasing Company)	<p>Greenbrier Management Services, LLC  Attn: Equipment Accounting  One Centerpointe Drive, Suite 400  Lake Oswego, Oregon 97035</p> <p>and</p> <p>Bridge Capital Leasing, Inc.  Attn: Leasing Servicing  7815 NW 148<sup>th</sup> Street, 3-CMCRE  Miami Lakes, FL 33016</p>	Lease Rate Adjustment	October 6, 2014
45.	D & I Silica, LLC	Bridge Capital Leasing, Inc. (as assignee of Greenbrier Leasing Company)	<p>Greenbrier Management Services, LLC  Attn: Equipment Accounting  One Centerpointe Drive, Suite 400  Lake Oswego, Oregon 97035</p> <p>and</p> <p>Bridge Capital Leasing, Inc.  Attn: Leasing Servicing  7815 NW 148<sup>th</sup> Street, 3-CMCRE  Miami Lakes, FL 33016</p>	Notice and Acknowledgement of Assignment	October 27, 2014
46.	D & I Silica, LLC	Bridge Capital Leasing, Inc. (as assignee of Greenbrier Leasing Company)	<p>Greenbrier Management Services, LLC  Attn: Equipment Accounting  One Centerpointe Drive, Suite 400  Lake Oswego, Oregon 97035</p> <p>and</p> <p>Bridge Capital Leasing, Inc.  Attn: Leasing Servicing  7815 NW 148<sup>th</sup> Street, 3-CMCRE</p>	<p>Schedule No. 3 to Lease Agreement dated as of April 1, 2014</p> <p>Certificate of Acceptance commencing November 1, 2014</p>	April 1, 2014

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
			Miami Lakes, FL 33016		
47.	D & I Silica, LLC	Bridge Capital Leasing, Inc. (as assignee of Greenbrier Leasing Company)	Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035  and  Bridge Capital Leasing, Inc. Attn: Leasing Servicing 7815 NW 148 <sup>th</sup> Street, 3-CMCRE Miami Lakes, FL 33016	Lease Rate Adjustment	November 10, 2014
48.	D & I Silica, LLC	Bridge Capital Leasing, Inc. (as assignee of Greenbrier Leasing Company)	Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, Oregon 97035  And  Bridge Capital Leasing, Inc. Attn: Leasing Servicing 7815 NW 148 <sup>th</sup> Street, 3-CMCRE Miami Lakes, FL 33016	Notice of Acknowledgement of Assignment	November 6, 2014
49.	D & I Silica, LLC	Railcar Holdings PAS IV LLC (as assignee of Greenbrier Leasing Company)	Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, OR 97035  and  Railcar Holdings PAS I LLC 200 Park Avenue South Suite 1511	Schedule No. 7 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing July 1, 2015	October 1, 2014

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
			New York, NY 10002 Attn: Jason Koenig		
50.	D & I Silica, LLC	Railcar Holdings PAS IV LLC (as assignee of Greenbrier Leasing Company)	Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, OR 97035  and Railcar Holdings PAS I LLC 200 Park Avenue South Suite 1511 New York, NY 10002 Attn: Jason Koenig	Notice of Acknowledgement of Assignment	July 17, 2015
51.	D & I Silica, LLC	Railcar Holdings PAS IV LLC (as assignee of Greenbrier Leasing Company)	Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, OR 97035  and Railcar Holdings PAS I LLC 200 Park Avenue South Suite 1511 New York, NY 10002 Attn: Jason Koenig	Transfer Notice	January 20, 2020
52.	D & I Silica, LLC	Riverside Rail 1 LLC (as assignee of Greenbrier Leasing Company)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 8 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing August 1, 2015	October 1, 2014
53.	D & I Silica, LLC	Railcar Holding Pass II (as assignee)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 9 to Lease agreement dated as of April 1, 2014	October 1, 2014

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
		of Greenbrier Leasing Company)		Certificate of Acceptance commencing September 1, 2015	
54.	D & I Silica, LLC	Riverside Rail 1 LLC	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 10 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing September 1, 2015	October 1, 2014
55.	D & I Silica, LLC	ITE Rail Fund Levered L.P. (ITWX) (as assignee of Greenbrier Leasing Company)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 13 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing October 1, 2015	October 1, 2014
56.	D & I Silica, LLC	ITE Rail Fund Levered L.P. (ITWX) (as assignee of Greenbrier Leasing Company)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Amendment No. 1 to Schedule No. 13	October 1, 2014
57.	D & I Silica, LLC	CCM Railcar Holdings (as assignee of Greenbrier Leasing Company)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 14 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing November 1, 2015	October 1, 2014
58.	D & I Silica, LLC	CCM Railcar Holdings (as assignee of Greenbrier Leasing Company)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Amendment No. to Schedule 14	October 1, 2014



No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
59.	D & I Silica, LLC	CCM Railcar Holdings (as assignee of Greenbrier Leasing Company)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Transfer Notice	January 25, 2017
60.	D & I Silica, LLC	Greenbrier Leasing Company LLC	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 17 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing January 1, 2016	February 1, 2015
61.	D & I Silica, LLC	Greenbrier Railcar Funding I LLC	Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, OR 97035  and  Greenbrier Railcar Funding I LLC c/o ITE Management L.P. Attn: Jason Koenig 200 Park Avenue South, Suite 1511 New York, NY 10002	Schedule No. 18 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing February 1, 2016	February 1, 2015
62.	D & I Silica, LLC	Greenbrier Railcar Funding I LLC	Greenbrier Management Services, LLC Attn: Equipment Accounting One Centerpointe Drive, Suite 400 Lake Oswego, OR 97035  and  Greenbrier Railcar Funding I LLC c/o ITE Management L.P. Attn: Jason Koenig	Transfer Notice	June 30, 2017

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
			200 Park Avenue South, Suite 1511 New York, NY 10002		
63.	D & I Silica, LLC	City National Bank FL (as assignee of Greenbrier Leasing Company)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 19 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing April 1, 2016	February 1, 2015
64.	D & I Silica, LLC	City National Bank FL (as assignee of Greenbrier Leasing Company)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 20 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing July 1, 2016	February 1, 2015
65.	D & I Silica, LLC	City National Bank FL (as assignee of Greenbrier Leasing Company)	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 21 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing May 1, 2016	February 1, 2015
66.	D & I Silica, LLC	Greenbrier Leasing Company LLC	Greenbrier Leasing Company LLC 13799 Collections Center Drive, Chicago, IL 60693	Schedule No. 22 to Lease Agreement dated as of April 1, 2014  Certificate of Acceptance commencing March 1, 2019	August 3, 2018
<b>Chicago Freight Car Leasing Co.</b>					
67.	D & I Silica, LLC	Chicago Freight Car Leasing Co.	425 N. Martingale Rd. 6 <sup>th</sup> Floor, Schaumburg, IL 60173	Chicago Freight Car Leasing Co. Master Lease of Railcars with D & I Silica, LLC, Lease No. 1139-13	April 17, 2018

No.	Debtor Name	Counterparty	Counterparty Address	Description/Title <sup>1</sup>	Contract Date
68.	D & I Silica, LLC	Chicago Freight Car Leasing Co.	425 N. Martingale Rd. 6 <sup>th</sup> Floor, Schaumburg, IL 60173	Rider 1139-13-01 to Master Lease 1139-13 of Railcars with D & I Silica, LLC	April 17, 2018
69.	D & I Silica, LLC	Chicago Freight Car Leasing Co.	425 N. Martingale Rd. 6 <sup>th</sup> Floor, Schaumburg, IL 60173	Chicago Freight Car Leasing Co. Lease of Railway Covered Hopper Cars with D & I Silica, LLC, Lease No. 1139	August 2, 2010
70.	D & I Silica, LLC	Chicago Freight Car Leasing Co.	425 N. Martingale Rd. 6 <sup>th</sup> Floor, Schaumburg, IL 60173	First Supplement to Lease No. 1139 Dated August 2, 2010 Between Chicago Freight Car Leasing Co. and D & I Silica, LLC, Lease No. 1139A	September 14, 2012
71.	D & I Silica, LLC	Chicago Freight Car Leasing Co.	425 N. Martingale Rd. 6 <sup>th</sup> Floor, Schaumburg, IL 60173	Second Supplement to Lease No. 1139 Dated August 2, 2010 Between Chicago Freight Car Leasing Co. and D & I Silica, LLC, Lease No. 1139B	March 12, 2013
72.	D & I Silica, LLC	Chicago Freight Car Leasing Co.	425 N. Martingale Rd. 6 <sup>th</sup> Floor, Schaumburg, IL 60173	Amendment to Lease Supplement 1139B of Railcars with D & I Silica, LLC	April 19, 2017
73.	D & I Silica, LLC	Chicago Freight Car Leasing Co.	425 N. Martingale Rd. 6 <sup>th</sup> Floor, Schaumburg, IL 60173	Third Supplement to Lease No. 1139 Dated August 2, 2010 Between Chicago Freight Car Leasing Co. and D & I Silica, LLC, Lease No. 1139D	December 1, 2017

**Exhibit 2**

**New Railcar Lease Letter Agreements**

(filed under seal)

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

	X	
In re:	:	Chapter 11
	:	
HI-CRUSH INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 20-33495 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**ORDER AUTHORIZING THE DEBTORS  
TO (I) REJECT CERTAIN RAILCAR LEASE AGREEMENTS  
EFFECTIVE AS OF THE PETITION DATE, (II) ENTER INTO PROPOSED  
NEW RAILCAR LEASE AGREEMENTS EFFECTIVE AS OF THE PETITION  
DATE AND (III) ENTER INTO PROPOSED STORAGE AGREEMENTS  
EFFECTIVE AS OF THE PETITION DATE**

**[Relates to Motion at Docket No. \_\_\_\_]**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for an Order authorizing the Debtors to (i) reject certain railcar lease agreements, including any amendments or modifications thereto, each as set forth on Exhibit 1 to the Motion (collectively, the “**Rejected Railcar Leases**”) effective as of the Petition Date, and (ii) enter into new railcar lease agreements (collectively, the “**New Railcar Leases**”) with certain counterparties on the term set forth in the letter agreements and associated term sheets attached to the Motion as Exhibit 2, effective as of the Petition Date, all as more fully described in the Motion; and the Court having reviewed the Motion and the First Day

---

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Order, it is hereby

**ORDERED THAT:**

1. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, the Rejected Railcar Leases are rejected, effective as of the Petition Date.
2. The Debtors are authorized to enter into the New Railcar Leases, effective as of the Petition Date.
3. Any claims based on the rejection of the Rejected Railcar Leases shall be filed in accordance with the bar date for filing proofs of claims, to be established by the Court at a later date.
4. Consistent with the limitations of section 362 of the Bankruptcy Code, and any other applicable law, the Go-Forward Lessors are prohibited from setting off or otherwise utilizing any amounts deposited by the Debtors with any of the Go-Forward Lessors as a security deposit or pursuant to another similar arrangement, or owed to the Debtors by any of the Go-Forward Lessors under the Rejected Railcar Leases or other agreements between the same parties, without further order of this Court.

5. Nothing herein shall prejudice the rights of the Debtors to argue that any of the Rejected Railcar Leases were terminated prior to the Petition Date or that any claim for damages arising from the rejection of the Rejected Railcar Leases is limited to the remedies available under any applicable termination provision of such contract or lease, as applicable, or that any such claim is an obligation of a third party and not that of the Debtors or their estates.

6. Nothing in the Motion or this Order shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; or (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code (other than the Rejected Railcar Leases); or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

7. Notwithstanding anything to the contrary contained herein, (i) any payment made, or authorization contained hereunder shall be subject to the requirements imposed on the Debtors under any order approving a postpetition financing facility or any order regarding the use of cash collateral approved by this Court in these Chapter 11 Cases (collectively, the "**DIP Orders**"), and (ii) to the extent there is any inconsistency between the terms of the DIP Orders and any action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Order except as permitted by the Budget (as defined in the DIP Order).

8. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6004(a).

9. Notwithstanding Bankruptcy Rule 6004(h) to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

10. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order, including but not limited to executing the New Railcar Leases.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: \_\_\_\_\_, 2020

---

DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE