

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

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In re:

Case No. 20-33495 (DRJ)

HI-CRUSH INC., *et al.*,

Chapter 11

Debtors.<sup>1</sup>

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(Jointly Administered)

**OBJECTION AND RESERVATION OF RIGHTS OF LEXON INSURANCE  
COMPANY AND ENDURANCE AMERICAN INSURANCE COMPANY TO  
DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I)  
APPROVING ADEQUACY OF DISCLOSURE STATEMENT, (II) SCHEDULING  
HEARING ON CONFIRMATION OF PLAN, (III) ESTABLISHING DEADLINE  
TO OBJECT TO PLAN AND FORM OF NOTICE THEREOF, (IV) APPROVING  
(A) SOLICITATION PROCEDURES, (B) FORMS OF BALLOTS AND NOTICES  
OF NON-VOTING AND LIMITED VOTING STATUS, AND (C) RIGHTS  
OFFERING MATERIALS, (V) APPROVING PROCEDURES FOR  
ASSUMPTION OF CONTRACTS AND LEASES AND FORM AND MANNER OF  
CURE NOTICE, AND (VI) GRANTING RELATED RELIEF  
(Related to Docket Nos.: 175 and 176)**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

Lexon Insurance Company and Endurance American Insurance Company (collectively, “Lexon”), by and through their undersigned counsel, Harris Beach PLLC, hereby submit this Objection and Reservation of Rights (the “Objection”) with respect to the *Debtors’ Emergency Motion for Entry of an Order (I) Approving Adequacy of Disclosure Statement, (II) Scheduling Hearing on Confirmation of Plan, (III) Establishing Deadline to Object to Plan and Form of*

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi0Crush Augusta LLC (0668), Hi0Crush 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.



*Notice Thereof, (IV) Approving (A) Solicitation Procedures, (B) Forms of Ballots and Notices of Non-Voting and Limited Voting Status, and (C) Rights offering Materials, (V) Approving Procedures for Assumption of Contracts and Leases and Form and Manner of Cure Notice, and (VI) Granting Related Relief* (the “Motion”) [Dkt. No. 176]. In support of its Objection, Lexon shows to the Court as follows:

### **BACKGROUND**

1. On July 12, 2020 (the “Petition Date”), the Debtors filed voluntary petitions in this Court<sup>2</sup> commencing cases for relief under chapter 11 of the Bankruptcy Code. 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 the First Day Declaration [Dkt. No. 24].

2. 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.

3. The Debtors’ cases are being jointly administered for procedural purposes pursuant to Bankruptcy Rule 1015(b).

4. The Debtors are a fully-integrated provider of proppant and logistics services used in hydraulic fracturing of oil and gas wells. Proppant is sand (also known as “frac sand”) or similar particulate material suspended in water or other fluid injected into wells at high pressure to keep fractures open to stimulate the extraction of hydrocarbons. In addition to frac sand

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<sup>2</sup> Capitalized terms not defined herein are defined in the Motion or the *Disclosure Statement for the Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (the “Disclosure Statement”) [Dkt. No. 175].

production, the Debtors also offer their customers advanced wellsite storage system, flexible “last mile” transportation services, and innovative software for real-time supply chain visibility and management from loadout terminals to wellsites. The Debtors’ suite of solutions provides operators and service companies in all major U.S. oil and gas basins with the ability to build safety, reliability and efficiency into every well completion. The Debtors own and operate six production facilities located in Wisconsin and Texas and utilize an extensive logistics network of rail-served destination terminals strategically located throughout Pennsylvania, Ohio, New York, Texas and Colorado. *See* First Day Declaration at ¶¶ 6-7 [Dkt. No. 24].

5. In order to obtain appropriate governmental approvals needed to conduct their operations, the Debtors had to provide acceptable financial assurances to federal and state governments, regulatory agencies, and other third parties. The Debtors’ bonding program generally covers reclamation, permits and taxes, conservation and environmental obligations, and other miscellaneous items. *See* Dkt. No. 11 at ¶ 17.

6. The surety relationship involves three parties: (1) the Principal who is the primary obligor – the Debtors; (2) the Obligee, the party to whom the Principal and the Surety owe the duty – the regulatory authority; and (3) the Surety who is the secondary obligor – Lexon.

7. Notably, the Debtor retains the primary duty to perform its obligations; the obligations may not simply be handed over to the surety to perform.

8. Lexon has issued approximately 5 surety bonds to the Debtors to secure certain of the Debtors’ payment or performance of various obligations to governmental and non-governmental obligees for the total penal sum of \$6,372,100.16 (the “Lexon Bonds”).

9. Additionally, as partial consideration for the execution of the Lexon Bonds, Hi-Crush Inc. and its “present or future subsidiaries, affiliates, divisions or operating units whether in the form of a corporation, partnership, limited liability company or other unincorporated association and/or any of the aforementioned entities’ successors or assigns” (collectively, the “Indemnitors”), executed a General Agreement of Indemnity (the “Indemnity Agreement”) in which the Indemnitors agreed to indemnify and hold Lexon harmless from every claim that Lexon may pay as a result of the Lexon Bonds. A copy of the Indemnity Agreement is attached hereto as **Exhibit A**.

10. On July 12, 2020, the Debtors filed *Debtors’ Emergency Motion for Entry of an Order Authorizing Debtors to (I) Pay their Prepetition Insurance Obligations, (II) Pay their Prepetition Bonding Obligations, (III) Maintain their Postpetition Insurance Coverage, (IV) Maintain their Bonding Program, and (V) Maintain Postpetition Financing of Insurance Premiums* (the “Surety Bond Motion”) [Dkt. No. 11].

11. In the Surety Bond Motion, the Debtors acknowledge the importance of procuring and maintaining the Lexon Bonds because “[t]o continue their business operations, the Debtors must be able to provide financial assurance to federal and state governments, regulatory agencies, and other third parties.” *Id.* at ¶ 22. Furthermore, the Debtors recognize that if the Lexon Bonds were terminated, it would “jeopardize the Debtors’ operations and endanger the Debtors’ efforts to reorganize and maximize the value of their assets through the Chapter 11 Cases.” *Id.* at ¶ 35.

12. On July 27, 2020, the Debtors filed the Disclosure Statement. Pursuant to the Disclosure Statement, the Debtors are attempting to implement a comprehensive financial

restructuring to deleverage the Debtors' balance sheet to ensure the long-term viability of the Debtors' enterprise through a Restructuring Support Agreement.

13. While the Debtors have acknowledged the importance of the Lexon Bonds through the Surety Bond Motion, the Disclosure Statement does not make clear how the Lexon Bonds will be treated in the restructuring. Furthermore, despite the Debtors referencing that certain of their facilities are either closed or idled and that the closure and/or idling of these facilities could involve significant reclamation and environmental costs, the Debtors fail to discuss their environmental obligations and how those obligations will be met in their restructuring. *See* Disclosure Statement at p. 75-76, 79-80, 82.

### **ARGUMENT**

#### **A. No Environmental Protections**

14. While the Disclosure Statement states the purpose of the Plan is to implement a comprehensive financial restructuring of the Debtors' balance sheets in order to allow the Reorganized Debtors to continue to operate their businesses going forward, the Disclosure Statement and Plan fail to provide any discussion of the Debtors' potential environmental liabilities. Without a discussion as to the impact as to the Debtors' environmental liabilities there is no way to determine whether the Debtors are abandoning their environmental obligations in violation of the mandate of *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494 (1986) ("*Midlantic*"), which specifically prohibits debtors from using the bankruptcy process to avoid such obligations.

15. Section 554 of the Bankruptcy Code allows a trustee to abandon property "that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C.

§ 554(a). In *Midlantic*, a trustee in a converted Chapter 7 case sought to use § 554 to abandon properties containing contaminated oil in violation of New York and New Jersey environmental laws. *Id.* at 496-99. The debtor had stored over 70,000 gallons of contaminated oil in deteriorating and leaking containers. After unsuccessfully trying to sell the property upon which the containers were located, the Chapter 7 trustee notified the bankruptcy court and creditors that he intended to abandon the property under 11 U.S.C. § 554(a). The Supreme Court refused to allow the trustee to abandon the property, holding that although Congress did not include an explicit exception to a trustee's abandonment power in § 554, it nonetheless intended to codify pre-Code laws which establish that a trustee cannot "exercise his abandonment power in violation of certain state and federal laws." 474 U.S. at 501. The Court reasoned that Congress did not intend the Bankruptcy Code to displace all other applicable law because it also enacted 28 U.S.C. § 959(b), which requires debtors to manage their property in accordance with all state laws.<sup>3</sup> *Id.* at 502. Because a debtor cannot manage its property in violation of state laws, the Court held "a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards." 474 U.S. at 507. While the Supreme Court characterized its holding as a "narrow one," only applying if abandonment violates a law "reasonably calculated to protect the public health or safety from eminent and identifiable harm," it nevertheless held that a bankruptcy court does not have the power to authorize abandonment "without formulating conditions that will adequately protect the public's health and safety." *Id.* at 516.

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<sup>3</sup> Section 959(b) provides that "[A] trustee ... including a debtor in possession, shall manage and operate the property in his possession ... according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do so if in possession thereof."

16. In reaching this conclusion, the Supreme Court cited its own decision from the preceding term, *Ohio v. Kovacs*, 469 U.S. 274, 285 (1985), wherein it had held that a trustee must comply with environmental laws and “may not maintain a nuisance, pollute the waters of the State, or refuse to remove the source of such conditions.” *See Midlantic*, 474 U.S. at 502.

17. Based on the above, the Disclosure Statement, Plan and/or Restructuring Support Agreement must specifically state how the Debtors’ environmental obligations will be satisfied. The importance of the discussion of how the environmental obligations will be satisfied is even more important considering the Debtors’ acknowledgment that: (1) they idled at least four (4) of their facilities, (2) the idling of those facilities could involve significant reclamation and other environmental costs, (3) they are aware of that certain statutes and regulations require that mining property be reclaimed following a mine closure in accordance with an approved reclamation plan, and (4) they are are required to obtain surety bonds in relation to their reclamation obligations. See Disclosure Statement at pp. 75-76, 79-80, 82.

18. Based on the lack of any discussion related to how the Debtors’ environmental obligations will be satisfied under this reorganization, Lexon respectfully submits that the Disclosure Statement cannot be approved.

**B. Treatment of the Lexon Bonds**

19. It is unclear in the Disclosure Statement as to how the Lexon Bonds are going to be treated under the Plan and Restructuring Support Agreement. The term “Insurance Contract” in the Disclosure Statement includes all surety bonds and related agreements. See Disclosure Statement, Exh. A at p. 11. Based on the Disclosure Statement and Plan, it appears all

“Insurance Contracts” will be treated as executory contracts to be assumed or assigned. *See Id.* at p. 42.

20. The Lexon Bonds are not executory contracts that can be assumed or assigned at the sole discretion of the Debtors, or at the discretion of any other party involved in the transactions contemplated by the Disclosure Statement and Plan. The Lexon Bonds cannot be transferred, sold, assumed, and/or assigned, as surety bonds are not executory contracts. *See In re James River Coal Co.*, 2006 WL 2548456 (Bankr. M.D. Tenn. 2006); *In re All Phase Electrical Contracting, Inc.*, 409 B.R. 272, 275 (Bankr. D. Conn. 2009). As the Lexon Bonds are specific to the individual Debtor named as principal on each bond and are financial accommodations, they cannot be transferred to the extent any such transfer may be contemplated under the Disclosure Statement and Plan.

21. Although the Bankruptcy Code does not define “financial accommodation,” courts have held that the obligation to pay money on the obligation of another, such as the surety bonds here, is a financial accommodation. *See, e.g., In re Adana Mortg. Bankers, Inc.*, 12 B.R. 977, 987 (Bankr. N.D. Ga. 1980).

22. Section 365(c)(2) and Section 365(e)(2)(B) of the Bankruptcy Code prohibit the assumption of financial accommodations, such as the Lexon Bonds, by a debtor in bankruptcy. *See In re Thomas B. Hamilton Corp.*, 969 F.2d 1013, 1019 (11th Cir. 1992); *In re Wegner Farms*, 49 B.R. 440, 444 (Bankr. N.D. Iowa 1985) (in relation to surety bonds as financial accommodations only); *In re Edwards Mobile Home Sales, Inc.*, 119 B.R. 857, 859 (Bankr. M.D. Fla. 1990).

23. As a result, Lexon's Bonds cannot simply be transferred. A transfer to any entity, even the Reorganized Debtors, does not create any rights to acquire or assume any of Lexon's Bonds without the consent of Lexon.

24. Lastly, the Disclosure Statement and Plan fail to discuss the requirement that the Reorganized Debtors must demonstrate an ability to obtain government, licensing or regulatory approval, as well as an ability to replace the Lexon Bonds. In order for the restructuring to be successful, it is imperative that a purchaser demonstrates an ability to obtain the necessary bonds associated with the Debtors' assets, or provide sufficient proof that the bonds, specifically the Lexon Bonds, can be replaced.

25. To resolve Lexon's concerns, Lexon proposed that the following language be included in the Disclosure Statement Order and Confirmation Order:

**Surety Bond Obligations.** Notwithstanding any other provisions of the Plan, this Order, or any other order of this Bankruptcy Court, on the Effective Date, all rights and obligations related to the (i) Debtors' current surety bonds issued by a surety provider (each a "Surety", and collectively, the "Surety Bonds") and maintained in the ordinary course of business; (ii) surety payment and indemnity agreements, setting forth the Surety's rights against the Debtors, and the Debtors' obligations to pay and indemnify the Surety from any loss, cost, or expense that the Surety may incur, in each case, on account of the issuance of any surety bonds on behalf of the Debtors; (iii) surety collateral agreements governing collateral, if any, in connection with the Debtors' surety bonds; and/or (iv) ordinary course premium payments to the Surety for the Debtors' surety bonds (collectively, the

“Surety Bond Program,” and the Debtors’ obligations arising therefrom, the “Surety Bond Obligations”) shall be reaffirmed and ratified by the applicable Reorganized Debtors and continue in full force and effect and are not discharged, enjoined or released by the Plan in any way. For the avoidance of doubt, nothing in the Plan, this Order or other agreements between the Debtors and third parties, including, without limitation, any exculpation, release, injunction, exclusions and discharge provision of the Plan, including, without limitation, any of those provisions contained in Article X of the Plan, shall bar, alter, limit, impair, release or modify or enjoin any Surety Bond Obligations. The Sureties are deemed to have opted out of any release, exculpation, injunction provisions of the Plan that apply or could be interpreted to apply to the Sureties, their rights or claims in any respect, and are otherwise not Releasing Parties under the Plan. The Surety Bond Program and all Surety Bond Obligations related thereto shall be treated by the Reorganized Debtors and the Surety in the ordinary course of business as if these Chapter 11 Cases had not been commenced. For the avoidance of any doubt, with a reservation of rights to all parties, and only to the extent applicable, any agreements related to the Surety Bond Program are assumed by the Debtors and the Reorganized Debtors pursuant to section 365 of the Bankruptcy Code upon the Effective Date. Nothing in the Plan or this paragraph shall affect in any way the Surety’s rights against any non-debtor, or any non-debtor’s rights against the Surety, including under the Surety Bond Program or with regard to the Surety Bond Obligations.

**RESERVATION OF RIGHTS**

26. Nothing herein shall be considered a waiver of any rights or claims that Lexon might have against the Debtors, their subsidiaries and affiliates. The submission of this Objection by Lexon is not intended as, and shall not be construed as:

- a. Lexon's admission of any liability or waiver of any defenses or limitations of any rights of Lexon with respect to any claims against one or more of the Lexon Bonds or under the Indemnity Agreement;
- b. Lexon's waiver or release of any rights to exoneration it may have against any one with respect to its obligations pursuant to the Lexon Bonds;
- c. Lexon's waiver or release of its right to be subrogated to the rights of one or more parties paid pursuant to the Lexon Bonds;
- d. An election of remedies; or
- e. Consent to the determination of Debtors' liability to Lexon by a particular Court, including, without limitations, the Bankruptcy Court.

**CONCLUSION**

For the foregoing reasons, Lexon respectfully requests that this Court sustain Lexon's Objection to the Disclosure Statement, and grant such other and further relief as is just and proper.

Dated: August 12, 2020  
Houston, Texas

Respectfully submitted,  
By: */s/Philip G. Eisenberg*

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*Attorneys for Lexon Insurance Company and  
Endurance American Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of August, 2020, a true and correct copy of the foregoing Notice of Appearance was served via the Court's electronic case filing system (CM/ECF) to all parties registered to receive such notice in the above-captioned case.

/s/ Eric Boylan  
Eric Boylan



## COMMERCIAL GENERAL AGREEMENT OF INDEMNITY

This COMMERCIAL GENERAL AGREEMENT OF INDEMNITY (this "Agreement") is effective as of the  25  day of  June ,  2019  by the undersigned and any of its present or future direct or indirect subsidiaries, affiliates, divisions or operating units whether in the form of a corporation, partnership, limited liability company or other unincorporated association and/or any of the aforementioned entities' successors or assigns (individually and/or collectively, the "Principal) and any additional undersigned persons and/or entities and any of present or future subsidiaries, affiliates, divisions or operating units whether in the form of a corporation, partnership, limited liability company or other unincorporated association and/or any of the aforementioned entities' successors or assigns (individually and/or collectively, the "Indemnitors") in favor of Endurance American Insurance Company and / or Endurance Assurance Corporation and/or Lexon Insurance Company and/or Bond Safeguard Insurance Company, and any of their present or future subsidiaries, affiliates and/or any of the aforementioned entities' successors or assigns and/or any Person or company joining with the aforesaid entities at the request of the aforesaid entities, (individually and/or collectively, the "Surety") to execute or procure bonds, undertakings, guarantees, and/or contractual obligations, including renewals and extensions thereof or other similar instruments of guarantee, whether issued in paper form or electronically, whether before or after the date of this Agreement, and bonds and undertakings for which Surety has obligations as a result of an asset purchase, acquisition, merger or like transaction (individually and/or collectively, "Bond").

WHEREAS, in the transaction of business, the Principal and/or some or all of the Indemnitors are required, or may desire, to give a Bond; and

WHEREAS, the Principal and/or Indemnitors have a substantial, material and beneficial interest (a) in the obtaining of any Bond by the Principal and/or Indemnitors, and (b) in any transaction for which any other Indemnitor has applied or will apply to Surety for a Bond pursuant to this Agreement; and

WHEREAS, it is understood that the purpose of this Agreement is to induce Surety to furnish Bonds; however, Surety is under no obligation to furnish any Bond to the Principal or Indemnitors; and

NOW, THEREFORE, as an inducement to Surety to execute, procure, renew, continue, substitute or amend Bonds on behalf of or at the request of Principal and/or any of the other Indemnitors and in consideration of the furnishing of any Bond, the forbearance of cancellation of any existing Bond by Surety, the assumption of obligations by Surety of any Bond, and for other valuable consideration, Principal and Indemnitors for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally covenant and agree as follows:

- 1. PREMIUMS.** To pay or cause to be paid to Surety, in advance and promptly upon demand, in such manner as may be agreed upon, all premiums, costs and charges of Surety for any Bond, in accordance with Surety's rate filings, its manual of rates, or as otherwise agreed upon, and, where such premiums, costs or charges are annual, to continue to pay the same at the then applicable rate as they fall due, until the Principal or any of the other Indemnitors shall deliver



competent legal evidence satisfactory to Surety of its discharge or release from such Bond and all liability by reason thereof .

**2. INDEMNITY.** To at all times indemnify, exonerate, defend and save the Surety harmless from and against any and all liability, loss, cost and expense of whatever kind including unpaid premiums, interest, court costs and counsel fees, and any expense incurred or sustained by reason of making any investigation that Surety may incur or sustain as a result of, or in connection with: (1) having executed or procured the execution of any Bond or any commitment letter, consent of surety, or any other document related to the issuance of any Bond; (2) the failure of the Principal or any of the other Indemnitors to perform or comply with any of the covenants and conditions of this Agreement or any obligation under any other agreement executed by any Principal and/or any of the other Indemnitors that inure to or for the benefit of Surety, including but not limited to collateral agreements or Bond or any obligation under any agreements with respect to which a Bond has been executed by Surety; or (3) seeking enforcement of any of the representations, warranties, covenants and conditions of this Agreement or any other agreement (hereinafter referred to as "Loss"). To this end Principal and Indemnitors promise:

- (a) To promptly reimburse Surety for all sums paid on account of such Loss and it is agreed that (1) originals or photocopies of claim drafts, or of payment records, kept in the ordinary course of business, including computer printouts, verified by affidavit, shall be prima facie evidence of the fact and amount of such Loss, and (2) Surety shall be entitled to reimbursement for any and all disbursements made by it, under the belief that it was liable, or that such disbursement was necessary or expedient.
- (b) To deposit with Surety, on demand, the amount of any reserve against such Loss which Surety is required, or deems it prudent to establish whether on account of an actual liability or one which is, or may be, asserted against it and whether or not any payment for such Loss has been made.

**3. BONDS COVERED.** This Agreement shall apply to any Bond furnished as follows:

- (a) If Surety executes a Bond, procures the execution of a Bond by other sureties, executes a Bond with co-sureties and/or obtains reinsurance;
- (b) For or on behalf of any or all of the following:
  - (1) One, some or all of the Principal and Indemnitors;
  - (2) Any joint venture or other form of common enterprise in which Principal and/or Indemnitors were members at the time the Bond was furnished;
  - (3) Any present or future affiliate and/or subsidiary of Principal and/or Indemnitors;
  - (4) Any third party at the request of Principal and/or Indemnitors, their subsidiaries and/or affiliates.

**4. CHANGES TO BONDS.**



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(a) The validity and effect of this Agreement shall not be impaired by, and Surety shall incur no liability on account of, and Principal and Indemnitors need not be notified of:

- (1) Surety's failure or refusal to furnish any Bond, including a final Bond where Surety has furnished a bid Bond;
- (2) Surety's consent or failure to consent to changes in the terms and provisions of any Bond, or the obligation or performance secured by any Bond;
- (3) The taking, failing to take, or release of security, collateral, assignment, indemnity agreements and the like, as to any Bond;
- (4) The release by Surety, on terms satisfactory to it, of Principal and any Indemnitors; or
- (5) Information which may come to the attention of Surety which affects or might affect its rights and liabilities or those of the Principal and any of the Indemnitors.

(b) The validity and effect of this Agreement shall not be impaired by, and Surety shall incur no liability on account of, the cancellation or termination of any Bond.

**5. WAIVER AND SUBORDINATION.** Principal and Indemnitors waive and subordinate and shall have no rights of indemnity, contribution or right to seek collection of any other outstanding obligation against Principal and any other Indemnitors or their property until the obligations of the Principal and Indemnitors to Surety under this Agreement have been satisfied in full.

**6. BREACH.** Surety shall have the right, in its sole discretion, (a) to deem this Agreement breached should any Principal or Indemnitor become involved in any agreement or proceeding of liquidation, receivership, bankruptcy, insolvency or creditor assignment, whether voluntarily or involuntarily, or should any Principal or Indemnitor, if an individual, die, or be convicted of a felony, become a fugitive from justice, or for any reason disappear and cannot immediately be found by Surety by use of usual methods, and (b) to adjust, settle, compromise or defend any claim, demand, suit or judgment upon any Bond.

**7. COLLATERAL.** If Surety has or obtains collateral or letters of credit, Surety shall not have any obligation to release collateral or letters of credit or turn over the proceeds thereof until it shall have received a written release in form and substance satisfactory to Surety with respect to each and every Bond. Any collateral or letters of credit provided to Surety by Principal and any Indemnitor or any third party, or the proceeds thereof, may be applied to any Loss.

**8. CONTINUING OBLIGATION.** Principal and Indemnitors also understand and agree that their obligations remain in full force and effect for any Bond issued pursuant to this Agreement, notwithstanding that the entity on whose behalf a Bond was issued has been sold, dissolved or whose ownership has been otherwise altered in any way.

**9. TERM AND TERMINATION.** This Agreement shall remain in full force and effect until terminated. Principal and Indemnitors may only terminate participation in this Agreement by providing written notice to Surety of Principal's or Indemnitors' intent to terminate. Such notice shall be addressed to:

Sompo International

Endurance American Insurance Company and /  
or Endurance Assurance Corporation and /  
or Lexon Insurance Company and /  
or Bond Safeguard Insurance Company



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Surety Department  
1221 Avenue of the Americas, 18th Floor  
New York, New York 10020

Such notice of termination shall become effective thirty (30) days after Surety's receipt of the same. The obligations and liability of Principal and Indemnitors giving such notice shall thereafter be limited to any Bond furnished before the effective date of the notice, which liability shall include any Bond that was originally issued prior to the effective date of notice and renewed or otherwise extended subsequent to the notice or effective date of termination.

- 10. CREDIT VERIFICATION.** Principal and Indemnitors hereby expressly authorize Surety to access credit records and to make such pertinent inquiries as may be necessary from third party sources for underwriting purposes, claim purposes and/or debt collection. To the extent required by law, Surety will, upon request, provide notice whether or not a consumer report has been requested by Surety, and if so, the name and address of the consumer reporting agency furnishing the report.
- 11. BOOKS AND RECORDS.** In the event of a claim or notice of a potential claim, Surety shall have the right, at all times, to free access to the books, records, and accounts of the Principal and Indemnitors for the purpose of examining the same.
- 12. SURETY RECORDS.** Surety may furnish copies of any and all statements, agreements, financial statements and any information which it now has or may hereafter obtain concerning Principal and Indemnitors, to other persons or companies for the purpose of procuring co-suretyship or reinsurance.
- 13. COPIES AS ORIGINALS.** A duplicate or facsimile copy or electronic reproduction of the original document shall have the same force and effect as the original.
- 14. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.
- 15. SEVERABILITY.** If any provision or portion of this Agreement shall be unenforceable, this Agreement shall not be void, but shall be construed and enforced with the same effect as though such provision or portion were omitted.
- 16. OTHER AGREEMENTS.** This Agreement is in addition to and not in lieu of any other agreements and obligations undertaken in favor of Surety, whether now existing or entered into hereafter.
- 17. AMENDMENTS.** The rights and remedies afforded to Surety by the terms of this Agreement can only be impaired by a written rider to this Agreement signed by an authorized employee of the Surety.



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- 18. ASSETS IN TRUST.** The Principal and Indemnitors hereby warrant the accuracy of all financial statements submitted or to be submitted to Surety, and covenant and agree that the assets described therein are dedicated and imposed with a trust for the purpose of this Agreement.
- 19. REPRESENTATIONS AND WARRANTIES.** The Principal and Indemnitors each represent, warrant and agree that (i) they have the full power and authority to execute, deliver and perform this Agreement and to carry out the obligations stated herein, (ii) the execution, delivery, and performance of their duties and obligations pursuant to this Agreement have been duly authorized by all necessary corporate action and do not and will not: (a) require any consent or approval of the equity holders of such entity; (b) contravene such entity's charter or bylaws or any other organizational documents; (c) violate any provision of any law presently in effect having applicability to them; or (d) result in a breach of or constitute a default under any other agreement or instrument to which they are party or by which they or their properties may be bound or affected.
- 20. NO WAIVER.** Surety's failure to act to enforce any or all of its rights under this Agreement shall not be construed as a waiver of these rights.
- 21. DISCHARGE OF SURETY.** The Principal and/or each Indemnitors shall, upon the written request of the Surety, promptly procure the full and complete discharge of the Surety from any Bond and all liability by reason thereof. If such full and complete discharge is unattainable, the Principal and/or each Indemnitor shall, if requested by Surety, promptly provide collateral to the Surety in an amount equal to the undischarged liability of the Surety under each Bond as of the date of such request.
- 21. APPLICABLE LAW AND WAIVER OF JURY.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to such state's conflicts of laws rules. As to any legal action or proceeding related to this Agreement, the Principal and each of the other Indemnitors shall submit to the general jurisdiction of the United States District Court for the Southern District of New York or, if such court does not have subject matter jurisdiction, to the general jurisdiction of New York State Supreme Court in the County of New York, and the Principal and each of the other Indemnitors waive any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar basis. **THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION TO ENFORCE OR DEFEND ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT.**

(SIGNATURE PAGES FOLLOW)



**If Principal or Indemnitor is a Corporation, Limited Liability Company or Partnership, sign below:**

Instructions: If the entity(ies) is: 1) a corporation the secretary and an authorized officer should sign on behalf of the corporation, 2) a limited liability company the manager(s) or member(s) should sign on behalf of the LLC, or 3) a partnership the partner(s) should sign on behalf of the partnership. Two signatures are required for all entities and all signatures must be notarized and dated. Please provide the entity's(ies) federal tax identification number on the line provided. Each of the undersigned hereby affirms to Surety as follows: I am a duly authorized official of the business entity(ies) Principal or Indemnitor, as applicable, on whose behalf I am executing this Agreement. In such capacity I am familiar with all of the documents which set forth and establish the rights which govern the affairs, power and authority of such business entity including, to the extent applicable, the certificate or articles of incorporation, bylaws, corporate resolutions and/or partnership, operating or limited liability agreements of such business entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, I hereby affirm that such entity(ies) has the power and authority to enter into this Agreement and that the individuals executing this Agreement on behalf of such entity(ies) are duly authorized to do so.

**(ALL SIGNATURES MUST BE ACKNOWLEDGED BELOW)**

**WITNESS:**

By: [Signature]  
Name and title: Mark C. Skiba  
GC/Secretary

**Principal:** Hi-Crush Inc.  
By: [Signature]  
Name and title: Laura Fulton, CFO  
Taxpayer ID #: \_90-0840530  
State of incorporation: \_DE\_

Principal Address: 1330 Post Oak Blvd, Ste 600, Houston, TX 77056

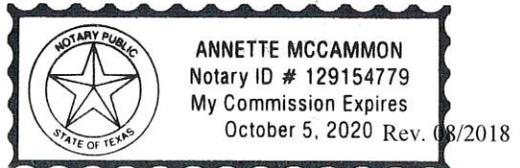
**ACKNOWLEDGEMENT**

STATE OF Texas County of Harris

On this 25 day of June 2019 before me personally appeared Laura C Fulton, known or proven to me to be the CFO of Hi-Crush Inc. the entity executing the foregoing instrument, who acknowledged to me that said instrument is the free and voluntary act and deed of said Entity, for the uses and purposes therein mentioned and on oath that he/she executed said instrument by authority of the Entity(ies). IN WITNESS WHEREOF, I have hereunto set my hand and affixed my OFFICIAL SEAL the day and year first above written.

[Signature]  
Notary Public residing at Harris County Texas  
(Commission expires 10/5/20)

Endurance American Insurance Company and /  
or Endurance Assurance Corporation and /  
or Lexon Insurance Company and /  
or Bond Safeguard Insurance Company





**ATTEST:**

By: [Signature]  
Name and title: GC/Secretary

**Indemnitor:** Hi-Crush Inc.

By: [Signature]  
Name and title: Laura Fulton, CFO  
Taxpayer ID #: \_90-0840530\_  
State of incorporation: \_DE\_

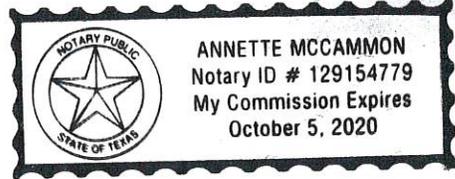
Indemnitor Address: 1330 Post Oak Blvd, Ste 600, Houston, TX 77056

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STATE OF Texas County of Harris

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SOMPO  
INTERNATIONAL