

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11  
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 EMERGE ENERGY SERVICES LP, *et al.*,<sup>1</sup> : Case No. 19-\_\_\_\_\_ (\_\_\_\_\_)  
 :  
 Debtors. : (Joint Administration Requested)  
 :  
 : **Objection Deadline: To be determined**  
 : **Hearing Date: To be determined**  
 :  
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**DEBTORS’ FIRST OMNIBUS MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE DEBTORS TO (I) REJECT CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES *NUNC PRO TUNC* TO THE  
PETITION DATE AND (II) ABANDON ANY REMAINING PERSONAL  
PROPERTY IN CONNECTION THEREWITH**

**THIS MOTION SEEKS TO, AMONG OTHER THINGS, REJECT CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES. PARTIES RECEIVING THIS MOTION SHOULD REVIEW THE MOTION TO SEE IF THEIR NAME(S) OR CONTRACT(S) AND/OR LEASE(S) ARE SET FORTH IN THE MOTION OR THE EXHIBITS ATTACHED HERETO TO DETERMINE WHETHER THE MOTION AFFECTS THEIR CONTRACT(S) AND/OR LEASE(S).**

The debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) hereby file this motion (the “**Motion**”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “**Order**”), under sections 365(a) and 554(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6006 and 6007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the Debtors to (i) reject certain executory contracts and unexpired leases, including any amendments or modifications thereto,

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



each as set forth on Exhibit 1 to the Order (collectively, the “**Rejected Contracts and Leases**”) with the counterparties to the Rejected Contracts and Leases (collectively, the “**Counterparties**”), *nunc pro tunc* to the Petition Date (as defined below), and (ii) abandon any remaining personal property in connection therewith. In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

### **JURISDICTION**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 365(a) and 554(a) of the Bankruptcy Code and Bankruptcy Rules 6006 and 6007.

### **BACKGROUND**

2. 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 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 Bryan Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**Gaston Declaration**”), and is fully incorporated herein by reference.<sup>2</sup>

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

3. 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 yet been appointed.

4. 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.

### **RELIEF REQUESTED**

5. By this Motion, the Debtors seek entry of the Order authorizing the Debtors to (i) reject the Rejected Contracts and Leases effective as of the Petition Date, and (ii) abandon any remaining personal property in connection therewith.

### **BASIS FOR RELIEF**

#### **A. The Rejected Contracts and Leases**

6. As more particularly described in the Gaston 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 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, either directly or through transloading facilities located in key basins throughout North America.

7. In the lead up to the Chapter 11 Cases, the Debtors undertook an initial analysis of certain of their executory contracts and unexpired leases. As a result of this ongoing analysis, the Debtors determined, in their business judgment, that the Rejected Contracts and Leases identified on Exhibit 1 attached to the Order are unnecessary and burdensome to the

Debtors' estates and should be rejected immediately. The Rejected Contracts and Leases include the following:

- ***Railcar Lease Agreements.*** The Debtors are parties to certain railcar lease agreements (collectively, the "**Railcar Lease Agreements**") pursuant to which the Debtors lease railcars to transport the Debtors' silica sand products from their plant facilities to transloading facilities for customer pick up. The Railcar Lease Agreements vary in pricing. Under the Railcar Lease Agreements, the Debtors pay the Counterparties a fixed fee per car based on market terms negotiated at the time the leases were executed. The Railcar Lease Agreements vary in length, and may last from two to ten years.
- ***Terminal, Transloading and Storage Agreements.*** The Debtors are party to certain terminal, transloading and storage agreements (collectively, the "**Terminal, Transloading and Storage Agreements**") pursuant to which the Debtors pay for the use of terminal and transloading facilities to deliver the Debtors' products to customers and to store certain of the Debtors railcars. Generally, the Debtors pay the Counterparties to the Terminal, Transloading and Storage Agreements a fee based on the amount of tonnage processed through the transloading facility (plus, in most cases, a minimum payment if the required tonnage is not met by the Debtors) and/or the amount of railcars to be stored. The Terminal, Transloading and Storage Agreements vary in length, and may last up to 10 years or more.
- ***Mining and Processing Agreements.*** The Debtors are party to certain mining and processing agreements (collectively, the "**Mining and Processing Agreements**") pursuant to which the Debtors contract with certain third parties that provide excavating and processing services for the Debtors on their silica sand mining and processing facilities. Generally, the Debtors pay the Counterparties to the Mining and Processing Agreements a fee based on volume of material processed. In some cases the Mining and Processing Agreements include minimum volumes and/or minimum fees and also vary in length lasting up to seven years or more.
- ***Royalty Agreements.*** The Debtors are party to certain royalty agreements (the "**Royalty Agreements**") pursuant to which the Debtors pay landowners who own the property on which the Debtors' silica sand mining and processing operations are located a fee for every ton of sand removed from the property (or an annual minimum payment if a certain tonnage amount is not mined by the Debtors) in exchange for the exclusive right to mine and process sand on the landowners' property. The Royalty Agreements may last up to twenty five years or more.

- ***Purchase Agreements.*** The Debtors are party to certain purchase agreements (the “**Purchase Agreements**”) pursuant to which the Debtors agree to purchase certain sand products and other materials from Counterparties pursuant to the terms and conditions set forth in the Purchase Agreements.
- ***Pre-Annexation Agreements.*** The Debtors are party to certain pre-annexation agreements (the “**Pre-Annexation Agreements**”) pursuant to which the Debtors agree, among other things, pay the Counterparties an annual royalty payment and certain other fees and costs and in exchange, among other things, the Counterparties shall annex certain property for use by the Debtors’ in their mining and processing operations.
- ***Landowner Annexation Easement Agreements.*** The Debtors are party to certain landowner annexation easement agreements (the “**Landowner Annexation Easement Agreements**”) pursuant to which the Debtors agree, among other things, pay the Counterparties certain annual fees and in exchange, among other things, the Counterparties shall provide the Debtors with an easement over certain of Counterparties’ properties for use by the Debtors’ in their mining and processing operations.
- ***Subscription Agreement.*** The Debtors are party to that certain subscription agreement (the “**Subscription Agreement**”) pursuant to which the Debtors agree to pay for, and the Counterparty agrees to provide, certain tax and financial related software.

**B. Abandonment of Remaining Property in Connection Therewith**

8. The Debtors have determined in their reasonable business judgment that the costs associated with the continued storage of certain inventory and personal property or other remaining assets, which might include silica sand (collectively, the “**Abandoned Property**”), located or stored at the surrendered storage, transloading, and terminal facilities or rail cars will exceed any projected proceeds that could be realized from the sale thereof, or may have low prospects for resale. Storage and removal costs associated with the Abandoned Property would impose a financial burden on the Debtors’ estates that would provide little to no value in return. Accordingly, the Debtors request that the Court approve the abandonment of such property in connection with the Debtors’ rejection of the Rejected Contracts and Leases as of the Petition Date for the benefit of their estates and creditors.

## APPLICABLE AUTHORITY

### A. The Rejection of the Rejected Contracts and Leases Is an Appropriate Exercise of the Debtors' Business Judgment

9. 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). The bankruptcy court should approve a debtor’s rejection of an executory contract or unexpired lease if such rejection is an exercise of the debtor’s sound business judgment, benefits its estate, and is not made in bad faith. *See In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d*, 465 U.S. 513 (1984) (“[t]he usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”); *Sharon Steel Corp. v. Nat’l Fuel Gas Distr. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989) (affirming rejection of a service agreement as sound exercise of debtor’s business judgment where bankruptcy court found rejection would benefit estate); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (holding the business judgment standard applicable, absent bad faith, whim, or caprice). In applying the business judgment standard, bankruptcy courts afford great deference to a debtor’s decision to assume or reject executory contracts. *See In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

10. The Debtors have determined, in the sound exercise of their business judgment, that (i) they no longer need any of the services provided pursuant to the Rejected Contracts and Leases, and/or (ii) the Rejected Contracts and Leases are above market or no longer provide any benefit or value to the Debtors. Absent rejection, the Debtors might continue to incur administrative expenses arising under the Rejected Contracts and Leases without any

corresponding benefit to their estates. The rejection of the Rejected Contracts and Leases will relieve the Debtors of these unnecessary burdens and strains and, thus, is in the best interests of the Debtors' estates and their creditors. Accordingly, authorizing the Debtors to reject the Rejected Contracts and Leases as of the Petition Date constitutes an exercise of the Debtors' sound business judgment.

**B. The Rejection of the Rejected Contracts and Leases *Nunc Pro Tunc* to the Petition Date Is Appropriate Under the Circumstances**

11. Section 365 of the Bankruptcy Code does not restrict a bankruptcy court from applying rejection retroactively. *See Adelpheia Bus. Solutions, Inc. v. Abnos*, 485 F.3d 602 (2d Cir. 2007) (affirming the bankruptcy court's equitable authority to authorize the retroactive rejection of a nonresidential lease of real property where advance notice is provided); *In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 does not include "restrictions as to the manner in which the court can approve rejection"). Courts have held that a bankruptcy court may, in its discretion, authorize rejection retroactively to a date prior to entry of an order authorizing such rejection where the balance of equities favors such relief. *See In re Thinking Machs. Corp.*, 67 F.3d 1021, 1028–29 (1st. Cir. 1995) (stating "rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively"); *In re Chi-Chi's, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating "the court's power to grant retroactive relief is derived from the bankruptcy court's equitable powers so long as it promotes the purposes of § 365(a)"); *BP Energy Co. v. Bethlehem Steel Corp.*, 2002 WL 31548723, at \*3 (S.D.N.Y. Nov. 15, 2002) ("We cannot conclude . . . that a bankruptcy court's assignment of a retroactive rejection date falls outside of its authority when the balance of the equities favors this solution.").

12. The balance of the equities favors rejection *nunc pro tunc* to the Petition Date. Moreover, the Debtors provided the Counterparties subject to retroactive rejection of their respective Rejected Contracts and Leases with advance written notice of the Debtors' intent to reject such contracts and leases as of the Petition Date. Furthermore, the Debtors have unequivocally surrendered any storage, transloading, and terminal facilities or rail cars that are the subject of the Rejected Contracts and Leases to each Counterparty on or before the Petition Date. Where applicable, the Debtors have made arrangements, or made best efforts to make commercially reasonable arrangements, with the Counterparties or other parties with an interest in the Rejected Contracts and Leases or Abandoned Property for the transfer or surrender thereof. Absent retroactive rejection, the Debtors may incur unnecessary administrative charges and other obligations under the Rejected Contracts and Leases without any reciprocal benefits to their estates. Accordingly, the Debtors submit that it is fair and equitable for the Court to reject the Rejected Contracts and Leases *nunc pro tunc* to the Petition Date.

**C. Abandonment of Remaining Personal Property Is Authorized Pursuant to Section 554(a) of the Bankruptcy Code**

13. The Debtors derive authority to abandon the Abandoned Property from section 554(a) of the Bankruptcy Code, which provides that, "after notice and a hearing, the trustee may abandon any property that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a); *see also Hanover Ins. Co. v. Tyco Indus., Inc.*, 500 F.2d 654, 657 (3d Cir. 1974) ("[A trustee] may abandon his claim to any asset, including a cause of action, he deems less value than the cost of asserting that claim."); *In re Contract Research Sols., Inc.*, 2013 WL 1910286, at \*4 (Bankr. D. Del. May 1, 2013) ("[A debtor] need only demonstrate that [it] has exercised sound business judgment in making the determination to abandon."). The right to abandon property is virtually unfettered, unless



(i) abandonment of the property will contravene laws designed to protect public health and safety or (ii) abandonment of the property poses an imminent threat to the public's welfare. *See In re Midlantic Nat'l Bank*, 474 U.S. 494, 501 (1986). Neither of these limitations is relevant under the facts and circumstances presented here.

14. Here, although the Debtors believe that they have removed all of their significant owned personal property assets located or stored at the surrendered premises and facilities, rail cars, or other leased personalty (the "**Leased Premises**") subject to the Rejected Contracts and Leases, in limited volumes some of the Debtors' silica sand may remain thereat. The Debtors submit that such Abandoned Property is inconsequential to their estates and/or removal or storage of such property exceeds its value and is burdensome to their estates. Therefore, to the extent that any Abandoned Property remains at the Leased Premises, the Debtors seek authority to abandon such assets as of the Petition Date. For the foregoing reasons, the abandonment of the Abandoned Property should be approved by the Court.

#### **WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)**

15. To implement the foregoing successfully, the Debtors request, to the extent Bankruptcy Rule 6004 is applicable to the relief requested herein, that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen day stay period under Bankruptcy Rule 6004(h) and any other applicable Bankruptcy Rule.

#### **CONSENT TO JURISDICTION**

16. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors consent to the entry of a final judgment or order with respect to this Motion

if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

### **RESERVATION OF RIGHTS**

17. 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; or (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

### **NOTICE**

18. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the creditors listed on the Debtors' consolidated list of thirty creditors holding the largest unsecured claims; (v) counsel to the DIP Agent and the Prepetition Agents; (vi) the Counterparties; (vii) counsel to Insight Equity; and (ix) all parties that have requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

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

### **NO PRIOR REQUEST**

20. No previous request for the relief sought herein has been made to this Court or any other court.

*[Remainder of page intentionally left blank]*

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

Dated: July 15, 2019  
Wilmington, Delaware

/s/ Zachary I. Shapiro

**RICHARDS, LAYTON & FINGER, P.A.**

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*Proposed Counsel for Debtors and Debtors-in-Possession*

**EXHIBIT A**

**Proposed Order**

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

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In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , <sup>1</sup>	:	Case No. 19-_____ (_____)
	:	
Debtors.	:	(Joint Administration Requested)
	:	
	:	<b>Re: Docket No.</b>
	X	

**ORDER AUTHORIZING THE DEBTORS TO (I) REJECT CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES *NUNC PRO TUNC*  
TO THE PETITION DATE AND (II) ABANDON ANY REMAINING  
PERSONAL PROPERTY IN CONNECTION THEREWITH**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an Order authorizing the Debtors to (i) reject certain executory contracts and unexpired leases, each as set forth on Exhibit 1 attached hereto (collectively, the “**Rejected Contracts and Leases**”), *nunc pro tunc* to the Petition Date, and (ii) abandon any remaining personal property in connection therewith, all as more fully described in the Motion; and the Court having reviewed the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; 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

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

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

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 upon the record herein; and after due deliberation thereon; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and the Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to reject the Rejected Contracts and Leases, identified on Exhibit 1 attached hereto, including, to the extent applicable, any agreements, amendments, modifications, and subleases related thereto, effective as of the Petition Date.
3. Consistent with the limitations of section 362 of the Bankruptcy Code, and any other applicable law, the Counterparties are prohibited from setting off or otherwise utilizing any amounts deposited by the Debtors with any of the Counterparties as a security deposit or pursuant to another similar arrangement, or owed to the Debtors by any of the Counterparties under the Rejected Contracts and Leases or other agreements between the same parties, without further order of this Court.
4. The Debtors are authorized to abandon the Abandoned Property, and the Counterparties may dispose of the Abandoned Property on and after the Petition Date in their sole and absolute discretion without further notice to or the approval from the Debtors or any third party.
5. Nothing in this Order shall prejudice the rights of the Counterparties with respect to any claim for damages arising from the rejection of the Rejected Contracts and Leases

and with respect to any objection by the Debtors thereto.

6. Any claims based on the rejection of the Rejected Contracts and 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.

7. Nothing herein shall prejudice the rights of the Debtors to argue that any of the Rejected Contracts and Leases were terminated prior to the Petition Date or that any claim for damages arising from the rejection of the Rejected Contracts and 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.

8. Nothing contained in the Motion or this Order 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; or (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

9. Adequate notice of, and an opportunity for a hearing on, the Motion has been provided, and such notice satisfies the requirements of Bankruptcy Rule 6004(a).

10. Notwithstanding any applicability of Bankruptcy Rules 6004(h), 7062, or 9014, the terms and conditions of this Order are immediately effective and enforceable upon its entry. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

11. 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.

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

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE



**Exhibit 1**

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
1	Superior Silica Sands LLC (“ <b>SSS LLC</b> ”)	16 Sand, LLC	922 Isom Road San Antonio, TX 78216 Attn: Anthony S. Ridout 210-518-5082 Tridout@ridoutBarrett.com	Purchase Agreement	Sand Supply and Financing Agreement	3/21/18
2	SSS LLC	Kristine Benusa	Kristine Benusa W 23495 Grulkowski Lane Arcadia, WI 54612  With a copy to: River Ridge Sands, LLC N32706 River Valley Road Arcadia, WI 54612	Royalty Agreement	Lease and Royalty Agreement	10/30/14
3	SSS LLC	BMT Consulting Group LLC	36 Redwood Drive Butte, MT 59701 Attn: Paul McCarthy Phone: 406-490-2598 paul@bmt.us	Terminal, Transloading and Storage Agreement	Railcar Storage Agreement	2/1/15
4	SSS LLC & Emerge Energy Services LP (“ <b>EMES LP</b> ”)	CAI Rail Inc.	Steuart Tower 1 Market Plaza, Suite 900 San Francisco, CA 94105 Fax: 415-788-3430 amcdonald@capps.com	Railcar Lease Agreement	Master Car Master Lease Agreement Net Lease Schedule SUPR-700	5/16/16
5	SSS LLC	Capital Aggregates	2330 N Loop 1604 W San Antonio, TX 78248	Purchase Agreement	Credit Agreement (Sand Supply)	9/15/17

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
		Inc.	Phone: 210-871-6100			
6	SSS LLC	Chicago Freight Car Leasing Co.	425 N. Martingale Road, 6th Floor Shaumburg, Il 60173 Phone: 847-318-8000 Fax: 847-318-8045 Matthew.Branch@crdx.com	Railcar Lease Agreement	Amendment to Lease Rider 1204-13-01 Dated October 9, 2014	12/1/16
7	SSS LLC	City of Independence	23688 Adams Street Independence, WI 54747 US Phone: (715) 985-3055	Pre-Annexation Agreement	Pre-Annexation Agreement	7/7/14
8	SSS LLC	Edward Grulkowski Living Trust	Edward J. Grulkowski Living Trust W 23046 Grulkowski Lane Arcadia, WI 54612  With a copy to: River Ridge Sands, LLC N32706 River Valley Road Arcadia, WI 54612	Royalty Agreement	Lease and Royalty Agreement	10/31/14
9	SSS LLC	Evergreen Transloading Terminal Ltd	Evergreen Transloading Terminal Ltd. Lot 29, 712051 RR54 County of Grande Prarie No. 1 AB T8X 4A7 Attn: Ryan Peterson Fax: 780-539-4769 ryan@baillys.ca	Terminal, Transloading and Storage Agreement	Terminal Contract	The effective date of this Agreement (the "Effective Date") shall be thirty (30) days following the later to occur of: (i) The Operator's

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
						receipt of written approval from Canadian National Railway Company to commence operations; and (ii) The erection of storage silos and written confirmation from the Operator that the Facility is ready to commence operations;
10	SSS LLC	Evergreen Transloading Terminal Ltd	Evergreen Transloading Terminal Ltd. Lot 29, 712051 RR54 County of Grande Prairie No. 1, AB T8X 4A7 Attn: Ryan Peterson Fax: 780-539-4769 ryan@baillys.ca	Terminal, Transloading and Storage Agreement	Amending Agreement	3/7/14

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
11	SSS LLC	Evergreen Transloading Terminal Ltd	Evergreen Transloading Terminal Ltd. Lot 29, 712051 RR54 County of Grande Prairie No. 1, AB T8X 4A7 Attn: Ryan Peterson Fax: 780-539-4769 ryan@baillys.ca	Terminal, Transloading and Storage Agreement	Amending Agreement	9/24/13
12	SSS LLC	Evergreen Transloading Terminal Ltd	Evergreen Transloading Terminal Ltd. Lot 29, 712051 RR54 County of Grande Prairie No. 1, AB T8X 4A7 Attn: Ryan Peterson Fax: 780-539-4769 ryan@baillys.ca	Terminal, Transloading and Storage Agreement	Amending Agreement	3/7/14
13	SSS LLC	Allen Filla	Allen J. Filla N32440 Bisek Road Independence, WI 54747  With a copy to: River Ridge Sands, LLC N32706 River Valley Road Arcadia, WI 54612	Royalty Agreement	Pooled Royalty Lease Agreement	11/3/14
14	SSS LLC	Fred Weber, Inc.	2320 Creve Coeur Mill Road Maryland Heights, MO 63043 Phone: 314-344-0070 Fax: 314-344-0970 matbilling@fredweberinc.com	Mining and Processing Agreement	Wet Sand Services Agreement	4/7/11
15	SSS LLC	Fred Weber, Inc.	2320 Creve Coeur Mill Road Maryland Heights, MO 63043 Phone: 314-344-0070 Fax: 314-344-0970 matbilling@fredweberinc.com	Mining and Processing Agreement	First Amendment to Wet Sand Services Agreement	8/1/11

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
16	SSS LLC	Fred Weber, Inc.	2320 Creve Coeur Mill Road Maryland Heights, MO 63043 Phone: 314-344-0070 Fax: 314-344-0970 matbilling@fredweberinc.com	Mining and Processing Agreement	Second Amendment to Wet Sand Services Agreement	1/1/15
17	SSS LLC	Fred Weber, Inc.	2320 Creve Coeur Mill Road Maryland Heights, MO 63043 Phone: 314-344-0070 Fax: 314-344-0970 matbilling@fredweberinc.com	Mining and Processing Agreement	Third Amendment to Wet Sand Services Agreement	12/1/15
18	SSS LLC	Fred Weber, Inc.	2320 Creve Coeur Mill Road Maryland Heights, MO 63043 Phone: 314-344-0070 Fax: 314-344-0970 matbilling@fredweberinc.com	Mining and Processing Agreement	Fourth Amendment to Wet Sand Services Agreement	4/19/17
19	SSS LLC	Greenbrier Leasing Company, LLC	One Centerpointe Drive, Suite 200 Lake Oswego, Oregon, 97035 Attn: Equipment Accounting Fax: 503-968-4375 AR.Inquiries@gbrx.com	Railcar Lease Agreement	Lease Amendment Agreement Lease Schedules No. 4 and 8	10/31/16
20	SSS LLC	Greenbrier Leasing Company, LLC	One Centerpointe Drive, Suite 200 Lake Oswego, Oregon, 97035 Attn: Equipment Accounting Fax: 503-968-4375 AR.Inquiries@gbrx.com	Railcar Lease Agreement	Lease Amendment Agreement	10/31/16
21	SSS LLC	Iowa Northern Railway Company	305 Second Street SE, Suite 400 Cedar Rapids, Iowa 52401	Terminal, Transloading and Storage Agreement	Car Storage Agreement	2/12/15

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
22	SSS LLC	Iowa Northern Railway Company	305 Second Street SE, Suite 400 Cedar Rapids, Iowa 52401	Terminal, Transloading and Storage Agreement	First Amendment	10/20/17
23	SSS LLC	Keokuk Junction Railway Co.	1318 Johanson Road Peoria, Illinois 61607 Attn: Shane Cullen	Terminal, Transloading and Storage Agreement	Railcar Storage Agreement	12/3/18
24	SSS LLC	Dennis and Rosemary Korpak	Dennis J. Korpak and Rosemary I. Korpak N31860 Churchill Road Arcadia, WI 54612  With a copy to: River Ridge Sands, LLC N32706 River Valley Road Arcadia, WI 54612	Royalty Agreement	Lease and Royalty Agreement	10/30/14
25	SSS LLC	Gregory Korpak	Gregory Korpak W 23624 Grulkowski Lane Arcadia, WI 54612  With a copy to: River Ridge Sands, LLC N32706 River Valley Road Arcadia, WI 54612	Royalty Agreement	Lease and Royalty Agreement	10/30/14

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
26	SSS LLC	Minnesota Commercial Railway Company	14047 W Petronella Drive # 201 Libertyville, IL 60048	Terminal, Transloading and Storage Agreement	Track Lease Agreement	1/19/15
27	SSS LLC	Modern Materials d/b/a Arrow Material Services	Arrow Material Services 2605 Nicholson Road Sewickley, PA 15143 Attn: Tim Chutz Fax: 412-489-4779 gbuffington@arrowmaterialservices.com	Terminal, Transloading and Storage Agreement	Transload Facility Management, Warehousing and Transportation Agreement	1/1/15
28	SSS LLC	OmniTrax Logistics Services, LLC	OmniTRAX Logistics Services, LLC 252 Clayton Street, 4th Floor Denver, Co 80206 Attn: General Counsel Phone: 303-398-5400 Fax: 303-398-4540 info@omnitrax.com	Terminal, Transloading and Storage Agreement	Transload and Storage Services Agreement	12/29/17
29	SSS LLC	Pientok Family	35253 Co. Road Q, Independence, WI 54747	Landowner Annexation Easement Agreement	Landowner Annexation Easement Agreement	7/31/14
30	SSS LLC	Prokop Family	W23737 Creek Road PO Box 341 Independence, WI 54747	Landowner Annexation Easement Agreement	Landowner Annexation Easement Agreement	10/21/14
31	SSS LLC	Andrew and Carol Puchalla	Andrew J. Puchalla and Carol Puchalla N33049 State Road 93 Independence, WI 54747  With a copy to: River Ridge Sands, LLC N32706 River Valley Road	Royalty Agreement	Lease and Royalty Agreement	10/31/14

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
			Arcadia, WI 54612			
32	SSS LLC	Rail Logix Alamo Junction, LLC	Rail Logix Alamo Junction, LLC C/O Randy Bennett 3330 S. Sam Houston PKWY E. Houston, TX 77047 Telephone: 713-962-3200 Phone: 713-943-0750 Fax: 713-943-8483 rbennett@rail-logix.com	Terminal, Transloading and Storage Agreement	Rail Yard Services Agreement	6/1/14
33	SSS LLC	Rail Logix Alamo Junction, LLC	Rail Logix Alamo Junction, LLC C/O Randy Bennett 3330 S. Sam Houston PKWY. E. Houston, TX 77047 Telephone: 713-962-3200 Phone: 713-943-0750 Fax: 713-943-8483 rbennett@rail-logix.com	Terminal, Transloading and Storage Agreement	First Amendment to Rail Yard Services Agreement	1/1/15
34	SSS LLC	Schank Family Farms, LLC	N30673 Stak Road 93 Independence, WI 54612	Landowner Annexation Easement Agreement	Landowner Annexation Easement Agreement	8/1/14
35	SSS LLC	Randall J. Slaby	Randall J. Slaby P.O. Box 233 Independence, WI 54747  With a copy to: Godfrey & Kahn, S.C. P.O. Box 2719 Madison, WI 53701-2719 Attn: Richard A. Latta Fax: 608-257-0609	Landowner Annexation Easement Agreement	Landowner Annexation Easement Agreement	7/31/14



No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
36	SSS LLC	SMBC Rail Services LLC	300 S. Riverside Plaza, Suite 1925 Chicago, Illinois 60606 Fax: 312-559-4829 billing@smbcrail.com	Railcar Lease Agreement	Master Railcar Lease Agreement	5/30/14
37	SSS LLC	SMBC Rail Services LLC	300 S. Riverside Plaza, Suite 1925 Chicago, Illinois 60606 Fax: 312-559-4829 billing@smbcrail.com	Railcar Lease Agreement	SMBC Railcar Lease Rider 1	5/30/14
38	SSS LLC	SMBC Rail Services LLC	300 S. Riverside Plaza, Suite 1925 Chicago, Illinois 60606 Fax: 312-559-4829 billing@smbcrail.com	Railcar Lease Agreement	Amendment No. 1 to Rider No. 1	1/1/17
39	SSS LLC	SMBC Rail Services LLC	300 S. Riverside Plaza, Suite 1925 Chicago, Illinois 60606 Fax: 312-559-4829 billing@smbcrail.com	Railcar Lease Agreement	Amendment No. 2 to Rider No. 1	1/1/16
40	SSS LLC	SMBC Rail Services LLC	300 S. Riverside Plaza, Suite 1925 Chicago, Illinois 60606 Fax: 312-559-4829 billing@smbcrail.com	Railcar Lease Agreement	SMBC Railcar Lease Rider 2	5/30/14
41	SSS LLC	SMBC Rail Services LLC	300 S. Riverside Plaza, Suite 1925 Chicago, Illinois 60606 Fax: 312-559-4829 billing@smbcrail.com	Railcar Lease Agreement	Amendment No. 1 to Rider No. 2	1/1/17
42	SSS LLC	SMBC Rail Services LLC	300 S. Riverside Plaza, Suite 1925 Chicago, Illinois 60606 Fax: 312-559-4829 billing@smbcrail.com	Railcar Lease Agreement	SMBC Railcar Lease Rider 3	5/30/14
43	SSS LLC	SMBC Rail Services LLC	300 S. Riverside Plaza, Suite 1925 Chicago, Illinois 60606 Fax: 312-559-4829 billing@smbcrail.com	Railcar Lease Agreement	Amendment No. 1 to Rider No. 3	1/1/17
44	SSS LLC	Robert Smith and Kristin	Robert J. Smith and Kristin J. Little-Smith	Royalty	Lease and Royalty Agreement	10/31/14

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
		Little-Smith	N32623 Bisek Road Independence, WI 54747  With a copy to: River Ridge Sands, LLC N32706 River Valley Road Arcadia, WI 54612	Agreement		
45	SSS LLC	Smith Family	N32623 Bisek Road Independence, WI 54747	Royalty Agreement	Lease and Royalty Agreement	10/31/14
46	SSS LLC	The Andersons, Inc	1947 Briarfield Blvd Maumee, Ohio 43537 Phone: 419-897-3645 Fax: 419-891-2749 rebecca_noll@andersoninc.com	Railcar Lease Agreement	Railcar Lease	12/31/14
47	SSS LLC	The Andersons, Inc	1947 Briarfield Blvd Maumee, Ohio 43537 Phone: 419-897-3645 Fax: 419-891-2749 rebecca_noll@andersoninc.com	Railcar Lease Agreement	Railcar Lease	2/18/15
48	SSS LLC	TIAA Commercial Finance, Inc. f/k/a Everbank Commercial Finance, Inc.	10 Waterview Blvd., 2nd Floor Parsippany, NJ 07054	Railcar Lease Agreement	Lease Amendment Agreement Lease Schedule No. 6	4/15/14
49	SSS LLC	TIAA Commercial Finance, Inc. f/k/a Everbank Commercial	10 Waterview Blvd., 2nd Floor Parsippany, NJ 07054	Railcar Lease Agreement	Lease Amendment Agreement Lease Schedule No. 6	11/23/16

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
		Finance, Inc.				
50	SSS LLC	Tidewater Logistics Corp	Tidewater Logistics Corp. 706 Aviator Drive Fort Worth, TX 76179 Attn: Scott Spence Phone: 855-718-9564 scott@twlog.com	Terminal, Transloading and Storage Agreement	Transload and Storage Services Agreement	1/11/17
51	SSS LLC	V&S Railway, LLC	1505 South Redwood Road Salt Lake City, UT 84104 Phone: 801-972-8330	Terminal, Transloading and Storage Agreement	Railcar Storage Agreement	11/2/15
52	SSS LLC	Viper Railcar Storage	794 Emerald Oaks Drive Farmington, UT 84025	Terminal, Transloading and Storage Agreement	Railcar Agreement	10/20/15
53	SSS LLC	Viper Railcar Storage	794 Emerald Oaks Drive Farmington, UT 84025	Terminal, Transloading and Storage Agreement	Amendment One	10/23/15
54	SSS LLC	Viper Railcar Storage	794 Emerald Oaks Drive Farmington, UT 84025	Terminal, Transloading and Storage Agreement	Amendment Two	11/1/15

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
55	SSS LLC	Viper Railcar Storage	794 Emerald Oaks Drive Farmington, UT 84025	Terminal, Transloading and Storage Agreement	Amendment Three	5/1/19
56	SSS LLC	James M. Warner	James M. Warner 23684 Washington Street P.O. Box 157 Independence, WI 54747-0157 Fax: 715-985-3193  With a copy to: Godfrey & Kahn, S.C. P.O. Box 2719 Madison, WI 53701-2719 Attn: Richard A. Latta Fax: 608-257-0609	Landowner Annexation Easement Agreement	Landowner Annexation Easement Agreement	7/31/14
57	SSS LLC	Scott Weaver	Scott A. Weaver N31845 Churchill Road Arcadia, WI 54612  With a copy to: River Ridge Sands, LLC N32706 River Valley Road Arcadia, WI 54612	Royalty Agreement	Lease and Royalty Agreement	10/30/14
58	SSS LLC	Kevin Welein	Kevin Werlein 1455 Cliffview Avenue Onalaska, WI 54650  With a copy to: River Ridge Sands, LLC	Royalty Agreement	Lease and Royalty Agreement	10/30/14

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
			N32706 River Valley Road Arcadia, WI 54612			
59	SSS LLC	Wells Fargo Rail Corporation	9377 W. Higgins Road, Suite 600 Rosemont, IL 60018 Attn: Contract Administration Phone: 847-318-7575 Fax: 847-318-7588 dean.lagrosa@firstunionrail.com	Railcar Lease Agreement	Assignment and Assumption Agreement	5/9/14
60	SSS LLC	Wells Fargo Rail Corporation	9377 W. Higgins Road, Suite 600 Rosemont, IL 60018 Attn: Contract Administration Phone: 847-318-7575 Fax: 847-318-7588 dean.lagrosa@firstunionrail.com	Railcar Lease Agreement	Assignment and Assumption Agreement	6/19/14
61	SSS LLC	Wisconsin Great Northern Railroad	n6639 Dilly Lake Road Trego, WI 54888	Terminal, Transloading and Storage Agreement	Car Storage Agreement	9/10/18
62	EMES LP	Workiva, Inc.	Workiva Legal Team 2900 University Blvd. Ames, Iowa 50010 Phone: 515-817-6109	Subscription Agreement	Subscription Order; Master Terms and Conditions	5/27/18; 5/19/14